Joint Ventures, Teaming Agreements, and Strategic Alliances

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What is a Teaming Agreement?

When two or more companies combine resources to bid on a government contract, it is known as a 'teaming agreement.' Usually, a teaming agreement is composed of a large corporation and one or more small businesses, with the large corporation acting as the prime contractor to the government and the smaller company or companies serving as subcontractors to the prime contractor.

The Defense Contract Audit Agency defines a teaming agreement as, "An arrangement between two or more companies, either as a partnership or joint venture, to perform on a specific contract. The team itself may be designated to act as the prime contractor; or one of the team members may be designated to act as the prime contractor, and the other member(s) designated to act as subcontractors."

The Federal Acquisition Regulation (FAR) 9.601 defines teaming agreements as a "Contractor team arrangement." The term, as used in this subpart, means an arrangement in which:

(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program.

The key elements of teaming agreements, taken from SBA guidelines, are as follows:

- Proposal preparation responsibilities of all team members are clearly defined.
- Team members are required to submit a proposal to the prime contractor covering the team members' portion of the effort.
- Statement-of-work tasks are clearly divided among team members in the event of contract award.
- Protection of the competition-sensitive proprietary information of all team members is provided for.
- The proposed prime contractor is responsible for adhering to contract terms and conditions.
- The proposed prime contractor is responsible for daily management in the event of contract award.
- The prime contractor is obligated to negotiate a subcontract in good faith if the team receives a contract award.
- Exclusivity is guaranteed, ensuring that team members cannot be easily replaced and that team members will not simultaneously act as team members and competitors by teaming with other firms on the same procurement.

The Advantages of a Teaming Agreement

The SBA considers the key advantages of a teaming agreement under federal guidelines as an agreement that:

- Takes advantage of relaxed SBA affiliation rules
- Maximizes complementary skills, resources, and capabilities
- Minimizes risks
- Develops a direct relationship with the Dept. of Defense (DoD)
- Fills gaps in past performances
- Eliminates barriers (for example, supporting requirements that are geographically dispersed)
- Increases competitiveness.

The Requirements for a Teaming Agreement

A teaming agreement is a legally binding contract that must specify the following:

- The parties involved in the agreement
- The actual project under consideration
- Specialized instructions and definitions of the activities to be completed by both parties.

If a teaming arrangement is being formed between more than two corporate entities, it is not necessary to list these entities beyond the prime contractor and the main subcontractor.

Teaming Agreement Set Asides

For teaming agreements involving set asides, the following guidelines/ requirements are applicable:

- A clear statement that the prime contractor, i.e. the business that qualifies for the particular set aside, is in control and will remain in control if the contract is awarded to the prime.
- A clear requirement for the prime to issue a subcontract to the team member if the contract is awarded to the prime.

However, while writing a teaming agreement, you need to avoid certain pitfalls. The contract listing the details of the teaming arrangement should be set out in such a manner so as to avoid confusion with a joint venture. In case this distinction is not clearly made, it could be construed as a separate affiliate entity and would then be responsible for meeting the size standards set forth by the Small Business Administration (SBA), rather than those for individual small businesses.

In case you are interested in forming a joint venture, you will find more information on the subject in the latter half of this article.

Definitions Necessary in Teaming Agreements

Definitions for Teaming Agreements are very specific.

Prime contractor

- Has a direct relationship with the government
  Has privity of contract with the government
- Is responsible for adhering to contract terms and conditions
- Conveys appropriate terms and conditions to the subcontractor
- Manages the subcontractor's performance and adherence to the subcontract

Small business subcontractor

- Has a direct relationship with the prime contractor and not DoD
- Is responsible for adhering to subcontract terms and conditions
- Conveys appropriate terms and conditions to second-tier subcontractors
- Manages the second-tier subcontractors' performance and adherence to the subcontract.

Limitations of a subcontracting agreement in terms of percentage of cost that can be subcontracted in order to be awarded a full or partial small business set-aside contract, an 8(a) contract, or an unrestricted procurement where a concern has claimed a 10 percent small disadvantaged business (SDB) price evaluation preference, are as follows:

Alternatives to Teaming Agreements

Partnership

A partnership is legally defined as "a business enterprise consisting of two or more individuals or concerns who come together to co-own a trade or business for profit." Partnerships one can be one of three types: i.e. incorporated, limited liability, or an unincorporated organization (syndicate, group, pool).

Joint Ventures

The Code of Federal Regulations (CFR) 13 CFR 121.103(h) defines a joint venture as an association of two or more individuals or concerns formed to undertake a particular business transaction or project, rather than one intended to continue indefinitely. The members of the joint venture share in the profits and risk of loss. The joint venture entity and its members, are in privity of contract with the government.

Benefits of Joint Ventures:

The benefits of joint ventures are as follows:

- The joint venture protégé may form a joint venture with its SBA-approved mentor.
- The joint venture may pursue any federal contract procurement, including consolidated or bundled procurements
- The joint venture is deemed small as long as the joint venture protégé is small.
- For large, bundled procurements, there are no performance-of-work requirements; in other words, individual members of the joint venture need not be concerned about who does what percentage of work.

- Mentors may own up to a 40 percent equity interest in a protégé and can thereby assist the protégé with raising capital under the SBA Mentor Protégé Program.

The Regulations Applicable for Teaming Agreements

The SBA regulations establish small business size standards by industry based on a particular industry's North American Industry Classification System (NAICS) code. The designated SBA size standards for small business set asides based on average annual receipts range from $750,000 to $33.5 million depending on the industry or NAICS code at issue, and the designated SBA size standards based on number of employees range from 100 to 1,500 employees depending on the NAICS code at issue.