

Legal and Practical Considerations for Teaming Agreements

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What are Teaming Agreements?

- TA is Umbrella term encompassing:
 - Joint Venture Agreements
 - Prime/Subcontractor Agreements
 - Mentor – Protégé Arrangements
- Small Business Considerations
 - Impact on Small Business Status
 - Self-Performance
 - Affiliation

Legal Considerations for Teaming

- Four distinct phases:
 - 1. Before the team is formed (Pre-Teaming)
 - 2. Pre-Bid/Proposal Preparation
 - 3. Negotiation Period
 - 4. Post-Award Period (regardless of success or failure)

Phase 1: Pre-Teaming

- Due Diligence
 - Capabilities, financial strength, & past performance of potential teaming partner
 - Consider legal impediments
 - Suspension & Debarment
 - Organizational Conflicts of Interest (OCI's)
 - Compatibility
- Separate (early) Confidentiality/Non-Disclosure Agreement

Phase 2: Pre-Bid

- Who will write the proposal?
- Who has final say re: what goes into the proposal?
- Exclusivity and cross teaming?
- Division of labor in event of award?
- Business registration items

Phase 3: Negotiation Period

- Who will be the primary point of contact between the team and the awarding agency?
- Who will decide the content of any proposal revision?

Phase 4: Post-Bid

- Teaming Agreement must provide a framework for the contemplated subcontract agreement
- Think about what happens if the team:
 - Obtains the target contract
 - Fails to obtain the target contract

Teaming Agreement Must:

1. Define the relationship
2. Cover publicity
3. Determine exclusivity
4. Address the exchange of intellectual property
5. Set out relief in the event of breach

And don't forget...

Protection of Proprietary Information and Trade Secrets

- Mutual obligation to hold partner's confidential information in confidence
- Specific agreements not to hire each others' employees during & after TA
- Outright prohibition against dealings with any competing companies in connection with the target contract

Dispute Resolution

- Choice of law
- Choice of forum
 - Arbitration is always an option
- Require a set pre-litigation course of action in order to maximize the possibility of settlement?

Enforceability

- Decide whether you want the TA to be enforceable
 - Prime contractor and subcontractor may have different opinions about this!
- Indefinite commitments do not create an enforceable agreement
 - Mere “agreement to agree”
- Subcontracting Plans

What Makes TA Enforceable?

- Objective means for court to determine subcontract provisions:
 - Price
 - Quantity/Scope
 - Time
 - Delivery
 - Payment

Exit Strategy

- Good TA's define how and when the relationship will end:
 - Contract not awarded to team
 - Failure to agree on final subcontract
 - Execution of subsequent agreement
 - Failure to obtain consents & approvals
 - Financial condition
 - Exceptional contractual risks
- Decide which terms of the TA will survive

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