WHAT IS A TEAMING AGREEMENT?

- DEFINITION
  - An agreements between companies to pool resources to obtain and perform a government contract

- TYPES
  1. Prime contractor/subcontractor
  2. Joint venture or partnership

- This presentation focuses on prime contractor/subcontractor teaming agreements
  - For purposes of this lecture a teaming agreement is an agreement between a potential contractor and another firm under which the other firm is an intended subcontractor if the potential contractor is awarded a contract
TEAMING AGREEMENTS AND SUBCONTRACTS COMPARED

- **TEAMING AGREEMENT TERMS**
  - Proposal Preparation
  - Exclusivity
  - What Happens if Prime Contract Awarded
  - Duration
  - Subcontract Terms (maybe)

- **SUBCONTRACT TERMS**
  - Statement of Work
  - Pricing
  - Subcontract Terms and Conditions
  - Flowdown Clauses
  - Duration

SUBCONTRACTOR NEGOTIATION STRATEGIES

- **Negotiate Up Front**
  - Negotiate Favorable Subcontract Terms as Part of the Teaming Agreement
  - A Potential Subcontractor Loses Negotiating Leverage Once Prime Contract Awarded

- **Bring Something Unique to the Table**
- **Negotiate With the Decision Maker**
AN AGREEMENT TO NEGOTIATE OR AN AGREEMENT TO AWARD A SUBCONTRACT?

• TYPES OF TEAMING AGREEMENTS
  • agreements to award subcontract
  • agreements to negotiate subcontract

• AGREEMENTS REQUIRING SUBCONTRACT AWARD PREFERABLE TO SUBCONTRACTOR
  • If potential subcontractor has the negotiating leverage it should insist on a teaming agreement that requires it to be awarded a subcontract if the team leader is awarded the prime contract.

TWO REQUIREMENTS FOR BINDING AGREEMENTS TO AWARD A SUBCONTRACT

• 1. SUBCONTRACT AWARD REQUIRED IF TEAM LEAD AWARDED PRIME CONTRACT

• 2. ESSENTIAL TERMS AND CONDITIONS
  • Description of work to be performed
  • price or a means of determining price
  • delivery
  • quantity or a means of determining quantity
    • all x type work ordered by the Government

  • EG&G Technical Services, Inc. v. Cube Corp., Chancery No, 178996 (Fairfax County Cir. Ct. Dec 23, 2002)
FAVORABLE SUBCONTRACT TERMS THAT CAN BE ESTABLISHED IN TEAMING AGREEMENT

- A Matter of Negotiating Leverage
- Provisions to be considered:
  - prohibition against employee raiding
  - requirement to exercise subcontract option if prime contract option exercised
  - limiting primes right to terminate for convenience to work terminated by the Government

SUBCONTRACTOR FAVORABLE TERMS THAT CAN BE ESTABLISHED IN TEAMING AGREEMENT (continued)

- substitute work if work subcontractor is to perform is eliminated from the program
- protection of proprietary rights
- prime contractor sponsorship of subcontractor claims against the Government
- Prohibition of subcontract provisions absolving prime of liability for breach of contract
RISK BENEFIT/ANALYSIS

- Large primes often refuse to alter their standard teaming agreement or subcontract forms for small business teammates
- Many subcontractors make substantial sums working under onerous subcontracts
- On the other hand primes sometimes use subcontractors to get the work and then dispose of them
- Whether to enter a subcontract with unfavorable terms and conditions requires a risk/benefit analysis