

GOVERNMENT CONTRACT TEAMING – A SUBCONTRACTOR PERSPECTIVE

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PRESENTATION
BY

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TO

**NATIONAL SMALL BUSINESS ASSOCIATION
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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

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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

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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**

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**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.

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**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)

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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

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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

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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

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THANK YOU QUESTIONS:

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