

LEGAL ASPECTS OF TEAMING AGREEMENTS

6TH ANNUAL MULTICULTURAL BUSINESS CONFERENCE

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Instructor:

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INTRODUCTION: WHAT IS A TEAMING AGREEMENT?

- ▶ “An arrangement pursuant to which . . .
- ▶ A. Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
- ▶ B. A potential prime contractor agrees with one or more other companies to have them act as its subcontractor under a specified government contract or acquisition program”

FAR 9.601

DETERMINING YOUR NEGOTIATION LEVERAGE

 5 Reasons Why a Prime Would Be Interested in You

 Two Questions to Ask to Determine Which Reason Applies to You

SMALL BUSINESS'S OBJECTIVE IN NEGOTIATING THE TEAMING AGREEMENT

- ▶ Prime Contractor's Perfect World
- ▶ Subcontractor's Perfect World

BEFORE THE NEGOTIATIONS START

- ▶ The Pre-Nup
- ▶ “There ain’t no good guy; there ain’t no bad guy; it’s just you and me and we just don’t agree
- ▶ Protecting What Came Out of Your Mouth
- ▶ Advance Confidentiality Agreement

GETTING THROUGH THE FORMALITIES

- 🕒 Getting it in Writing
- 🕒 But Just What is it That You Have That's in Writing
- 🕒 Memorandum of Understanding, Letter of Intent, or a Teaming Agreement

THE TEAMING AGREEMENT: A PROMISE OR A CONTRACT?

- ▶ A Short Lesson in Contracts
- ▶ Gratuitous Promise
- ▶ Non-Binding Expression of Interest
- ▶ Agreement to Agree
- ▶ Obligation to Negotiate in Good Faith
- ▶ Obligation to Award a Subcontract

GETTING TO THE HEART OF THE MATTER

- Essential Terms of the Teaming Agreement
- Notice of Intent
- Protection of Intellectual Property
- Termination Clauses

TERMINATION CLAUSES

- ▶ Termination for Convenience
- ▶ Termination for Convenience in Disguise

DISCLOSURE REQUIREMENTS

- ▶ Funny how things change all of the sudden – once the contract is won
- ▶ A Series of Unfortunate Events
- ▶ Protecting Yourself

PROSELYTIZING OF EMPLOYEES

- ▶ “Although the teaming arrangement with your company didn’t work out, we think you’d make a fine management employee with our company.”

DISPUTES AND DAMAGES

- ▶ Disputes: “I never thought it would come to this.”
Litigation vs. Arbitration
- ▶ Damages: What to Ask for

WHEN THE SMALL BUSINESS IS THE PRIME

⚠ Issue to Avoid: An SBA
Determination of Being “Other Than
Small” by virtue of:




⚠ Affiliation

⚠ Ostensible Subcontractor Rule

AFFILIATION

- ③ When one firm controls or has the power to control another
- ③ SBA considers factors such as ownership, management, previous relationships with or ties to another concern
- ③ “Totality of Circumstances” Test
- ③ Consequences of SBA Finding of Affiliation

OSTENSIBLE SUBCONTRACTOR RULE

-  Subcontractor performs primary and vital requirements of a contract
-  Small Prime is unusually reliant on Subcontractor
-  Subcontractor was Prime but is no longer eligible because it has outgrown size

OTHER EXCEPTIONS TO AFFILIATION AND OSTENSIBLE SUBCONTRACTOR RULE

- ⦿ SBA-Approved Mentor Protégé Relationships
- ⦿ SBA-Approved 8(a) Joint Ventures
- ⦿ Unapproved SBA 8(a) Mentor Protégé Joint Ventures on non-8(a) procurements

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