

Contractor Team Arrangements: a Strategic Overview



Presented by:

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Disclaimer



- Not official government statement or guidance
- Contracting officers, SBA officials, or government attorneys may differ in interpretation
- Where possible, language from Government law or directives is employed

Contractor Team Arrangement



- Potential prime contractor agrees with one or more other companies to have them act as its subcontractors under specified Government contract or acquisition program
- Two or more companies form partnership or joint venture to act as potential prime contractor

Types of Contractor Team Arrangements



- Subcontracting (AKA Teaming Agreement)
- Joint Venture
- Mentor-Protégé Agreement (in conjunction with Joint Venture)

Advantages



- Contractors:
 - Complement and enhance each other's unique capabilities (mitigate deficiencies: past performance, key personnel, bonding, insurance, capital, etc.)
 - Offer the best combination of performance, cost, and delivery for system or product
 - Access procurement opportunities (set-asides, meeting specifications)
- Government:
 - Increase pool of available contractors
 - Reduce performance risk
 - Simplify procurement process
 - Meet Small Business utilization goals

Disadvantages



- Contractors:
 - Potential for smaller contractors to be “controlled” by larger contractors
 - Complicate normal business procedures
 - Added administrative and reporting burden
- Government:
 - Potential for circumvention of procurement process
 - Added administrative and evaluation burden

Teaming Agreements



- Generally, formal document, reported to contracting agency with offer
- Teaming Agreement will be recognized provided arrangements are identified and disclosed in an offer, or, for arrangements entered into after offer submission, before arrangement becomes effective
- Typically involves one Prime contractor and one or more Subcontractors

Joint Ventures



- Joint venture is association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business
- Generally, an LLC or other business entity is formed
- Note: SBA may also determine between that the relationship between prime contractor and its subcontractor is Joint Venture

Joint Ventures, Cont'd



- Consider the set-aside of requirement:
 - Unrestricted Joint Venture
 - Small Business Program Set-Aside Joint Venture
 - SB – with one or more SB firms
 - SDVO SBC – with one or more SB firms
 - HUBZone – with one or more HUBZone firms
 - Evaluated by Contracting Agency
 - 8(a) Set-Aside Joint Venture
 - 8(a) – with one or more SB firms
 - Evaluated by SBA

Joint Ventures, Cont'd



- Consider the size standard of requirement:
 - Normal rule of affiliation:
 - Generally, JV firms are considered to be affiliated for size purposes
 - To compute size of venture, the annual receipts or employees of all JV firms are evaluated in combination
 - Exception to rule of affiliation:
 - Bundled procurement of any dollar value
 - Revenue-based requirement: dollar value (including options) exceed one half the size standard
 - Employee-based requirement: dollar value (including options) exceed \$10 million
 - To compute size of venture, the annual receipts or employees of all JV firms are evaluated separately

Joint Ventures, Cont'd



- Additional considerations for 8(a) Set-Aside Joint Venture:
 - The size of at least one 8(a) firm must be less than one half the size standard of the requirement
 - SBA must determine that 8(a) firm lacks capacity, agreement is fair and reasonable and will bring substantial benefit; 8(a) firm must offer resources and expertise other than its status
 - Prescribed SBA 8(a) Joint Venture Agreement and package submittal
 - Approved by local SBA District Office, allow 20 working days for 8(a) JV package review and approval
 - 8(a) JV must be approved prior to award of contract (not prior to bidding)
 - Prescribed SBA 8(a) Joint Venture Agreement reporting requirements

Mentor-Protégé Agreements



- Mentor-Protégé Program is designed to encourage approved mentors to provide assistance to eligible protégé. May include technical, management, financial and contract performance assistance.
- SBA Mentor-Protégé program
 - Qualified 8(a) Participants
- DoD Mentor-Protégé program
 - Qualified 8(a), SDB (including self-certified), HUBZone, WOSB, SDVO SBC, and Organizations employing severely disabled
- Note: Mentor may be large business; may enter Joint Venture without determination of affiliation or control

Mentor-Protégé Agreements, Cont'd



- Additional considerations for SBA 8(a) Mentor-Protégé Agreements:
 - Protégé required to in 8(a) Developmental Stage (first 4 years of program), or never received an 8(a) contract, or is less than half the size standard of its primary industry
- Additional considerations for DoD Mentor-Protégé Agreements:
 - Mentor is eligible for direct reimbursement for allowable costs of developmental assistance, or multiple of credit toward SDB subcontracting goal

Mentor-Protégé Agreements, Cont'd



- Prescribed SBA 8(a) Mentor-Protégé Agreement and package submittal
 - Approved by SBA Central Office (Washington DC), allow 3-6 months for MPA package review and approval
 - MPA package must be approved prior to award of contract (not prior to bidding)
 - Prescribed SBA 8(a) Mentor-Protégé Program reporting requirements, thereafter
- Prescribed DoD Mentor-Protégé Agreement and package submittal
 - Approved by OSBP of cognizant Military Service or Defense Agency, allow 3-6 months for MPA package review and approval
 - MPA package must be approved prior to award of contract (not prior to bidding)
 - Prescribed DoD Mentor-Protégé Program reporting requirements, thereafter

References



- Contractor Team Arrangements: FAR Subpart 9.6
- Socioeconomic Programs: FAR Part 19
 - Contracting with the Small Business Administration (The 8(a) Program): FAR Subpart 19.8
 - Historically Underutilized Business Zone (HUBZone) Program: FAR Subpart 19.13
 - Service-Disabled Veteran-Owned Small Business Procurement Program: FAR Subpart 19.14
- Small Business Size Regulations: 13 CFR 121
 - “How does SBA determine affiliation?”: 13 CFR 121.103
- 8(a) Business Development/Small Disadvantaged Business status determinations: 13 CFR 124
 - “Under what circumstances can a joint venture be awarded an 8(a) contract?”: 13 CFR 124.513
 - “Mentor/Protégé program”: 13 CFR 124.520
- Government Contracting Programs [SDVO SBC]: 13 CFR 125
- HUBZone program: 13 CFR 126
- Chapter 8: [8(a)] Joint Ventures and Teaming Arrangements: SBA SOP 80 05 3A, pgs. 167-180
- Chapter 9: [SBA] Mentor/Protégé Program: SBA SOP 80 05 3A, pgs. 181-190
- SBA Procedural Notice, Guidance for [8(a)] Joint Ventures and Teaming Agreements, Control No.: 8000-596: Available from SBA District Office upon request
- SBA [8(a)] Joint Venture Template: Available from SBA District Office upon request
- SBA Mentor-Protégé Template: Available from SBA District Office upon request
- Policy and Procedures for the DoD Pilot Mentor-Protégé Program: DFARS Appendix I
- DoD Mentor-Protégé Program website: http://www.acq.osd.mil/osbp/mentor_protege/index.htm

Questions



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