



Teaming Agreements, Joint Ventures and Strategic Alliances




Considerations, Advantages & Cautions

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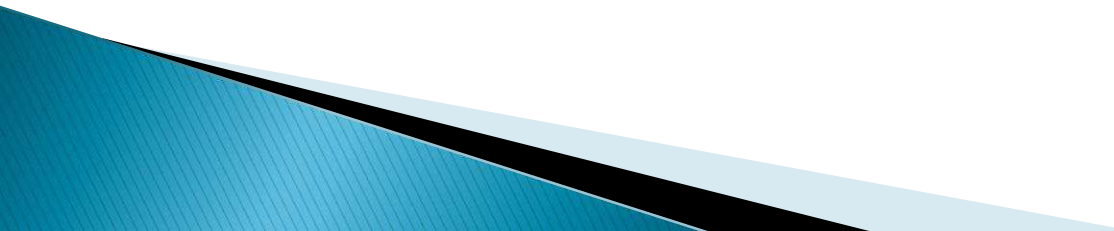
Strategic Positioning

Use of carefully structured teaming agreements for subcontracts, joint ventures and strategic alliances can allow companies, especially small businesses, to expand their documented capabilities and the pursuit of projects well beyond their normal capabilities.



Evaluating Our Strategic Fit

Some Strategy Considerations:

- ▶ If all is going well with current business, why change?
 - ▶ Are our core competencies compatible with targeted market?
 - ▶ Do we have verifiable positive past performance?
 - ▶ Do we have the critical operational resources?
 - ▶ Is our firm adequately capitalized and do we have access to outside financial resources as necessary?
 - ▶ What are our constraints?
 - ▶ What can others offer to improve our competitive positioning?
 - ▶ Do we have the right people and communicative abilities needed to definitize our agreements verbally and formally in writing?
 - ▶ Have we considered our needs for legal guidance and assistance?
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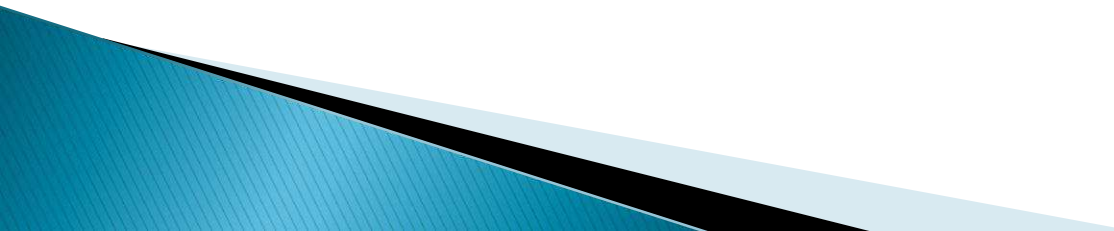
Strategic Alliances

These are relationships between two or more parties to pursue a set of agreed upon goals or to meet a critical need while remaining independent. Formation usually progresses in stages similar to these:

1. Networking & Target Opportunities Identification
 2. Strategy Development
 3. Partner Assessment
 4. Agreed Assignment of Roles & Responsibilities
 5. Contract Negotiation & Definitization
 6. Alliances in Operation
 7. Termination of Alliances
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Types of Strategic Alliances

Strategic Alliances have been more commonly used by large corporations and are usually one, or a combination, of the following:

1. Equity Strategic Alliance
 2. Non-Equity Strategic Alliances
 3. Global Strategic Alliances
 4. Joint Ventures
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Joint Ventures

A joint venture is:

- An association of firms, individuals or business concerns desiring to jointly engage in specific business ventures for joint profit; who,
- Agree to combine their efforts, property, money, skill, knowledge, and other specified resources but not on a permanent basis

Teaming Agreements

Teaming Agreements in general happen when parties enter into arrangement in which:

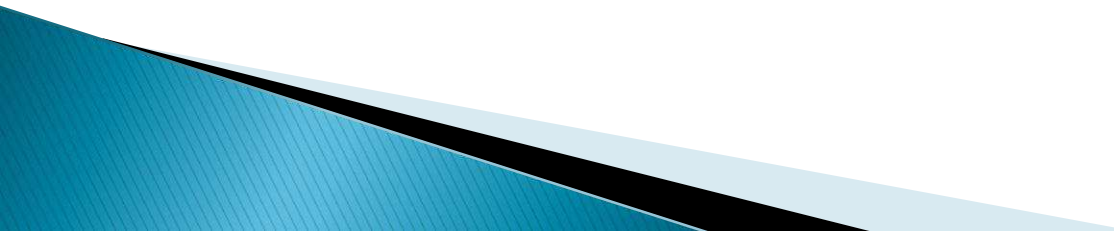
- ▶ Two or more companies form a partnership or joint venture to act as a potential prime* contractor; or
- ▶ A potential prime* contractor agrees with one or more other companies to have them act as its subcontractors under a specified commercial or government contract or acquisition program.

*Or a higher tier subcontractor



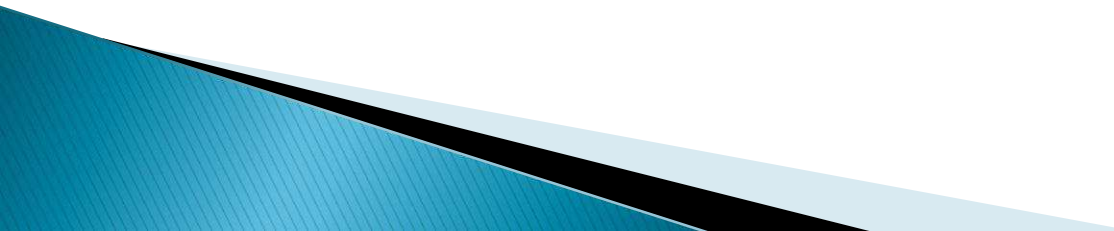
Preliminary Teaming Agreement

Critical issues may include:

- ▶ Confidentiality
 - ▶ Exclusivity
 - ▶ Good-faith negotiations
 - ▶ Withdrawal from the team
 - ▶ Document ownership
 - ▶ Financial Responsibilities
 - ▶ Post-Award Responsibilities
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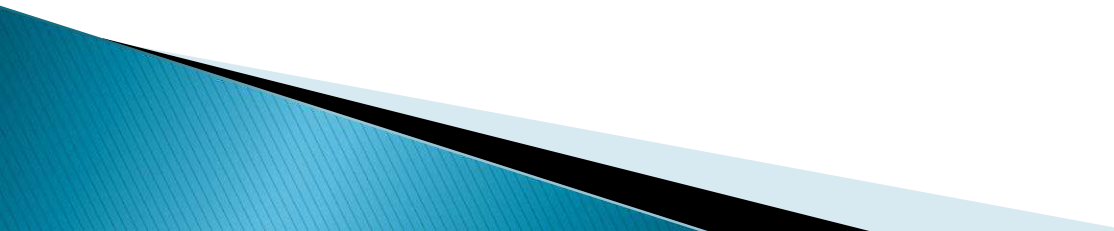
Preliminary TA Example A

The purpose of this Agreement is to define the terms by which the Parties identified and signing below will work together in an effort to submit their proposal to _____ and the terms by which they will maintain confidentiality; however, this Agreement is not intended to define the terms of the Parties' future subcontract in the event _____ accepts the proposal and awards a prime (or subcontract).



Preliminary TA Example B

The purpose of this Agreement is to define the terms by which the Parties identified and signing below will work together in an effort to submit their proposal to _____ and the terms by which they will maintain confidentiality. This Agreement is further intended to define the material terms that will be included in the Parties' subcontract and to guarantee that the Parties execute a subcontract should _____ award a prime (or subcontract) contract to Team Leader.



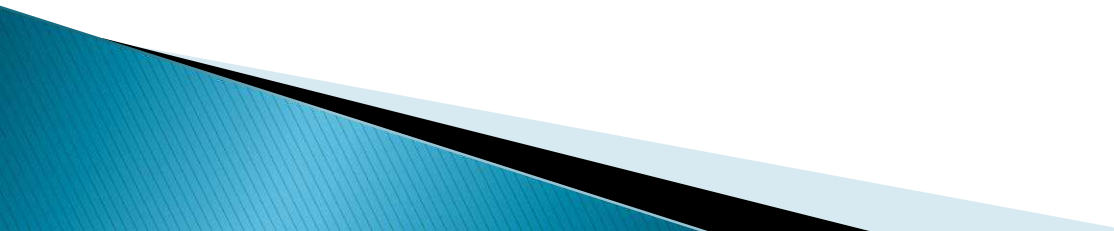
Teaming Agreement

Formalizes the relationship between the team members and normally should address:

- ▶ Proposal preparation & submittal responsibilities
- ▶ Purpose, Requirement(s) Pursuing or Solicitation(s)
- ▶ SOW/Delivery tasks identified upon contract award
- ▶ Protection of team members' proprietary information
- ▶ Adhering to terms and conditions
- ▶ Responsibilities for daily management after award
- ▶ Obligations to negotiate in good faith after award
- ▶ Exclusivity protections for all parties to ensure no team members will act as both team members and competitors utilizing other firms on the same target(s)

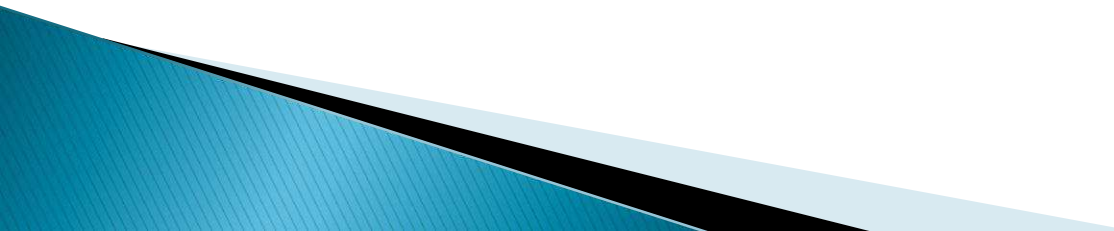
Choosing Partner(s)

Some things to look for when choosing a teaming partner:

- ▶ Clarity of Communication & Commitment
 - ▶ Proposal skills
 - ▶ Positive client standing
 - ▶ Complimentary not competitive
 - ▶ Business acumen & ethics
 - ▶ Due diligence evaluation – “Trust, but Verify”
 - ▶ Strengthens our presentation to Client
 - ▶ Adds capabilities to deliver on time within budget
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SOME CONSIDERATIONS

Some of the issues affecting the structure and use of teaming agreements are:

- ▶ Client relationship & Communication
 - ▶ Risks & Liability
 - ▶ Benefits & Payments
 - ▶ Subcontractor's scope of work
 - ▶ Prime and subcontractor relationship
 - ▶ Fiscal/financial considerations
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More Considerations

A good JVA or Teaming Agreement should identify:

- ▶ Lead manager & roles for proposal preparation
 - ▶ Specific project(s)
 - ▶ Principal point of contact and negotiator
 - ▶ Delegations of authority
 - ▶ Anticipated Scopes of work for each party
 - ▶ Prohibitions against or mutual approvals required for hiring each other's employees
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Some One-Sided Examples

Prime-lead Agreement

- ▶ Prime's* liability to sub(s) may be governed directly by client's liability to prime
- ▶ Any damages that may be recoverable by lower-tier sub from higher-tier sub and/or prime may be limited to damages that higher-tier sub and/or prime may recover from client
- ▶ Sub will normally indemnify higher-tier sub, prime **and** client
- ▶ Sub may not receive payment until after prime or higher-tier sub receives its' payment

* Or Higher Tier Subcontractor

Sub-lead Agreement

- ▶ Liability is usually limited to sub's negligence or factors within sub's control
- ▶ No stated limitations to damages that sub may recover from prime whether recoverable from client or not
- ▶ Payments terms clearly defined such as advance, materials stored, periodic, progress payments, stages of work completed, within set number of days after completion, inspection or receipt and/or acceptance, etc.

Prime, Sub, Client Relationships

Prime*– lead Teaming Agreement

- ▶ Prime decides who handles contact and communication with client
- ▶ Sub does not communicate directly with client without prime presence
- ▶ Prime handles all communications with other outside parties
- ▶ Prime controls all litigation decisions
- ▶ SOW is subject to client's instructions, may be conditional, applicable laws and perspectives of other team members

Subcontractor–lead Teaming Agreement

- ▶ Sub participates in all aspects of the client relationship including communicating with client
- ▶ Prime agrees in advance to present sub's positions to client on issues such as costs and performance
- ▶ SOW may include specific tasks and roles as well as percentage of work

* Or Higher Tier Subcontractor

Prime, Sub Relationship

Prime-lead Teaming Agreement

- ▶ Prime's* commitment to sub governed by securing of client approval
- ▶ Prime shall exercise best efforts to negotiate a subcontract
- ▶ Prime may have option to award subcontracts to other firms if sub **does not come to terms** within an agreed upon time frame.
- ▶ Prime will often seek to allow for payments to subcontractor **after** prime has been paid.

Sub-lead Teaming Agreement

- ▶ Prime proposes sub to client.
- ▶ Prime formally recognizes subcontractor's efforts
- ▶ Prime will award a subcontract provided client approves
- ▶ Any modifications to subcontract cannot be made without approval of subcontractor
- ▶ Definitive, clear payment terms

* Or Higher Tier Subcontractor

Cautions

Teaming agreements, joint ventures or formal strategic alliances can be a danger to contractors because:

- ▶ A government agency (i.e.SBA) may make a determination that a firm is *no longer a small business because it is judged to have exceeded small business size status; thereby*
- ▶ Voiding Its Small Business Program Eligibility

Most common ways for a firm to get into trouble are:

- ▶ Affiliation
- ▶ Non-compliance with Work Percentage, Performance or Delivery Requirements on Government contracts
- ▶ Labor Law and other Violations of Affiliated Team Members*
- ▶ Under Federal Rules JV partners are affiliated unless it is a “large” procurement (SBA employee based size standard, exceeds \$10MM)

Notes – SBA recent advice is these type of joint ventures are considered small if each joint venture partner is small. J/Vs entered into with 8(A) concerns must be approved by SBA.

LA PTAC – Southwest



- V. Roy Paul
- 4310 Ryan Street, 3rd Floor
Lake Charles LA 70605
- (337) 433-3632 Ext 1219
- (337) 436-3727 Fax
- rpaul@allianceswla.org