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
Funny how things change all of the sudden – once the contract is won

A Series of Unfortunate Events

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

- Affiliation

- Ostensible Subcontractor Rule
AFFILIATION

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