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# **Teaming, Joint Ventures and Mentor Protégé Relationships for Large and Small Contractors**

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# Meet the Presenter

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# THE BUILDING BLOCKS

# Start at the Very Beginning...

## Basic Building Blocks – Why Does Any of this Matter?

- Rising Importance of Set-Aside Contracts as Revenue Streams
  - What is a “**set-aside**” contract?
  - What does it mean to be a “**small**” business?
  - Are there specific *types* of small businesses?
  - What is **affiliation** and why is it important?
- “Partnering” Strategies Outside Small Business/Set-Aside Context?

# Start at the Very Beginning...

## Talk the Talk! Get Your Lingo Straight

### What is “Teaming” Anyway?

- Sometimes used as “umbrella term” meant to encompass several things, but...
- Strictly speaking, “Teaming” is a special type of **subcontracting** relationship
- Subcontracting v. Teaming - It’s the **timing** and **intent** that makes it special
- (CTAs v Teaming)

### “Teams” vs. “Joint Ventures”

- Not a prime/sub relationship; JV as prime contractor
- Might require prerequisite...

### ...And Why is Mentor-Protégé in the Mix??

- Relation to JVs?
- Purpose of program
- First Step, not Final Destination

# Start at the Very Beginning...

## Who Forms Teams and JVs?

- Teams
  - Set-Aside Context - Small (Prime) and Large (Sub)
  - Can also have teams of 2 small businesses or, in non-set-aside context, 2 large (other than small) businesses...
- Joint Ventures
  - Two (or more) Small
  - A Large and a Small → MP Required
  - Outside Set-Aside Context, Two (or More) Large

# TEAM OR JOINT VENTURE?

# Teaming or Joint Venture?

## Key Things to Think About:

- Business, Legal and Practical Concerns
- Your Goals, Strengths, Weaknesses, Capabilities
- Your Partner's Goals, Strengths, Weaknesses, Capabilities
- Think in Terms of **Reality** v. Expectations or Hope
- What is and is not a Dealbreaker? Again, be Honest and Realistic



# TEAMING AGREEMENT TIPS

# Teaming Tips

## Keys for a Successful Team:

- Diligence and Responsibility
- Ownership and Accountability
- Open and Honest Communication
- Transparency
- Trust

# Teaming - Exclusivity

## Going Steady: Are You Going to Be Exclusive?

- Do you want your competitors to have the same leg up?
- Address this issue **up front**
  - Remember: Communication; Honesty; Dealbreakers?
- Be specific about *scope* and *term* of exclusivity arrangement!

# Teaming - Enforceability

## What if Something Goes Wrong – Can You Enforce the Agreement?

- A mere “agreement to agree” or does language manifest an intent to bind the parties?
- Level of specificity in language
- Different states → Different attitudes

# Teaming – Other Essentials/Expectations

## Other Essential Provisions/Considerations

- Term and Termination; Scope
- Protest Rights and Responsibilities
- Protection of Proprietary Information/NDAs and Non- Solicitation
- Subcontract Terms
- Governing Law

*Plan for all Contingencies!*

# Teaming

## Best Practice Advice:

- Discuss Exclusivity
- Specificity/Strong language for Enforceability
- Agree on (and Describe) Scopes of Work
  - Make sure you and your partner understand legal requirements and limitations, etc.
- Plan for Contingencies
- Communicate and Honestly Discuss Expectations and Dealbreakers

# Teaming

## What Can Go Wrong?

- Destroy Small Business Status/Eligibility
- Lose Contract
- Lost Eligibility for *Future* Contracts
- Other Violations
- Sanctions/Fees/Debarment?

## When Do These Problems Arise?

# JOINT VENTURES AND THE SBA MENTOR PROTÉGÉ PROGRAM



# Joint Ventures

## First Question: Who is In the Joint Venture?

- Two (or more) Small Businesses
  - Each is Individually Small...
- A Large and Small Business
  - Mentor Protégé is a Prerequisite

# Mentor Protégé Program

## A Primer on the SBA Mentor Protégé Program:

- Up until recently, there were two programs
- Now just one: 13 CFR 125.9
- Purpose (from **SBA** Point of View)

# Mentor Protégé Program

## A Primer on the SBA Mentor Protégé Program

- Not just anyone can participate. There are eligibility requirements for both Mentors and Protégés
- NAICS Codes
- Impact of other MP Relationships

# Mentor Protégé Program

## A Primer on the SBA Mentor Protégé Program

- Written Agreement
  - Requirements
  - Business Plan?
  - Be VERY Wary of Templates!

# Mentor Protégé Program

## A Primer on the SBA Mentor Protégé Program

- Application Review
- Approval/(No) Reconsideration

# Mentor Protégé Program

## A Primer on the SBA Mentor Protégé Program

- On-going Evaluation
- On-going Reporting Requirements
- Notice of Changes
- Potentially Serious Consequences of Non-Compliance

# Mentor Protégé Program

## Benefits of SBA Mentor Protégé Relationship

- Raising Capital
- No determination of affiliation or control may be found between a protégé firm and its mentor based solely on the mentor-protégé agreement or any assistance **pursuant to the agreement** (*There are tradeoffs to discuss with your partner here...*)
- A protégé and mentor **may joint venture as a small business** for any government prime contract or subcontract or sale, provided the protégé qualifies as small for the procurement. Such a JV may seek any type of small business contract for which the protégé qualifies.
- Remember 2-year rule! (No longer 3-in-2)

# Mentor Protégé Program

## **“Small” Joint Ventures: Requirements**

- Written Agreement
- Performance of Work & Performance of Work Reports
- Certificate of Compliance
- Inspection of Records
- Consequences?

## **Other Eligible JVs: Requirements?**



# Teaming, JVs, Mentor-Protégé Wrap Up

## Best Practices

- COMMUNICATION
- Discuss Options/Dealbreakers
- Understand MP and JV Requirements **BEFORE** Selecting Partnership Type / Starting Down Path
- Stay Vigilant About Requirements (Including Changes to Regs)
- Do Not Be Embarrassed to Seek Advice!

# Questions?

# Contact Information

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