

US Procurement and Contracting Opportunities

Presented by:

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TEAMING AGREEMENT



- 1. No Affiliation**
- 2. No Ambiguity**
- 3. Mutuality**
- 4. Proprietary Information**
- 5. Division of Work (areas and %'s)**
- 6. Other Issues**



TEAMING and AFFILIATION UNDER THE OSTENSIBLE SUBCONTRACTOR RULE



- 1. Unusual Reliance on Subcontractor**
- 2. Primary and Vital Requirements of the Contract**
- 3. Totality of the Circumstances Test**

JOINT VENTURE TEAMING STRUCTURE

Main Characteristics

- 1. Co-management**
- 2. Sharing of Profits and Losses**
- 3. Limited Duration**



ADVANTAGES OF JOINT VENTURES



- 1. The Government can look to the resources of two (or more) companies to perform the work;**
- 2. A minority joint venture member can exert more control over contract performance to protect its interests than in a traditional prime-sub relationship;**
- 3. The joint venture parties receive favorable partnership income tax treatment; and**
- 4. Participating in a joint venture may allow a company to avoid any perceived stigma associated with being a subcontractor to its competitors.**

DISADVANTAGES OF JOINT VENTURES

- 1. Lead Contractor gives up substantial control;**
- 2. The participating contractors become joint and severally liable to third parties for the acts of their joint venture partners, including criminal acts;**
- 3. The Government may view the joint venture as lacking a clear point of contract, thus raising concerns regarding control, authority, and accountability.**



MENTOR PROTÉGÉ PROGRAMS



General Overview/Advantages

- 1. Opportunity to establish on-going working relationship with large firms.**
- 2. Joint venture and subcontracting opportunities.**
- 3. Advantages to mentor firms.**
- 4. Provides exemptions from affiliation rules.**



RECENT JOINT VENTURES ISSUES



- **Program manager must be employed by small business at the time JV submits proposal** *Lance Bailey & Associates*
- **Strict compliance with 8(a) joint venture requirements, despite SBA approval** *ST Net/Apptis*
- **Appeals of size determination not dismissed as moot because contracting officer intends to leave award in place** *Ross Aviation*
- **Mentor Protégé/JV exemption to affiliation rule apply to JV as prime contractor; JV with large business mentor impermissible as subcontractor to DOE Labs**
- **When Mentor Protégé agreement ends, affiliation may arise on long term contracts or MACs disqualifying JV between mentor and protégé**