

AMERICAN INDIAN CHAMBER EDUCATION FUND APEX ACCELERATOR

The AICEF APEX Accelerator is funded in part through a cooperative agreement by DoD and the American Indian Chamber Education Fund and the American Indian Chamber of Commerce of California.

About APEX Accelerators



SERVICES:

- ★ Services provide at **No Cost** to any business
- ★ Procurement Readiness Assessment
- ★ Bid Matching Services
- ★ Government Target and Strategic Market Research
- ★ Capability Statements Assistance
- ★ Solicitation/Contract Assistance
- ★ Proposal Compliance Review
- ★ System for Award Management (SAM.gov) Assistance
- ★ SBIR/STTR Application Assistance and Commercialization Plan Review
- ★ Certification Program Application Assistance: Federal 8(a), WOSB/EDWOSB, VOSH, SDVOSH, HUBZone) and State (DBE/ACDBE, SBE, SBC)
- ★ Contract Administration Procedures and Process Assistance
- ★ Matchmaking and Networking Events (Federal, County, Local)
- ★ Training Events

GEOGRAPHIC AREA



100% Northwest BIA Region:

WA, OR, ID

100% Pacific BIA Region:

CA

100% Western BIA Region:

AZ, NV & UT

How we work with government and industry



- Educate buying & program offices on procurement programs specific to Native Americans, such as the DoD 5% Indian Incentive Program & the Buy Indian Act
- Sponsor, partner with agencies and other APEX Accelerators on training and & networking events
- Maintain a listing of Native American owned businesses
- Help find qualified vendors with a specific certification or in a certain industry
- Post bid opportunities and outreach events in our newsletters
- Work with businesses to understand the government contracting process

Teaming vs Joint Ventures

- Does your firm have access or adequate financial resources, if needed?
- Is Teaming or a Joint Venture necessary to perform on a contract?
- What are the risks?



Teaming Arrangements and Joint Ventures the same?

NO

Teaming

- Is a prime/subcontractor arrangement. An agreement between a prime contractor and subcontractor.

Joint Venture

- Joint Ventures are separate entities formed to perform on a specific contract.



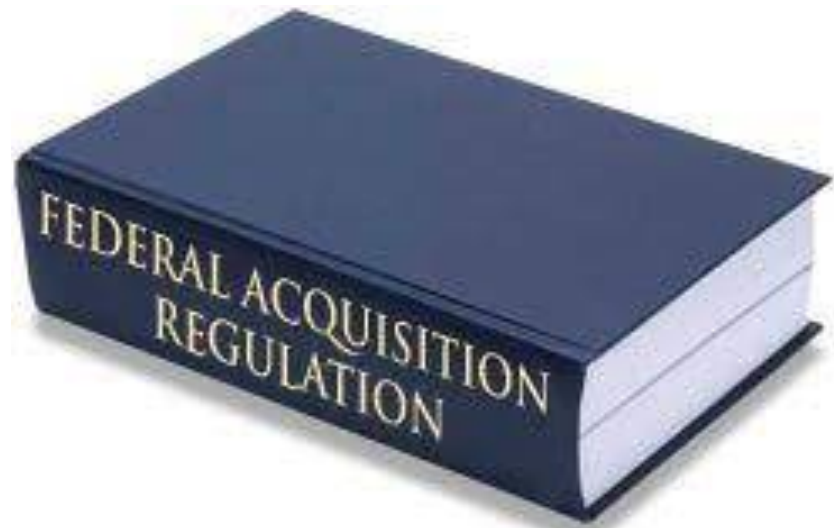
Factors to Consider when Teaming

TEAMING

- What is Teaming?
- Why Team?
- What to Consider



48 CFR Subpart 9.601 – Teaming



FEDERAL ACQUISITION REGULATION MEANING:

- 1) Two or more companies form a partnership to act as a potential prime contractor; or
- 2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract

WHY TEAM?



May be desirable for all concerns both large and small in order to enable businesses to:

- Complement each other's unique capabilities; and
- Offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.
- The companies can compete for larger more technically complex contracts by combining the capabilities and past performance of various team members.

PRIME SUBCONTRACT TEAMING AGREEMENTS



- Teaming may be encouraged by the government
- Add capacity / capability and needed expertise
- No Affiliation Issues

*****Important to Know your teaming partner!***

Prime Subcontract Teaming Agreements can:



- Delineate each company's role in the project
- Provide reasonable assurances of the relationship.
- May protect both parties' propriety information as part of a separate no-disclosure agreement.
- Ensure agreement complies with limitations on subcontracting and ostensible subcontractor rule.

WHAT TO CONSIDER – FAR 52.219-14



- Self performance requirements for prime and similar situated entities.
- Supplies: 50% of award amount excluding cost of materials
- Services: 50% of the award amount
- General Construction: 15% of the award amount excluding cost of materials
- Specialty Construction 25% of the award amount excluding cost of materials

***Subcontracting does not include any work done by similarly situated entities.**

OSTENSIBLE SUBCONTRACTING



A subcontractor is an ostensible subcontractor if:

- The subcontractor performs the primary and vital requirements,
or
- The prime contractor is unusually or unduly reliant upon the subcontractor.

Similarly situated entity rule amends ostensible subcontractor rule to exclude subcontractors that are similarly situated entities.

Teaming Agreements

TEAMING AGREEMENTS



- Do they have to be in writing?
- Does it have to be reviewed?
- When does it need to review, if at all?

- Per Small Business Administration (SBA):
 - *“Teaming Agreement must be carefully evaluated to determine the relationship of the parties, as it may affect a participant’s eligibility if it results in actual or negative control, affiliation or loss of small business status.”*

AREAS TO CONSIDER IN A TEAMING AGREEMENT

For Example:

- Who are the team members
- What is the Purpose
- What is the Role of each team member
- Who will communicate with the Government / Procurement Office
- Work share - Source of Labor
- Contract Performance Responsibilities
- Responsibility for Cost and Pricing Data
- Limitations on Subcontracting – De-scope?
- Disputes
- Exclusivity?



Does It Make Sense?

Does It look right



Does It sound right



Does It make sense



- Does this make sense for my business at this time?
- Can I successfully meet all requirements in the Scope of Work?
- Do I understand all the requirements necessary to perform?
- ***Know your Teaming Partner***

Understanding Joint Ventures

WHY WOULD TWO SMALL BUSINESSES JV?

- Increase capacity
- Address capability
- Shared start up costs
- Shared liability
- Could bolster past performance
- Licenses
- Bonding
- Allow experience in more complex projects
- Addresses geographical limitations



If Teaming Doesn't Work? Joint Venture?



To be eligible as a Joint Venture

- It must be in writing.
- New separate business created under its own name.
- Formed as an unpopulated separate legal entity.

JOINT VENTURE AGREEMENT



- Separate Legal Entity (formal) or informal
- Address-headquarters for JV
- Term
- Termination
- Choice of Law
- Profits/losses
- How is work managed
- Who controls prime contract
- Who negotiates prime contract and communications with the government
- Amount of contributions to JV
- How you will fund start up costs?

JOINT VENTURE CONSIDERATIONS



- Record Keeping
- Subcontracting to the JV
 - Profit and Overhead
 - Invoicing the JV
 - Allowable Costs
- Transfer of Interest in Joint Venture
- Disputes and Jurisdiction
- Withdrawal by a JV partner
- Default by a JV partner
 - What if the JV partner cannot make it payroll?
 - What if the JV partners defaults on it promised work

BEFORE YOU ENTER INTO A JOINT VENTURE

Risk Analysis:

- FIRST, IDENTIFY TYPES OF RISKS
- Ask: What can possibly go wrong
 - Physical
 - Financial
 - Feasible
 - Warranty
 - Other Losses
- Risks must be addressed in JV agreement
- Risks should be allocated in the JV



WHAT TO CONSIDER

- Ambiguous terms or wording
- No clear expectations of responsibility
- Risks not identified or addressed
- Liabilities unclear
- Use of JV agreement “found on internet”
- Shoving inappropriate terms in Operating Agreements to hide JV terms
- Nothing about default and liabilities



FINAL WRAP-UP



Teaming is a prime/
subcontractor relationship

- Privity of contract remains with the prime

Joint Ventures are separate entities created to perform on a specific contract

- Both parties are equally liable for the contract

Mentor Protégé Agreements are "**agreements**" in place to allow large/small businesses to mentor small businesses for business development purposes

- Allow businesses to not be affiliated

Office locations



Washington AICEF APEX Accelerator

713 Jadwin Avenue

Suite 9

Richland, WA 99352

(509) 581-7505

Jeremy Sandoval | Procurement Specialist

Jeremy.Sandoval@aicccal.org

California AICEF APEX Accelerator

5912 Bolsa Avenue, Suite 108

Huntington Beach, CA 92649

(213) 341-0102

Aaron Emi | Sr. Procurement Specialist

Aaron.Emi@aicccal.org

213-442-8612

Maurice Begay | Procurement Specialist

Maurice.begay@aicccal.org

213-442-8611

Annette Wakolee | Procurement Specialist

Annette.Wakolee@aicccal.org

Arizona AICEF APEX Accelerator

3200 N. Dobson Rd.

Bldg. C, #103

Chandler, AZ 85224

(480) 699-9529

Venessa Gleich | Program Manager

Venessa.Gleich@aicccal.org

Oregon AICEF APEX Accelerator

522 S.E. Washington

Roseburg, OR 97471

(541) 391-2992

Linda Sandoval | Procurement Specialist

Outreach@aicccal.org

QUESTIONS



Venessa Gleich. Program Manager

AICEF APEX Accelerator

Phone: (213) 448-2333

Email: Venessa.gleich@aicccal.org