

One Minute Memo®



The Power of Strategic Alliances and Teaming Relationships

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An increasing number of contractors are joining forces through teaming relationships to more efficiently deliver innovative products and services to their customers.

A teaming relationship is a strategic alliance between two or more contractors possessing complementary, yet distinct, skills and resources to provide the customer with an integrated plan to deliver products or services. Teaming relationships usually form prior to submission of a proposal, and one contractor is often small or diverse.

Both the small or diverse business and the customer benefit from teaming relationships. For example a teaming relationship allows the small or diverse business to maximize its skills, resources, and capabilities to be able to secure work on a project that it otherwise may not have. Such teaming relationships offer the opportunity for the small or diverse business to fill in gaps in its past performance, build its capacity and credibility, and to demonstrate its proficiency in a particular trade. Similarly, a teaming relationship benefits the customer by reducing its administrative burden of contracting with multiple parties and by enabling it to increase opportunities for diverse business participation, as well as to increase innovation.

The three most common types of teaming relationships are: contractor-subcontractor relationships; joint ventures; and mentor-protégé relationships.

Contractor-Subcontractor Relationship

This approach allows the parties to remain independent entities, but still associate with each other to pursue potential projects and, if successful, then to perform the work. Typically the parties will work together to pursue a prime contract with the promise to negotiate in good faith a subcontract if the prime contractor is successful in winning the contract. In this type of teaming relationship, the prime contractor typically enters into a contract with the customer and the subcontractor enters into a contract with the prime contractor. The subcontractor does not have a direct relationship with the customer. For this type of arrangement, it is particularly important for the parties, at the beginning of their relationship, to agree upon their specific undertakings during the proposal, or pre-award phase of the project, as well as for their respective responsibilities during the post-award phase of the project if their bid is accepted by the customer.

Joint Venture

A joint venture is an association of two or more firms in which property, capital, efforts, skill, and knowledge are combined to carry out a single business endeavor. Joint ventures can take several forms -- either as independent contracting parties or a special purpose joint venture. In a contractual joint venture, the parties do not form a separate legal entity, but associate

themselves in a standard, arms-length arrangement. Conversely, in a special purpose joint venture, the parties form a separate legal entity, typically in the form of a corporation, partnership, or limited liability company. The forms differ on their respective treatment of personal liability for the venturers, taxation issues, management structure, and statutory formalities.

Mentor-Protégé

A mentor-protégé relationship is a relationship between a mentor (usually a large, established firm) and a protégé (usually a smaller, inexperienced firm) to enhance the capabilities of the protégé and to improve its performance and ability to successfully compete for contracts. Mentors provide various forms of assistance to protégés:

- Guidance and oversight
- Exposure to and familiarization with laws, regulations, and rules
- Technical and/or management assistance
- Financial assistance in the form of equity investments and/or loans
- Formation of joint venture relationships to compete for larger contracts

Before entering into a teaming relationship, understand your company's industry and capabilities, and conduct due diligence. Your company should review financial documents, including information regarding late payments, delinquent accounts, and credit history. Your company should also consult references and consider the corporate culture of its potential teaming partner. Finally, you need to consider what happens in the event of default by your company's teaming partner and provide for a framework that minimizes your company's exposure overall.

Seyfarth Shaw LLP assists clients who are interested in strategic alliances and teaming relationships by:

- Counseling clients on how to form a teaming relationship and comply with DBE/MBE/WBE contract participation requirements, where applicable;
- Identifying prospective teaming partners and contracting opportunities through Seyfarth's Government Contractors Business Forum;
- Helping clients to prepare for and benefit from teaming relationships; and
- Evaluating, drafting and negotiating teaming agreements including subcontract, joint venture and mentor-protégé agreements.

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