



NACA

Native American Contractors Association

**Welcome to the
Native American Contractors
Association's**

**Forging Relationships to Win
Business... And Keep It**

AK CLE Certified for 5 credits

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Who we are

NACA is a National Native organization based in Washington, D.C. that advocates for the rights of Tribes, ANCs and NHOs in government contracting and their participation in the SBA 8(a) Program.

Vision: To enhance the economic self-sufficiency of America's Indigenous people.

View our website at www.nativecontractors.org





FORGING RELATIONSHIPS TO WIN BUSINESS – AND KEEP IT

HOW TO USE TEAMING AGREEMENTS AND JOINT VENTURES TO WIN WORK





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OVERVIEW

- ❖ Why should you team up?
- ❖ Getting started
- ❖ The nuts and bolts of teaming agreements, subcontracts, and joint ventures
- ❖ Protect your small business status



WHY YOU SHOULD TEAM UP

❖ The Benefits of Teaming

- Capture new business with less risk
- Increase market access
- Grow your bonding capacity
- Provide a robust offering of services by joining with contractors that compliment what you do
- Take your business to the next level!



GETTING STARTED WITH TEAMING AND JOINT VENTURES

❖ Contracting Basics

- Don't forget the golden rule . . .

PUT IT IN WRITING!

- Also, whenever possible, don't begin work before the project agreement is reduced to writing
- The contract also must be signed by all parties, and it must be the version that you made changes to (i.e., the “final” version)



GETTING STARTED WITH TEAMING AND JOINT VENTURES

❖ Contracting Basics

- Be careful of oral contracts
 - If the contract can be performed within one year, it may be valid even if it is not put in writing
 - Make clear who the persons are that have the ability to bind the company – you don't want your project personnel entering into oral contracts for changes, additional work, etc.



BUILD A WINNING TEAM

❖ Do your due diligence!

- Avoid the temptation to get onto any team, at any cost
- Carefully and thoroughly screen prospective teammates and partners
- Look for:
 - History of being a good teaming partner – ask for references
 - Record of being fair and flexible in teaming relationships
 - Attitude of mutual dependence and benefit
 - Unblemished reputation with the government and other customers
 - Strong financial and technical capabilities to fulfill elements of the SOW
 - Proven record of past performance covering elements of the SOW
 - Cost competitiveness
 - Positive name recognition with the customer
 - Proposal support resources
 - Conflicts of interest
 - Competition from potential teammate



KNOW YOUR ROLE

❖ Prime Contractor/Subcontractor

- Prime is responsible for fulfillment of contract requirements to the customer
- Sub is responsible to the prime contractor for fulfillment of the subcontract requirements

❖ Joint Venture Partners

- Each is responsible for fulfillment of the requirements to the customer



TEAMING AGREEMENTS & SUBCONTRACTS

❖ Typical Chronology

- Identify requirements
- Find teaming partner
- Negotiate division of work – areas and percentages
- Sign teaming agreement
- Prepare and submit proposal
- Contract award
- Negotiate and sign subcontract



WHAT IS A TEAMING AGREEMENT?

- ❖ Generally, a teaming agreement is . . .
 - An agreement to compete together to win a specific procurement
 - Legally enforceable, not an “agreement to agree”
 - As specific as possible – clearly define the roles and responsibilities of each party
 - Not ambiguous
 - A “meeting of the minds”



IMPORTANT TERMS AND CONDITIONS

- ❖ Identify the requirement (i.e., RFP, SOW, etc.)
- ❖ Establish why the parties are teaming
- ❖ No affiliation – independent contractors
- ❖ Describe proposal support resources
- ❖ Set forth the roles of the parties during proposal preparation & evaluation
- ❖ How you will handle proprietary information
- ❖ Spell out the division of work (areas & percentages)
- ❖ Assignment
- ❖ Termination
- ❖ Exclusivity and noncompetition
- ❖ Nonsolicitation of employees
- ❖ Disputes
- ❖ Governing law



DIVISION OF WORK

- ❖ A lot of problems arise over this part of the teaming agreement
- ❖ Expectations should be agreed to with as much specificity as possible
 - Clearly spell out type of work to be performed by each party, as well as the amount of work
 - Identify specific elements of the SOW to be handled by each party
 - Teaming agreement should provide the % of \$ to each party
 - Continuity of work during period of performance and beyond



SUBCONTRACT AGREEMENTS

- ❖ If your teaming agreement is successful, you will need a subcontract agreement between the teammates
- ❖ The subcontract should include many of the clauses from the teaming agreement, plus:
 - Additional performance details
 - Scope of work from the awarded contract
 - “Flow down” provisions
 - Identify project management roles for relations with the customer
 - Assignment/lower-tier subcontracting
 - Duration
 - Deliverables and timeframe
 - Billing procedures and payment clauses



“FLOW DOWN” PROVISIONS

- ❖ You will be required to include certain provisions from the prime contract into your subcontracts
- ❖ Make sure you can terminate your subcontractors for convenience by including a clause similar to this:

In the event of a termination of the Prime Contract or any part of the Prime Contract which includes the Work, or the failure of the Government to commit additional funds to the Prime Contract for continued performance of the Work, Contractor shall have the right to terminate this Subcontract for convenience by giving Subcontractor written notice of termination, which shall be effective upon receipt by Subcontractor.



PAYMENT CLAUSES

- ❖ Clearly define when payment is due
- ❖ Define invoice procedure
- ❖ Limit travel and include the applicable per diem
- ❖ Right of audit
- ❖ Specify procedure in case government/customer disallows sub's costs
- ❖ Escrow accounts



PROTECT YOUR SMALL BUSINESS STATUS

❖ Make Sure You Stay Small

- Size is determined based on SBA standards for your industry
- Measured by revenue (services) or employees (manufacturing)
 - Revenues generally measured on a three-year average
 - Employee head count includes full-time, part-time, temporary, and leased employees



AVOID AFFILIATION

- ❖ Affiliation can cause your small business to be considered a large business and lose its small business status
- ❖ When one firm has the power to control another firm, or two firms can be controlled by a third, the SBA will find the companies to be “affiliated”



AVOID AFFILIATION

- ❖ To determine size of affiliates, must add the revenue or employees from all affiliates
- ❖ Example: Company A is a small business with \$2M in revenue, and Company B is a large business with \$20M in revenue. If Companies A and B are affiliated, Company A will be considered a \$22M company, and it will lose its small business status



WHAT CAUSES AFFILIATION?

- ❖ Affiliation can be caused by?
 - Common ownership
 - Common management
 - Shared facilities
 - Shared key employees
 - Shared financing
 - Too many contracts with the same partner or teammate – you should diversify
 - The “3-in-2 Rule” for joint ventures



WHAT IS A JOINT VENTURE?

- ❖ A joint venture is –
 - “A joint venture is an association of individuals and/or concerns with interest in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge but not on a continuing or permanent basis for conducting business generally.” 13 C.F.R. § 121.103(h).



ABOUT JOINT VENTURES

❖ Main characteristics:

- Co-management
- Sharing profits and losses
- Limited duration

❖ Competing as a joint venture:

- Joint venture should be legally formed before submitting the proposal
- Like the teaming agreement, the joint venture agreement should provide how the contract will be performed by each partner



STRUCTURE OF A JOINT VENTURE

- ❖ Joint ventures take on two primary forms:
 - Partnership
 - Limited liability company (recommended)
- ❖ Other Considerations:
 - Populated vs. Unpopulated Joint Ventures
 - May allow your company to stay small longer
 - Limitations on Subcontracting



JOINT VENTURE PROS AND CONS

❖ Pros

- Prime contractor can look to resources of two or more companies to perform the work
- Joint venture partners can receive favorable partnership income tax treatment
- Offers small businesses better experience than a subcontract
- Exception from affiliation if all partners are small or partners are SBA-approved mentors and protégés

❖ Cons

- Lead contractor gives up substantial control
- In a partnership, joint and several liability for all partners
- Past performance could be an issue
- Customer concerns about accountability, authority and control



TEAMING AGREEMENT VS. JOINT VENTURE

❖ Liability

- JV partners jointly responsible for contract performance, and except in LLC, jointly and severally liable
- Subcontractor only responsible for portion of work it performs – limited liability

❖ Control

- Shared by JV partners
- Prime contractor has control over teaming relationship

❖ Bonding

- JVs typically able to obtain bonding based on combination of all partners
- Prime/sub may work also, if all parties agree to be bound and owners offer collateral



JOINT VENTURING UNDER SMALL BUSINESS / 8(A) SET-ASIDES

- ❖ At least one partner must be an 8(a) firm
- ❖ All partners must be small businesses
- ❖ The contract must meet certain size requirements
 - Revenue-based size standard – contract must exceed one-half of the size standard
 - Employee-based size standard – contract must exceed \$10 million



JOINT VENTURING UNDER SMALL BUSINESS / 8(A) SET-ASIDES

- ❖ The SBA must approve the Joint Venture Agreement
 - 8(a) firm must manage
 - 8(a) employee must be project manager
 - 8(a) company must receive at least 51% of profits if the JV is populated
 - Otherwise, 8(a) firm must receive profits commensurate with work it performed
 - 8(a) company must perform 40% of the work performed by the JV if unpopulated



ANY QUESTIONS?

Thank you for joining us today.

If you would like to speak with Pam Mazza or Megan Connor about the any of the topics discussed today please contact them as follows:

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