Federal contract small business joint ventures and teaming arrangements

Michelle F. Kantor | Wednesday, July 19, 2017

Small business joint venture teaming can be of great value to both the government customer and to your own business. In fact, the Federal Government encourages teaming agreements among small businesses to not only increase the capacity and capability of the small business prime contractor, but to also provide the government the “best combination of performance, costs, and delivery for the system or product being acquired. FAR9.602.

Generally, there are two types of small business teaming agreements. The first type is where a prime contractor preselects one or more subcontractors that work in a collaborative effort to prepare a bid proposal to the government. The subcontractor is expected to work exclusively with the prime contractor to prepare an estimate that contains the best pricing and delivery methods in the hope that they will be the winning team for the prime contract award. In exchange, the prime contractor agrees to award the subcontract work to the team member that participated in this collaborative effort. This type of teaming arrangement is common in federal government contracting.

The second type of common teaming agreement is a joint venture arrangement. The Small Business Administration (SBA) defines a joint venture as an “association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, 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.”

Two or more companies can form joint ventures as subcontractors to a prime contractor or can form a joint venture to act as a prime contractor. This article focuses on small prime contracting business joint ventures.

Why joint venture as a prime contractor

Many small businesses have outstanding expertise in their industry, but simply don’t have the capacity to perform the work as a prime contractor. A small business can lack the personnel, bonding capacity, startup costs, equipment, financing, or ability to work in other geographical areas. Other small business contractors may have that capacity but lack past performance or expertise in a particular area of work. However, when two small businesses form a joint venture they can pool their capabilities and capacity to perform larger and more complex projects.

Things to look for in a prospective joint venture partner

There are numerous key questions to ask yourself and your prospective joint venture partner before you solidify the relationship. First, ask yourself what are you looking for in a joint venture relationship? There must be an open and honest dialogue regarding both of the joint venturer’s financial capacity, expertise, pricing models, insurance and bonding capacity, key personnel, administrative support, and knowledge of the government customer. In addition, understanding of each other’s firm corporate cultures can be crucial to the equation. If your prospective joint venture partner has a very different corporate culture than you have in addressing workmanship issues, employees, payment to vendors, and even handling emergencies, this will not be a good recipe for a joint venture relationship. Lastly, and most importantly, clearly express your expectations with your prospective joint venture partner regarding who will manage the joint venture, who will manage the project work, work share/ division of labor splits, addressing regulatory compliance, and sharing of profits. This is key to understanding whether you can have a successful relationship.

Joint venture agreements

Now that you have selected the right joint venture partner, you want to get down to the business of having the joint venture agreement prepared. A joint venture is not a one-size-fits-all recipe. Instead, every project is unique with distinctive risks, different team players and distinct potential liability exposures. As such, it is recommended that you seek knowledgeable counsel to assist you through identifying risks and addressing them in your joint venture agreement.

While not exhaustive, the following issues should be addressed in your joint venture agreement. First, is the joint venture agreement created to pursue federal small business setaside opportunities such as SBA 8(a), HUBZone, Women Owned Small Business (WOSB), or Service Disabled Veteran Owned Small Business (SDVOSB) procurements? If so, you must comply with the eligibility and joint venture requirements for each certification, which can differ dramatically. For instance, while an SDVOSB joint venture can be developed between an SDVOSB firm and an 8(a), women-owned, or just a small business, the SBA only allows HUBZone small business firms to joint venture with other HUBZone firms at this time. In addition, percentage of work requirements (also known as Limitations on Subcontracting) as well as required profit percentages differ depending on the type of small business joint venture and the type of project. If you are creating a joint venture for local government work, other joint venture requirements must be met in order to comply with local procurement regulations, which can include self-performance requirements, prequalifications, and proof of small business size status, among other things.

Other crucial issues that joint venture agreements should address include, but are not limited to, whether or not the parties want to incorporate their joint venture as a limited liability company or a corporation and whether the parties want the joint venture to be populated or unpopulated. Further, the agreement should address who is going to manage the joint venture and the relationship with the customer. Other important issues to address are how and when profits are distributed and in what proportion, how third party liabilities will be handled, the amount of capital contributions required to acquire a firm's ownership interests in the joint venture, how finances are controlled, the term of the joint venture, and how disputes will be handled.

Joint ventures are very common and can be a great avenue to grow your business, experience and expertise. However, having a proper agreement in place will help to ensure a greater chance for success.

For more information or for a consultation please contact Michelle F. Kantor, Chair of the Federal Government Contracting Group.

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