

Drafting a Teaming Agreement

It is common for contractors to join together to compete for government contracts under teaming agreements. Teaming arrangements allow companies to compete for government contracts that they might not be able to obtain and perform individually. While teaming may provide for great benefits to your company, it is imperative that your teaming agreement is drafted properly.

Please note that the teaming template below is provided **for example only**. Actual teaming agreements should be drawn individually for the specific situation, circumstances and relationship of the parties. Companies assume full responsibility for all due diligence required for entering into a teaming arrangement. Companies are highly recommended to consult with an attorney in such matters. The SAP&DC PTAC can not provide legal advice and assumes no responsibility for use of this template.

1.0 PURPOSE

This Teaming Agreement (“Agreement”) dated as of **(Enter Date)** (“Effective Date”), between **(Enter Name of Prime)** (“Contractor”) and **(Enter Name of Subcontractor)** (“Subcontractor”) establishes the basis for a relationship under which the Parties (“Parties”) will work together for the purpose of preparing and submitting a response (“Proposal”) to the RFP for **(Enter RFP Information)** to be issued by **(Enter Name of Customer)** (“Customer”) for the purpose of **(Enter Commodity/Service)** (“Program”). In order to maximize the likelihood of presenting an effective solution for the Program requirements, the Parties have agreed to pool their complementary capabilities according to the terms and conditions herein. The Parties recognize the efficiency of teaming and wish to team for the purpose of competitively responding to the Program requirements and performing resulting contracts.

1.1 EXCLUSIVITY

This Agreement shall be an exclusive agreement between the parties for the specified Proposal. Subcontractor warrants and represents that the contracted Commodity/Services for this Proposal shall be provided exclusively to Contractor and the Contractor only and that Subcontractor will not provide Services to any other respondent (or third party) to the specified RFP or unsolicited proposal specified herein. Breach of the Exclusivity provision shall immediately void this agreement and render it unenforceable. This clause shall not be construed as intending to restrict or restrain trade.

2.0 INTENT TO TEAM

Provided the Contractor receives a cost and technical proposal that is acceptable, the Contractor will name the Subcontractor as a potential subcontractor for the following areas as mutually agreed upon: *As a major Subcontractor, (Enter Name of Subcontractor) will supply key resources with:*

- *The appropriate resources, as requested by (Enter Customer Name), to support the proposal development effort;*
- *The appropriate resources, as requested by (Enter Customer Name), to support any oral presentation or demonstration that may be required for this effort;*
- *(Enter Commodity/Service) in an agreed upon geographical area and time frame.*

Provided the requirements of this teaming agreement are met, (Enter Name of Contractor) intends to provide (Enter Name of Subcontractor) a share of (Enter Commodity/Service) revenues with future growth potential.

If the Contractor is awarded a contract resulting from the Proposal, the Contractor will award a subcontract to the Subcontractor for a mutually agreed upon level of effort and deliverables in one or

more of the areas of responsibility set forth above to the extent they are included in the Contractor's contract with its Customer. The Subcontractor agrees to accept such subcontract provided:

1. the Subcontractor's cumulative performance has been successful;
2. the award of such subcontract by the Contractor will be acceptable to the Customer; and
3. the Parties establish mutually agreed upon prices, terms and conditions specified in the Contractor's Subcontract Agreement (CSA), and a Statement of Work ("SOW").

Contractor and Subcontractor will mutually agree on the subcontract area, level of effort, and deliverables to be provided by Subcontractor and will document the resulting Subcontractor scope in the SOW.

3.0 PROPOSAL PREPARATION

- 3.1 The Contractor will act as the prime contractor and will prepare and submit the Proposal. The Contractor will be the point of contact to the Customer and will own the overall customer relationship and satisfaction. The Contractor shall have sole discretion in regard to pricing the Proposal to the Customer.
- 3.2 The Proposal will be prepared by the Contractor who will designate a representative and will act as the leader for the Proposal. The Subcontractor agrees to provide the necessary liaison effort to draft and write the portion of the Proposal that describes the Subcontractor's specific area of responsibility, and furnish the Contractor with all the information necessary to submit the most responsive Proposal practicable, in accordance with the schedule set by the Contractor.
- 3.3 To the extent required and requested by the Contractor, the Subcontractor will support and participate in reviews, presentations, briefings, or other communications necessary to support the Proposal effort.

4.0 ALLOCATION OF COST

Each party shall bear its own costs and expenses incurred, including travel expenses, during the preparation and submission of the Proposal and all commitments and representations that it makes.

5.0 CONFIDENTIAL OBLIGATIONS

The Parties agree that any exchange of confidential information hereunder, including but not limited to the exchange of confidential business information pursuant to the preparation of the Proposal, will be exchanged in accordance with the terms and conditions of a separate confidentiality agreement and its applicable supplements.

6.0 TERM AND TERMINATION

This Agreement shall remain in effect until the first of the following shall occur.

1. notice by the Customer that:
 - (a) a contract award for the Program has been granted to an organization other than the Contractor; or
 - (b) the Contractor is disqualified or otherwise will not be selected for the Program;
2. official cancellation of the Program/RFP by the Customer;
3. Customer's disapproval of an award of a subcontract to the Subcontractor;
4. (Enter Time Frame e.g. Six (6) months) from the Effective Date of this Agreement;
5. notice by the Contractor that a change in the Customer's requirements materially affect the capability of the Subcontractor to contribute to the Proposal offered by the Contractor;

6. after a reasonable period of good faith negotiations, notice by either party that they cannot reach agreement on the terms and conditions of the CSA and SOW (including price, schedule, and terms) prior to the due date for the Contractor's Proposal submission to the Customer;
7. the execution by the Contractor and the Subcontractor of a CSA and SOW prior to and contingent upon the Contractor's executing a contract with the Customer;
8. the Parties mutually agree in writing to terminate this Agreement.

7.0 FREEDOM TO MARKET AND EXCLUSIONS

It is understood that neither party shall be precluded from its normal marketing efforts in connection with the sale or licensing of its products and services, including but not limited to sales efforts to organizations submitting proposals which are competitive to the Proposal defined in this Agreement. However, before the Subcontractor commences any communication with an organization that is or may be submitting a proposal competitive to the Proposal defined in this Agreement, the Subcontractor agrees to provide the Contractor with (Enter Time Frame e.g. ten (10) days) written notice.

8.0 INTELLECTUAL PROPERTY

- 8.1 For purposes of this Agreement, "Invention" means any ideas, designs, concepts, techniques, inventions, discoveries or improvement, whether or not patentable, conceived or reduced to practice by Contractor personnel and/or Subcontractor personnel in performance of the Agreement and the term "Materials" means literary works or other works of authorship (such as programs, program listing, programming tools, documentation, reports, drawings and similar works) created by Contractor personnel and/or Subcontractor personnel in performance of this Agreement.
- 8.2 For purposes of this Agreement, the term Inventions and Materials will be treated as follows:
 1. If made solely by Contractor personnel, Inventions and Materials are the Contractor's property. The Contractor grants the Subcontractor a non-exclusive, irrevocable, worldwide, and paid-up license under such Inventions, patent applications, and all patents issued thereon, and under such Materials and copyrights therein.
 2. If made solely by Subcontractor personnel, Inventions and Materials are the Subcontractor's property. The Subcontractor grants the Contractor a nonexclusive, irrevocable, worldwide, and paid-up license under such Inventions, patent applications and all patents issued thereon, and under such Materials and copyrights therein.
 3. If made by the personnel of both Parties, Inventions and all patent applications filed thereon and all patents issuing thereon, and under such Materials and copyrights therein, are jointly owned by the Parties without accounting to the other. Each party shall have the right to grant licenses to third parties or assign its rights therein without the consent of the other. If any such consent is required by law, it is hereby granted.
- 8.3 All licenses granted in this section include, in the case of Inventions, the right to make, have made, use, have used, lease, sell and/or otherwise transfer any apparatus, and/or practice and have practiced any method and includes the right to grant, directly or indirectly, revocable or irrevocable sublicenses to its affiliates and, in the case of Materials, the right to prepare and have prepared derivative works of such Materials and to execute, reproduce, transmit, display, perform, transfer, and distribute such Materials or their derivative works, and to grant others the rights granted herein with respect to such Materials.

8.4 Nothing contained in this Agreement grants any license under any other materials or patent or patent applications arising out of any other inventions of either party.

9.0 INDEMNIFICATION

9.1 The Subcontractor will defend, or at Contractor's option, cooperate in the defense of Contractor, and hold Contractor and Contractor personnel harmless from any resultant losses, liabilities, damages, costs, and expenses (including legal fees) resulting from any claims that arise or are alleged to have arisen as a result of:

- (a) Negligent or intentional acts or omissions of the Subcontractor or Subcontractor personnel or breach by the Subcontractor of any term of this Agreement; or
- (b) Subcontractor's products or services infringing or misappropriating the intellectual property rights of a third party.

9.2 The Subcontractor obligations under this section shall not apply to any infringement or misappropriation arising from a modification by Contractor of any information, data or drawings provided by the Subcontractor pursuant to this Agreement, if such infringement or misappropriation arises solely from such modification.

10.0 LIMITATION OF LIABILITY

In no event will either party be liable to the other for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.

11.0 CHOICE OF LAW AND FORUM; WAIVER OF JURY TRIAL; LIMITATION OF ACTION

This Agreement is governed by the laws of the country where the Contractor entering into the Agreement is located, except:

1. in Australia, this Agreement will be governed by the laws of the State or Territory in which the disclosure occurs;
2. in the United Kingdom, this Agreement will be governed by the laws of England;
3. in Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia (collectively, "Central Europe"), this Agreement will be governed by the laws of Austria;
4. in Estonia, Latvia, and Lithuania, Finnish law shall apply;
5. in Canada, the laws of the Province of Ontario govern this Agreement; and
6. in the United States (including if any part of the disclosure is performed within the United States or if the Information is of United States origin) and Puerto Rico, and People's Republic of China, the laws of the State of New York govern this Agreement.

The United Nations Convention on Contracts for the International Sale of Goods does not apply. The Parties expressly waive any right to a jury trial regarding disputes related to this Agreement. Unless otherwise provide by local law without the possibility of contractual waiver or limitation, any legal or other action related to this Agreement must be commenced no later than two (2) years from the date on which the cause of action arose.

12.0 GENERAL

12.1 Neither party shall assign its rights or duties under the Agreement in whole or part without prior written approval of the other party.

