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CONSIDERATIONS FOR A TEAMING AGREEMENT  
TO PROPOSE ON GOVERNMENT PRIME CONTRACTS

By Lawrence J. Costello

1. The subcontractor's task responsibilities must be adequately defined along with documentation requirements and other areas of support.
2. Cost, Technical and Management Proposal format must be defined. (Include RFP requirements plus other necessary information.)
3. Any promise to a potential subcontractor that he will get a subcontract, if the other party gets the prime contract must be made subject to Government approval, mutually acceptable terms, conditions, prices and statement of work. The mutually acceptable terms and conditions include those in the prime contract and other Government provisions required to be included in subcontracts. In addition, the promise must be predicated on the availability of funding.
4. It must be made clear to the subcontractor that the prime contractor will pay neither any subcontractor expenses for the pre-proposal nor any negotiating expenses related to the definitization of the prime contract or instant subcontract.
5. The subcontractor must be ready to support and participate as required, in negotiations between the Government Agency and the prime contractor.
6. Agreement on which sections of the prime proposal are given to the subcontractor. All of it or just the subcontractor's contribution?
7. The prime contractor should have sole right to decide final form and content of the proposal to be submitted. (Very controversial especially on page limited proposals.)
8. The prime proposal should specifically identify the subcontractors contribution.
9. Only the prime contractor deals with the Government Agency unless the prime contractor approves the subcontractor doing so. If the subcontractor is approached by the agency, he immediately notifies the prime contractor.

10. If the prime contractor edits sections of the subcontractors input to the proposal, is the subcontractor notified of the changes?
11. Should the prime contractor retain the right not to submit a proposal?
12. The subcontractor should not be terminated for convenience or otherwise have his work reduced or stopped unless as a direct result of the written direction of the Government Agency.
13. Should the teaming agreement extend to any contemplated follow-on contract?
14. The amount and type of the subcontract should be stipulated subject to necessary changes at negotiations between the Government Agency and the prime contractor.
15. The parties shall use best efforts to negotiate a subcontract in good faith. The subcontract should be awarded provided that:
  - (a) The Government does not disapprove of such subcontract or the subcontractor.
  - (b) The work statement is not substantially changed by the Government thereby negating the applicability of this agreement.
  - (c) The resources and technical capabilities of the subcontractor have not been substantially reduced.
16. If the teaming agreement, scope of work, or other conditions were established before the receipt of the formal request for proposal from the Government Agency, then the agreement must provide for necessary revisions because of differences resulting from evaluating the RFP or any amendments thereto.
17. The agreement is terminated by:
  - 1) Mutual agreement of the parties.
  - 2) The contemplated prime contractor has been eliminated from consideration for the contemplated contract. (Let subcontractor go with the winner if the opportunity exists.)
  - 3) Program cancelled or indefinitely postponed.
  - 4) Award of the subcontract.
  - 5) A mutually acceptable expiration date.
  - 6) Government Agency decides to contract separately.
  - 7) Failure to negotiate a mutually acceptable subcontract.
18. The agreement names the prime contractor and subcontractor(s) and addresses whether the agreement is exclusive. (Also be sure subcontractor cannot decide to be prime contractor.)

19. Proprietary information shall be defined and the purposes for which it may be used shall be delineated along with the disposition of such information whether or not the prime contractor gets an award.
20. Include a caveat that the agreement is not a joint venture, pooling arrangement, partnership or formal business organization of any kind
21. All public releases are subject to prior written approval of the prime contractor.
22. Interests in the agreement are not assignable to other parties.
23. The agreement constitutes the entire agreement and supersedes previous understandings either written or oral. All modifications must be in writing and signed by a duly authorized official.
24. The date for delivery of the prime proposal should be established.
25. A provision which requires the subcontractor to agree to take the subcontract should be included.
26. The agreement shall not restrict either party from quoting, offering to sell, or selling to others standard commercial products or services regularly offered to the public. (Anti-Trust provision.)
27. Include restrictions subject to the laws of some state, e.g., Mass., Calif., etc.
28. Should the prime contractor be required notify the subcontractor of any Government Agency inquiries which affect the subcontractor during the period between proposal submission and the prime contract award?
29. Failures or delays in proposal submission are not waivers.
30. Nothing contained in the agreement shall affect the right of the Government Agency to negotiate and contract with either party on any basis that the Government Agency may desire.
31. Include a caveat that the agreement is indeed the entire agreement.
32. The agreement must have sufficient introductory information to: 1) Identify the parties, 2) Identify the program, 3) Explain why they are a teaming.
33. The agreement must be signed by authorized representatives.