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Corporate Counsel Services

TEAMING ON PROPOSAL AND MAJOR OPPORTUNITY RESPONSES THE FUNDAMENTALS

I. The Starting Point “Contractor Teaming Arrangements”

A. Vertical Relationship – “a potential prime contractor agrees with one or more other companies to have them act as its subcontractors ...”

B. Horizontal Relationship – “two or more companies form a partnership or joint venture to act as a potential prime contractor ...”

II. The Vertical Relationship – The Teaming Agreement

A. *Mandatory Provisions*

1. Covenant to Work With the Sub – *If the Prime wins the Sub wins.*
2. Division of Labor – *Who does what?*
3. Exclusive or Non-exclusive?
4. Pricing From Sub – Fixed for a term.
5. Termination – cover all the possible events
6. Ownership of Intellectual Property – Important!
7. Confidentiality - More than Just Pricing Methodology

B. *The Subcontract and Flow Downs*

1. Review the Prime Contract Terms in General
2. Reach Agreement With Partner on Subcontract Terms
3. Reach Agreement With Partner on Flow Downs

III. The Horizontal Relationship – Possible Structures

Joint Venture – General term meaning two or more entities coming together to form a separate entity for a specific purpose. Can be any of the following:

A. *General Partnership*

1. An association of two or more persons (entities) formed to carry on business for profit
2. Can be informal (no filing required)
3. Partners individually responsible for partnership debts
4. Pass through tax treatment of profits and losses to partners

B. *Limited Partnership (the LP)*

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1. Partnership with one or more General Partners and one or more Limited Partners
2. Must file with the State – creature of statute
3. Limited Partners not liable for partnership debts
4. Limited Partners cannot participate in management of the partnership

C. Corporation (the C Corp)

1. Separate legal entity apart from its shareholders
2. No personal liability of shareholders
3. Double Taxation (Profits taxed; dividends taxed)
4. Corporate filings and procedures must be followed

D. The S Corporation (the S Corp)

1. Corporation that elects to be treated as a partnership for tax purposes only.
2. No personal liability of shareholders
3. Pass through tax treatment of profits and losses to shareholders
4. Restrictions on number of shareholders and classes of stock

E. Limited Liability Company (the LLC)

1. Blends corporation and partnership elements
2. Legal entity distinct from its members
3. No personal liability for members
4. May be formed by one person (single member LLC)
5. Must file with the State – creature of statute
6. Pass through tax treatment of profits and losses to members

F. Limited Liability Partnership (the LLP)

1. Operates as a General Partnership
2. Members protected from some or all of the debts of the partnership
3. Must file with the State – creature of statute
4. Pass through tax treatment of profits and losses to members

IV. Formation of the Joint Venture

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A. Entities Involved

1. Existing company can be the member, shareholder of the newly formed Joint Venture.
2. Can form a new entity (ex. LLC) owned by existing company to be the member, shareholder of the newly formed Joint Venture.
3. Individual can be member, shareholder of newly formed Joint Venture
4. Decision dictated by tax and liability reasons.

B. Operating Agreement

1. Regardless of the structure, must have a formal operating agreement with other participants
2. Defines:
 - a) Capital contributions and profit distribution
 - b) Management and purpose of the enterprise (duration)
 - c) Governance (Board of Directors/Management Committee)
 - d) Powers of shareholder, members, directors, managers
 - e) Dissolution and termination of enterprise
 - f) Withdrawal of shareholder/member
 - g) Transferability/assignment of interests

For any questions on any matter discussed above, please contact Bruce L. Galaro of Business Law Group at 203-797-1600