

HANDOUT COPY

***BUSINESS TEAMING FOR WINNING
GOVERNMENT CONTRACTS***

JOHNSTOWN AREA REGIONAL INDUSTRIES
PROCUREMENT TECHNICAL ASSISTANCE CENTER


THE FINE PRINT

- ◇ This presentation is intended to be general information only. It does not constitute legal advice. Always consult with competent legal counsel.
- ◇ Reference to any private vendor is for example purposes and is not an endorsement.
- ◇ Other techniques, methods, approaches, and considerations may be just as workable as items presented herein.
- ◇ Resources provided may change over time, or become outdated.
- ◇ This presentation focuses on Federal procurement and assumes rudimentary contracting knowledge.

TODAY'S WORKSHOP OUTLINE

- ◇ Objectives
- ◇ Introductions
- ◇ Topic Areas
 - Definitions •Pre-Teaming
 - Small Businesses •Creating the Team
 - Benefits •Types of Arrangements
- ◇ Resources (Including URLs for presentation links)
- ◇ PTAC Contacts

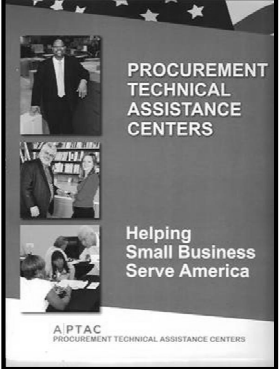
YOUR OBJECTIVES FOR TODAY

- ◇ Stay awake!!! 
- ◇ Learn:
 - Assistance that's available to you and where you can get it.
 - The basics of business teaming from the perspective of doing business with the Federal government.
 - How to create a team.
 - Various types of teaming arrangements and their attributes.

INTRODUCTIONS

PTACS ARE YOUR PALS!

- ◇ A nationwide network of local offices that facilitate business participation in government markets.
- ◇ Little or no cost to you. Budgeted by Congress.
- ◇ Administered by the Defense Logistics Agency (DLA).
- ◇ More info: www.aptac-us.org



PTACS HELP BUSINESSES

- ◇ Capabilities evaluation.
- ◇ Registrations & certifications.
- ◇ Marketing collateral.
- ◇ Market targeting.
- ◇ Teaming.
- ◇ Buyer-seller matchmaking.
- ◇ Opportunity ID.
- ◇ E-commerce.
- ◇ Bids and proposals.
- ◇ Standards & specifications.
- ◇ Contract administration.
- ◇ Subcontracting.
- ◇ Audits.
- ◇ Contracting news.
- ◇ Referrals.

PTACS HELP GOVERNMENTS AND CITIZENS

Increased knowledge, capability, and availability of the nation's government's supply chain.

↓


Increased competition.

↓

Improved quality of goods and services. Lower costs. Increased delivery reliability.

↓

Taxpayer gets more "Bang for the Buck."



ANNUAL PTAC IMPACTS

- ◇ 75,000 client organizations, over 20,000 brand new to government contracting.
- ◇ Host or support over 5,500 events with over 335,000 attendees.
- ◇ Hold over 180,000 business counseling sessions.
- ◇ Assist clients in winning over 127,000 contracts totaling over \$17.4 billion.

These efforts create and retain over 320,000 jobs, and reflect a \$600+ return for each \$1 invested in the PTAC program.

WHAT PTACS EXPECT OF CLIENTS

- ◇ Progress toward becoming a viable government contracting candidate.
- ◇ A local place of business.
- ◇ Computer capability.
- ◇ Information about your organization and its operations.
- ◇ Active pursuit of procurement opportunities.
- ◇ Quarterly contract and employment data.
- ◇ Client feedback at least annually.

WHAT PTACS WON'T DO

- ◇ Serve as an official business representative or agent for your organization.
- ◇ Market or sell for your organization.
- ◇ Write your bid/proposal for you.
- ◇ Make your business decisions.
- ◇ Release information specific to your organization without your prior approval.
- ◇ Accept compensation or gifts.

YOUR LOCAL PTAC IS A VALUABLE SOURCE OF FREE OR LOW COST EXPERTISE THAT CAN ASSIST YOU IN VIRTUALLY EVERY ASPECT OF DOING BUSINESS WITH FEDERAL, STATE, OR REGIONAL/LOCAL GOVERNMENTS.

CLASS ROLE CALL

- ◇ Your name and title.
- ◇ Your company name.
- ◇ What your company does.
- ◇ What you do at your company.
- ◇ Why are you here? What do you want to learn? What specific topics interest you?



DEFINITIONS

DEFINITIONS: DICTIONARY

- ◇ A group of entities with a full set of complementary skills required to complete a task, job, or project.
 - Team members (1) operate with a high degree of interdependence, (2) share authority and responsibility for self-management, (3) are accountable for the collective performance (Not necessarily so!), and (4) work toward a common goal and shared rewards(s).
 - A team becomes more than just a collection of parts when a strong sense of mutual commitment creates synergy, thus generating performance greater than the sum of the performance of its individual members.

DEFINITIONS: FAR

- ◇ FAR Subpart 9.6 - Contractor Team Arrangements
 - (1) Two or more companies form a partnership or joint venture to act as a potential prime contractor.
 - (2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.



FAR Subpart 9.6

DEFINITIONS: FAR

- ◇ Why are teams allowed?
 - Offer the government the best combination of performance, cost, and delivery when team members complement each other's capabilities.
- ◇ Timing and information requirements:
 - Normally before submitting an offer, but can be after.
 - Relationships must be fully disclosed prior to or with an offer, or subsequently, before the arrangement becomes effective.
 - Teams are temporary entities.

A WORD ABOUT SMALL BUSINESSES

WHAT IS A SMALL BUSINESS?

◇ **SBA Size classifications:**

- Small
- Other Than Small



◇ **NAICS determines size of "for profits:"**

- Based on average annual receipts over 3 years or average number of "head count" employees over 12 months.
- Self-assigned in CCR, BUT . . .
- . . . The Contracting Officer (CO) assigns a NAICS to a procurement that sets the size criteria for that procurement.

WHY SIZE MATTERS

◇ **"Affiliation:"**

- **Affiliated businesses can be ineligible for participation in "set asides" due to size.**
- **Locations / varied industries irrelevant.**
- **One business has control or "power to control" another. Ownership, management, economic dependency, etc. See 13 C.F.R. § 121.103.**
- **"Ostensible subcontractor:"** Occurs when a subcontractor performs primary and vital requirements of the prime contract. Business are considered to be affiliated.

BENEFITS

BENEFITS: TO GOVERNMENT

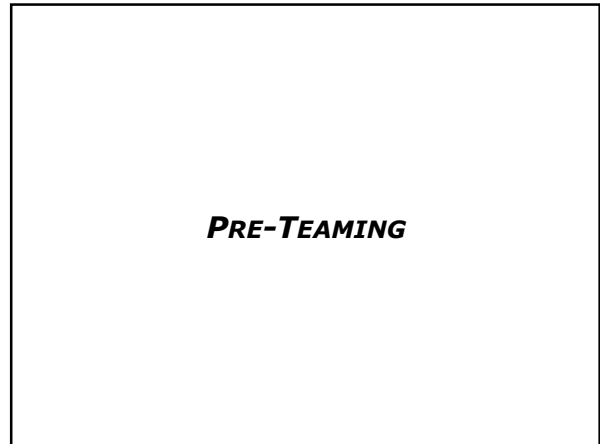
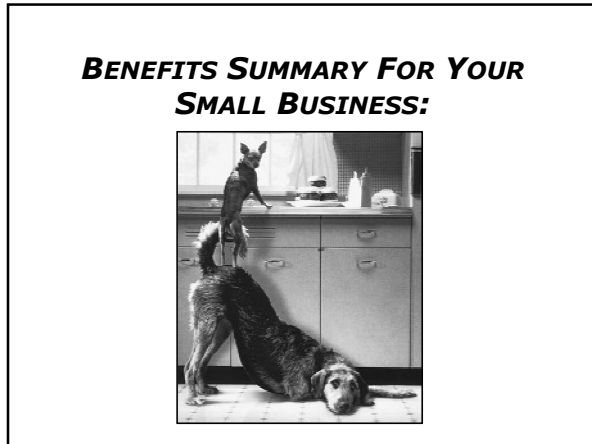
- ◇ **Consolidation of contractors reduces administrative burden.**
- ◇ **Expands opportunities for meeting small business contracting goals.**
- ◇ **Develops better expertise in government contracting among small businesses for potential follow on work.**
- ◇ **Increases competition.**
- ◇ **Reduces risk.**

BENEFITS: TO "BIG" BUSINESSES

- ◇ **Credit toward small business subcontracting goals.**
- ◇ **Access to "set aside" contracts for which they would otherwise be ineligible.**
- ◇ **Access to niche expertise on a temporary basis:**
 - **Allows focus on core competencies.**
 - **Fixed costs become variable costs.**


BENEFITS: TO SMALL BUSINESSES

- ◇ **Access to set asides and niche expertise.**
- ◇ **Contracts are becoming more complex, larger ("bundling") and geographically dispersed. A small business by itself may not have the resources to do the whole job.**
- ◇ **Association with experienced contractors builds proficiency.**
- ◇ **Economies of scale: More purchasing power, easier access to capital and bonding.**



PRE-TEAMING: YOUR #1 TEAMMATE IS YOU




- ◇ Know who your company is and what you can do.
 - Identify core competencies: Strengths
 - The basis of your Capabilities Statement.



More on Capabilities Statements







PRE-TEAMING: HELP TEAMMATES FIND YOU

- ◇ Current, complete, and accurate CCR, DSBS, website, Facebook.
- ◇ Other directories, e.g.:




- ◇ Participate in trade associations, shows, forums, message boards.
- ◇ Speak and Publish: Voilà, vous êtes un expert!
- ◇ Advertise.
- ◇ Pound the pavement, if necessary.

PRE-TEAMING: OPPORTUNITY DOESN'T KNOCK

- ◇ Locate specific work that requires your core competencies, e.g.:

Example	Notes	Reactive	Proactive
	>\$25K open and awarded solicitations.	✓	✓
	Prime subcontracting needs.	✓	
ACQUISITION CENTRAL	Procurement forecasts.		✓
 	Subcontracting directory & procurement forecast.	✓	✓
	DOD subcontracting plans. (.csv)	✓	✓
	Procurement histories.		✓
Other	Shows, pubs, matchmaking, prime websites, etc.	✓	✓

PRE-TEAMING: GAP ANALYSIS

- ◇ Work that matches your core competencies = Go for it!
- ◇ Work that matches your core competencies and then some = Gap analysis to determine suitable partner(s).

RFP
We Need:

A.
B.
C.
D.
E.

=

My Capabilities
I Have:

A.
c.
E.

+

My Partner
Should Have:

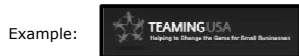
B.
c.
D.

PRE-TEAMING: IDENTIFYING PARTNERS

◇ **Ways we've already discussed:**



◇ **Also, perhaps, fee for service:**



PRE-TEAMING: A WORD ON FIRST CONTACT

◇ **ALWAYS One-to-One: Cold call, email, snail mail, text, face-to-face, etc.**

◇ **F2F "Do's/Have's":**

- 30-second elevator pitch.
- Eye contact. Show interest.
- Non-glossy business card to allow note taking.
- Keep it short. When conversation lulls, thank the person and move on.
- Intro capabilities statement.
- Listen more than talk. Take notes on their business card.
- Be approachable. SMILE! (This is fun, dammit!)
- Ask questions to find commonalities.
- Firm handshake.
- Set expectations for next steps.
- Remember names and use them.

PRE-TEAMING: A WORD ON FIRST CONTACT

◇ **F2F "Dont's":**

- Be unprepared.
- Let your mind wander while the other person is speaking.
- Collect reams of info or decks of business cards. Quality over quantity.
- Talk too much.
- Isolate yourself or surround yourself with friends.
- Monopolize someone's time.
- Make too much small talk.

◇ **ALWAYS follow up quickly, typically within 1 business day.**

- ◇ Summarize the meeting, reinforce synergies, recap next steps and set a plan, invite to social networks, invite to coffee/lunch, etc.

PRE-TEAMING: DUE DILIGENCE SCREENING

◇ **Create partner business dossiers:**


- Complementary core competencies.
- Past performance. (**PPIRS**)
- **Excluded Party?**
- Financial stability. (Annual reports, **D&B PAYDEX, FICO SBSS**)
- Capacity.
- Geography.
- Culture.
- Competitor?
- Antitrust potential.



THE PRELIMINARY STEPS FOR ENTERING INTO A TEAMING AGREEMENT ARE TO UNDERSTAND (1) YOUR ORGANIZATION, (2) WHAT YOU WANT TO DO, AND (3) WHO CAN HELP YOU GET THERE.

CREATING THE TEAM

TYPICAL TEAM CREATION PROCESS STEPS

- ◇ You are here  Opportunity + Teammate.
- ◇ Next:
 - Negotiate and execute a "Teaming Agreement" (TA).
 - Prepare and submit the proposal.
 - ~~Win the contract.~~
 - ~~Negotiate and execute a subcontract or a partnership/joint venture contract.~~

Beyond today's presentation scope.

THE TEAMING AGREEMENT (TA)



- ◇ A private contract between two or more parties governed by contract law and the Uniform Commercial Code (UCC).
- ◇ Serves as an interim agreement ; superseded by a subsequent contract that is negotiated post-award.
- ◇ Sets terms / obligations and becomes a primary document governing the initial relationship of the parties.
- ◇ Enforceability can be an issue without specificity and express statements.

THE TEAMING AGREEMENT (TA)

- ◇ Needs to be carefully drafted. Brevity is discouraged. **USE AN ATTORNEY!**
- ◇ Potential non-binding TA precursors:
 - Letter of Intent (LOI), Memorandum of Understanding (MOU), Memorandum of Agreement (MOA).
 - Agreement to explore the relationship. May include: ID of issues to be addressed in TA, minimum binding terms, agreement on key points, etc.
 - Facilitates the start of a business deal – a bridge between discussions and a TA.

THE TEAMING AGREEMENT (TA)

- ◇ Another important TA precursor: The Nondisclosure Agreement (NDA)
 - Defines proprietary or confidential information and exclusions.
 - Provides the purpose for disclosure.
 - Limits use by teammates and disclosure to 3rd parties.
 - Protects existing client and vendor relationships.
 - "One-way" or "two-way."

More:  

THE TEAMING AGREEMENT (TA): KEY ITEMS

◇ Statement of purpose, i.e., a specific RFP.	◇ Subcontracting obligations. (for prime / sub)
◇ Work allocation on proposal and contract.	◇ Management. (for partners / JV)
◇ Duration.	◇ Compensation to sub if government disapproves the subcontract. (for prime / sub)
◇ Termination options.	◇ Confidentiality and intellectual property (including rates).
◇ Exclusivity.	◇ Communication.
◇ Proposal cost share.	◇ <u>Sample.</u>
◇ Control of client relationship.	
◇ Dispute resolution.	
◇ Publicity.	
◇ Non-competition.	

PROPOSAL WRITING CONSIDERATIONS

- ◇ Explain the decision to team and the benefits to the government.
- ◇ Demonstrate due diligence conducted to find the best team for the work. Show why the team is particularly well-suited to the job at hand.
- ◇ If companies have worked together before, demonstrate shorter learning curve, more efficient or faster performance, and reduced risk or cost.
- ◇ Explain the management of project team to ensure performance.

**WHEN CREATING YOUR TEAM,
GET EVERYTHING IN WRITING!**

TYPES OF ARRANGEMENTS

FOUR PRIMARY CONTRACTING ARRANGEMENTS



- ◇ Prime Contractor / Subcontractor.
- ◇ Joint Venture.
 - Includes: General Partnership, Limited Liability Company / Partnership, Corporation, etc.
- ◇ Mentor – Protégé.
- ◇ General Services Administration (GSA) Contractor Teaming Agreement (CTA).
- ◇ Others:
 - Licensing, distribution, cooperative R&D, etc.

PRIME CONTRACTOR / SUBCONTRACTOR

- ◇ Most common arrangement.
- ◇ Prime has the only direct contact and responsibility (privity) with the government.
- ◇ Prime is in control. Usually desires flexibility (“good faith effort”) vs. subcontractor desire for guarantees.
- ◇ Subcontract will probably require finalization prior to the final offer to the government . (Otherwise the prime needs 3 bids.)

PRIME CONTRACTOR / SUBCONTRACTOR

- ◇ FAR clauses “flowed down” to the sub.
 - Mandatory: FAR requires these to be included in subcontracts. Usually reserved for public policy purposes. (e.g., equal opportunity, etc.) “Christian doctrine” does not normally apply to subs.
 - Advisory: Included in subcontracts to protect the interests of the prime. (e.g., termination for convenience, changes, etc.)
 - Negotiable: Situational usage. Discretional.
 - Review carefully! Understand compliance and costs!

More:  

PRIME CONTRACTOR / SUBCONTRACTOR

- ◇ A Small Business as a prime contractor. The SB must get a minimum work percentage for set-asides:
 - Service: At least 50% of the cost of the work.
 - Supplies: At least 50% of the manufacturing costs, excluding materials.
 - General construction: At least 15% of the costs, excluding materials.
 - Specialty construction: At least 25% of the costs , excluding materials.

MENTOR - PROTÉGÉ


- ◇ An arrangement where an experienced contractor provides assistance to a less experienced small business.
- ◇ Mentors provide one or more:
 - Management, financial and/or technical assistance.
 - Loans and/or equity (40% limit) investments.
 - Cooperation on joint venture projects.
 - Subcontracts under prime contracts being performed by the Mentor.

MENTOR - PROTÉGÉ

- ◇ Mentor benefits can include:
 - Credit toward subcontracting goals.
 - Monetary reimbursement.
- ◇ General Mentor eligibility:
 - Any type of company. (Small, other than small, non-profit, etc.)
 - Capability and commitment to assist the Protégé.
 - Profitable the last two years.
 - Knowledgeable in government contracting and in good standing.

MENTOR - PROTÉGÉ

- ◇ Protégé flavors vary by program:
 - Must be a small business and generally fall into at least one socio-economic designation.
 - MP programs: SBA, Army, DHS, DOE, FAA, NASA, Oak Ridge National Labs, State Department, Treasury Department, DOD, GSA

Sample Agreement: 

◇ Prime examples:



JOINT VENTURE

- ◇ Limited purpose partnership with each party jointly and severally liable to government and 3rd parties.
- ◇ Usually creates a new business entity.
 - Need DUNS, CCR, ORCA, bank account, etc.
- ◇ JV partners are generally "affiliated" for size classification. Some exceptions exist depending upon the size of contract and types and sizes of participants (SDVOB, 8(a), Mentor - Protégé, etc.)

JOINT VENTURE

- ◇ JV must be approved before the proposal is submitted.
- ◇ Each party has privity with the government.
- ◇ 3/2 rule: The JV cannot submit more than 3 proposals over 2 years.
- ◇ May have requirements for percentage of work performed and profits shared.
- ◇ A government agency may have a JV arrangement form they prefer to use. Check with the contracting agency.

GSA CONTRACTOR TEAMING ARRANGEMENT

- ◇ GSA schedule contractors work together to offer a turnkey purchasing solution for which they independently would not qualify.
- ◇ Not a subcontract or JV: Each contractor has privity. No new entity is formed.
- ◇ Non-schedule holders may serve as subcontractors to schedule holders using traditional subcontracts.

More: 

RESOURCES

- ◇ DOD Guidebook for Facilitating Small Business Teaming Arrangements
http://www.acq.osd.mil/osbp/docs/dod_OSBP_Guidebook_for_Facilitating_Small_Business_Team_Arrangements.pdf
- ◇ Army Corps of Engineers Teaming Arrangement Presentation
http://www.nwo.usace.army.mil/html/sa/Team%20Arrangement_20110106.pdf
- ◇ SBA Teaming Arrangements Presentation
<http://www.docstoc.com/docs/10672979/Teaming-Arrangements>
- ◇ Top 100 Government Contractors
<http://www.fedaccess.com/top-contractors-one.htm>

RESOURCES

- ◇ Electronic Code of Federal Regulations
<http://ecfr.gpoaccess.gov>
- ◇ Top 100 Government Contractors
<http://www.fedaccess.com/top-contractors-one.htm>
- ◇ Association of Procurement Technical Assistance Centers
<http://www.aptac-us.org>
- ◇ Federal Acquisition Regulation
<https://www.acquisition.gov/far/>
- ◇ SBA Table of Small Business Size Standards (.pdf)
http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf

RESOURCES

- ◇ Affiliation
<http://ecfr.gpoaccess.gov> (See section 13, part 121)
- ◇ Ostensible Subcontractor
<http://www.whaylaw.com/OstensibleSubcontractorRule.htm>
- ◇ FDIC Capabilities Statement Presentation
<http://www.fdic.gov/about/diversity/sbrp/14.ppt>
- ◇ Business Directory Examples
<http://www.thomasnet.com>
<http://www.pasourcenet.com>
<http://www.jari.com/businesslocator>
- ◇ Federal Business Opportunities
<https://www.fbo.gov/>

RESOURCES

- ◇ SBA SUB-Net
web.sba.gov/subnet/
- ◇ Acquisition Central Procurement Forecasts
https://www.acquisition.gov/comp/procurement_forcasts/index.html
- ◇ GSA Subcontracting Directory
http://w3.gsa.gov/web/i/subs_dir.nsf/
- ◇ GSA Procurement Forecast
<http://www.gsa.gov/portal/content/101163>
- ◇ DOD Subcontracting Plans
<http://www.acq.osd.mil/osbp/sb/dod.shtml>
- ◇ Federal Procurement Data System
<https://www.fpds.gov/>

RESOURCES

- ◇ Teaming USA
<http://www.teamingusa.com/>
- ◇ Past Performance Information retrieval System
<http://www.ppirs.gov/>
- ◇ Excluded Parties List System
<https://www.epls.gov/>
- ◇ D&B PAYDEX
<https://www.dnb.com/product/ptpsampl.htm>
- ◇ FICO SBSS
http://www.fico.com/en/FIResourcesLibrary/FICO_SBSS_solution_2013PS.pdf
- ◇ Uniform Commercial Code
<http://www.law.duke.edu/lib/researchguides/ucc>

RESOURCES

- ◇ Teaming Agreement Enforceability
http://www.whaylaw.com/Teaming_Agreement_Enforceability.htm
- ◇ Non-Disclosure Agreements
<http://www.bitlaw.com/forms/nda.html>
http://www.wipo.int/sme/en/documents/disclosing_inf.htm
- ◇ Sample Teaming Agreement
<http://www.attny.com/team24.html>
- ◇ FAR Flow Down Clauses and Christian Doctrine
<http://www.wesselcpa.com/~wesselcp/images/Prime%20and%20Subcontracting%20-%20Showcase%206-7-2011.pdf>
<http://www.jdsupra.com/post/documentViewer.aspx?fid=c4327900-5e06-49f7-8670-0a0e5eb31280>

RESOURCES

- ◇ Government Mentor Protégé Programs
<http://www.jari.com> (JARI PTAC Page)
- ◇ SBA Sample Mentor – Protégé Agreement
<http://www.sba.gov/content/mentor-protége-agreement>
- ◇ Prime Contractor Mentor – Protégé Examples
<http://www.lockheedmartin.com/suppliers/supplier-diversity/initiatives/mentor.html>
http://www.is.northropgrumman.com/suppliers/mentor_program.html
- ◇ GSA Contractor Teaming Arrangement
<http://www.gsa.gov/portal/content/200553>

IN CLOSING



TEAMWORK
Share Victory. Share Defeat.

YOUR FRIENDLY NEIGHBORHOOD PTAC

Johnstown Area Regional
Industries
Procurement Technical
Assistance Center
245 Market Street, Suite 200
Johnstown, PA 15905



www.jari.com

jariptac@jari.com

Bob Shark

814.254.4022
bshark@jari.com

Michelle Nyanko

814.254.4023
mnyanko@jari.com