GSA Schedule Contract Teaming Arrangements & Subcontracts

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Types of Contractor Teaming Arrangements

- Teaming Agreements
- Subcontract Agreements
- Joint Ventures (JVs)
- *GSA Contractor Team Arrangements (CTAs)*

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What is a Contractor Teaming Arrangement?

- FAR 9.601 - “Contractor Team Arrangement” is when:
  - Two or more companies form a *partnership* or *joint venture* to act as a potential *prime contractor*; or
  - 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.

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What Is a Subcontract?

- Under the FAR 2.101, “Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services and the buyer to pay for them.
- Under FAR 44.101:
  - “Subcontract” is any “Contract” entered into by a Subcontractor to furnish supplies or services for performance of a Prime contract or Subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
  - “Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a Prime Contractor or another Subcontractor.

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What is a *GSA Schedule CTA*?

- FAR 9.6 does not apply to GSA Schedules
- A Schedule CTA is an agreement between two or more GSA Schedule contract holders to combine complementary capabilities from their Schedule offerings as a "team" to pursue task orders or BPAs issued under Schedule contracts
- CTA team members do *not* have a prime-sub relationship.
- Unlike a JV, Schedule CTAs are *not* a separate legal entity and do not create affiliation between team members
- Each CTA team member is a "co-prime," and each member maintains privity of contract with the government

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Benefits for CTA Members

- Each team member:
  - Increases competitiveness –
    - Can compete for work which is not included in their schedule (i.e., would be precluded from competing but for the CTA)
  - Builds prime relationships with customers
  - Earn past performance as a prime contractor
  - Reduces risk by sharing responsibilities with other CTA team members
  - Gains complementary capabilities

Benefits for Government Buyers

- Schedule CTAs allow for:
  - Total solution from CTA team members who complement each other
  - Increased opportunities for small businesses

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How do set-asides apply to CTAs?

- All CTA members must be small (or whatever sub-set the order is set-aside for) for the CTA to be eligible for that task order or BPA

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Can CTAs subcontract?

- CTA team members *can* enter into subcontracts to perform work that is on their GSA schedules
  - Subcontractors can be non-Schedule contract holders

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How Does the Limitation on Subcontracting Rule apply to CTAs?

- The CTA team must perform 50% of the *value* of the work in the aggregate.
- For example, to meet the 50% requirement on a team consisting of three contractors:
  - Team Leader could perform 30% of the work, and
  - Each Team Member could perform 10% of the work
- The remaining 50% of the work may be performed by subcontractors working under any team member's Schedule contract
  - Socioeconomic restrictions do not apply to subcontractors (i.e., they may be large business)

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Differences between CTAs and Prime/Sub Relationships in GSA Schedule Contracting

Schedule CTA (Prime/Prime)	Prime/Sub Relationship
Each team member must have a Schedule contract	Only the prime must have a Schedule contract
Each team member is responsible for duties addressed in the CTA agreement	The prime cannot delegate responsibility for performance to subs
Each team member has privity of contract with the government and can interact directly with the government	Only the prime contractor has privity of contract with the government and can interact with the government
Agency is invoiced at each team member's unit prices/hourly rates as agreed in the task/delivery order or BPA	Agency is invoiced according to the prime's Schedule contract, including any applicable price reductions
Total solutions can be created using multiple Schedule contracts	Prime is limited to the supplies/services awarded on its Schedule contract

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Administrative Issues with CTAs

- Because FPDS/beta.sam will only accept information relating to one contractor per order, only the Team Lead may listed as a prime contractor
  - Agency must determine which CTA member is realizing the preponderance of the revenue for an order and report that contractor's information to FPDS
- Same problem with the Past Performance Information Retrieval System (PPIRS)
  - The CTA agreement should designate the team member to have CPARS ratings entered into PPIRS

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CTA Agreements

- CTAs Agreement should:
  - Be developed in advance of preparing an offer to the RFQ
  - Clearly define the terms of the arrangement
  - Set forth each participant's roles, responsibilities, and obligations
  - Identify the scope, period of performance and termination provisions of the arrangement
  - Identify price and payment terms for functions performed
  - Establish how disputes will be addressed and resolved

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Primary CTA Agreement Consideration

- Combined Orders
  - CTA agreement requires “Team Lead” to:
    - Receive purchase orders from the government
    - Issue purchase orders to team members
    - Receive good/services and invoices from team members
    - Sell the goods/services to and invoice the government based on the prices in each team member’s Schedule contract
- Separate Orders
  - CTA agreement requires government issue separate orders to each team member using their respective Schedule contracts

GSA Schedule CTA Protest Considerations

- FASA limits jurisdiction of task orders protest (under FAR Part 16) to the GAO (COFC has no jurisdiction), and only if the award is above specific thresholds:
  - $10m for civilian agencies
  - $25m for defense agencies
- GSA Schedule Task Orders are *not* subject the FASA protest jurisdiction limitations
  - Can protest at both GAO and COFC for any award value
- *Any Schedule CTA team member can protest*
  - *Sirius Federal, LLC, et. al v. United States,* No. 21-1030C, 21-1041C, 21-1043C, 21-1053C (Fed. Cl., Mar. 29, 2021).

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Questions?

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