

# Government Contracting White Paper

## **CREATING WINNING CONTRACTOR TEAMS**

Mastering the Most Important Strategies  
To Grow Your Government Contracting Business

**BANKS & ASSOCIATES**  
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## **Executive Summary**

Today, the competition for major government contract dollars on the State and Federal level is team versus team, and not company versus company. The ability to collaborate and leverage the skills and competencies of multiple organizations is essential for remaining competitively relevant.

A collaborative team member for one government contract could be your company's main rival for the next procurement. With the increasing emphasis on small business inclusion, virtually every government contract will be awarded to a contractor team.

This information-packed article will provide your company with the critical insight and clarity that every government contractor must have to become successful or retain their competitive edge.

### **WHO SHOULD READ THIS?**

- Chief Financial Officers,
- Contract Administrators,
- Project Managers,
- Controllers
- Financials Managers,
- Small Business CEOs.

### **WHAT WILL YOU LEARN?**

- How to identify the right teaming options for your organization,
- Key components of a due diligence checklist for your teams,
- Critical negotiating points for every teaming agreement,
- Avoiding the three most crucial subcontract administration mistakes,

- Why small and HUB businesses must team for government work,
- How to cost-effectively utilize professionals for optimal success.

The following article provides insights and experience gained over the course of 20 years professional and government contracting experience. It is designed to be concise and easy to read. We limit the use of acronyms and jargon, to situations where they aid in conveying an important point or principle.

Whether you are brand new to Government contracting, or a seasoned Government contractor looking to take your business to the next level, the information included in this white paper is on point and on time.

### **Please contact our firm with questions:**

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## Why Every Business Must Team To Be Successful In Government Contracting?

Not every business can have the success that Lebolo Construction Management had entering the government contracting arena. Lebolo was featured in a June 2012 article in Bloomberg Businessweek, because the business was a shining example of how small and HUB businesses can have tremendous success in Federal and State contracting.<sup>i</sup> The title of the article, "Small Businesses Team Up To Land Federal Contracts," says it all.

Randy Lebolo, an American citizen born to a Columbian father and Texan mother, started Lebolo Construction Management in 2000. For the first eight years Lebolo operated in the residential housing market, before making a calculated shift to enter the Government market following the housing collapse in 2008. After spending \$5,000 in consulting fees and working through the 6-month process, Lebolo Construction Management was certified as an 8(a) business.

As a certified 8(a) business Lebolo Construction Management can offer its services, in a limited competitive environment, against other 8(a) firms for small business set aside contracts. That's exactly what they did. After being certified in 2009, Lebolo won their first Government contract in 2009, earned \$3 million in Government revenue in 2011 and made an estimated \$11 million in Government revenue in 2012.

## EVERY BUSINESS NEEDS...

Every business needs an entry point to succeed in Government contracting. But to grow as a contractor, teaming is critical. Lebolo was able to go from 2011 revenue of \$3 million to \$11 million in 2012 because of an \$18 million joint venture on a Government contract that they won with Weitz Company, a large Government contractor.

Of course small businesses benefit directly from set-aside contracts, but they also benefit from being favorable subcontracting partners. Government clients award points in proposal evaluation for teams that include small businesses, and in many cases have small business subcontracting requirements.

Federal agencies have a goal of awarding 23% of prime contract dollars to small businesses, and routinely have challenges meeting that goal<sup>ii</sup>. Still another 35% of all subcontracting dollars go to small businesses. Large businesses and small businesses are inextricably intertwined – they need each other.

In Texas, agencies like TxDOT are creating initiatives that encourage and facilitate contractor teaming between large businesses and Certified Texas HUBs<sup>iii</sup>. The Alliance Program is such a program that actively fosters relationships between so-called Legacy Firms and HUBs with the hope of increasing HUB participation.

Elsewhere, the City of Houston has increased its small business contracting goals from 23% to 36%. Small businesses can be big players in Government contracting.

## How To Identify Teaming Possibilities?

### FIRST THE BASICS...

To begin pursuing Federal Government contracts, every business must register with the Government's System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov).<sup>iv</sup>

SAM was formerly Central Contractor Registration (CCR). Even experienced Government contractors are required to renew their registration at least annually, and to update their Representations and Certifications (Reps and Certs) in the ORCA system.<sup>v</sup>

If your business is not registered with SAM, or if your business' ORCA certifications are expired then you are not even eligible to pursue Government prime contracts.

Whether at the Federal or State level, every business pursuing Government prime contracts is expected to be current in filing and paying all taxes.

If your business isn't on at least one GSA<sup>vi</sup> schedule, then we strongly suggest that you investigate the steps necessary to become a GSA schedule seller.<sup>vii</sup> The process of becoming a seller under one of the GSA schedules is very informative for the new Government contractor, even if they are experienced in business.

Stating your business' capabilities and articulating your business' value proposition is very different in a Government contracting environment than in the traditional private sector environment.

### NEXT STEPS...

Being active in SAM and having a current ORCA registration is the first step to being considered a viable teaming partner for government contracting.

Being approved on at least one GSA schedule will provide your business with an initial level of visibility and a basic level of credibility with potential teaming partners.

Other critical steps include:

#### 1. Refining Your Capability Statement

One of the most important actions that a business can take to go deeper in Government contracting is to refine its capability statement. Government clients, and in particular the end users, need to know what you can do. For service providers, especially in engineering and construction, it is of utmost important to have a clear documented statement of the organization's experience, skills and certifications of the leaders.

#### 2. Obtaining Certifications

Any relevant certification that your organization adds to bolster its credibility can only help. Industry certifications are critical. Additional certification programs for small businesses, women owned-businesses, minority/HUB businesses and veteran-owned businesses are also extremely helpful.

The 8(a) Program has been exceptionally successful in helping to develop small businesses that ultimately graduate and compete effectively. Certified businesses often qualify to compete for small business set-aside contracts, and larger more established businesses will seek out these businesses

to partner with. In some cases the first successful teaming experience can lay the groundwork for many more teaming opportunities with the same company. Getting certified is an important step!

### 3. Identify Teaming Programs

Government contracting is not something that a business can do on a whim. It is not a short-term solution to a business' cash-flow problem. Success is based on a real commitment to excellence. There is no shortage of programs that encourage teaming between large and small businesses. A few of these programs and websites are presented below.

**[www.sba8a.com](http://www.sba8a.com)** is a website that provides a wide range of resources for small businesses including certification support, and multiple points of access for larger businesses to identify certified small businesses.

**<http://www.businessmatchmaking.com>** is billed the nation's premier public-private initiative supporting procurement opportunities for small business in every industry. The company produces events across the country to provide face-to-face meeting opportunities for small Government contractors to connect with major corporations and government buyers. The events are free to attendees and are hosted in major cities all across the country. Business Matchmaking Inc. is a 501c3 non-profit organization.

**[http://dsbs.sba.gov/dsbs/search/dsp\\_dsbs.cfm](http://dsbs.sba.gov/dsbs/search/dsp_dsbs.cfm)** is a website hosted by the Small Business Administration (SBA) where small businesses can post their capabilities and interest in collaborating. Large businesses can identify potential small-business collaborators from this database.

The Mentor-Protégé program at **[www.sba.gov](http://www.sba.gov)** is available for businesses in the 8(a) program. Approved small businesses provide mentoring for other small businesses. Benefits include: technical and management assistance, prime contracting, loan and equity assistance, and qualification for other SBA programs.

### 4. Contact Teaming Targets

Whether your business is a large or small business, you have to be willing to reach out to other potential bidders to discuss potential teaming opportunities.

It is important to make a list of the key players in your product or service areas, and create a profile on each company. You can scour their websites to better understand their value proposition, strengths and weaknesses.

Once you have created a profile for each of these key players, then you can determine what value your business might bring to a potential team.

The ultimate point is to be prepared and have something to offer before making contact. Bringing something to the table is essential to establishing a meaningful teaming relationship. Don't expect immediate results and, by all means, don't seem desperate.

### 5. Win A Contract

The best way to be taken seriously as a player in Government contracting is to win a contract. The best way to win a contract is to submit a competitive proposal. When it comes to professional services and skilled delivery of products, for example engineering and construction, the ability to submit well-written and competitively priced proposals is key to success.

## Due Diligence Checklist for Teaming Agreements

Due diligence is all about putting the research and work in upfront to avoid and minimize hiccups and harmful outcomes that can arise from misunderstandings and unarticulated assumptions.

Answering the following questions will go a long way in helping your business to assess and understand the situation, and take the actions necessary to succeed in creating a winning contractor team.

### **Have any of the companies teamed before?**

It is important to research and discuss the background and prior performance of each proposed teaming partner. Valuable nuggets can arise from these discussions, including impressions on possible strengths and weaknesses of competitor teams. Many other lessons-learned can emerge from these conversations. Most importantly, by understanding the prior experiences of the contractor team members, businesses can avoid unwelcomed surprises.

### **Were prior team arrangements successful?**

One question that must be answered is, what level of success did any of the proposed team members have on any prior teams - separately or together - before this one?

Did any prior team win a contract award? Was any prior team short-listed? Did any prior team request a debriefing from the Contracting Officer after not being awarded a contract?

### **What issues were identified from previous teaming arrangements?**

Many issues can arise in contractor teams, including disagreements on strategy, allocation of work, and breakdowns in communication between the partners. It is important to identify the lessons learned from these previous issues, and take them into consideration in assessing the viability of this proposed team.

### **Who are the other competitors and teams?**

As important as it is to know your own team and get all the important background information, it is equally important to know the competition. Government buyers are supposed to be fair and impartial in evaluating proposals, focusing exclusively on the evaluation criteria outlined in the RFP. Still, it's important to know the relationships and experience that your competitors have with the procuring agency, and division within the agency making the purchase.

Most RFPs are evaluated on three separate components that make up the full proposal. They are (1) the technical proposal, (2) price/cost proposal, and (3) past performance. A prior record of good performance is important to even be considered for a contract award.

Knowing where you stand in comparison to other potential teams can critically impact the bid/no bid decision.

### **What is the customer's (Government) acquisition timetable?**

As this article has repeatedly stated, Government contracting is not a short-term proposition. Departments post their proposed acquisition budgets well in advanced, and each agency's goals



and spending focuses are also published. The Government contractor must remain connected with the agency to anticipate upcoming spending. Resources like [www.fbo.gov](http://www.fbo.gov) also provide excellent information on RFPs and upcoming opportunities.

It is also important to know the typical proposal and procurement season for the agencies that you intend to penetrate. Many agencies have proposal due dates between April and August. Since the Federal Government's fiscal year runs from October 1 through September 30, the goal is to have contracts signed and in place by September. There are obviously RFPs issued at all points during the year, but many of the big dollar projects are issued during the proposal season.

Understanding that it takes time to get the introductions and gain the trust of potential teaming partner, the best time to start finding and engaging potential team members is right now!

#### **Do the parties have an understanding of the intended division of labor?**

Who will actually do the work is a question that has to be addressed early in the teaming process.

The way to handle this is to talk through the service areas that each teaming partner can bring to the table, and begin identifying what each party can do really well.

The starting point for discussion is each organization's capability statement. Once the RFP is issued and the statement of work (SOW) is reviewed, a more precise division of the effort can be done. These discussions will be an

important preliminary step in creating budgets for each team member.

#### **What are the potential anti-competitive issues?**

Two important anti-competitive issues are: (1) the existence of conflicts of interest, (2) employment of individuals who worked with the Government agency issuing the RFP within the prior 12 months.

FAR Part 9.5 is dedicated exclusively to the Government's treatment and procedures for handling organizational conflicts of interest<sup>viii</sup>. Each business should have a set of procedures in place for identifying and mitigating conflicts of interest.

While it may seem attractive to have a former Government employee onboard, to bring inside knowledge of how the buying agency works, the fact is this will either be of no advantage or even a potential disadvantage. These relationships need to be disclosed, and in more cases than not, the former Government employee could probably have no role in the proposal process or in delivery of the work.

#### **Will the project require an investment and how much will each party contribute?**

Competing for Government work is not cheap. Responding on a competitive RFP can require as much as 200 hours for a low seven-figure contract. A ballpark estimate of the cost to prepare a proposal is about 1% of the expected contract value.

As in other areas of life, there are no free lunches in Government contracting. Every team member has to contribute to proposal process, albeit at different levels. Generally, none of

the parties get paid or reimbursed by the other team members for the time they put into writing and developing the proposal. Still, Everything is negotiable and the more your business brings to the table the more likely that you may be able to negotiate with your team members for reimbursement of proposal costs.

A thorough review of the Statement of Work (SOW) should provide a good indication of the time and materials must be invested in the proposal process.

Any agreement on the sharing of costs should be clearly documented in the teaming agreement.

#### **Do any of the parties have past performance issues?**

In Government contracting, success begets success.

It is of utmost importance to ensure that you have satisfied Government clients, because your successful performance on prior Government contracts is heavily weighted in evaluating your current response to an RFP.

Past performance issues including contract terminations, difficult relationships with contracting officers or contracting officers' representatives, could all negatively impact your past performance scores.

This question must be addressed frankly and any potential negative feedback must be promptly.

#### **Who will be the prime contractor?**

There are a few factors to weigh when determining which party will serve as the prime contractor.

Which company identified the proposal opportunity? Which company led during the prior successful proposal team? Which organization has more relevant successful experience with the procuring agency? Is this opportunity being offered as a small business set-aside? These are just some of the questions to consider when determining who will serve as the prime contractor.

#### **Whose teaming agreement will be used?**

As we discussed in the section on how the investment of costs will be allocated, everything is negotiable. Another truth is that anything already on paper has a little bit more weight in a negotiation.

It is a good idea to have your own "standard teaming agreement." When you present your own document, especially on 50/50 issues, you have the ability to hold the line on certain negotiating points because you can make concessions on others. The more changes another party requests, the more unreasonable they can seem when they request concessions on issues that are important to you.

While you are hoping to establish a fruitful teaming relationship with the other potential team members, always remember that your team members are either current or future competitors.

#### **Will the present teaming agreement be exclusive for this project?**

Beware of the potential team member with the wandering eye. You want team members who are fully invested in your team. It is wise to avoid including "team members" who are also part of other teams for the same procurement.



## 2 Critical Negotiation Points In Team Agreements

In the book "Playing To Win", the author emphasizes the importance of having conversations up-front, and applying 5 basic rules to each negotiation.

The five basic rules of negotiating were identified as follows:

1. Be prepared,
2. Know your value,
3. Be organized,
4. Know what's important to you, and
5. Know what's important to the other side.

These negotiating principles are relevant and applicable in any negotiating situation.

You need to understand that the person on the other side of negotiation, though they may be your teammate for this procurement, is a serious businessperson and will be coming to the negotiating table prepared. Being prepared means avoiding surprises. Don't stereotype your counterpart. Stereotypes are for lazy people, who don't plan to be in business very long. Truly get to know your counterpart. Understand what drives their business.

You will also need to understand your value proposition inside and out. Understand some of the common criticisms and objections that people may raise about you and your business, and have responses that underscore your value. If you don't understand and believe in your value then nobody will.

Regardless of your personal preference in style of thinking and operating, having your notes and thoughts clearly

organized will help you to be a better negotiator.

The fact that this discussion of negotiation is written on such a rudimentary level is not based on an expectation that the reader is new to negotiating, but negotiating is not rocket science. What makes an average negotiator become good is focusing on the basics. What makes a good negotiator become great is returning to and refocusing on the basics.

Focus on the basics!

The next two principals, which are: (1) know what's important to you, and (2) know what's important to the other side, go hand in hand.

A mistake many people make in negotiating is focusing only on what's important to you. When you understand what's really important to the other side you create leverage. You can trade something that's less valuable to you, but more valuable to the other side, for something that's more valuable to you and less valuable to them. This is called, "enlarging the pie." A basic illustration of this is in a barter situation. If one farmer has cows, and another has grain, then by trading grain for meat, or grain for milk, both farmers can benefit. The pie has been enlarged. The farmer who had cows can now feed his family and his animals with the grain. The farmer with the grain can now add some protein to her diet.

This is simple stuff, but the simple things in business make all the difference.

From my experience, three of the most important negotiating points are: (1)

How will my company get paid, (2) How will disagreements be resolved.

### **How do we get paid?**

One of the questions addressed in the due diligence section was, who will be the prime contractor? The prime contractor has privity of contract with the Government (or the ultimate client) and the subcontractor does not. The prime contractor typically leads the proposal effort, and also leads at least certain sections of the project.

The prime contractor is also the party that the Government pays, and the subcontractor gets paid by the prime contractor.

Ideally, the prime contractor, will want to negotiate to pay its subcontractors within some specified number of days after receiving payment from the Government. Whereas the subcontractor, will want to negotiate to receive payment within some fixed number of days issuing its invoice to the prime contractor. This distinction between these two positions is much more than semantics. It could account for as much as 45 to 60 days in a payment cycle.

Large or small, all prudent businesses want to maximize their payment terms and minimize their collection period. When the margins on a project or in the overall business are small, the efficient management of working capital can mean life or death for a business.

Depending on what is negotiated, the prime contractor might end up financing not just their internal costs, but also the costs of the subcontractors. Alternatively a subcontractor can find itself receiving payment 90 days or more

after the products or services have been delivered.

If this does not come up as a negotiating point in your contractor teams, then you may be overlooking this issue and agreeing to unfavorable payment terms. Alternatively you might be dealing with an unsophisticated teaming partner who may not have considered this issue, and will likely complain about the payment terms once you have entered the project.

Neither of these situations is desirable.

Small businesses are attractive teaming partners because of the points allocated for small business inclusion on contractor teams. However, it is critical to assess the working capital position of your small business teaming partners to avoid the uncomfortable position of being asked for advances on payment and other financing arrangements.

Some large businesses can be equally notorious and abusive in their payment practices. This issue of “how do we get paid” is crucial conversation, but can be difficult. Have these difficult conversations early to avoid problems.

### **How do we resolve disagreements?**

Will the parties be required to have meetings at the C-suite level before litigation may be commenced? Will the parties be required to participate in mediation? Will the parties be required to participate in arbitration as opposed to litigation? Which state's laws will apply to disputes? In what forum (where) will litigation, mediation or arbitration occur? Who bears the cost of fees and expenses associated with disputes? These questions must be answered and any ambiguity removed before work begins.

## Using The Right Professionals

The biggest mistake that you can make in Government contracting is not having the right professional team in place. The professionals you use for legal support and contract management will go a long way in demonstrating how serious you are about success.

It is bad enough to use accounting and office management staff to review contracts in a traditional, unregulated business. But it rises to the level of negligence and poor stewardship to rely on administrative assistants, engineers and office managers to review contracts in a Government contracting environment.

I have advised and counseled many large businesses, and part of the advice I give them is not to do business with other businesses, large or small that don't use professionals for contracts and legal work. Such unsophisticated businesses do not make very good teaming partners. If they are so cavalier as to not even get the right people to protect their own assets, how can they be counted on to look out for the interests of their teaming partners?

The most successful Government contractors have in-house expertise for legal and contracts, accounting and finance, marketing and business development, project management and in the subject matter area of their work.

It is easy for businesses, when cash flow becomes tight, to eliminate the use of professionals. But this really is a shortsighted and catastrophic strategy.

There are at least five questions that you should have answered as you select the right professionals to provide legal and contracts support for your business. These questions are:

### **1. Is this a law firm?**

One very big mistake that business make is to hire non-attorneys to perform legal work. In some cases this is illegal and in other cases it is just a very bad idea. Regardless of stereotypes, attorneys are accountable to bar associations and can potentially lose their license if they act inappropriately. Non-attorneys are not held to these standards. Non-attorneys also can't preserve the attorney-client privilege. Always use a licensed attorney for legal and contracts work.

### **2. Does the firm have a practice focus on Government contracting and procurement?**

If the firm does not have a practice focused on Government contracting then it is clearly not the right choice.

### **3. Are the attorneys and professionals experienced in Government contracting?**

It would defeat the purpose to hire an attorney or law firm for Government contracting that lacks extensive experience in the field.

### **4. Are the attorneys oriented toward litigation or being business advisors?**

For contract administration and management, you need attorneys who understand litigation, but are focused on helping to build your business.

### **5. Are the advisors accessible?**

An advisor is of little value if you can't reach them.

## Why Banks & Associates?

Banks & Associates is a law firm that is focused on providing sound advice and bold advocacy. Our services include contract risk analysis, interpretation of Government solicitations, review and analysis of RFPs and concise interpretation and actionable advice on Federal Acquisition Regulations (FAR) clauses.

Instead of being bogged down in paperwork that neither drives new business or revenue, our clients use our expertise to create joint ventures, contractor teaming arrangements, and subcontracting plans.

We have the firsthand experience to solve problems, mitigate threats, and ensure our clients' contracting success. Based on our knowledge of the issues, and our litigation experience in both State and Federal Courts, we are able to provide expert advice and solutions to help our clients avoid costly problems in the future.

Our attorneys and advisors have worked in the Federal-contracting arena for years as accountants, controllers, contract administrators, strategists and attorneys.

We understand business and offer customized solutions to drive value for our clients.

IF YOU NEED...

### **Support for your staff**

Many government contractors have an understaffed contract administration department. When your internal team is spread too thin, you miss deadlines and place your organization at unnecessary risk. Whether the need is for one day, one month or on year, we can provide the expert contract administration support that your business needs.

### **Expert Legal Advice**

There are times when the legal position that you take on an issue will determine the success or failure of your Government contract. You need a firm that uniquely understands what your business needs, as well as the intricate Government contracting laws and regulations.

### **General Counsel Services**

We are not just attorneys we are advisors. We have the experience and skill to communicate effectively with your staff, from the entry level to the C-suite.

### **Onsite Training**

Most expert training for Government contractor staff requires travel across the country to the Washington, DC area. Banks & Associates can provide customized on-site training in ethics, contract administration, changes in the law, employment and labor law, and various other areas of interest to Government contractors.

## Referenced Sources

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<sup>i</sup> Small Businesses Team Up To Land Federal Contracts.

<http://www.businessweek.com/articles/2012-06-25/small-businesses-team-up-to-land-federal->

<sup>ii</sup> <http://www.sba.gov/content/small-business-goaling>

<sup>iii</sup> RFP No. B442014015605000

<sup>iv</sup> System for Award Management (SAM) [www.sam.gov](http://www.sam.gov)

<sup>v</sup> ORCA – Online Representation and Certification Acceptance. ORCA records are also updated at [www.sam.gov](http://www.sam.gov).

<sup>vi</sup> GSA is the General Services Administration and may be found at [www.gsa.gov](http://www.gsa.gov)

<sup>vii</sup> [www.gsa.gov/schedules](http://www.gsa.gov/schedules)

<sup>viii</sup> FAR Part 9.5 – Conflicts of Interest - [http://www.acquisition.gov/far/html/Subpart%209\\_5.html](http://www.acquisition.gov/far/html/Subpart%209_5.html)