



# INCREASING COMPETITIVENESS

MENTOR/PROTÉGÉ, JOINT  
VENTURE, AND TEAMING  
RELATIONSHIPS

*It's great to have friends.*

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**This presentation is not intended to be legal advice. If you have specific questions, please contact a government contracts attorney.**



# OVERVIEW

- **Mentor-protégé program**
  - **Overview**
  - **Duration, limitations, eligibility**
  - **Mentor-protégé agreements**
- **Joint ventures**
  - **What is a joint venture?**
  - **Why are joint ventures helpful?**
  - **Drawbacks and pitfalls**
  - **Work share requirements**
  - **Joint venture agreements**
- **Prime/sub teams**



# GovConBrief



# MENTOR-PROTÉGÉ PROGRAM



# MENTOR-PROTÉGÉ PROGRAM

- **Overview**

- Mentor-Protégé Program is a way for one business (large or small) to provide small business developmental assistance
- Improve the protégé's ability to compete for federal government contracts
- Open to all small businesses

- **Administration**

- 8(a) “rolled into” ASMPP → MPP
- The SBA administers the Mentor-Protégé Program

- **Application**

- Applicants must develop a mentor-protégé agreement and submit it to the SBA for approval.
  - Agreement details developmental assistance items



- Relationship lasts for up to six years
- SBA reviews the relationship annually
  - Unless rescinded in writing, it's automatically renewed
  - During the 30 days prior to annual anniversary, protégé must report: technical/management assistance; loans or investments made by mentor; subcontracts between the two; federal contracts awarded to the pair as a joint venture; narrative describing the success of assistance provided by mentor; mentoring services by category and hours



# MENTOR- PROTÉGÉ LIMITATIONS

- Protégé can usually only have one mentor at a time
  - Protégé can have a second simultaneous one if it doesn't conflict with the first (e.g., a second NAICS code or protégé wants expertise that the first mentor doesn't have)
  - **Protégé can only have two mentors during its lifetime**
- Mentors usually have one protégé at a time, but can have up to three
  - Additional relationships can't prejudice the others
  - No lifetime max
- A firm can be a protégé and mentor at the same time, if there's no conflict (e.g., different NAICS codes)

# ELIGIBILITY

## ▪ **Protégés**

- Must be organized for profit
- Must qualify as small in its primary NAICS code (or identify a secondary NAICS code that it is seeking to develop)
  - For a secondary NAICS code, must have some pre-existing capabilities and experience
  - Affiliation rules apply
- Not required to have a particular socio-economic designation

## ▪ **Mentors**

- Must be organized for profit
- Must demonstrate that it can provide the assistance set forth in the mentor-protégé agreement
- Possesses good character
- Not debarred or suspended federal contractor
- Can impart knowledge through experience or knowledge of general business operations



- **Small business development**
  - The mentor responsible for providing the assistance items with the mentor-protégé agreement
- **Affiliation exceptions**
  - A mentor and protégé will not be affiliated for engaging in the SBA approved assistance items.
- **Mentor-protégé joint venture**
  - A compliant mentor-protégé joint venture will qualify for *any* small business set-asides that the protégé member qualifies.
    - *Regardless of the mentor firm's size!*
- **Equity investment**
  - Mentor can make 40% equity investment to provide capital for protégé



# MENTOR- PROTÉGÉ AGREEMENT

- Form of agreement is largely dictated by SBA
- Core of agreement is listing:
  - Protégé's needs
  - Assistance that mentor will provide to meet those needs
  - Timeline for providing identified assistance
  - Metrics: how will the parties determine that the assistance has been successfully given
- Specificity and details are key in this section

THEREFORE, consistent with the Parties' goals and the requirements of the SBA Mentor-Protégé Program, the Parties agree to the following:

1. Identify the type(s) of assistance the Protégé is seeking from the Mentor. There are six categories to choose from, and you may select any or all that apply to your situation.
  - A. *Management and Technical Assistance - This type of assistance might include help with internal business processes and management systems.*
  - B. *Financial Assistance - This type of assistance might take the form of equity investments, loans or bonding.*
  - C. *Contracting - This type of assistance might include navigating the contracting process, understanding your obligations as a government contractor, or developing your capability to compete for government contracts.*
  - D. *International Trade Education - This type of assistance might include learning how to export, developing an international business plan, or identifying which international markets are right for your business.*
  - E. *Business Development - This type of assistance might include help with strategic planning, identifying potential new markets for your business, or finding new contracting and partnership opportunities.*
  - F. *General Administrative - This type of assistance might include help with general business processes, or other administrative support.*

For each of the assessed needs addressed in the paragraph above, the Protégé must describe in detail: **WHAT** specifically will the mentor do to meet your need, **WHEN** (detailed timelines or number of hours in annual increments) the assistance will be provided, and **HOW** you will measure whether each of your needs have been successfully met and **HOW** the assistance will help the protégé enhance its growth and/or foster or acquire needed capabilities, as per 13 C.F.R. §125.9.



# MENTOR-PROTÉGÉ JOINT VENTURES

- Mentor-protégé relationship does not establish an automatic joint venture
- Mentor-protégé joint venture must still abide by:
  - Joint venture work share requirements
  - Applicable limitation on subcontracting
- SBA must approve the mentor-protégé agreement before the joint venture can submit an offer for a federal government contract
  - Otherwise, SBA may find the venturers affiliated



# IMPORTANT CONSIDERATIONS

- **Protégé**
  - This is a great opportunity to learn from a seasoned company
  - Ensure compatibility
    - Limited to two mentors in a lifetime
    - Might try subcontracting with the company before beginning the mentor-protégé relationship
- **Mentors**
  - Opportunity to assess its own abilities and areas for improvement
  - Chance to make investments in younger companies
- **Don't treat the relationship merely as an avenue for joint venturing**

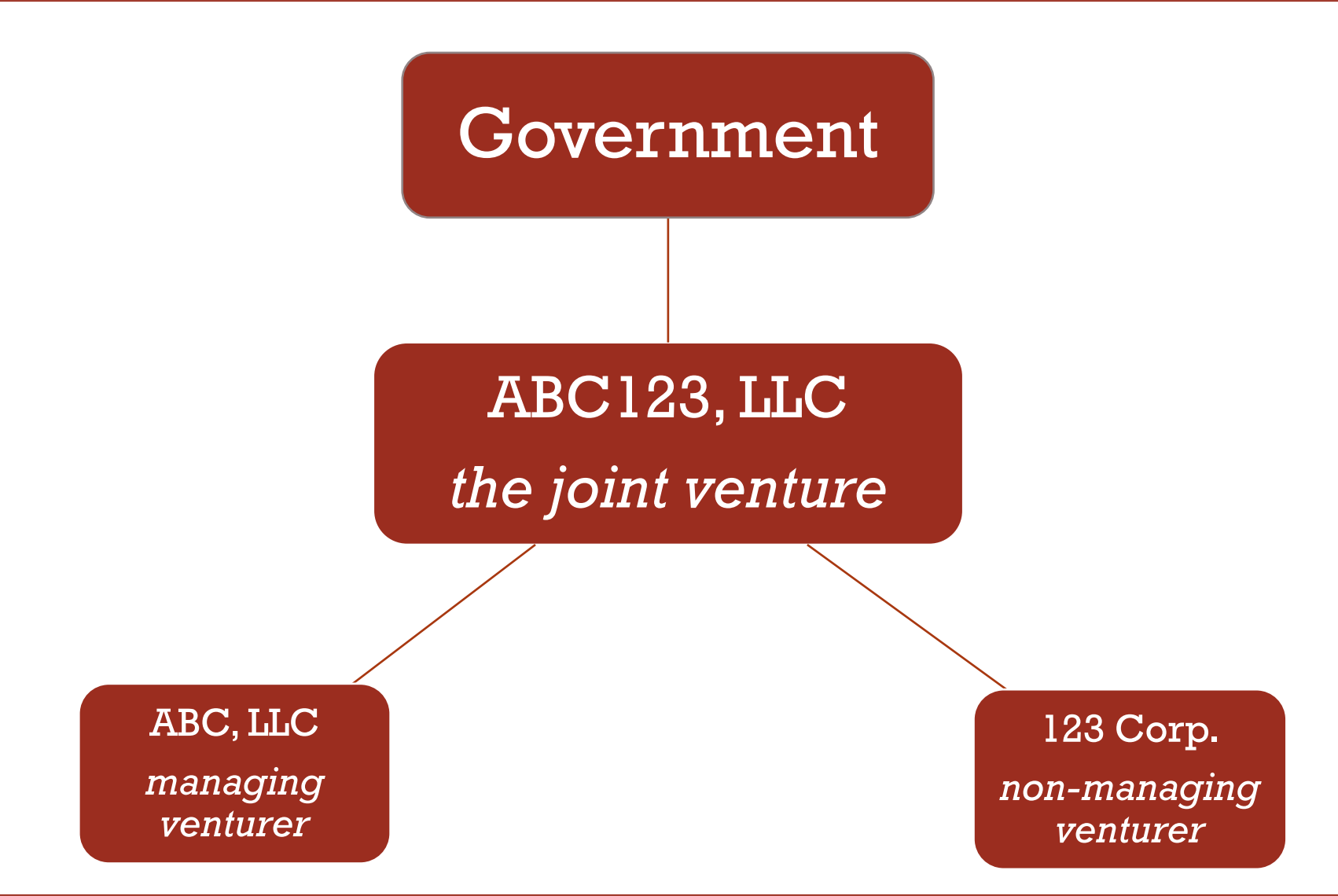
# JOINT VENTURE RELATIONSHIPS



# WHAT IS A JOINT VENTURE?

- **According to the SBA, a joint venture is a separate legal entity of limited purpose and duration.**
- Let's break that down...
- **“Separate legal entity”**
  - The joint venture is an independent businesses (e.g., corporation, LLC, LLP, etc.)
  - The founding businesses are members/owners
- **Limited purpose**
  - Pursue specific federal contracting opportunities
- **Limited duration**
  - They are not ongoing concerns
  - Spoiler Alert: The SBA's rules on duration are very strict







- **In a word:** collaboration.
- Joint ventures allow two small businesses to work together to pursue federal jobs that otherwise would have been out of reach.
- **Practical support**
  - The joint venture structure allows businesses to:
    - Pool resources
    - Diversify offerings
    - Take on larger projects
    - Avoid possible affiliation
    - Leverage security clearances
    - Share past performance

# WHY ARE JOINT VENTURES HELPFUL?

- **Preserve small business status**
  - Compliant joint ventures receive an exception from affiliation
  - Exception only lasts two years
    - “Once a joint venture receives a contract, it may submit additional offers for a period of two years from the date of that first award.” 13 C.F.R. § 121.103(h).
    - Submitting a proposal more than 2 years after first contract award will result in affiliation of the joint venture members
    - Solution: Create a new joint venture.
- **Provides alternative to subcontracting**
  - Because they are separate legal entities, joint ventures have limitation on subcontracting advantages. (More on that later!)
- **Legal mechanism for “co-prime” contractors**
  - Joint ventures are a way for multiple companies to work at the prime contractor tier.



# GREATER THAN THE SUM OF ITS PARTS

- **Past performance**
  - SBA's regulations require the agency to consider the past performance of the JV and its constituent members as part of the evaluation
  - Small business can now also rely on its performance as a JV member, to some extent
- **Equipment, personnel and facilities**
  - Ventures can pursue larger work as a duo with shared resources and experience
- **Facility clearances**
  - SBA regulations allow either the joint venture's clearance, or individual member clearances to satisfy security clearance requirements.

# DRAWBACKS AND PITFALLS

- **Timing**
  - **Don't wait! Lots of Paperwork**
    - EIN/TIN, DUNS, and SAM registration – before bidding
    - In some instances, joint venture agreement must be approved to bid
  - **Non-compliant joint venture agreement**
  - **SBA's regulations have detailed requirements**
  - **If joint venture agreement doesn't comply, it does not get the benefit of the affiliation/size exception**
- **Performance requirements**

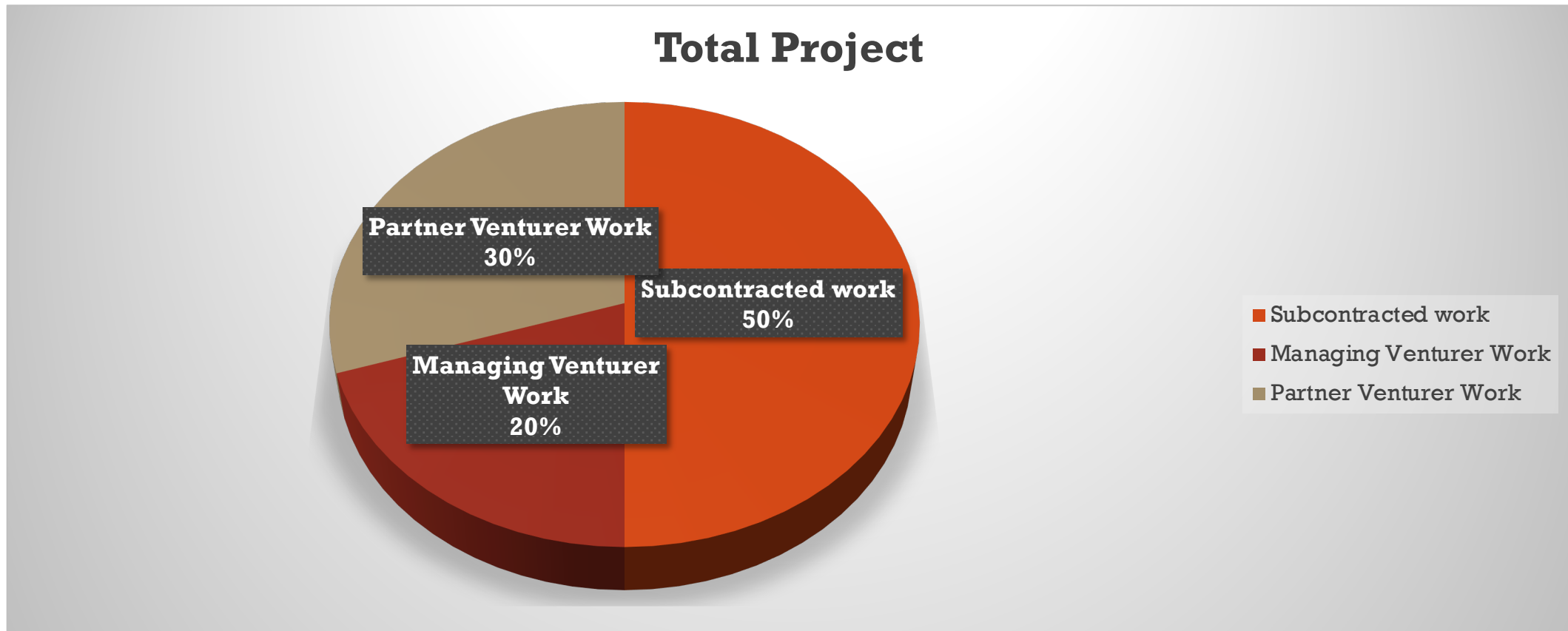


# PERFORMANCE REQUIREMENTS

- **Limitation on subcontracting**
  - Applies to virtually all small business set-aside contracts
  - Limits the amount of a project that may be subcontracted
    - Measured as percentage of total dollars paid by the government
    - Different limits for different industries
- **Performance work requirement**
  - Applies only to small business joint ventures
  - The managing venturer must perform at least 40% of the work performed by the joint venture



# HOW DO THESE REQUIREMENTS INTERACT?



# JOINT VENTURE AGREEMENTS

- All joint ventures must have a written agreement
  - Must comply with applicable regulations
  - Have JVA in place **before bid is submitted**
- JV agreements must contain **contract-specific provisions**
  - Create addendum for each contract the JV will bid on

# “UNIVERSAL” SOCIO-ECONOMIC AGREEMENT REQUIREMENTS

- 8(a)/SDVOSB/WOSB/HUBZone/protégé must own 51%
- 8(a )/SDVOSB/WOSB/HUBZone/protégé = managing venturer
  - Responsible for the day-to-day management and administration
  - Partners may participate in decisions “as is commercially customary”
- Employee of the 8(a)/SDVOSB/WOSB/HUBZone/protégé = Responsible Manager
  - Has the “ultimate responsibility for performance of the contract”
  - Need not be a current employee when offer submitted if letter of intent
  - Cannot be an employee of the mentor
- (8)(a)/SDVOSB/WOSB/HUBZone/protégé must receive profits commensurate with work performed OR a higher percentage agreed to by the parties



# “UNIVERSAL” SOCIO-ECONOMIC AGREEMENT REQUIREMENTS

- **Purpose** – what is the joint venture designed to do?
- **Bank account** – requiring the signature or consent of all parties for payments to venturers for work performed
- Itemized list with value of **major equipment, facilities, and resources**
- Responsibilities of the parties
  - **Negotiation** of the contract
  - **Source of labor**
  - **Contract performance** – including how they will meet the performance of work requirements
- **Obligating all members to perform**
- **Records**
  - Accounting and administrative records kept at the MV office
  - Final original records retained by the MV
  - **Quarterly financial statements to SBA** within **45 days**
  - **Project end profit and loss statement to SBA** within **90 days**
- **Certification of compliance**

# 8(A) JOINT VENTURES ARE UNIQUE

- 8(a) JVs up for sole source awards must be approved **prior** to award
  - 8(a) must “lack the necessary capacity to perform”
  - Agreement must be “fair and equitable” and of “substantial benefit” to 8(a)
  - **Denial** if the 8(a) brings little to the table other than 8(a) status
  - Amendments must be approved also
- Approval no longer required for competitive awards BUT eligibility will be determined at the time of award



# PRIME / SUB TEAMS





# TEAMING

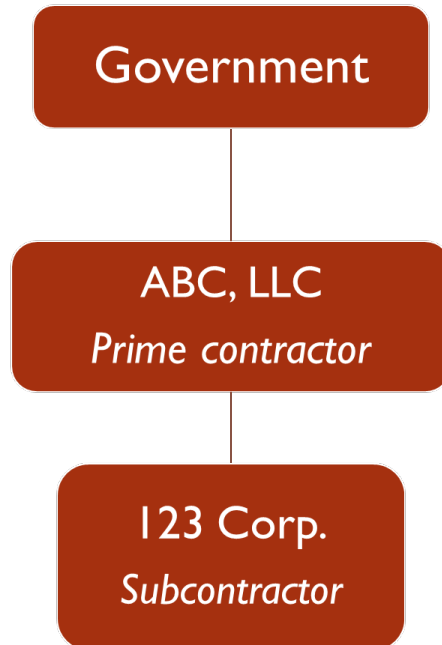
- **Prime Contractor/Subcontractor**

- Only prime in “privity” with the Government
- No new legal entity created
- Subcontractor paid on a pre-determined basis

- **Joint Ventures**

- New legal entity (split ownership)
- Only joint venture entity in “privity” with the Government
- Venturers split profits and losses
- Workshare requirements for venturers

# PRIME/SUB TEAMS



- **Quintessential contracting relationship**

- Prime is awarded the contract, then subcontracts out a portion of that work to one or more subcontractors
- Prime has privity of contract with the government, and is responsible/liable for performance of the contract
- Prime/Sub Teams are ultimately governed under state law, but important principles apply

# TEAMING AGREEMENT

- **Agreement between the (prospective) prime and the (prospective) subcontractor to pursue a specific opportunity as a team**
  - Entered before the prime contract and subcontracts are awarded
  - Lock in each party to the relationship
  - Define their roles on the team and their work in developing the proposal
    - Ensure compliance with requirements at the outset
- **FAR does not specifically require TAs**
  - Agencies/specific solicitations might require them



# TEAMING AGREEMENT

- **Potential TA terms**
  - Identification of parties and their roles
  - Identification of solicitation/opportunity being pursued
  - Division of responsibilities relating to proposal preparation
  - Anticipated areas of performance under contract
    - Avoid illusory agreements
  - Exclusivity, non-disclosure, and termination provisions
  - Key subcontract provisions (limitation on subcontracting compliance, OCI/ethics, FAR flowdowns, etc.)

# SUBCONTRACTS

- **Awarded by the prime contractor to the subcontractor after the prime contract is awarded**
  - Can be negotiated in advance
  - Replaces/supersedes the Teaming Agreement
- **Detailed provisions relating to subcontractor performance**
  - Scope of work
  - Deliverables/performance benchmarks
  - Payment provisions
- **More common subcontract provisions**
  - FAR flowdowns; ethics/OCI provisions
  - Limitation on subcontracting compliance
  - Non-disclosure, non-compete, and non-solicitation
  - Service Contract Act compliance
  - Changes (who/how authorized)
  - Dispute resolution (internal and external)
  - Termination (convenience and default)

# TAKE AWAYS

- **Mentor-protégé program offer significant benefits**
  - Small businesses can receive significant mentoring from established and experienced businesses.
  - The program offers affiliation protection, joint venturing possibilities, and capital raising opportunities.
- **Joint ventures are a powerful tool**
  - Allow two small businesses, or a mentor and its protégé to collaborate to target larger projects.
  - Provide affiliation exceptions and limitation on subcontracting compliance advantages
  - Must have compliant JVA in place at time bid is submitted!
- **Prime/subcontractor teams**
  - Although firms to customized solution for each procurement.





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