



CLIENT ALERT

DMV Courts on Teaming Agreements: Enforcibility and Drafting Guidance

WHAT ARE TEAMING AGREEMENTS?

Teaming agreements are preliminary agreements often used in the government contracting context to define the relationship between a prime contractor and subcontractors when bidding on federal or state projects. These agreements allow parties to collaborate on proposals, share proprietary information securely, and establish expectations before committing to a full subcontract or joint venture. While such agreements can allocate roles and responsibilities during the proposal stage, their enforceability varies significantly depending on the jurisdiction. Courts in the District of Columbia, Maryland, and Virginia apply different standards when determining whether a teaming agreement is binding. Generally, the enforceability of teaming agreements turns on whether the agreement includes definite, objective, and mutually assented-to terms, or instead leaves material obligations for future negotiation. This alert provides an overview of how courts in the D.C., Maryland, and Virginia region interpret and enforce teaming agreements.

HOW DO TEAMING AGREEMENTS DIFFER ACROSS THE REGION?

District of Columbia

The District of Columbia has limited case law addressing teaming agreements but generally enforces definite clauses as contracts while rejecting open-ended promises. In one case, the court enforced an ADR provision within a teaming agreement, applying ordinary contract principles. Similarly, in another case, the courts recognized exclusivity and confidentiality obligations arising from teaming-type agreements. These decisions collectively indicate that D.C. courts will enforce provisions that are specific and objectively measurable, such as ADR, confidentiality, or exclusivity, but will not uphold vague promises to negotiate a subcontract in the future. D.C. law emphasizes the importance of definiteness and intent to be bound in contractual terms.

Maryland

Maryland courts emphasize definiteness and mutual assent in teaming agreements. In one instance, the Court of Special Appeals held that a teaming agreement leaving material terms for future negotiation was an unenforceable 'agreement to agree.' As a result, breach of contract claims were dismissed. However, the court acknowledged that equitable theories such as unjust enrichment and quantum meruit had been sufficiently pled, leaving the door open for recovery where one party conferred a benefit absent an enforceable contract. Maryland law therefore permits disappointed subcontractors to pursue equitable remedies for contributions to proposal preparation or technical support.

Sabre Int'l Sec. v. Torres Advanced Enterprise Solutions, 857 F. Supp. 2d 97 (D.D.C. 2012).
General Dynamics Corp. v. the United States, 773 F.2d 1224 (Fed. Cir. 1985).
Advance Telecom Process, LLC v. DSFederal, Inc., 224 Md. App. 164, 119 A.3d 175 (2015).

On the other hand, Maryland courts have also indicated that enforceability is possible where the agreement contains definite and objective terms. For example, the District of Maryland has enforced provisions allocating defined roles and obligations. Similarly, in another case, the court upheld a teaming agreement with sufficiently detailed subcontract terms. Together, these cases suggest that Maryland courts will not enforce indefinite promises to negotiate, but will uphold agreements that hard-wire essential terms like scope, pricing, and workshare.

Virginia

Virginia courts have developed the most extensive body of case law on teaming agreements, largely because Northern Virginia is home to a high concentration of federal contracting companies who regularly rely on such agreements. Notably, Virginia has adopted the narrowest approach to enforceability. In one case, the court refused to enforce provisions regarding workshare and subcontracting obligations because they were contingent on future negotiations, rendering them unenforceable 'agreements to agree.' The court enforced only definite obligations such as confidentiality. The Virginia Supreme Court reached a similar result in another case, finding a teaming agreement unenforceable where it merely required the parties to negotiate a subcontract in good faith without fixing scope, pricing, or workshare.

Notably, a Virginia court in a 2003 decision enforced a teaming agreement that included an attached draft subcontract containing fixed scope and pricing terms. Likewise, in another case, exclusivity and scope-of-work obligations were upheld. These cases illustrate that under Virginia law, teaming agreements are enforceable only when they hard-wire essential subcontract terms or when pre-award provisions (such as exclusivity or confidentiality) are definite and presently binding.

HOW DO INDEFINITE TEAMING AGREEMENTS IMPACT YOUR BUSINESS?

WHAT DOES THIS MEAN FOR CONTRACTORS/SUBCONTRACTORS?

Contractors and subcontractors should avoid entering into vague teaming agreements that leave room for future negotiation of scope, workshare, and pricing; such agreements risk being deemed unenforceable.

KEY TERMS TO INCLUDE IN A TEAMING AGREEMENT

Before signing or renewing a teaming agreement, contractors and subcontractors should ensure that the document clearly addresses the following:

- **Scope of Work:** Define each party's responsibilities and deliverables during both proposal and post-award phases.
- **Workshare Allocation:** Specify how tasks, percentages, or contract segments will be divided if the prime wins the award.

Cianbro Corp. v. National Surety Corp., 2013 WL 173878 (D. Md. Jan. 15, 2013).

TACS Corp. v. Trans World Communications, Inc., 155 F.3d 659 (3d Cir. 1998).

Cyberlock Consulting, Inc. v. Information Experts, Inc., 939 F. Supp. 2d 572 (E.D. Va. 2013), *aff'd*, 549 F. App'x 211 (4th Cir. 2014).

Navar, Inc. v. Federal Business Council, Inc., 291 Va. 338, 784 S.E.2d 296 (2016).

EG&G, Inc. v. The Cube Corp., 63 Va. Cir. 634 (Fairfax Cty. Cir. Ct. 2003).

RCS Services, Inc. v. Chesapeake Consultants, Inc., 822 F. Supp. 114 (E.D. Va. 1993).

- **Pricing Framework:** Include at least preliminary rates or pricing methodology to demonstrate mutual assent.
- **Exclusivity:** State whether the parties are restricted from teaming with other bidders for the same opportunity.
- **Confidentiality:** Protect proprietary and proposal information shared during the bidding process.
- **Subcontract Conditions:** Attach or reference draft subcontract terms that will govern the relationship post-award.
- **Dispute Resolution:** Outline how pre-award disputes will be resolved (e.g., mediation, arbitration, venue).
- **Duration and Termination:** Clarify how long the teaming relationship lasts and under what conditions it can end.

BUSINESS TO-DO LIST

Time-Sensitive To-Dos:

1. Review existing teaming agreements for definiteness of scope, pricing, and workshare provisions.
2. Avoid language obligating parties only to 'negotiate in good faith' without fixing material terms.
3. Where possible, attach a near-final subcontract or detailed exhibit setting forth essential terms.
4. Ensure that pre-award obligations (confidentiality, exclusivity, ADR) are drafted with clarity and precision.
5. Consider equitable remedies as fallback claims, but do not rely on them as substitutes for enforceable agreements.
6. For Contractors/Subcontractors: Pay special attention to whether teaming agreements guarantee post-award workshare. Without definite commitments, contractors may lose anticipated partners, and subcontractors may forfeit expected portions of awarded work.

The SJS Law Firm can provide guidance on drafting strategies tailored to jurisdictional differences and help mitigate the risks associated with indefinite agreements. For assistance, please contact us at (202) 505-5309 or sjsmith@thesjslawfirm.com

CONTACT US



1775 I Street, NW Suite 1150
Washington, DC 20006



202-505-5309



sjsmith@thesjslawfirm.com



www.TheSJSLawFirm.com



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