

Teaming

Doing Business With ARPA-H Industry Day
Breakout Session

November 13, 2024



Why You're Here

- Discuss teaming, possible teaming structures (including advantages and disadvantages), and considerations when contemplating team structures for ARPA-H research and development efforts



Teaming

In complex acquisitions or programs/projects, it is rare that a single Performer can accomplish all tasks

Performers come together to accomplish a project for a variety of reasons

- Most common reason is to make money
- Goal may also be to create strategic alliances (short-term or long-term) in both Gov't and commercial sectors

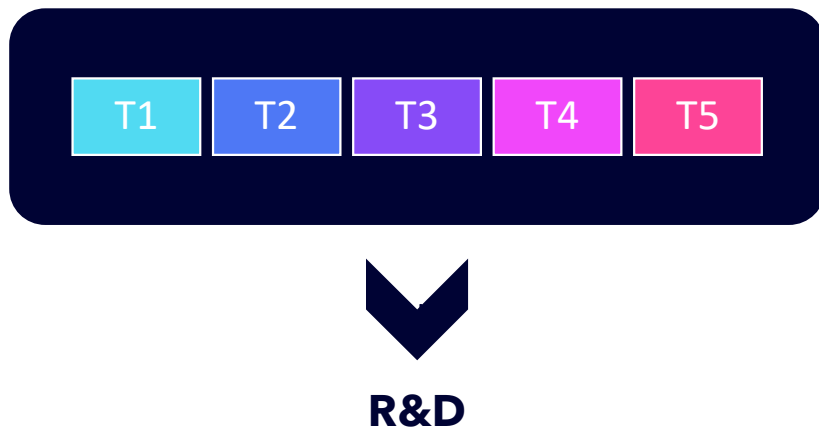
Commercial companies often work together in structures based on two different sets of market forces



Teaming Structures

Horizontal

- Multiple competitors who come together to accomplish a common goal or solve a common problem
- Resources plentiful, but trust may be an issue



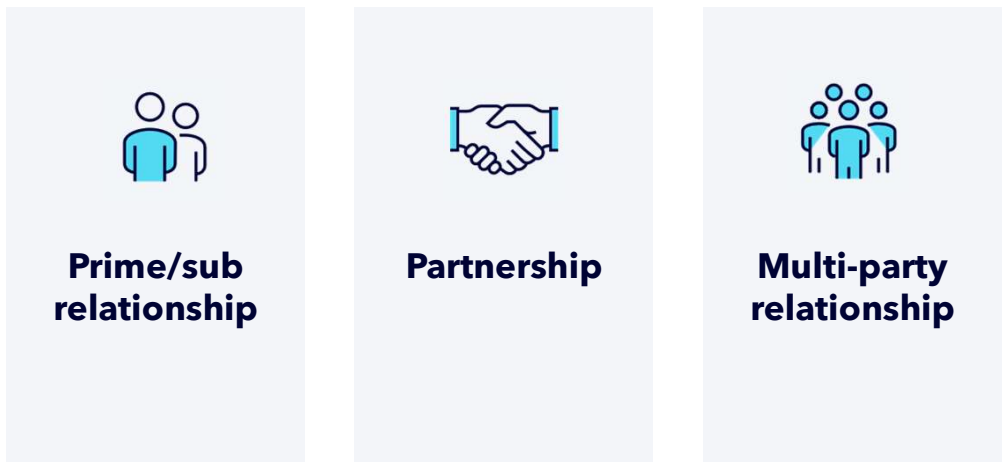
Vertical

- Multiple performers who each play a role at a different stage of a product's life-cycle
- Symbiotic relationships, but time may be an issue



Teaming Structures (cont.)

There is a variety of team structures that might evolve but they tend to fall under three basic groupings



Each has its advantages and disadvantages

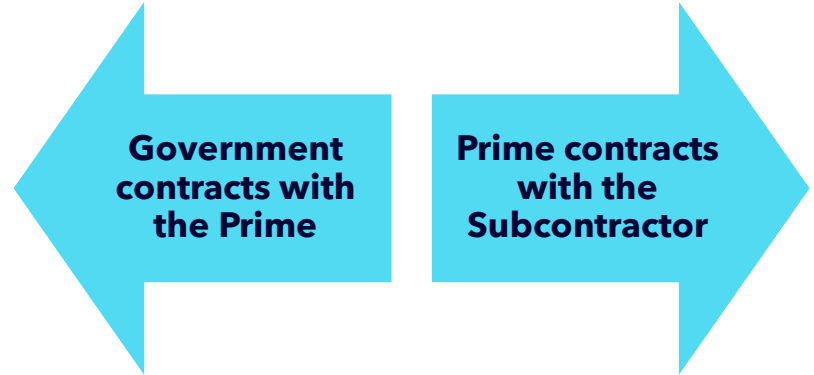
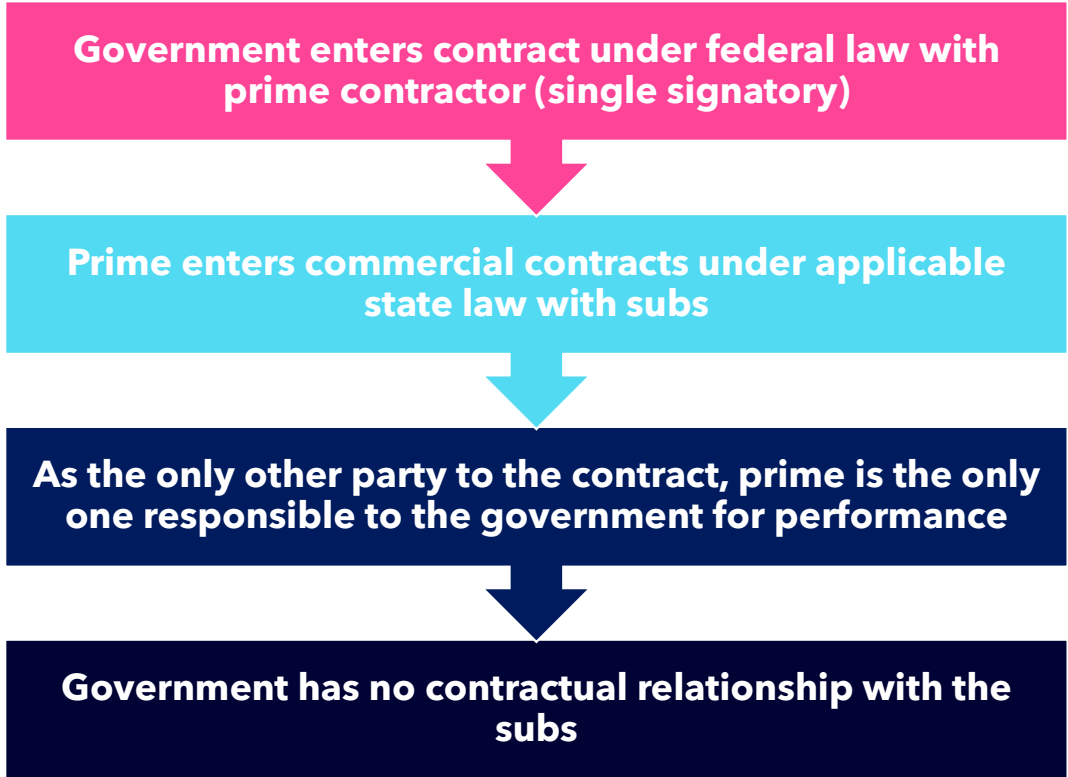
- Some entities are more familiar with the government
- Some work better in certain types of arrangements
- Some are easier to manage (either by the team itself or the government)

Teaming (Privity of Contract)

- Regardless of structure, before entering into an agreement, the government needs to understand the legal relationship it will have with the Performer team
- A contract law doctrine that prevents any person from seeking the enforcement of a contract or suing on its terms, unless they are a party to the contract
- Privity of contract = the signatories to the contract are the parties and only they will be bound to the contract terms



Privity of Contract in Prime/Sub Relationship



No privity of contract between the government and the subcontractor

Prime/Sub Relationships



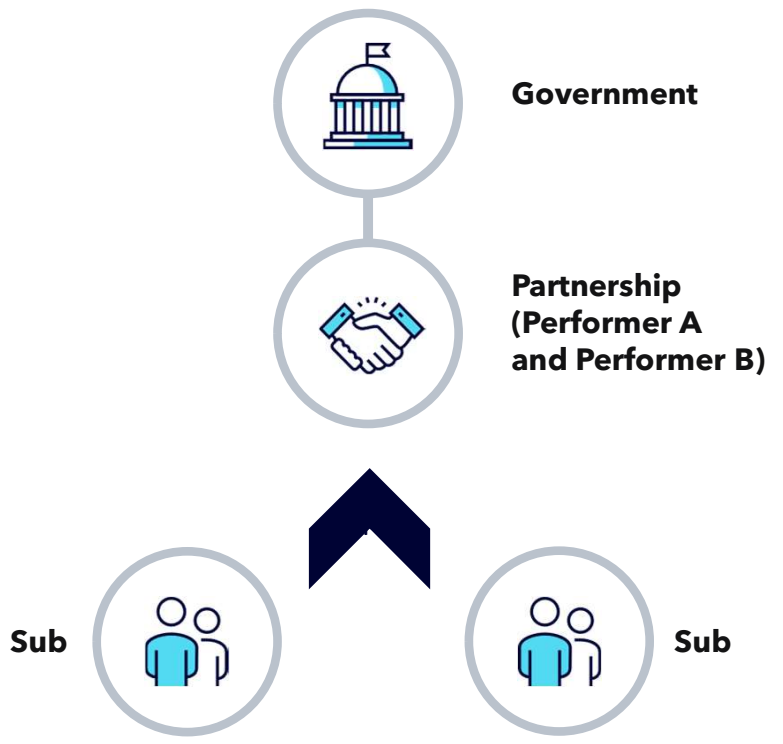
- ### Advantages
- The most familiar arrangement for most people
 - There is one person that is responsible to the government
 - There is only one person with whom to negotiate
 - The prime is responsible for managing the subs and addressing any issues
 - Only the prime can file suit with the government



- ### Disadvantages
- Creates an artificial separation between the government and sub-tier participants
 - If the prime does not perform, the whole thing falls apart
 - If the prime does not manage the team well, it can either fall apart or the government find itself in the middle
 - You cannot change leadership mid-program
 - There is a cost to having a prime (pass-through fee)

Privity of Contract with a Partnership

- Performer A and Performer B enter into a partnership relationship governed under state law
- Partnership becomes a separate legal entity and is treated like a separate person
- Both partners share jointly in the responsibilities and rewards of the partnership
- Government enters into a federal contract with the partnership
- Partnership enters into commercial contracts with the subs
- Government has the privity of contract with the partnership - and by extension each partner
- Government has no privity of contract with the subs



Partnership Relationships



Advantages

- The partnership is a legal entity so, in many ways, it's like dealing with a prime
- The partnership can leverage the resources and talents of all the partners
- The partnership determines how it will internally manage and present a united front to the Gov't
 - The terms of the partnership may allow new members to be added or some to leave the partnership
 - Leadership of the partnership can adjust and evolve with program progression
- The partners are generally jointly and severally liable for the partnership performance

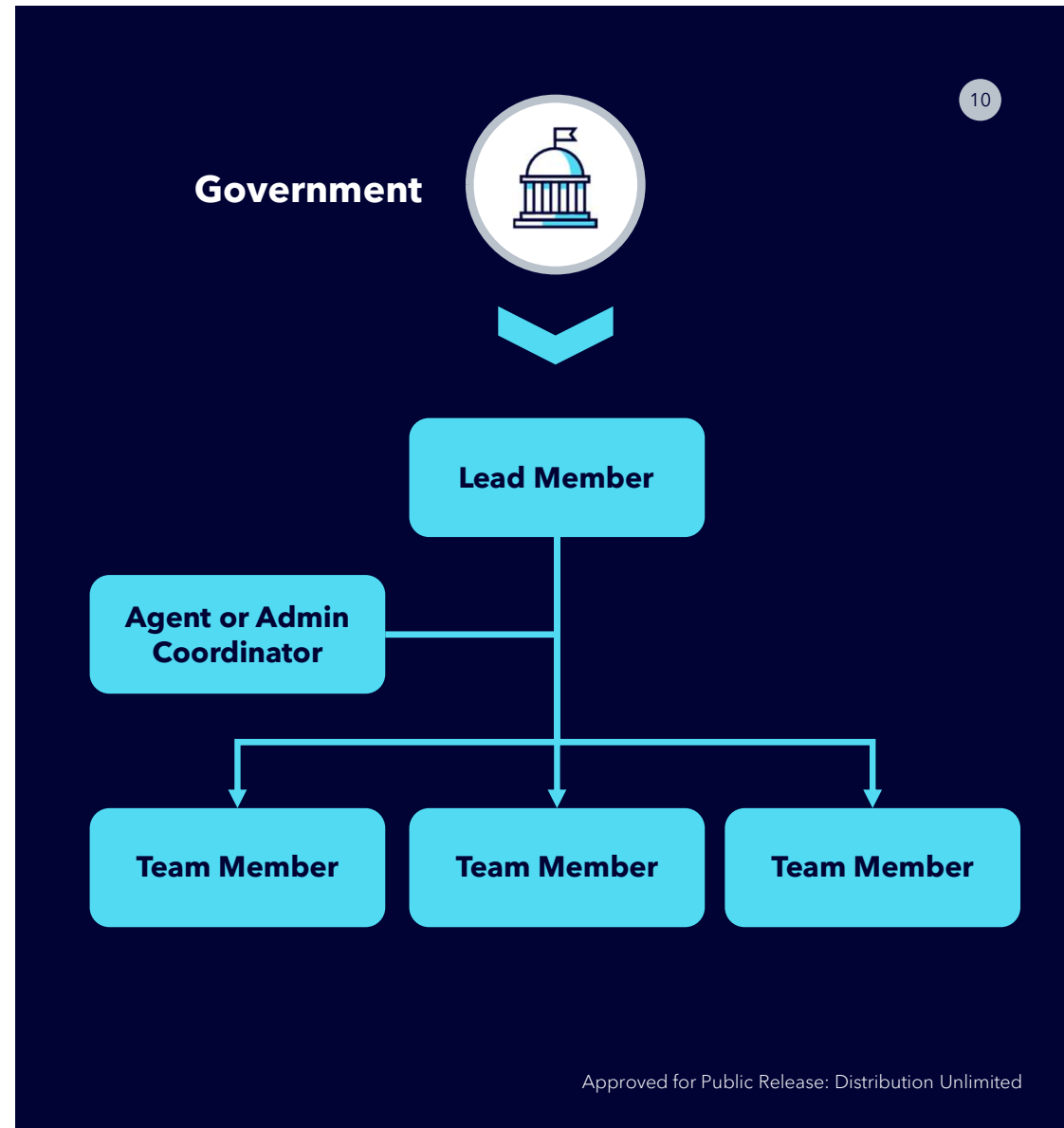


Disadvantages

- The relationship of the partners can cause internal conflict(s)
- If the partners are usually competitors, they may not easily share info or work between them
- If the partners don't have an equal relationship - either in voting on partnership decisions or in benefits received - it can make for a difficult relationship
- The partnership needs to be established and formalized before negotiating with the Gov't (which can add time to the process)

Privity of Contract with a Multi-Party Team

- Team membership and dynamics defined by a contract signed by all members (i.e., Article of Collaboration)
- Team elects one member to act as their agent with the Gov't or hires an administrative coordinator
- Gov't signs agreement with the team as a whole (the team agent actually signs the agreement)
- Gov't has direct privity with all team members



Multi-Party Relationship



Advantages

- Because the team has chosen to work together collaboratively, the hope is that the alliance will be advantageous to all members and continue past this agreement
- Since the Gov't has signed the agreement with the entire team, it can have technical insight and visibility into all levels of technical and management actions
- If any resource sharing is required or leveraged, it will come from the team as a whole (how they choose to allocate the resource sharing is up to them)
- Since the team is bound to the Gov't and responsible for performance, the responsibility is on the team to self-police the effort and quickly respond to issues
- Leadership of the effort can change as the effort evolves



Disadvantages

- While the teams as a whole are the party to the agreement and the government has privity with all the members, it is still important that the membership select a strong leader to maintain the vision and effort direction
- Loose confederations and management by committee do not really work well
- The larger the team membership, the more important strong leadership and management is
- This type of relationship is relatively unfamiliar to the government and may cause some cultural problems

Teaming Best Practices



Generally, teaming works best if it's organic

Teams should generally "live" and flourish past government funding and involvement



There may be reasons for the Gov't to dictate a particular structure, but teams tend to work together better if the decision is left to them



Gov't should not be "matchmaking" or "marriage brokering"



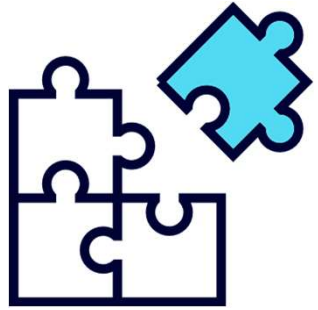
Gov't can encourage teaming via solicitations, Proposers' Days



Consider flexible teaming arrangements that may address different goals in different phases (as priorities shift during stages in a program or effort, consortia lead members may rotate in and out)

Session Takeaways

- For ARPA-H programs, it will be essential (in most cases) for performers to team together to address all aspects of a program/project
- There are several different teaming structures, including prime/subs, partnerships, and multi-party teams (each with advantages and disadvantages)
- Multi-party teams may be the best way to structure a team for ARPA-H efforts, as the structure:
 - allows for changes in performer leadership as needed throughout the evolution of a program,
 - allows direct access and communication between the Government and all performers on the team,
 - ensures that all key stakeholders are invested in the success of the project, and;
 - may facilitate the creation of alliances that outlast the ARPA-H funded project.





Q&A



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