

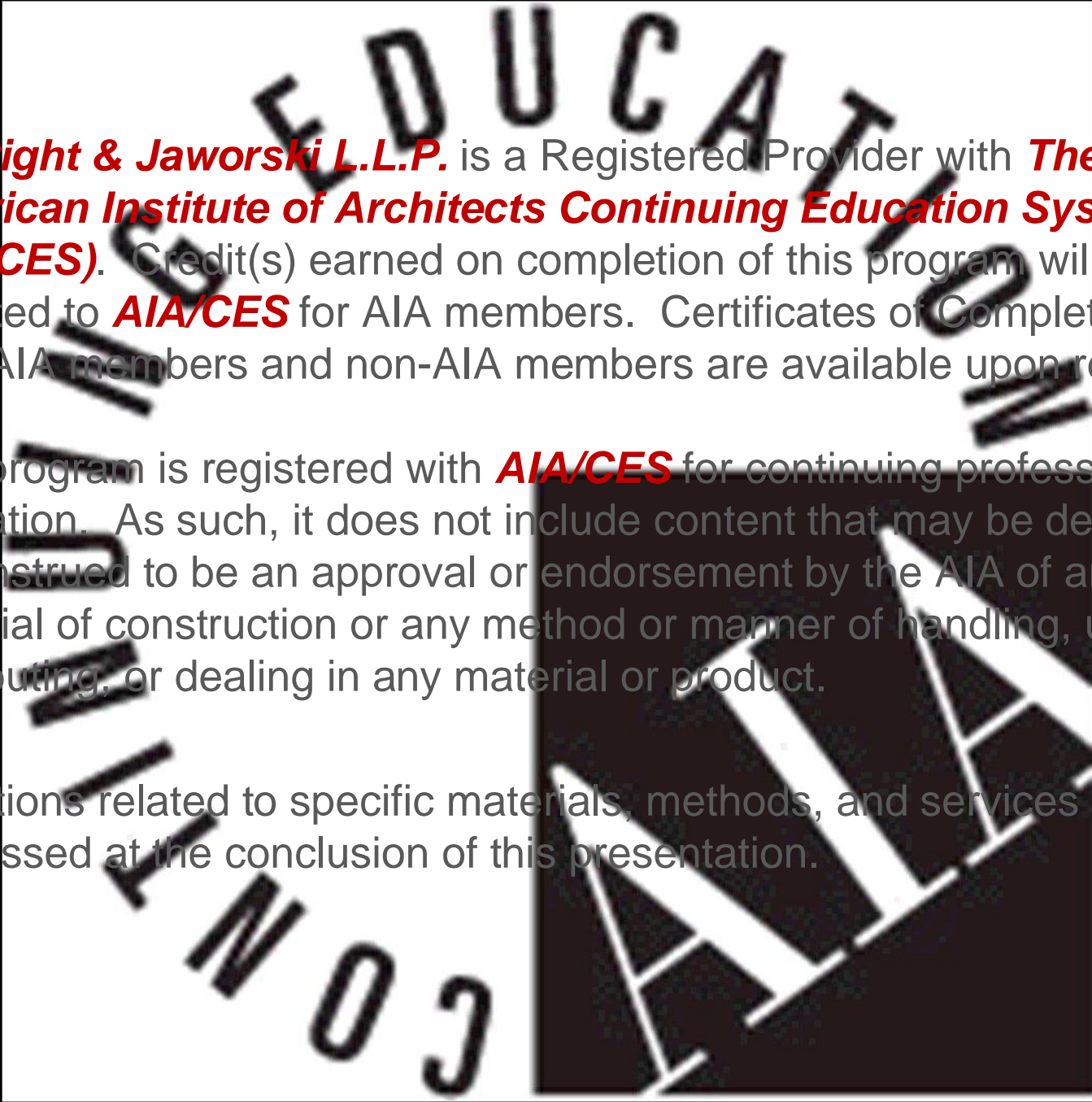
TEAMING AGREEMENTS

JEDDAH DESIGN DAYS

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Course Description

Throughout the Middle East commercial construction and public infrastructure projects offer opportunities for collaboration between local and international design firms. Such collaboration, or teaming, requires careful thought and a planned approach. Planning should begin early before the parties enter the pressurized environment of the bidding process. This presentation identifies key legal and business considerations to assist firms in evaluating and implementing teaming relationships.

Learning Objectives

At the end of this program, participants will be able to:

- 1. Understand what a teaming agreement is, and where it fits in the range of options available to firms that desire to work together*
- 2. Recognize the possible benefits of teaming agreements*
- 3. Recognize risks of teaming agreements*
- 4. Understand the key elements that a teaming agreement should address*

A Working Definition of Teaming Agreement

Broadly speaking - a contract by which two firms work together on one or more projects.

In this case, two design firms.



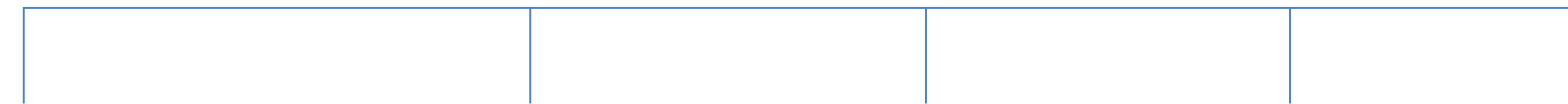
A COMMON SCENARIO

- Client requirements include
 - Need for international experience and resources
 - Need for local experience and resources
- International firm may not be licensed as a design firm in the jurisdiction
 - Review obstacles to licensing as design firm: time, required market presence, sector-by-sector requirement for engineers, national ownership requirements

RANGE OF OPTIONS

Less
Integration

More
Integration



Consultant –
Subconsultant

Contractual JV
Non-integrated

Contractual JV
Integrated

Territory-
wide
Commitment

Company
wide

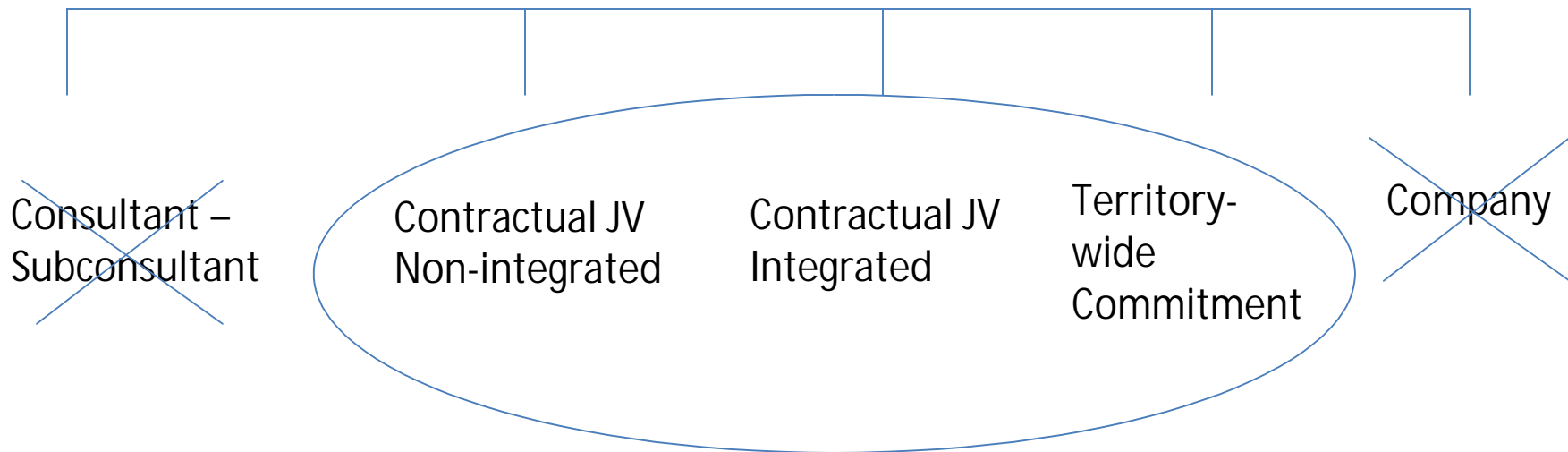


TODAY'S FOCUS



Less
Integration

More
Integration



Integrated vs. Non-integrated

Integrated – although no company is formed, treat the job as a shared responsibility, as if the parties had formed a company – share profits and risks, limited grounds to claim against each other

Non-integrated – separate scopes of work (division or allocation of responsibility), each partner focuses on increasing profits and decreasing its costs and risks, more grounds to claim against each other

WHY TEAM?

Poor Perspective = Bad Foundation

- Increase market awareness
 - Valid goal, but is it a reason to team?
- Increase market profile
 - Too vague (at best) or free rider (worst)
- Learn new skills, train workforce
 - Tension with partner
- Put personnel on the ground
 - Valid goal, wrong means to accomplish

WHY TEAM?(Cont'd)

“If you don't know where you are going, any road will get you there.”

A good teaming arrangement has

- A specific goal – the project (or series)
- A realistic goal – completion/profit
- A specific role for each party – complement don't compete

KEY RISKS AND PROTECTIONS



- Biggest risk – incompatibility
- Protection – Due diligence
 - Reputation for completion, quality
 - Reputation for ethics (FCPA, UK Bribery Act, etc.)
 - Sufficient financial resources
 - Complementary skills, licenses
 - Relationship to client – independent? Too dependent?
 - Prior teaming experience

KEY RISKS AND PROTECTIONS (CONT'D)

- Risk– joint and several liability
 - Often a matter of law
 - Often required by client
 - Even third parties can claim on a joint and several basis
- Protections – See prior slide, due diligence
 - Maintain close contact and awareness
 - Guarantees, insurance, contract terms

KEY RISKS AND PROTECTIONS (CONT'D)

- Risk – Completion
 - Partner is not able to do its share (skills, financial troubles, personnel shortfall)
- Protection – Practical and contract
 - International firm may need to be onshore
 - Right to work with others (client consent required)
 - Right to access funds, including client payment

KEY RISKS AND PROTECTIONS (CONT'D)

- Risk – Guarantees, bank accounts
 - Client requires local bank guarantees for bid, advance payment and performance
 - Client will only pay to one bank account
 - Where to put “investment” funds?
- Protection – Consider onshore presence
 - Bank guarantees can be resolved if local partner is willing to put up the entire amount based on counter guarantee
 - To have a bank account requires an onshore presence

KEY RISKS AND PROTECTIONS (CONT'D)

- Risk – For international partner, staying offshore too long
 - Initial market entry starts offshore – design work from home, a few visits
 - Opportunity arises – temptation to “second”, what are risks of seconding personnel to another firm?
 - Opportunity expands – construction supervision, project management
 - Local laws or client require presence – anti-concealment , foreign investment
 - Tax risks -- tax permanent establishment, final payment may require tax clearance
- Protection – establish a presence (control your destiny)

KEY RISKS AND PROTECTIONS (CONT'D)

- Risk – Local laws and practices vary
 - Taxes
 - Requirements to obtain license
 - Decennial liability
 - Client contractual requirements
 - Availability of remedies (injunctions, interest, right to suspend work)
 - Protection – Good local partner, local legal advice
- } DANGER!
Don't work on visit visas.

PUTTING IT TOGETHER (FROM BID TO PAYOUT)



What documents are involved?

- “MOU” or “Letter of Intent”
 - Identify specific purpose and contributions of each
 - Exclusivity?
 - Confidentiality – careful, it is not just “boiler plate”
 - No commitment? Mutual approval on client contact
- Correspondence – **DANGER! No without prejudice!!**
- Optional: framework agreement for prospecting
- Fully developed teaming agreement for a project (disclosure to client?)
- Question: Where is point of no return? Bid submittal?

PUTTING IT TOGETHER (Cont'd)

What must be addressed?

- Integrated or non-integrated
 - Scope, funding, staffing, pay-out, liabilities
 - Gray areas on scope and liabilities
- Is one partner the lead? (pre-bid/post-bid) (e.g. responses to changes in scope or requirements)
- Decision making – committee? Reserved veto rights? Paralysis?(local law issues with enforceability)
- Services from home office – compensation, taxes

PUTTING IT TOGETHER (Cont'd)

What must be addressed?

- Exclusivity (expansion of project, other projects)
- Rights to work product (between partners and policy to client)
- Invoicing client, managing funds, payment of third party and related party expenses, distributing profits, retentions and reserves
- Investment commitment (enforceability issue)

PUTTING IT TOGETHER (Cont'd)

What must be addressed?

- Credit support to each other: parent guarantees, bank guarantees, insurance
- Rights to work product
- Invoicing client, managing funds, payment of third party and related party expenses, distributing profits, retentions and reserves

Taking it Apart (Job Well Done)

- Remember, it is a contract – simply stop?
- Stranded assets? Money, people, leased space, equipment, files?
- Protocols for maintaining relationship with client (starting to compete?)



Taking it Apart (Before Completion)



- Contract should address
 - Right to perform alone or with others
 - Right to use drawings, data and assets
 - Non-interference, cooperation
 - Indemnity, security for same
- But contract not enough – no fast enforcement
- Need close relationship with client, incentive for cooperation

Thank you for your time!

QUESTIONS??

This concludes The American Institute of Architects
Continuing Education Systems Course

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