Joint Ventures in Small Business Contracting Programs

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What is a Joint Venture?

- Separate legal entity
- Includes “members” with proportionate interests in entity
- Limited in duration
- Special purpose (i.e. pursuit of contract award)
- Unless joint venture is LLC, members are jointly and severally liable
- Sharing of profits and losses among members

SBA Definition of Joint Venture

- Association of individuals or companies that come together to combine resources and bid on contract opportunities
- Allowed **three** specific or limited purpose business ventures (contract awards)
  - Some exceptions
- Limited duration of **two** years
- Known as the “3 in 2” rule

Affiliation

- Members of a joint venture that submit an offer on a procurement are presumed to be affiliated with one another for that procurement
- If a small business is determined to be “affiliated” with another company, SBA will aggregate the size of the two companies in determining the small business’ “size”
- If affiliated size exceeds applicable size standard, JV not eligible for set-aside award

Joint Venture Affiliation Exceptions

- Each member is “small” under the size standard corresponding to the NAICS code identified in the solicitation and certain conditions met **or**
- The members are in an SBA-approved Mentor/Protégé Agreement and the Protégé is small under the size standard identified for a small business/8(a) set-aside procurement, provided 8(a) has not exceeded established limits on contract awards

Advantages of Compliant Joint Venture

- JV may receive more than 3 “set-aside” contracts within the 2 year period
  - Proposal must have been submitted prior to expiration of 2 year period
- JV may be “populated” or “unpopulated”
  - Formal entity w/ its own employees or shell company with only administrative employees and members as subcontractors
- Members may form another JV and receive another 3+ contract awards

Mentor/Protégé Program

- Alliance between an 8(a) Program Participant and a "large business"
- Protégé has identified needs for business development and Mentor has capacity to meet those needs
- Relationship must be approved by SBA
- Relationship must be approved by SBA before a joint venture is created and joint venture submits offer
- Mentor can have up to 3 Protégés at one time
- Protégé cannot have a Mentor if Protégé in last six months of nine-year 8(a) program term

8(a) JV Requirements

- JV must be reflected in writing, generally by an operating agreement if JV is LLC
- 8(a) JV must be approved by 8(a) concern's SBA District Office in order to be entitled to an 8(a) contract award, but not for small business set-aside contract award
- But JV must follow 8(a) JV requirements even if offer submitted for small business (v. 8(a)) set-aide
- Nature of JV relationship must be disclosed in proposal

8(a) JV Performance of Work Requirements

- 8(a) JV Member must perform 40% of the work performed by the JV (which includes work performed by non-8(a) member and any of its affiliates at any contracting tier)
  - If 8(a) JV is "unpopulated," amount of work performed by all members (as subcontractors) will be aggregated
  - If 8(a) JV is "populated," the non-8(a) JV member, or any of its affiliates, cannot be a subcontractor to the JV at any tier
- 8(a)JV must comply with the Limitations on Subcontracting clause (FAR 52.219-14)
  - For services, the JV must perform 51% of the cost of labor; but work of non-8(a) JV member included for 51% calculation

Respective Member Rights/Responsibilities

- 8(a) must be “Managing Member”
- Program Manager must be employed/appointed by 8(a)
- Non-8(a) member cannot exercise “negative control” over 8(a) member
- If populated, 8(a) member must get 51% of the profits of the JV
- Both members required to ensure performance of government contract, no withdrawal from joint venture permitted
- Separate JV bank account, joint signatures required
- Managing Member must physically keep JV records
- SBA reporting requirements