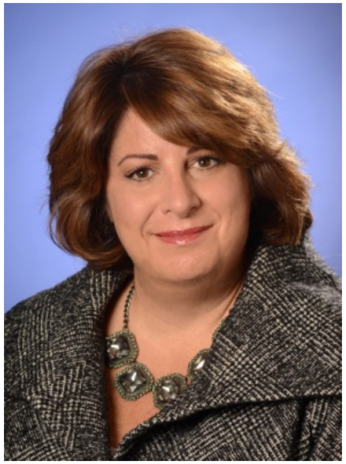
Joint Venture Relationships

ACT-IAC Small Business
Alliance Presentation

February 17, 2016



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What is a joint venture?

- A form of "teaming" under the FAR
- Business arrangement whereby the parties agree to develop, for a finite time, a new entity and create new assets by contributing equity
- Key characteristics:
  - A separate legal entity (generally a partnership or LLC)
  - Includes "members" with proportionate interests in the entity
    - Members may be "small" or "large" or combination of both
  - Limited in duration
  - Special purpose
  - Sharing of profits and losses among members

What is a SBA Joint Venture?

- Must meet SBA definition/rules in order for joint venture to compete for small business set-aside contracts
- SBA defines the term joint venture as an "association of concerns or individuals" that combine their "efforts, property, money, skill or knowledge" but NOT on a continuing basis for "conducting business generally"
- Limited purpose of receiving three (3) contracts in two (2) years (known as the 3 in 2 rule)

Affiliation

- SBA regulations provide that joint venture members are affiliated for size purposes
  - Once two businesses are determined to be "affiliated", SBA will aggregate the size of both companies to determine whether the Joint Venture is "small" for a small business set-aside
- "Small" refers to size standard associated with NAICS code applicable to the procurement
- If aggregated size greater than size standard, joint venture not eligible to compete for set aside
- Two exceptions to affiliation rule for joint ventures

Exception 1

- Were all members of the joint venture are "small" under the applicable size standard and
  - The procurement is "bundled" or
  - If the size standard is stated in revenues, the value of the procurement is greater than ½ the size standard or
  - If the size standard is stated in employees, the value of the procurement exceeds $10 million

Exception 1 - Example

The procurement value is:

- More than ½ the applicable size standard for revenue-based size standards

EXAMPLE: SMALL BUSINESS SET-ASIDE

NAICS SB Size Standard	$20M
Solicitation Value	$16M
JV of 3 SB Contractors: Annual Revenues	Contractor A: $7M Contractor B: $10M Contractor C: $5M
Total Aggregated Revenue of JV	$23M

- Aggregated contractor annual revenue ($23M) exceeds the applicable NAICS small business size standard ($20M), which would normally disqualify the team for this small business set-aside opportunity
- However, the procurement value ($16M) is more than ½ the applicable NAICS small business size standard ($20M) – this affiliation exception allows the team to pursue this opportunity

Exception 2

- Mentor-Protégé Joint Venture
  - Mentor-Protégé Program is part of SBA's 8(a) Program*****
  - Mentor-Protégé relationship is between an 8(a) Program Participant and typically a large business
  - Mentor-Protégé document must be executed before parties can create a joint venture and submit a bid/proposal as a joint venture

*****Proposed Rule to extend 8(a) M/P Program to all small businesses!

Mentor-Protégé Joint Venture

- Most M/P joint ventures are "unpopulated"
- In unpopulated JV, 8(a) member must perform 40% of the work and other member may perform up to 60% of the work
- JV itself, through both members, must perform in accordance with FAR Limitations on Subcontracting clause, 52.219-14
  - Together, the members must perform greater than 50% of the cost of the contract incurred for personnel

Unpopulated SBA Mentor-Protégé Joint Venture

JOINT VENTURE Unpopulated

- Acts as a pass-through
- JV must perform at least 51% of the cost of the JV contract incurred for personnel

PROTÉGÉ

- *De facto* subcontractor
- Must perform at least 40% of JV contract
- Must receive profits according to % of work performed

MENTOR

- *De facto* subcontractor
- Can perform up to 60% of JV contract
- May receive up to 60% of JV profits because no profit remains in unpopulated JV

SUBCONTRACTORS

- Can only perform up to 49% of cost of JV contract incurred for personnel
- Can be Mentor or Mentor affiliate under certain conditions

Joint Venture Advantages - Small Businesses

- Allows small business to chase more complex procurements – one stop shopping for the government
  - Can rely on skills, resources and past performance of other members to the joint venture
- Allows small business to become prime and receive prime contractor past performance
- Allows small business to be on "front line" with the client
- Allows small business to remain small longer

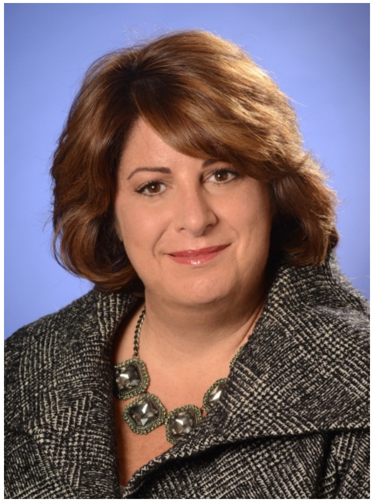
M/P Joint Venture Advantages – Mentors

- Can access contract revenue reserved for "small" businesses and for which Mentor typically ineligible to receive
- Can perform up to 60% of the contract work
- Mentor can also own up to 40% of the Protégé
- Allows Mentor to break into agency where Protégé has a niche
- Allows Mentor to have greater control over contract performance than if it was a sub

Joint Venture Disadvantages

- Structure unfamiliar to government
- More paperwork, more expense
- M/P joint ventures have strict requirements which limit ability of Mentor to control actions of the joint venture
- Competition among members, difficult to speak with "one voice"
- Hard to exit – may be stuck with other member for contract term

Questions?



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