



The ABCs of JVs

Devon E. Hewitt

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The ABCs of JVs



About SECAF

Founded in 2001, the Small and Emerging Contractor Advisory Forum (SECAF) enables the small and emerging government contractor to achieve maximum growth rates in a highly competitive marketplace. Providing members with business resources, access to influencers, government agencies, advocacy opportunities and education, the group is an important resource for a growing company. SECAF also serves the medium to large government contractors, providing invaluable introductions to specialized small businesses that enable the overall contracting community to work successfully in tandem. With more than 350 members, the organization boasts one of the highest retention rates in the Washington, DC metropolitan region.



*Devon E. Hewitt
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About Devon E. Hewitt

Devon Hewitt, a partner at Protoraë Law, has over 25 years' experience in the field of Government Contracts and represents emerging, small, mid-size and large government contractors located across the United States and abroad. Ms. Hewitt leads the firm's Government Contracts practice, and is best known as a bid protest attorney, having participated in well over 100 bid protests lodged at various federal agencies, including the Small Business Administration and the Government Accountability Office. In addition to bid protests, Ms. Hewitt represents government contractors in a wide variety of transactional matters such as the drafting and negotiation of subcontracts and teaming, cooperative, nondisclosure, non-compete, operating, joint venture, commercial vendor and "OTA" agreements. Ms. Hewitt recently was appointed General Counsel of the Small Emerging Contractor Advisory Forum (SECAF) and has been a member of its Board for over five years. She is active in the National Veterans Small Business Council and represents many SDVOSBs and VOSBs.

The ABCs of JVs



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The ABCs of JVs

- What is a JV?
- JVs – Pros and Cons
- SBA JVs – Regulatory Requirements
- JVs – Common Problems
- Withdrawal, Transfer, Addition of Members
- Restrictions on Business Ventures
- Other

What is a JV?



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- Contractor Team Arrangement
 - *Not* a prime/subcontract arrangement
 - *Not* a CTA as permitted by GSA
- Joint Venture vs. Partnership
 - Joint and several liability
- Separate Legal Entity vs. Contract
- Joint Ventures v. SBA Joint Ventures
 - Regulatory requirements associated with JVs established for participation in SBA's preferential contracting programs
 - But there are issues/concerns common to both

JVs – Pros and Cons



| PROS | CONS |
|--|---|
| Combination of Resources | Expensive Paperwork |
| Combination of Past Performance | Complicated Logistics |
| Small Prime Past Performance Reference | Agency Discomfort/Solicitation Requirements |
| Small Prime Size Management | Restraints on Competition |
| Other Than Small Access to Set-Asides | Lack of Control |
| Nose Under the Tent | Nose Under the Tent |
| Risk Allocation | Risk Allocation |

SBA JVs – Regulatory Requirements



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- Two types
 - All small businesses
 - Small business(es) and large business(es)
- Affiliation/Size issue
 - Presumption of affiliation, aggregation of size
 - May or may not be an issue
- Exemptions
 - All small businesses each of which is small under the applicable size standard/NAICS code
 - Mentor/Protégé JVs

SBA JVs – Regulatory Requirements



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- Common regulatory requirements
 - JV must be unpopulated
 - 2 year term (used to be known as “3 in 2” rule)
 - Single purpose entity
 - SAM registration/Tax ID
 - Limitations on Subcontracting
- Regulatory requirements applicable solely to Mentor/Protégé, SDVOSB, WOSB, 8(a) and HUBZone JVs
 - Control
 - Workshare requirements
 - Joint Bank Account
 - Reporting Requirements

JVs – Common Problems



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- Contract Performance
 - Who does what
 - Should be addressed in JV agreement
 - Ensured performance
 - Default/Dispute
- Multiple Voices
- Incompatible Cultures
- Dashed Expectations
- Lack of Transparency
 - Access to Records
 - Participation or notice of majority member decisions



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- Withdrawal
 - Usually not permitted
 - Conditions of Withdrawal
- Transfer of Interest
 - Generally not permitted
 - Buyout possible
 - Approval Required
- Addition of Members
 - Unanimous consent required?
 - Dilution of membership interest
 - Approval required

Restrictions on Business Ventures



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- Which contracts will JV pursue?
 - What does single purpose entity mean?
 - Who decides?
 - Joint Venture Agreement amendments
- Which contracts can the JV members pursue outside the JV?
 - Small vs unrestricted
 - Small vs specific type of small
 - NAICS code
 - Task Order competitions

Other



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- Intellectual Property
- Confidentiality
- Capital
- Insurance

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Q&A



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 **SECAF**
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