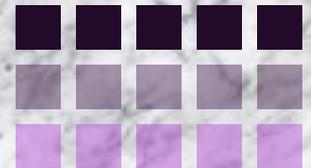


TEAMING FOR SUCCESS



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Topics

1. Introduction: Teaming in the FAR and the SBA definition of a joint venture
2. Size standards, affiliation, and exceptions
3. Limitations on subcontracting and ostensible subcontracting
4. Joint ventures and types of small business
5. Mentor protégé
6. What next?

Policy of the Government

Working together helps small business to compete in unrestricted competition and set-asides

The policy is to place a fair proportion of its acquisitions with:

- Small business

- Small disadvantaged business [SDB/8(a)]

- HUBZone small business

- Women owned small business (WOSB)

- Veteran owned small business (VOSB)

- Service disabled veteran owned small business (SDVOSB)

What's a fair proportion?

Small Business	23%
SDB [including 8(a)]	5%
WOSB	5%
HUBZone	3%
SDVOSB	3%

(there is no statutory goal for VOSB)

Contract Team Arrangement

- Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
- A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program.
- Applies to large and small business

Benefits of JVs to the Small Business

- ❖ Gain new capacity and expertise
- ❖ Combine capabilities and past performance
- ❖ Increase bidding power and bonding capacity
- ❖ Share risk

Pitfalls of a JV

- ❖ JV'ing with the wrong partner
 - ❖ <https://www.epls.gov/>
- ❖ Objectives are not clear
- ❖ Imbalance in the level of expertise, investment or assets
- ❖ Not having the JV agreement in writing

SBA Definition of a Joint Venture (13 CFR 121.103(h))

- ▣ An association of individuals and/or concerns with interests in any degree or proportion by way of contract, and
- ▣ Consorts to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period,
- ▣ Who combine efforts, property, money, skill or knowledge, and
- ▣ Is not on a continuing or permanent basis

And,

- ▣ Consists only of small businesses (exception 8(a) JVs)
- ▣ Self-certifies that it is “small”
- ▣ Is subject to the regulations as they govern small business – just like any other small business
- ▣ Is reviewed by the contracting officer, not SBA (except for 8(a) JVs).

Are you small for a particular acquisition?

▣ Self-certify

▣ NAICS

- 3 year average annual revenues or
- Number of employees over the last 12 months

▣ Size includes affiliates

Affiliation

13 CFR 121.103

- ▣ Power to control
- ▣ Common managers
- ▣ Identical business interests
- ▣ Common stockholders
- ▣ Ownership of multiple businesses
- ▣ Contractual relationships
- ▣ JV arrangements

The “Relaxed Rule” (exception to affiliation on JVs)

As long as each JV partner individually qualifies as a small business, then the JV counts as small.

The “Relaxed Rule” is applicable to:

- ▣ Bundled procurement of any dollar value
- ▣ Large procurement:
 - Revenue based size standard: the dollar value of the procurement, including options, exceeds half the size standard of the procurement.
 - Employee based size standard: dollar value of the procurement, with options, is over \$10 million.

Joint Venture & Affiliation

Small business set-aside with NAICS of 541620

Size standard for 541620 is \$6.5m

Est. value of award is \$3.0m

Firm A has average annual sales of \$3.5m

Firm B has average annual sales of \$3.5m

Can firms with combined receipts of \$7.0m compete as a small business joint venture for the set-aside?

Exception to Affiliation

- ▣ Small business set-aside with NAICS of 541620
- ▣ Size standard for 541620 is \$6.5m
- ▣ Est. value of contract is \$4.0m

Firm A has average annual sales of \$3.5m

Firm B has average annual sales of \$3.5m

Can firms with combined receipts of \$7.0m
compete as a small business joint venture for the
set-aside?

Ostensible subcontractor

- ▣ A subcontractor that performs primary and vital requirements or a subcontractor upon which the prime contractor is unusually reliant.

- ▣ The Old Seven Factor Test:
 - Who will manage the contract?
 - Which party possesses the requisite background and expertise?
 - Who “chased “ the contract
 - What degree of collaboration was there on the bid?
 - Are there discrete tasks to be performed or is there a commingling of personnel and materials?
 - What is the relative amount of work to be performed by each?
 - Which party performs the most complex and costly contract functions?

Limitations on subcontracting (FAR 52.219-14)

- ▣ Services – 50% of personnel costs
- ▣ Supplies – 50% of cost of mfg, excluding materials
- ▣ General Construction – 15% of cost of contract with own employees, excluding materials
- ▣ Special Trade Construction – 25% of cost of contract with own employees, excluding materials
- ▣ HUBZone – One or more HUBZones must spend at least 50% of the cost of the contract incurred for personnel on its own employees or employees of another HUBZone

Types of JVs

8(a)

- SBA must approve the JV
- Competes only for 8(a) set-asides
- At least one firm is 8(a) certified and less than $\frac{1}{2}$ the size standard corresponding to the NAICS code assigned to the contract
- 8(a) firm must manage and furnish project management and earn 51% of the profits

8(a) Approved Mentor-Protégé JV

- Can JV with large business

Types of JVs

HUBZone

- ▣ Consist of Hubzone firms only
- ▣ Limitations on subcontracting apply
- ▣ SBA does not approve

SDVOSB

- ▣ SDV must be managing partner
- ▣ SDVOSB receives 51% of profits
- ▣ SBA does not approve

What should be in a JV Agreement?

- ▣ A provision setting forth the purpose of the JV
- ▣ A provision designating someone as the Managing Venturer
- ▣ A provision stating the distribution of profits/losses
- ▣ A provision providing for the establishment of a special bank account
- ▣ A provision itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value each.

More Parts of a JV

- ▣ A provision specifying the responsibilities of parties
- ▣ A provision obligating all parties to the joint venture
- ▣ A provision designating that accounting and other administration records relating to the JV shall be kept in the office of the managing venturer
- ▣ A provision requiring the final original records be retained by the managing venturer upon completion of the contract performed by the joint venture.

Still More...

- ▣ A provision for handling substitution or addition of co-venturers
- ▣ A provision for handling disputes
- ▣ A provision for handling the termination of the JV

If an 8(a) JV, there are additional provisions that relate just to the 8(a) program. You may go to www.sba.gov for a template or your local SBA District Office

For a SDVOSB JV, you may go to www.va.gov for a template.

***MENTOR-
PROTÉGÉ
PROGRAMS***

Definitions

▣ MENTOR

- A wise and trusted counselor or teacher
- An influential senior sponsor or supporter

▣ PROTÉGÉ/PROTEGEE

- A person under the patronage, protection or care of someone interested in his or her career or welfare.

Federal Agencies

- Department of Defense:
http://www.acq.osd.mil/osbp/doing_business/index.htm
- Department of Homeland Security:
http://www.dhs.gov/xopnbiz/smallbusiness/editorial_0716.shtm
- Department of State:
<http://www.state.gov/m/a/sdbu/c14690.htm>
- Department of Energy:
http://smallbusiness.doe.gov/small_business_programs/mentor-protege/mentor-protege.html
- Department of Treasury:
<http://www.ustreas.gov/offices/management/dcfo/osdbu/mentor-protege/>
- NASA: <http://osbp.nasa.gov/mentor.html>

Attributes of a Successful Mentor-Protégé Relationship

▣ Mentor

- Strong interpersonal skills
- Technical competence/expertise
- Knowledge of organization and profession
- Status/prestige within organization/profession
- Willingness to be responsible for someone else's growth and development
- Ability to share credit
- Patience

Attributes of a Successful Mentor-Protégé Relationship

▣ Protégé

- Growth needs
- Seeking/accepting challenging assignments
- Receptive to feedback and coaching
- Willingness to assume responsibility for own growth and development
- Ability to perform in more than one skill area

Attributes of a Successful Mentor-Protégé Relationship

▣ Both

- Voluntary
- Mutual benefits
- No conflict of interest
- Not confined to merely professional or business interests

SBA Mentor-Protégé Program

- ▣ Encourage approved mentors to provide various forms of assistance to eligible 8(a) participants as proteges
- ▣ The purpose is to enhance the capabilities of the protégé and to improve its ability to successfully compete for federal contracts.

Mentor Assistance

- ▣ Technical and/or management assistance
- ▣ Financial assistance
- ▣ Subcontracts
- ▣ Performance of prime contracts

Eligibility & Qualifications

Mentors

- ▣ Demonstrate a commitment to develop 8(a) participants
 - Possess a favorable financial health
 - Good character
 - Not on the Debarred or Suspended List
 - Can impart value
- ▣ May have graduated from the 8(a) program or is in the transitional state
- ▣ Other small or large businesses may also qualify

Eligibility & Qualifications

Protégé

- ▣ Be in the developmental stage; or
- ▣ Have NOT yet received an 8(a) contract; or
- ▣ Have a size that is less than $\frac{1}{2}$ the size standard corresponding to its primary NAICS code
- ▣ Must be in good standing

Benefits

- ▣ Capabilities of mentor available to protégé
- ▣ Aid protégé in raising capital
- ▣ May better qualify for other assistance
- ▣ JV on any federal contract

Terms & Conditions

- ▣ SBA approves both mentors and protégés
- ▣ Written agreement
- ▣ A provision that either the protégé or mentor may terminate the relationship with 30-days advance notice to the other party
- ▣ A protégé firm may have only one mentor at a time
- ▣ Generally, a mentor will have no more than one protégé at a time.

Elements of a Mentor-Protégé Agreement

- ❖ Assessment of the Protégé's needs
 - ❖ Management & technical
 - ❖ Financial
 - ❖ Business Development
 - ❖ Contracting
 - ❖ General & administrative
- ❖ Mentor agrees to assist the Protégé to fully develop the above. – fully described

Elements of a Mentor-Protégé Agreement

- ❖ Preparation of reports
- ❖ Length of Agreement
- ❖ Termination clause and effect
- ❖ Modifying Agreement
- ❖ POC for both parties
- ❖ Status of the parties
- ❖ Integrated document
- ❖ Other provisions not discussed

Questions???

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