



## ***Joint Ventures—A Bidding Option You Should Consider***

As with many other things in life, there are fads in government contracting, and one of the hottest fads right now is joint venturing.

In a joint venture, two or more companies come together to form a new business entity. It's not a new idea, and it's used in an out of government to create a business entity that has capabilities that none of the individual companies involved have. Your Verizon cell phone, for example, isn't provided by Verizon, it's provided by Verizon Wireless, a joint venture of Verizon Communications and Vodafone.

Joint ventures have been around for a long time in government contracting, too, but recently, several Small Business Administration rules have created new advantages to joint venturing that make them more attractive for certain procurements. Probably the most significant is the Small Business Administration rule that allows an 8(a) company to joint venture with a much large company to bid on 8(a) set-aside opportunities based on the eligibility of the 8(a) member of the joint venture. This can mean that an 8(a) opportunity with a \$6.5 million size standard is awarded to a partnership owned by a \$6.5 million 8(a) company and a \$500 million (or greater) company—effectively a \$506 million business entity. If all the other competitors are true \$6.5 million companies, this can be a huge advantage.

### ***Qualifying Circumstances***

There are two sets of circumstances for which 8(a) firms may use their status to bid:

An 8(a) firm and one or more other businesses may submit an offer as a joint venture for an 8a competitive procurement provided that: each company meets the small business size standard for the procurement, at least one 8(a) participant in the JV is less than half the size standard, and the size of the procurement is at least one-half the size standard (for revenue-based size standards) or \$10 million (for employee based: size standards).

Two firms with an SBA-approved Mentor-Protégé agreement may submit an offer as a joint venture provided the protégé qualifies as small for the procurement and for an 8(a) sole source procurement, has not met the dollar limit.

The first set of circumstances limits the opportunities to pretty small ones, minimizing (but not eliminating) the advantage. The second set opens it to pretty large 8(a) set aside opportunities, but the Mentor-Protégé agreement in place first takes time and planning.

Joint ventures may sometimes be attractive for non-8(a) small businesses, too. In a joint venture the firms are considered affiliated for the purpose of that contract. Normally, the revenues or the employees of both firms are added together to determine the size of a joint venture. However, on certain large Federal procurements, a joint venture comprised of only small businesses would qualify as a small business joint venture, but this is limited to procurements that exceed \$10million in value and are classified with an employee-based size standard, or that exceed one-half of the size standard for procurements classified with a revenue-based size standard.



## ***Joint Venture Structure***

A joint venture may be set up with any business structure, such as a partnership or any of several types of corporations. The most common arrangement is a partnership.

Joint ventures may be what is sometimes termed “populated” or “unpopulated.” A populated joint venture has employees, with all the attendant implications like employment taxes and fringe benefits. An unpopulated joint venture does not; rather, it relies on the partners to provide personnel.

The joint venture, on award, becomes the prime contractor, not either of the partners. As the prime contractor, the joint venture may have one or more subcontractors.

The eligible partner in the joint venture must do a “significant” portion of the effort performed by the prime contractor. Although this is usually interpreted as 51%, it also means significant content. For example, if the eligible partner did 60% of the work, but only performed janitorial services, while the non-eligible partner performed high-level engineering services, this probably wouldn’t meet the test. If there would otherwise be a requirement that the prime perform 51% of the work, that still applies. Just doing a quick calculation, if the 8(a)-eligible partner does 51% of the work performed by the prime, and the prime does 51% of the total, the 8(a)-eligible partner ends up doing 25.5% of the total work on the contract.

The program manager also needs to be an employee of the eligible partner. The joint venture is usually governed by a board, with at least 51% of its members appointed by the eligible partner.

Under the SBA rules, the joint venture can perform on only the one contract for which it was organized.

If you search the SBA web site, you can find lots of copies of the template they like for the joint venture agreement. If you (or your lawyer) thinks that it’s not a very good form, don’t waste time improving it—this is the format the SBA wants to see for their mandatory pre-award approval and annual review.

### ***Advantages of the Joint Venture Prime***

There are a number of advantages to the government when they select a joint venture prime.

They potentially gain a much larger, more robust and financially healthier prime contractor.

They gain access to the technical capabilities and resources of the entire prime, not just those of the smaller eligible partner.

They gain the performance guarantee of three (or more) business entities, not just that of the prime.

Some would argue that there are management risks associated with selecting a joint venture prime. Those arguments are not without merit, but the advantages, coupled with the satisfaction of participating in the latest trend, will overcome them in many instances.



### ***Selling the Joint Venture Concept***

A joint venture bid is a little different from what evaluators usually see, More and more, solicitations include language to address some of the issues associated with the joint venture concept, but don't submit one without preparing the customer. This is probably not a last-minute solution, so you'll have time to go in and meet the customer before the solicitation is released and talk to him about the advantages of the joint venture concept, and help him understand why this is better for him than the alternatives that will be proposed by your less-capable competitors!