

Joint Ventures: *Rules, Reasons and Lessons-Learned*

Presenters



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Late Night Reading

FAR 9.601(a)

13 CFR 121.103 (h)

13 CFR 125.5

FAR 52.219-14

13 CFR 125.15 (b)

13 CFR 126.616

13 CFR 124.513

13 CFR 124.1001 (f)

...just a few of the regulation references

Presentation Objectives:

1. Summarize the SBA ***regulations/rules*** related to the formation of Joint Ventures
2. ***Advantages*** and ***Risks*** of forming a JV versus standard teaming arrangements and the due diligence required
3. ***Reasons*** for contemplating entering into a JV...from a small business and large business perspective
4. JV ***options and considerations***
5. Our ***experience/lessons-learned*** in forming and performing in JVs
6. Questions and Answers

Regulations/Rules for JVs

- ***SBA definition*** of a small business joint venture
- ***Size*** standards
 - ***Types*** of small business set-asides, unrestricted competition and joint ventures
 - ***Mentor/Protégé*** and 8(a) exception

SBA Definition of a Joint Venture

- An ***association of individuals and/or concerns*** with interests in any degree or proportion by way of contract, expressed or implied
- ***Combining*** efforts, property, money, skill, or knowledge
- JVs operate for a ***limited period of time*** or ***specific purpose*** and should not be considered as the “default” business model

Size Standards

- ***NAICS*** (North American Industry Classification System) code for the acquisition
- SBA size standard: ***3 year average annual revenues***
- SBA size standard: ***# of employees over the last 12 months***

...Special rules apply for SBA 8a Mentor/Protégé Program, and Tribal and Alaskan Native Corporations

Size Standards (Con't)

- ***“Affiliation” or combined revenue and employee size does not apply to the following Federal procurements:***
 - “Bundled” procurement
 - Other than “Bundled” procurement and:
 - ***Receipts-based size standard:*** dollar value of procurement exceeds half the size standard (i.e., NAICS is \$6.5M, Procurement Value >\$3.25M)
 - ***Employee-based size standard:*** dollar value of procurement (including options) exceeds \$10M

Joint Ventures or Teaming Agreements

Features of a JV	Features of Teaming Agreements
JV is higher level of <i>commitment</i> (marriage)	Teaming Agreements require <i>less commitment</i>
<i>Shared</i> Financial Risk/Reward, Joint and severable liability	Financial risk and reward can be <i>separated</i>
<i>Enforceable</i> Legal Document	Enforcing teaming agreements <i>difficult</i>
<i>Improve</i> Qualifications of Prime (JV Lead)	Prime <i>qualifications separate</i> from team subs
Requires <i>More Effort</i> to Manage	Typically <i>simple</i> to manage
<i>Reputations</i> joined	Reputations can be <i>independent</i>
More <i>Flexibility</i> in Pricing Approach	Prime/Subcontractor <i>pricing model</i>

JV vs standard Teaming Arrangement?

- Considerations include:
 - Similar ***cultures*** and ***values***
 - ***Existing*** proven and successful relationship
 - ***Financial stability*** of both firms, particularly for the small or disadvantaged firm
 - Which firm will ***bond***? Can the disadvantaged firm bond?
 - Does the disadvantaged firm have the ***resource/processes*** in place to manage the JV?

...Bottom line is the level of trust and commitment for a JV is much greater than that required for a standard teaming arrangement

Reasons for Considering a JV from a Small Business Perspective

- Need additional geographic **coverage**, **resources**, **capabilities**, and **qualifications** to address the SOW/RFP requirements
- **Leverage** capabilities and capital
- Share or reduce **risks**
- Need JV partner to **penetrate market opportunity**....SB, SDVOB, 8a, WOB, etc.
- Need a “mentor” to assist in the upgrading of **internal systems** to prepare for the rigors of federal work
- SB may be a “start up” and needs the **guidance/mentoring** of another more mature firm

Don't forget what the SB must perform!

- ***Limitations on subcontracting***
apply to small businesses and small business joint ventures too

Services Provide 50% of personnel costs	Supplies Provide 50% of cost of manufacturing, excluding materials
General Construction Perform 15% of cost of contract with own employees, excluding materials	Special Trade Construction Perform 25% of cost of contract with own employees, excluding materials

JV Options and Considerations for SBs

Small Business Type	Sole source	Competitive set-aside	Options
1. SB	<i>No</i>	Yes	<ul style="list-style-type: none"> Two SBs can JV subject to size restrictions
2. 8a	Yes	Yes	<ul style="list-style-type: none"> 8a and JV with 8a, SB or LB subject to size restrictions <i>8a in SBA MPP can JV with Mentor to create 8a with size restrictions waived</i>
3. HUB Zone	Yes	Yes	<ul style="list-style-type: none"> Two HUB Zones can JV subject to size restrictions HUB Zones cannot JV with non-HUB Zone firms
4. SDV	Yes	Yes	<ul style="list-style-type: none"> SDVOBs can JV with other SB firms subject to size restrictions

CAPE's JV Experience... And Proof That It Works

- CAPE is currently a member of 3 JVs
 - C/P/E which was formed for Department of Energy (DOE) Environmental Management Contract
 - CDM/CAPE JV which was formed for large business DoD construction pursuits
 - HCR/CAPE JV which was formed for 8(a) construction pursuits under SBA's Mentor-Protégé program

CAPE's JV Experience... And Proof That It Works

Target: A DOE multiple award remediation contract

Challenge: CAPE had the expertise and federal resume to pursue, but lacked DOE experience

CAPE's JV Experience... And Proof That It Works

Solution: Formed a JV that combined 3 SBs...

- CAPE
- TerranearPMC (Formerly PMC)
- ECOR ...that still qualified as a SB. The combined quals of the JV included the expertise, past performance and DOE-specific experience.

Result: Awarded a SB contract (\$800M program value)

- \$2M ID/IQ contract at Los Alamos National Lab
- Two TOs totaling \$1M at Idaho National Lab
- \$12M TO at Stanford Linear Accelerator Center (SLAC)

CAPE's JV Experience... And Proof That It Works

Target: Air Force Construction, and specifically the AFCEE HERC and AFCESA SATOC

Challenge: CAPE is a LB under construction NAICS code. CAPE had the AF resume but lacked world-wide resources and bonding (>\$100M available capacity) when compared to larger LBs

CAPE's JV Experience... And Proof That It Works

Solution: Formed CDM/CAPE JV, which synergistically drew from both firm's strengths to create an entity with AF resume, worldwide resources and financial stability

Result: Awarded AF Construction ID/IQ contracts

- AFCEE HERC - \$6B total program value
- AFCESA SATOC - \$2B total program value
- AFRC COMPEC - \$97.5M total program value

CAPE's JV Experience... And Proof That It Works

Target: DOD Construction market

Challenge: CAPE graduated from 8(a) program and has outgrown construction NAICS code as a small business.

One of our partner firms, HCR, is a successful small construction company, but lacked the resources to pursue mid- and large-size projects.

CAPE's JV Experience... And Proof That It Works

Solution: Entered into an SBA-approved mentor-protégé relationship with HCR

Result: Currently competing for three 8(a)-set aside projects through the JV ***(A part of the pie is better than no pie at all!)***

Bhate Experiences and Lessons-Learned

- ***Bhate*** is in a SBA Mentor-Protégé Program with NationView, LLC, an 8a Native American small business
- We have formed JVs resulting in:
 - \$5.1M NPS Renovation of Tuskegee Airmen, Moton Field, AL
 - \$10M Omaha District Compliance MATOC
 - \$147M Huntsville District/Child Youth Centers MATOC
- We have teamed/supported NationView resulting in:
 - \$3.5M Los Angeles District Restoration Contract
 - \$3.5M Huntsville Center Compliance Contract
 - \$3.5M Mobile District BEST contract



Bhate Experiences and Lessons-Learned (Con't)

- ***Bhate*** has also JV'd with two other 8a firms, subject to size revenue restrictions.
 - JV'd with 8a to secure a \$112M Huntsville Center Facility Renovation and Repair Contract (met size restrictions)
 - JV'd with private sector firm, no SBA regulations applied to win a contract for demolition of older homes in the flight path of Birmingham International Airport

Bhate Experiences and Lessons-Learned (Con't)

What is in it for Bhate?

- The ability to create a very strong resume for the new JV LLC and ***participate in opportunities*** in the 8a marketplace.
- ***Subcontracting opportunities*** (regulated by the terms of the JV and in strict accordance with SBA and DOD guidelines) that we would not otherwise have had.
- Pride in ***helping to “stand up”*** a firm comprised of owners that you have a long relationship with, trust and want to help establish a viable, qualified, and capable 8a firm. ***Teaming is dating, JV is a marriage.*** Pick your bride/husband carefully!

Bhate Experiences and Lessons-Learned (Con't)

What has NationView gained from Bhate's support?

- Valuable ***insight*** from a former 8a (graduated in 2003) on how to operate within the 8a program
- Upfront ***infrastructure/MIS support*** to put systems in place immediately, get off Quick Books and prepare the firm for third party and DCAA audits
- ***Introduction*** to our clients and business development support in writing ***proposals***, participating in "Red Teams" and ***pricing*** review
- The ability to obtain ***increased bonding capacity***, as permitted by SBA MPP

Bhate Experiences and Lessons-Learned (Con't)

- ***Day-to-Day interaction*** with Mentor to answer questions
- ***Assist*** Protégé in fleshing out the specifics of a GO-NO GO on proposals
- Assist the Protégé in a deeper understanding the ***Balance Sheet/Income Statement*** and it's performance relationship to securing additional capital/line of credit, bonds, etc.
- Assist the Protégé in identifying ***staffing*** needs
- Be there for the Protégé when they need reassurance and ***calm them down*** when they become overwhelmed

Bhate Experiences and Lessons-Learned (Con't)

What would we have done differently?

- Made ***better GO-NO GO decisions*** on the first JV slots. Everyone was excited to “go get'em”
- Been a little ***less specific*** on the opportunity identified in the JV (three slots/opportunities per JV)
- Use ***JV/attorney experts upfront***, as a means of reviewing your plans

Reasons for Considering a JV from a Large Business Perspective

- ***Increasingly*** solicitations/RFPs are coming out Small Business (8a, SDVOB, Hub Zone) and Large Businesses need contract vehicles to access new work
- JVs are a means of ***securing a dedicated portion*** of the work brought in by the JV. A more secure position than a teaming agreement operating as a subcontractor
- ***Creates a stronger team***, particularly if two large businesses JV in the full & open market
- If the JV is ***sanctioned by the SBA 8a Mentor/Protégé Program***, a very strong firm (new LLC) is created with size and revenue restrictions waived

*What does **CDM**, a Large Business, look for in a SB JV Partner*

- Leverage
 - Leverages **unique** SB technical skills, client contacts and capabilities with those of the LB and their geographic coverage to meet specific RFP requirements – fill the “gaps”
 - Leverages **strong separate qualifications** (experience and resumes) into a stronger joint RFP submittal
- Risk Management (JV risk is joint and severable)
 - Similar Corporate “**Core Values**”
 - **Trust** – date first, then a JV
 - Financial **health and stability**

*What does **CDM**, a Large Business, look for in a JV Partner*

- Executive Commitment
 - Senior staff from both firms have *mutual understanding and solid working relationship* to resolve issues
 - Commitment to make JV work
- Similar Work Standards
 - Client satisfaction, Quality, and Safety
 - Able to direct staff to meet critical needs in timely manner
 - *Fixes their own problems* – keeps us informed

Questions and Answers