Small Business Joint Ventures & Teaming Arrangements

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Does the FAR Recognize Teaming?

- The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. (FAR 9.603)

What Types of Contractor Teams Does the FAR Recognize?

FAR 9.601 Reads:

"**Contractor team arrangement**," as used in this subpart, **means** an arrangement in which—

- Two or more companies form a partnership or **joint venture** to act as a potential prime contractor
- 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.

How does SBA Define JV?

13 CFR 121.103(h) reads:

A joint venture is an association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than <u>three specific or limited-purpose business ventures for joint profit over a two year period</u>, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally.

SBA Definition – cont'd

- This means that the joint venture entity cannot submit more than three offers over a two year period, starting from the date of the submission of the first offer. A joint venture may or may not be in the form of a separate legal entity. The joint venture is viewed as a business entity in determining power to control its management. SBA may also determine that the relationship between a prime contractor and its subcontractor is a joint venture, and that affiliation between the two exists, pursuant to paragraph (h)(4) of this section

What are the Advantages of Small Business Teaming?

- The JV or team is able to compete for larger more technically complex contracts by combining the capabilities and assets of various team members.
- Relaxed affiliation rules for SB joint ventures and prime/sub teams on procurements that meet **certain requirements**
- Relaxed performance of work requirementson procurements that meet **certain requirements**

What is Affiliation?

Normal Rule of Affiliation

13 CFR 121.103(h)(2)

- The members of a joint venture or team are considered to be affiliated for size purposes.
  - The size of each team member contributes to the total size of the joint venture or team.
  - The joint venture or team is small only if the <u>combined</u> annual receipts or employees of all the firms in the JV meet the size standard for the procurement

What are the Relaxed Affiliation Rules? (13 CFR 121.103(h)(3))

- There is an exception to the normal rules of affiliation for joint ventures and teams on procurements that meet **certain requirements:**
  - A bundled procurement of any dollar value; or
  - For a procurement having a receipts based size standard, the dollar value of the procurement exceeds ½ the size standard; or
  - For a procurements having an employee based size standard, the dollar value of the procurement exceeds $10 million.
- For these procurements, the JV or prime/sub team is considered small so long as each member is small under the size standard assigned to the procurement

In Other Words

- Relaxed affiliation means that so long as each JV venturer (in the case of a joint venture) or team member (in the case of a teaming arrangement) *individually* qualifies as a small business, then the JV or teaming arrangement qualifies as small.
- Relaxed affiliation rules apply to SB JV's and teams only on procurements that meet **certain requirements.**

What are Performance of Work Requirements?

- Included in contract only if contractor must be small to be eligible for award
  - FAR clause 52.219-14, “Limitations on Subcontracting”
- Specifies per cent of contract work that must be performed by the small business prime contractor.
- Addressed in detail at 13 CFR 125.6

What are *Relaxed* Performance of Work Requirements?

- 13 CFR 125.6(h)(i)
- Where an offeror is exempt from affiliation under §121.103(h)(3) *(relaxed affiliation rules)* of this chapter and qualifies as a small business concern, the performance of work requirements set forth in this section apply to the cooperative effort of the joint venture, not its individual members.

What is a SB Prime/Sub Team?

- SB prime contractor agrees with one or more subcontractors to submit an offer on a SB set-aside procurement that meets **certain requirements**.
  - The prime/sub team is small if each member of the team qualifies as small for the procurement
  - Performance of work requirements apply to the cooperative effort of the team.

SB Prime/Sub Team – cont'd

- SB prime contractor agrees with one or more subcontractors to submit an offer on a SB set-aside procurement that does not meet **certain requirements**.
  - the team is small only if the combined annual receipts or employees of all firms in the team meet the size standard for the procurement
  - Performance of work requirements must be met solely by the SB prime contractor.
  - Prime/sub teaming not particularly beneficial

SB Prime/Sub Team – cont'd

- Usually the teaming agreement is executed prior to submission of offer and included with offer.
- FAR allows a team to be formed after contract award
- Contract is awarded to the SB prime contractor who is solely responsible for contract performance
- Government has privity of contract only with the SB prime contractor.

SB Prime/Sub Team – cont'd

- A business concern that is not small under the size standard for the procurement (a large business) cannot be a member of the prime/sub team.
- However – a large business can be a subcontractor on the contract so long as the prime/sub team meets the performance of work requirement.

What About SB Joint Ventures?

- Two or more concerns form a joint venture creating a new legal entity to pursue federal procurements.
- For procurements that meet **certain requirements:**
  - The JV is small if each member of the team qualifies as small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

SB Joint Ventures – Cont'd

- For procurements that do not meet **certain requirements**
  - the JV is small if the aggregate size of all the members meets the size standard assigned to the procurement.
  - Performance of work requirements still apply to the cooperative effort of the JV since the new JV entity is the prime contractor.

SB Joint Ventures – Cont'd

- For <u>any</u> federal government procurement:
  - an 8(a) protégé firm may joint venture with its SBA approved mentor.
  - The JV is small so long as the 8(a) protégé qualifies as small for the procurement.
  - Performance of work requirements apply to the cooperative effort of the JV.

SB Joint Ventures – Cont'd

- Contract is in the name of the JV entity
- Contract performance responsibility lies with the JV
- A JV entity may submit up to three offers over a two year period that starts with submission of first offer (13 CFR 121.103(h)).

Can 8(a) Firms JV?

- For <u>competitive</u> 8(a) procurements that meet **certain requirements:**
  - 8(a) firm can JV with one or more other businesses and the JV is considered small so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.
  - The size of at least one 8(a) member of the JV must be less than ½ the size standard for the procurement

8(a) Firms – Cont'd

- For sole source and competitive procurements that do not meet certain requirements.
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement
  - Performance of work requirements still apply to the cooperative effort of the JV.

8(a) Firms – Cont'd

- For any 8(a) procurement
  - Any JV between 8(a) protégé firm and its approved SBA mentor is considered small so long as the 8(a) protégé is small for the procurement
    - Mentor firm may be a large business concern
    - Performance of work requirements apply to the cooperative effort of the JV.

8(a) Firms – Cont'd

- The 8(a) JV agreement must:
  - Set forth the purpose of the JV
  - Designate the 8(a) participant as the managing venturer and an employee of the managing venturer as the project manager
  - State that 51% of the net profits of the JV go to the 8(a) participant(s).
  - Provide for the establishment of a bank account in the name of the JV
  - Contain all the provisions listed in13 CFR 124.513(c).

8(a) Firms – Cont'd

- 8(a) joint venture agreements must be approved by SBA prior to award of the contract.
- Generally, prime/sub teaming is not used for 8(a) procurements

Can SDB Firms JV?

- SDB JV's are permitted in order to take advantage of SDB procurement mechanisms such as
  - Price evaluation adjustments
  - Evaluation factors or subfactors
  - Monetary subcontracting incentives
  - SDB set-asides (if and when they become authorized)
- Disadvantaged participant to the JV must have SDB certification or have submitted an application for certification and not received negative determination.

SDB Firms – cont'd

- The SDB must be the manager of the new JV entity, and an employee of the SDB must be the project manager responsible for contract performance.
- The JV must be applicable performance of work requirements.
- SDB prime/sub teaming does not appear to be an option allowed by the regulations.
- See 13 CFR 124.1002(f) for more information on SDB joint ventures.

Can SDVOSB JV?

- For competitive SDVOSB procurements that meet **certain requirements:**
  - SDVOSB firm can JV with one or more other businesses so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

SDVOSB – cont'd

- For sole source and competitive procurements that do not meet **certain requirements:**
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement
  - Performance of work requirements still apply to the cooperative effort of the JV since the new JV entity is the prime contractor.

SDVOSB – cont'd

- SDVOSB JV agreement must:
  - Set forth purpose of JV
  - Designate SDVOSB as managing venturer and an employee of managing venturer as project manager
  - State that at least 51% of the net profits earned by the JV go the the SDVOSB venturer(s).
  - Contain other provisions as required by 13 CFR 125.15(b).
- SDVOSB prime/sub teaming does not appear to be an option contemplated by the regulations.

Can HUBZone SB JV?

- For HUBZone procurements that meet **certain requirements**:
  - HZSB firm can JV with one or more other HUBZone certified firms to submit an offer for a HUBZone contract so long as each JV member is small for the procurement
  - Performance of work requirements apply to the cooperative effort of the JV.

HUBZone – cont'd

- For procurements that do <u>not</u> meet **certain requirements:**
  - the JV is small only if the combined annual receipts or employees of all firms in the JV meet the size standard for the procurement.
  - Performance of work requirements still apply to the cooperative effort of the JV.
- HUBZone SB Prime/sub teaming does not appear to be an option contemplated by the regulations

Where Can I Find the CFR's

Federal Regulations (CFR) on-line:

- http://ecfr.gpoaccess.gov

Size regulations -- 13 CFR Part 121

8(a) & SDB regulations -- 13 CFR Part 124

Government Contracting Programs – 13 CFR Part 125.6

HUBZone Program – 13 CFR Part 126

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