



EDUCATION AND ACCESS FOR WOMEN  
IN FEDERAL CONTRACTS



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# Give Me 5

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- National program from WIPP & American Express OPEN designed to educate women business owners on how to apply for and secure federal procurement opportunities.
- Give Me 5 works to increase the representation of Women Business Owners that win government contracts. We provide accessible business education tools to assist both new and experienced federal contractors.
- Women Business Owners could gain more than \$5 billion in annual revenues if the 5% contracting goal set by Congress was reached.



# Give Me 5 223: The Ins and Outs of Joint Venture Agreements

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# WHAT IS A JOINT VENTURE?

- A Joint Venture is:

- “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 three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally.”

13 C.F.R. § 121.103(h)



# TEAMING AGREEMENT *vs.* JOINT VENTURE

- **Liability**

- JV partners jointly responsible for contract performance, and except in LLC, jointly and severally liable
- Subcontractor only responsible for portion of work it performs, limited liability

- **Control**

- Shared by JV partners
- Prime Contractor has control over teaming relationship

- **Bonding**

- JVs typically able to obtain bonding based on combination of all partners
- Prime/sub may work also, but likely requires agreement of all parties to be bound and collateral from owners



# ADVANTAGES OF A JOINT VENTURE?

- The Government can look to the resources of two (or more) companies to perform the work;
- A minority joint venture member can exert more control over contract performance to protect its interests than in a traditional prime-sub relationship; and
- Allows firms to stay smaller longer.

# DISADVANTAGES OF A JOINT VENTURE?

- Lead Contractor gives up substantial control;
- The participating contractors (except in an LLC) become joint and severally liable to third parties for the acts of their joint venture partners, including criminal acts;
- The Government may view the JV as lacking a clear point of contact, thus raising concerns regarding control, authority, and accountability;
- Terminating a JV may be more difficult than terminating a subcontract agreement while the prime contract is being performed; and
- Government may raise past performance questions.

# TIMING OF JOINT VENTURE RELATIONS

- Joint Ventures should be formed before the offer is submitted.
- Agreement should provide for performance of the contract – avoid “agreement to form a joint venture”.
- FAR requires that nature of the joint venture be fully disclosed in the proposal.

# ABOUT JOINT VENTURES

- Main Characteristics:
  - Co-management
  - Sharing profits and losses
  - Limited duration

# ABOUT JOINT VENTURES

- Forms of Joint Venture:
  - Partnership
  - Limited Liability Company
  - Corporation (almost never used)

# STRUCTURING A JOINT VENTURE

- Choice of Structure
- Other considerations:
  - Populated v. unpopulated joint ventures
  - Limitations on Subcontracting – for set-asides
  - Avoiding “general” affiliation

# JOINT VENTURE: MANAGEMENT STRUCTURE AND LABOR

- What will be the management structure of the Joint Venture?
  - Management Committee?
  - Project Manager?
- Which party will be responsible for negotiating contracts?
- Which party will be responsible for negotiating subcontracts with subcontractors?
- What are the sources of labor to be employed?
- How do the parties envision the division of labor on contracts?

# COMMON PROVISIONS

- **In Joint Venture Agreements**

- Purpose of the Joint Venture.
- Designation of managing venturer.
- Percentages of ownership and profit distribution.
- Responsibilities of the parties.
- Obliging parties to Joint Venture to ensure performance of government contract.
- Designation that accounting/administrative records are kept by managing venturer and requirement that managing venturer retain records of contracts completed by Joint Venture.
- Performance of Work.
- Inspection of Records.



# POPULATED JOINT VENTURES

## PROS:

- One seamless entity performs work.
- All employee benefits are from one organization.
- Possible competitive pricing edge.

## CONS:

- The Joint Venture and not the Joint Venture Partners earn past performance.
- Partners only receive proportionate share of the profits.

# UNPOPULATED JOINT VENTURE

## PROS:

- Each Joint Venturer performs work as subcontractor to Joint Venture.
- Each Joint Venturer received fee on the work it performs.
- “Joint Venture” may charge handling fee at prime Contract level.

## CONS:

- Companies may have different benefit packages.
- Procuring Agency may not understand who is performing work if Joint Venture is unpopulated.

# JOINT VENTURES: SMALL BUSINESS SET ASIDES

- General Affiliation Rule: Size of Joint Venture Partners is Aggregated for Purposes of Determining whether the Joint Venture is Small
- Exception for Larger Procurements: Joint Venture is small where each partner is small; and
  - The Government Estimated Value of the Contract Exceeds ½ of revenue-based size standard; or
  - Exceeds \$10M (employee-based size standard).
  - All partners must be small, except for SBA-approved 8(a) Mentor-protégé relationship.
- The “3-in-2” Rule; JV is eligible for three awards in two years



# SUBCONTRACT LIMITATIONS

- Performance of work under joint ventures.
- Work of joint venture counts towards subcontracting limitations.



Thank you for attending  
“THE INS AND OUTS OF  
JOINT VENTURE AGREEMENTS”

PilieroMazza /WIPP Give Me 5 223: The Ins and Outs of  
Joint Ventures

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# Questions???



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