



EDUCATION AND ACCESS FOR WOMEN
IN FEDERAL CONTRACTS



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Give Me 5

- 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 Training 222: Joint Ventures

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June 13, 2012



Today's Session Will Cover:

- What is a joint venture?
- Why should I consider entering into a joint venture?
- What are the considerations in finding a joint venture partner?
- What are the important terms of a joint venture agreement?
- How does SBA treat joint ventures?



DEFINITION OF JOINT VENTURE

An agreement joining two or more parties for the purpose of executing a particular business project and for the sharing of profits or losses on that project.



TYPICAL JOINT VENTURE

- Formed for the purpose of carrying out one major effort and dissolves upon completion of the project for which the JV was formed.
- Governed by contract agreement with no new separate entity created.
- Less common: form a new company to pursue and perform joint venture business.



RISKS AND REWARDS

- Joint ventures give smaller companies the chance to work with larger companies to develop and market new products and services and reach new customers.
- Joint ventures are not risk free, however, and smaller companies usually have far less margin for error than do larger companies.

REASONS FOR JOINT VENTURE

- Pooling of Resources
 - Financial Resources
 - Technical Ability
 - Personnel
 - Past Performance

REASONS FOR JOINT VENTURE (Cont.)

- Sharing of Costs and Risks
- Access to New Technologies, Markets, Competencies and/or Managerial Practices
- In Conjunction with SBA Contracting Program



JV EXAMPLES

- Scripps Network (USA) and Chello Zone (UK) formed joint venture to bring Food Network to British Television.
- Walt Disney entered into JV with several state-owned companies in China to construct and operate a Disneyland park in Shanghai.



JV EXAMPLES (Cont.)

- Joint Venture between Raytheon and Lockheed Martin to develop and build the Javelin Missile System for the U.S. Army.
- Small business joins forces with large business or other small businesses to compete for contract it would not otherwise be capable of performing.



DUE DILIGENCE

- Joint Venture is like marriage (albeit limited purpose and duration).
- Choose your joint venture partner carefully.
- The assets the partner brings to the joint venture should be complimentary and the corporate cultures should be similar.
- Objectives of the joint venture should be clear and understood by all partners.

PRELIMINARY CONSIDERATIONS

- Does the potential partner share business philosophy, culture, concepts and vision necessary to build a cohesive team?
- Does the potential partner have the technical experience and skill as well as the financial ability to successfully perform its portion of the project?



PRELIMINARY CONSIDERATIONS (Cont.)

- What is the potential partner's track record?
Any past performance issues?
- Is the potential partner willing to exchange confidential information and sign a Nondisclosure Agreement?
- Does the potential partner have a strong relationship with its current customers and suppliers?



PRELIMINARY CONSIDERATIONS (Cont.)

- Is the potential partner trustworthy and ethical?
- Does the potential partner have a reputation for treating its partners fairly?
- Is the potential partner willing to provide sufficient resources and management support from start to finish?



NEGOTIATING THE TERMS OF THE JOINT VENTURE AGREEMENT



ISSUES FOR DISCUSSION

- Scope of the Agreement
- Capital Contribution
- Profit and Loss
- Division of Work
- Management of Joint Venture
- Control of Billings and Receipts
- Termination of the Agreement

SCOPE OF THE AGREEMENT

Need to specify the purpose for which the Joint Venture is formed (*e.g.*, name of the project or contract) and its duration.



CAPITAL CONTRIBUTION

- Option 1: Joint venture partners each contribute capital (cash, equipment, etc.) to the JV.
- Option 2: Joint venture has little to no capital of its own. Each joint venture partner is responsible for furnishing the working capital necessary to perform its part of the work.

PROFIT AND LOSS

Option 1: Joint venture partners assume equal or proportional responsibility for work and share equally or proportionally in profit or loss.

Option 2: Joint venture subcontracts all work to the JV partners; profit or loss flows to partners only from the work allocated to each of them.

DIVISION OF WORK

- What are the parties' obligations for proposal submission?
 - Will the parties cooperate on all terms of the proposal or will each provide a proposal for specific areas to be combined later?
- How will the work be divided if the proposal is successful?



DIVISION OF WORK (Cont.)

- Joint Venture division of work generally reflects an allocation of the tasks required by the prime contract to each of the joint venture partners depending on their area of expertise.
- Joint Venture partners are jointly responsible to customer for overall contract performance.



MANAGEMENT OF JOINT VENTURE

Option 1: By Committee

Option 2: By Managing JV Partner

BILLINGS AND RECEIPTS

Billings: Most common practice is for JV partners to submit monthly invoices to JV for their work. JV then bills the customer.

Receipts: Joint Venture separate bank account is a best practice.

Issue of authorized signatures.



TERMINATION

- Upon completion (or termination) of the project for the JV was formed.
- Mutual agreement of the parties.
- Note: Certain obligations may survive completion of the project (*e.g.*, duty of confidentiality, retention of books and records). Need to address how intellectual property will be handled upon termination.

JOINT VENTURES AND THE SBA

- General rule is that joint venture partners are affiliates; their revenues/employees will be combined to determine size under SBA size status rules. 13 C.F.R. 121.103(h).
- Three exceptions to the general rule.



JOINT VENTURES AND THE SBA

Exception One

- JV partners will not be found affiliated if each concern is small and (i) the procurement is a bundled procurement or (ii) the procurement is not bundled but the dollar value of the procurement exceeds one-half the size standard (for receipt-based size standard) or the dollar value of the procurement exceeds \$10 million (for employee-based size standard). 13 C.F.R. 121.103(h)(3)(i).



JOINT VENTURES AND THE SBA

Exception Two

- A joint venture between a small business and an 8(a) small business may compete for an 8(a) contract if (1) the 8(a) small business is less than one-half the size standard and (2) the dollar amount of the contract award exceeds one-half the size standard (if the size standard is based on revenue) or \$10 million (if the size standard is based on number of employees).



JOINT VENTURES AND THE SBA

Exception Three

- A joint venture between a SBA-approved mentor and an 8(a) protégé can be awarded an 8(a) contract or subcontract provided the protégé qualifies as small for the procurement.



JOINT VENTURES AND THE SBA

SBA regulations require the every JV agreement to perform an 8(a) contract must include provisions addressing each of the following 19 points:

- 1.0 Purpose
- 2.0 Project Manager
- 3.0 Distributive Share
- 4.0 Percentage Ownership
- 5.0 Bank Account
- 6.0 Equipment

JOINT VENTURES AND THE SBA(Cont.)

SBA regulations require the every JV agreement to perform an 8(a) contract must include provisions addressing each of the following 19 points:

- 7.0 Contract Oversight
- 8.0 Source of Labor
- 9.0 Designation of 8(a) contract negotiator
- 10.0 Ensured performance
- 11.0 Books
- 12.0 Quarterly Financials

JOINT VENTURES AND THE SBA (Cont.)

SBA regulations require the every JV agreement to perform an 8(a) contract must include provisions addressing each of the following 19 points:

- 13.0 Profit & Loss Statements
- 14.0 Specific Responsibilities
- 15.0 Prior approval by SBA
- 16.0 Contract execution
- 17.0 Integrated Agreement
- 18.0 SBA Right to Inspect JV Records
- 19.0 Other provisions not previously discussed

WOSB/EDWOSB JOINT VENTURES

- Joint Venture between a WOSB/EDWOSB and a non-WOSB/EDWOSB may compete for WOSB/EDWOSB contract if three requirements are met.



WOSB/EDWOSB JOINT VENTURES (Cont.)

- (1) Parties enter into written JV agreement stating its purpose and setting forth the responsibilities of parties regarding performance, sources of labor and negotiations of contract as well as providing that final original records will be retained by managing partner upon completion of contract.



WOSB/EDWOSB JOINT VENTURES (Cont.)

- (2) WOSB/EDWOSB is managing partner and its employee is project manager responsible for performance.
- (3) At least 51% of net profits earned by JV will be distributed to the WOSB/EDWOSB.



WOSB/EDWOSB JOINT VENTURES (Cont.)

- WOSB/EDWOSB Joint Venture partners will be deemed affiliates unless one of the three small business exceptions to affiliation applies.



Questions???



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The Fairness in Women Owned Small Business Contracting Act

S. 2172 addresses two barriers that currently impede the WOSB Federal Contract Program

- ★ First, it eliminates the dollar limits of \$4 and \$6.5 million on contract awards.
- ★ Second, lack of sole source authority makes the program cumbersome and puts it on unequal footing with other small business procurement programs such as 8(a), HUBZone and the service disabled veterans program.
- ★ **[ACTION ALERT: Urge Your Senators to Co-Sponsor the WOSB Bill](#)**



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