



Office of
Small Business Programs (OSBP)
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Demystifying Joint Ventures

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Housekeeping

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- Presenters will take questions via the chat during the presentations
- Questions through the conference line will be taken between sections
- Slides will be available after the presentation

Overview

- The SBA MP/JV programs attributes
- Joint Venture (JV) framework and requirements
- Practical Guidance to Joint Venturing in SBA's JV Programs

The SBA Joint Venture Programs

- 8(a) Mentor-Protégé [MAJOR CHANGES]
- All Small Mentor-Protégé [BRAND NEW]
- Multi-Small Joint Ventures [MAJOR EXPANSION]
 - Status Managed Joint Ventures [BRAND NEW] Multi-Small
 - Mentor-Protégé Program

The SBA Joint Rules and Regulations

- 81 Fed. Reg. 48558 (Final Rule – Small Business Mentor-Protégé Programs) Reflects major changes to the 8(a) MPP, and creation of the All Small MPP
- Final Rule issued July 25, 2016 (Effective August 24, 2016)
- 81 Fed. Reg. 34243 (Final Rule - Small Business Government Contracting and National Defense Authorization Act of 2013 Amendments) Reflects major changes to multi-small and creation of status managed joint ventures
- Final Rule issued May 31, 2016 (Effective June 30, 2016)
- 13 CFR 121 (Size and Affiliation)
- 13 CFR 124 (8a and 8a MP)
- 13 CFR 125 (SDVOSB and All Small MP)
- 13 CFR 126 (HUBZone)
- 13 CFR 127 (WOSB)
- 13 CFR 134 (OHA)

Benefits to SBA Joint Venture

- Exemption from “affiliation” Firm’s size is measured based on firm + “affiliates”
- Normally JV members deemed automatic affiliates
- BUT, for JV in covered by an SBA Joint Venture Program, the members are NOT automatic affiliates
- Benefits Large and Small Businesses –Large: Exemption from affiliation allows companies to bid on set-asides when they would normally be too large to bid
- Small: Allows small business, who would otherwise qualify based on size/status, a competitive edge; and provides access to valuable training, guidance and resources

Joint Venture/SBA Mentor Protégé Program Background

- 1995 – Congress directs SBA to develop a program to “assist” 8(a) firms in performance of contracts
- 1998 – SBA establishes the 8(a) Mentor-Protégé Program – Encourages successful large businesses to provide various BD assistance to 8(a) firms, including: “technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts; and/or assistance in performing prime contracts with the Government in the form of joint venture agreements.”
- Once SBA approves the MPA, the mentor and protégé firms can form joint venture(s) and are eligible to compete for any set-aside procurement that the 8(a) protégé would qualify for individually based on size/status

Joint Venture/SBA Mentor Protégé Program Background (Cont.)

- 2010 – Congress passes Small Business Jobs Act of 2010 Authorizes SBA to establish separate mentor-protégé programs, (modeled on the 8a MPP), for the SDVOSB, HUBZone, and WOSB programs
- 2013 – Congress passes FY 2013 NDAA Authorizes SBA to establish a Mentor-Protégé Program for all small business concerns
- 2015 – SBA issues proposed rule for creation of the All Small Mentor-Protégé Program Instead of implementing four new separate small business mentor-protégé programs, SBA proposes to implement one mentor-protégé program for all small businesses in addition to the existing 8(a) MPP

Joint Venture/SBA Mentor Protégé Program Background (Cont.)

- 2016 – SBA issues final rule creating All Small Mentor-Protégé Program (and modifying 8(a) MPP) SBA launches All Small Mentor-Protégé Program Oct. 1, 2016
- Benefits and requirements of All Small and 8(a) MPPs are similar (but not identical)
- Exemption from Affiliation benefit carries over
- All Small MPP is open to any small business to be a protégé (including 8(a) firms)
- Once SBA approves the Mentor-Protégé Agreement, the mentor and protégé firms can form joint venture(s) and are eligible for any set-aside procurement that the protégé would qualify for individually based on size/status

SBA Mentor Protégé Program Major Changes

- SBA MPP opens up to Non-8(a) Protégés
- Relaxed Size Requirements for Protégés
- Potential for Size Qualification under Secondary NAICS Code
- Mentor Eligibility
- End of “populated” MP JVs

SBA Mentor Protégé Program Major Changes (Cont.)

- Limit on Number of Protégés a Firm Can Mentor across all MPPs [max. 3]
- Limit on Number of Mentors a Protégé Can Have in a Lifetime [max. 2]
- Limit on Duration of Mentor-Protégé Agreements and Renewals [3 years, x2]
- Transfer to All Small upon 8(a) Graduation

SBA Mentor Protégé Program Major Changes (Cont.)

- Disclosure of other MPAs – Benefit Received by Protégé under this MPA Must be Unique
- Size Protests Challenging Awards to MPs on 8(a) Set-Asides
- Mentor-Protégé joint ventures will be tracked through SAM.gov
- Potential Elimination of Mentor-Protégé Programs Run by Other Agencies (Other than DoD and agencies who apply for waiver (NASA))

Impact to Current MP/JVs

- Do duration restrictions apply to MPs approved under the old regulation?
- How does a 8(a) MP relationship approved under the old reg. count against the 3-year (x2) term rule?
- Do MP relationships under the old regulation count against the no more than 2 different mentors in a lifetime rule?

Three in Two Rule

- Automatic general affiliation between members of a JV, if JV is awarded 3 contracts in 2 years Used to be more strict (submission of 3 proposals in 2 years)
- New JV between same members restart the count i.e. ABC JV old JV and 123 JV new JV.

Difference 8(a) MP vs All Small MP

- Paper vs Electronic online
- Approval: District Office and SBA Office of Government Contracting & Business Development vs SBA Office of Government Contracting & Business Development
- SBA Mentor Protégé Agreement Preapproved before Joint Venture: Yes vs. Yes.
- Application processing time: Several months vs 8-12 days
- Eligible to bid on 8(a) Set-Asides?: Yes vs Yes, if protégé is 8(a)

Joint Venture Agreements

- To receive exemption from affiliation, JV must comply with specific regulatory requirements. Requirements differ by program.
- Process for amendments/addendums differs by program (some require SBA approval)
- If JV is competing for an 8(a) set-aside, JV is approved at time of award.
- Susceptible to size protest

Past Performance Evaluations

- Old Rule No requirement that source selection team consider past performance/experience of both mentor and protégé
 - In theory, source selection team could limit consideration to projects performed by joint venture itself
- New Rule For all set-aside procurements, source selection team must consider past performance/experience of all members of the joint venture “procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.”

Joint Venture Requirements

- Protégé / Status-Holding member must be managing member of JV
- Project manager must be employee of managing member
- Managing member must own at least 51% of the JV (if JV is a separate legal entity)
- Managing member must perform at least 40% of the work performed by the JV
- Profits split in accordance with work-split
- Each member ensures performance

Joint Venture Requirements (Cont)

- Itemization of all major equipment, facilities, and other resources to be furnished by each party to the JV
- Specified roles and responsibilities JV parties with regard to negotiation of the contract, source of labor, and contract performance
- Specific accounting, record keeping and reporting requirements defined by JV parties

Joint Venture Helpful Hints

- Creating JV as a formal corporate entity
 - Corp., LLC, etc. or
 - Partnership
- Choosing how to manage the JVs affairs
 - Management Committee
 - Direct Member Management
- Decide how decisions to be made:
 - unanimous or
 - super-majority

Joint Venture Helpful Hints (Cont.)

- Project Manager Needs to be employed by protégé (small business) who will be managing the contract.
 - For MPs – at time of proposal, PM needs to be employed by protégé
 - Can be employed by a 3rd party – if letter of commitment
 - Can't be employed by mentor
- Limitations on Subcontracting (LoS) requirement not all work counts towards compliance calculation
- LoS is applied in conjunction with 40% minimum managing member (small business protégé) work-share rule
- Have Subcontracts run through JV, rather than JV members
- Don't JV with companies you haven't work with before.

Questions?

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