

# Business Consideration of JVs Involving SBCs

NCMA West Sound Chapter

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- Why would two firms, of which at least one was a Small Business Concern (SBC), form a Joint Venture to perform Federal contracts?
- A JV is an association of persons or concerns **contractually bound** to carry out **a single specific business venture for joint profit**, for which purpose they combine their efforts, property, money, skill, or knowledge, but **not on a continuing or permanent basis** for conducting business

Why go to all the trouble?

# Reasons for JVs Involving SBCs

- Companies independently do not have the money, skill, knowledge or capacity to perform a contract
  - Expertise in key areas
  - Mitigate risk on large, complex projects
  - National industrial priorities and maintenance of the defense industrial base
  - Bonding: single small businesses often have difficulty being bonded to bid on and perform larger contracts.... sureties may provide increased bonding to a JV
- Often one JV partner with a Federal focus and one without

# Reasons for JVs Involving SBCs

- The two companies independently do not have the past performance to make it to the competitive range, second phase or contract award
- Solicitations define what kinds of projects or prior work may be considered relevant past performance
- Solicitations define whether past work performed as a subcontractor will be considered relevant... may drive decision to JV vice other teaming arrangements ... for current and future work

# Reasons for JVs Involving SBCs

- Non set-aside company desires to participate in set-aside work
- SB Set Aside: JV partners affiliated and JV as a whole must be small unless an exception applies
  - Exceptions: “large” or bundled procurement
  - Both must be small
- HUBZone Set Aside: JV partners affiliated and JV as a whole must be small unless an exception applies
  - Exceptions: “large” or bundled procurement
  - Both must be HUBZone

# Reasons for JVs Involving SBCs

- SDVOSB Set Aside: JV partners affiliated and JV as a whole must be small unless an exception applies
  - Exceptions: “large” or bundled procurement
  - Both must be small
  - Managing partner must be SDVOSB
  - 51% of profit to SDVOSB(s)
  - JV Agreement approved by Contracting Officer
- WOSB/EDWOSB Set Aside: JV partners affiliated and JV as a whole must be small unless an exception applies
  - Exceptions: large or bundled procurement
  - Both must be small
  - Managing partner is WOSB/EDWOSB
  - 51% of profit to WOSB/EDWOSB

# Reasons for JVs Involving SBCs

- 8(a) Set Aside: JV partners affiliated and JV as a whole must be small unless an exception applies
  - Exceptions: “large” procurement and bundled procurement
  - Both must be small
  - Managing partner must be 8(a)
  - Benefit to 8(a)
  - 51% of profit to 8(a) (changing this month)
  - Three offers in a two year period (changing this month)
  - JV Agreement approved by SBA
- The Big Exception: a SBA approved 8(a) JV may be considered as small and bid on 8(a) and small business set-asides. Since the mentor may be other than a SBC, this is the only time a large business may directly participate in a set-aside contract

# Why Not Other Teaming Arrangements

- If a large business desires to participate on a set-aside procurement, why not as a subcontractor?
  - Government may not recognize past performance of subcontractors, even those who worked under teaming agreements
  - Project control and privity of contract
  - Profit considerations given JV rules and limitations in subcontracting
    - The SDVOSB JV performs 15%/25%/50% from which 49% of the profit goes to the non-SDVOSB business,
    - The JV then subs 85%/75%/50% back to the non-SDVOSB

# Issues

- Trying to fit an unnatural relationship into a JV agreement... in the haste to pursue Federal contracts, the JV partners forget to ensure they could work together and that their companies were complementary
  - Contract Management April 2010 -Teaming Agreements: To Team or Not to Team
  - Contract Management November 2010 - Teaming Agreements: What Goes Into a Well-Drafted Document

# Issues

- Some firms willing to break the rules and maybe the law to get at set-aside work they are not otherwise eligible for...
- GAO reports
  - Shell companies
  - Pass-through's
  - Disadvantaged individual or SDV not principal owner and/or operator
- Closer to home...
  - Who shows up at the 35% design meeting or performance review or the partnering session?
  - Who's letterhead is being used to submit Task Order proposals on MACs?
  - Signage and shared facilities
  - The bona fide office