CREATION OF THE JOINT VENTURE THROUGH APPROVAL BY THE SBA

Teaming to Win 2012

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1. Research
   a. Rules and requirements
   b. Templates
   c. Checklists
   d. Registrations
   e. Accounting

2. Rules and Research
   a. Federal Register/ Vol. 76, No. 29/ Friday 11, 2011/ Rules and Regulations
      i. Page 8223; Joint Ventures
         1. 13 CFR 121.103(h): A JV has a limited duration
            a. Joint venture may be awarded three contracts over a two year period
            b. Second joint venture may be awarded three additional contracts
            c. A third joint venture could potentially be awarded three more
            d. Beware of a finding of affiliation between the partners from three forward; even in a mentor/protégé context
   2. Formal, Populated JV or Informal, Unpopulated JV
      a. May or may not be a separate legal entity
         i. The JV must exist through a written document (JV agreement)
      b. May or may not be populated (have its own separate employees)
      c. Depends on legal structure
      d. Be aware of indirect rate considerations
         i. Formal, populated
            1. Joint Venture indirect rates?
         ii. Informal, unpopulated
            1. Indirect rates of venturers?
   3. Work share and Ownership requirements
      a. If populated
         i. Demonstrate 8(a) managing venture
            1. Controls the venture
            2. Is responsible for the books and records of the JV
3. Owns at least 50% of the JV
4. Receives profits commensurate with its ownership interest

b. If unpopulated
   1. Controls the venture
   2. Is responsible for the books and records of the JV
   3. The project manager must be an employee of the 8(a) venturer
   4. 8(a) participant must perform at least 40% of the work done by the JV

4. Page 8224; Exclusion From Affiliation for Mentor/Protégé Joint Ventures
   a. 8(a) and non 8(a) awards with SBA approval
   b. SBA SOP 80 05 3 Chapter 8: Joint Ventures and Teaming Arrangements
      i. Go to www.sba.gov
      ii. Search for the term “SOP”
      iii. Select Standard Operating Procedures | SBA.gov
      iv. Select 80 05 (3A) Office of Business Development
      v. Select “Office of Business Development”
      vi. Chapter 8 begins on page 167 of the SOP 80 05 3

3. Templates
   a. Joint Venture Agreement Template
      i. 13 CFR 124.513 (c)(1): A provision sets forth the purpose of the JV
      ii. 13 CFR 124.513 (c)(2): A provision designating an 8(a) participant as the managing member
      iii. 13 CFR 124.513 (c)(3): A provision stating that not less than 51% of the net profits earned by the JV shall be distributed to the 8(a) participant
      iv. 13 CFR 124.513 (c)(4): A provision providing for the establishment of a special bank account
      v. 13 CFR 124.513 (c)(5): A provision itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value each
      vi. 13 CFR 124.513 (c)(6): A provision specifying the responsibilities of parties with regard to contract performance, source of labor and negotiations of the 8(a) contracts
      vii. 13 CFR 124.513 (c)(7): A provision obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member
      viii. 13 CFR 124.513 (c)(8): A provision designating that accounting and other administration records relating to the JV shall be kept in the office of the managing venture
ix. 13 CFR 124.513 (c)(9): A provision requiring the final original records be retained by the managing venture upon completion of the 8(a) contract performed by the joint venture
x. 13 CFR 124.513 (c)(10): A provision stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of JV’s principals) must be submitted to SBA
xi. 13 CFR 124.513 (c)(11): A provision stating that a project-end profit and loss statement including a final profit distribution must be submitted to SBA
xii. 13 CFR 124.513 (d): Performance of work requirement
xiii. 13 CFR 124.513 (e): Prior approval required by SBA before contract awarded
xiv. 13 CFR 124.513 (f): Contract execution
xv. 13 CFR 124.513 (g): A provision specifying that the amendments to an approved JV shall be subject to prior SBA approval
xvi. 13 CFR 124.513 (h): SBA shall have the right to inspect the records of the JV at any time without prior notice

b. Joint Venture Letter Template requesting SBA approval of the joint venture agreement

c. Joint Venture Agreement Checklist
   i. Complete for convenience of SBA reviewer
   ii. Attached

d. 8(a) Joint Venture – Supplemental Checklist
   i. For a Formal JV
   ii. Attached

e. Sample Joint Venture Agreement

4. Registrations
   a. DUNS and CCR
      ii. CAGE code assigned during CCR registration
      iii. Populate the Dynamic Small Business Research Database
           1. Must be available before SBA can review the Joint Venture
   b. Other considerations for informal and unpopulated JV’s
      i. You will have to request a TIN in order to open a bank account in the name of the JV
      ii. Use the address of the managing venture during registration

5. Accounting
   a. Accounting is performed at the JV level
   b. In accordance with the JV agreement