



U.S. Small Business
Administration



Joint Ventures

Hosts

Christopher Eischen, Procurement Center Representative SBA Office of Government Contracting, Area IV, Kansas City, MO

Gwen Davis, Procurement Center Representative SBA Office of Government Contracting, Area IV, Minneapolis, MN

Welcome to “SBA Virtual Learning 2019”

1. Questions answered during the final 10 minutes.
2. Technical problems: *Contact the moderator with a note in the chat box or call the AT&T Support Desk at 1-888-796-6118.*
3. Page numbers stated for those working off hard copies of the program.
4. We cover the “**SBA Quick Reference**” as time allows.
5. For more SBA training visit the SBA Learning Center website
<https://www.sba.gov/tools/sba-learning-center/search/training>

Association of Procurement Technical Assistance Centers (APTAC)

Procurement Technical Assistance Centers are a vital resource partner.

- APTAC posts past “First Wednesday” programming at this link:
<http://www.aptac-us.org/for-contracting-officers-sba-webinar-library/>
- Contracting officer resources: “How PTACs partner with federal agencies”:
<http://www.aptac-us.org/federal-partners/>
- Find your nearest Procurement Technical Assistance Center at <http://www.aptac-us.org>

FIRST WEDNESDAY VIRTUAL LEARNING SERIES

2019 SCHEDULE

1:00 to 2:00 Central Time

FY 2019	Date	Topic
1	October 3, 2018	Understanding the Non-Manufacturer Rule
2	November 7, 2018	Size and Affiliation
3	December 5, 2018	*National Day of Mourning*
4	January 9, 2019	*Government Shutdown*
5	February 13, 2019	Certificate of Competency (COC) Program
6	March 6, 2019	Market Research
7	April 3, 2019	8(a) Program
8	May 8, 2019	Joint Ventures
9	June 5, 2019	Service Disabled Veteran Owned (SDVOSB) Program
10	July 10, 2019	Regulation Updates
11	August 7, 2019	All Small Mentor Protégé Program

The program schedule is for information only and is subject to change.

One Continuous Learning Point

- Self-service: Using the PowerPoint that was sent with your invitation for this training event, fill in your name on the certificate slide and save. Download the certificate and print for your records. You submit your request for training credit IAW your agency policy, i.e. FAITAS.
- Phoning in only: If you listen in groups and you want all attendees to be included on the future mailing list, send email addresses of participants in an excel document to sbalearning@sba.gov.

“SBA 1st Wednesday Virtual Learning 2019”

This Certificate is awarded to

Insert Your Name Here

For completion of

Joint Ventures

This training seminar may be credited towards “Continuous Learning Points” as described in OFPP Policy Letter 05-01.
Recommendation of One CLP.



Pamela J. Beavers
Director, Area IV
SBA Office of Government Contracting

05/08/2019

DATE

Today's Speakers

Valerie Coleman
Prime Contracts Program Manager
Office of Government Contracting
U.S. Small Business Administration

Esmeralda Sanchez
Size Program Manager – Area VI
Office of Government Contracting
U.S. Small Business Administration

Topics

- **Why Joint Venture (JV)?**
- **Size**
- **Affiliation**
- **JV Agreement**
 - **All Small Mentor Protégé**
 - **8(a)**
 - **Parts of a JV Agreement**
- **Protests**

Policy of the Government

Working together helps small business to compete in unrestricted competition and set-asides

The policy is to place a fair proportion of its acquisitions with:

Small business

Small disadvantaged business [SDB/8(a)]

HUBZone small business

Women owned small business (WOSB)

Veteran owned small business (VOSB)

Service disabled veteran owned small business (SDVOSB)

What's a fair proportion?

Small Business	23%
SDB [including 8(a)]	5%
WOSB	5%
HUBZone	3%
SDVOSB	3%

(there is no statutory goal for VOSB)

Why JV?

JVs maintain competition from small business and it is an investment in the economy through small business participation

Benefits of JVs to the Small Business

- **Gain new capacity and expertise**
- **Combine capabilities and past performance**
- **Increase bidding power and bonding capacity**
- **Share risk**
- **Short time frame**

SBA Definition of a Joint Venture (13 CFR 121.103(h))

- **An association of individuals and/or concerns with interests in any degree or proportion by way of contract, and**
- **Consorts to engage in and carry out no more than three specific awards over a two year period,**
- **Who combine efforts, property, money, skill or knowledge, and**
- **Is not on a continuing or permanent basis**

And,

Consists only of small businesses (exception 8(a) & ASMPP)

Self-certifies that it is “small”

Is subject to the regulations as they govern small business – just like any other small business

Is reviewed by the contracting officer, not SBA (except for 8(a) JVs).

What is a small business?

- **Organized for profit**
- **Place of business in the U.S., operates primarily in the U.S., or makes a significant contribution to the U.S. economy (taxes, use of American products/labor)**
- **Does not exceed the small business revenue OR employee size standard for the procurement**
- **Each North American Industrial Classification System (NAICS) code has a small business size standard (wholesale and retail NAICS are not used in government procurements).**

13 CFR 121.105

NAICS Codes and Size Standards

NAICS	Description	Revenue (M)	# employees
236210	Industrial Building Construction	\$36.5	
236220	Commercial and Institutional Building Construction	\$36.5	
237310	Highway, Street, and Bridge Construction	\$36.5	
315110	Hosiery and Sock Mills		750
323111	Commercial Printing		500
336212	Truck Trailer Manufacturing		1000
337211	Wood Office Furniture Manufacturing		1000
484110	General Freight Trucking, Local	\$27.5	
492110	Couriers and Express Delivery Services		1500
493110	General Warehousing and Storage	\$27.5	
531110	Lessors of Residential Buildings and Dwellings	\$27.5	
541511	Custom Computer Programming Services	\$27.5	
541611	Admin Management and General MGMT Consulting Svcs	\$15	
541620	Environmental Consulting Services	\$15	

Size must include affiliates

What is an affiliate?

- **When one controls or has the power to control another**
 - Common ownership
 - Common control
 - Common management
 - Identity of Interest (family members, common investments, dependent through contractual relationships)
 - A newly organized concern
 - Joint Ventures
 - Franchise and license agreements.

13 CFR 121.103

Average Annual Receipts

**Use Federal Tax Returns
Cost of Goods Sold plus Total Income
Average of last three completed fiscal years**

13 CFR 121.104

Number of Employees

- **Count all individuals employed on a full-time, part-time, or other basis. This includes employees obtained from a temporary employee agency, professional employee organization or leasing concern.**
- **Numbers of employees for each of the pay periods for the preceding completed 12 calendar months (running average).**
- **Official payroll records/IRS Form 941**

13 CFR 121.106

Two Types of Affiliation

➤ **General Affiliation**

- On-going basis
- Common ownership, common control, economic dependence, etc.
- Applies to the company in all business transactions

➤ **For a specific procurement**

- Joint venture
- Non Manufacturer Rule requirements
- Applies only to the contract at hand

Joint Ventures (JV)



- JV must be in writing and registered in SAM
- Organized for a specific and limited purpose
- Each JV may be awarded up to 3 contracts

13 CFR § 121.103(h)

General Rule on JVs (exception to affiliation on JVS)

JV partners in a procurement **are always** affiliated with respect to that procurement, unless an exception to affiliation applies. 13 CFR 121.103(h)(2).

Exceptions, provided under 13 CFR 121.103(h)(3):

- A JV may be SB if **EACH** of the JV partners is small under the size standard of the NAICS assigned to the procurement (regardless of the dollar value of procurement); 121.103(h)(3)(i)
- A mentor-protégé relationship exists between the JV members and their JV agreement complies with JV regulations; 121.103(h)(3)(ii)

Joint Venture & Affiliation

Small business set-aside with NAICS of 541620

Size standard for NAICS 541620 is \$15.0m

Firm A has average annual sales of \$8.0m

Firm B has average annual sales of \$8.0m

Can firms with combined receipts of \$16.0m compete as a small business joint venture for the set-aside?

13 CFR 121.103(h)(3)(i)

Joint Venture & Affiliation

Small business set-aside with NAICS of 541620

Size standard for NAICS 541620 is \$15.0m

Firm A has average annual sales of \$7.0m

Firm B has average annual sales of \$8.0m

Can firms with combined receipts of \$15.0m compete as a small business joint venture for the set-aside?

13 CFR 121.103(h)(2)

Joint Venture & Affiliation

Small business set-aside with NAICS of 541620

Size standard for NAICS 541620 is \$15.0m

Firm A has average annual sales of \$2.0m

Firm B has average annual sales of \$15.5m

Can firms with combined receipts of \$17.5m compete as a small business joint venture for the set-aside?

13 CFR 121.103(h)(2)

Joint Venture & Affiliation

Small business set-aside with NAICS of 541620

Size standard for NAICS 541620 is \$15.0m

Firm A has average annual sales of \$12.0m

Firm B has average annual sales of \$14.0m

Can firms with combined receipts of \$26.0m compete as a small business joint venture for the set-aside?

13 CFR 121.103(h)(3)(i)

“All Small” Mentor–Protégé JVs

A joint venture submitted by an SBA-approved mentor and protégé may bid on a federal procurement as a SBC **if** the protégé is small....

13 CFR §121.103(h)(3)(ii)

SBA must:

- ✓ Approve the M/P agreement before **offer**

While SBA does not review the JV Agreement, it must still meet the requirements of a Joint Venture Agreement and will be evaluated if there is a size protest. 13 CFR 125.9(e)

8(a) Mentor–Protégé JVs

A joint venture formed by an SBA-approved mentor and 8(a) protégé (per §124.520) may bid on a federal procurement as a small business concern **if** the protégé is small....

13 CFR §121.103(h)(3)(iii)

SBA must:

- ✓ approve both mentor-protégé and JV Agreements (on 8a set-asides - 13 CFR 124.513(c)).
- ✓ written SBA approval of M/P Agreement must be given before **offer**
- ✓ written SBA approval of JV Agreement must be given before **award**

What should be in a JV Agreement?

- **A provision setting forth the purpose of the JV;**
- **A provision designating the SB venturer as Managing Venturer and an employee of this entity as project manager responsible for the performance on contract;**
- **A provision stating the ownership of JV partners in the JV;**
- **A provision stating the distribution of profits/losses;**
- **A provision providing for the establishment of a special bank account in the name of the JV;**

13 CFR 125.8

More Parts of a JV

- **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;***
- **A provision specifying the responsibilities of parties;***
- **A provision obligating all parties to the joint venture;**
- **A provision designating that accounting and other administration records relating to the JV shall be kept in the office of the managing venturer;**
- **A provision requiring the final original records be retained by the managing venturer upon completion of the contract performed by the joint venture;**

Still More...

- **A provision stating that certain financial statements need to be submitted to SBA no later than 45 days after each operating quarter of JV;**
- **A provision for handling substitution or addition of co-venturers;**
- **A provision for handling disputes;**
- **A provision for handling the termination of the JV;**

And More...

➤ **Performance of work.**

- The JV must perform the applicable percentage of work required by limitations on subcontracting, and the small business partner to the JV must perform at least 40% of the work performed by the JV.
- The work performed by the small business partner to a joint venture must be more than administrative or ministerial functions so that it gains substantive experience.
- The amount of work done by the partners will be aggregated and the work done by the small business protégé partner must be at least 40% of the total done by the partners.

Limitations on subcontracting (FAR 52.219-14)

Services – 50% of personnel costs

Supplies – 50% of cost of mfg, excluding materials

General Construction – 15% of cost of contract with own employees, excluding materials

Special Trade Construction – 25% of cost of contract with own employees, excluding materials

Area of Jurisdiction

If the headquarters of a protested concern is located in:

CT, ME, MA, NH, NJ, NY, VT, PR, USVI

DE, DC, MD, PA, VA, WV

AL, FL, GA, KY, MS, NC, SC, TN

IL, IN, IA, KS, MI, MN, MO, NE, OH, WI

AR, CO, LA, UT, WY, NM, OK, TX, MT, ND, SD

AK, AZ, CA, HI, ID, NV, OR, WA, Guam

Forward the protest to the SBA
Office of Government Contracting:

10 Causeway Street, Room 265
Boston, MA 02222-1093
Janette Fasano (617) 565-5622

1150 First Avenue, Parkview Towers
King of Prussia, PA 19406
Helen Goza (610) 382-3190
helen.goza@sba.gov

51 SW 1st Avenue, Suite 201
Miami, FL 33130
Ivette Bascumbe (305) 536-5749
Ivette.Bascumbe.mesa@sba.gov

500 West Madison Street, Suite 1150
Chicago, IL 60661
David Gordon (312) 353-7674
David.Gordon@sba.gov

4300 Amon Carter Boulevard, Suite 116
Fort Worth, TX 76155
Stephanie Lewis (817) 684-5305
Stephanie.Lewis@sba.gov

455 Market Street, 6th floor
San Francisco, CA 94105
Esmeralda Sanchez (415) 744-4242
Esmeralda.sanchez@sba.gov

Status of Award During Protest

May not make award for at least 15 business days (until SBA issues its formal determination) unless CO “determines in writing that an award must be made to protect the public interest.”

13 CFR §121.1009(a)(2); FAR §19.302(g)(1)

CO can award after 15 days—even if SBA’s size determination is not finished—by making a formal finding “in writing that there is an immediate need to award the contract **and** that waiting...will be disadvantageous to the Government.”

13 CFR §121.1009(a)(3); FAR §19.302(g)(2)

Advisory, Premature, “Particular” Contract Protests

- ▶ Size protests cannot be used to vet potential awardees
- ▶ Protests must be in connection with a “particular” (i.e., pending) procurement
- ▶ There is no “secret” SBA database listing all 28 million small businesses; we use SAM
- ▶ Premature protests (i.e., before notification of successful offeror) will be dismissed, even if made by CO
- ▶ Inform SBA if there is also a GAO protest

Timeliness and Specificity

- ▶ CO must receive a written protest five business days after
 - (i) notification to unsuccessful offerors (RFPs/RFQs)
 - (ii) bid opening (IFBs)

13 CFR §121.1004; FAR §19.302(d)

- ▶ Date of debrief is irrelevant for protest purposes
- ▶ A protest must contain “specific, detailed evidence to support the allegation that the offeror is not small.”

FAR §19.302(c)(2); 13 CFR §121.1007

- ▶ Protester must have standing to protest or will be dismissed
13 CFR 121.1001

Processing a Size Protest

- ▶ If timely and specific, SBA (not CO) will notify the protested concern; firm has three business days to respond.
- ▶ SBA has 15 working days to render its determination—assuming there is no extension.
- ▶ Copy of final determination will be sent to the protester, the protested concern, and the CO.

QUESTIONS?