Joint Ventures and Mentor-Protégé Bidding Strategies

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Meghan Leemon is an attorney in PilieroMazza's Government Contracts Group, where she counsels government contractors and commercial businesses on a broad range of government contracting matters. Her practice focuses on small business procurement, particularly issues related to eligibility and participation in small business federal procurement programs, such as the SBA's SDVOSB, WOSB, 8(a) BD, and HUBZone programs, as well as the Mentor Protégé Program and the VA's VetBiz VIP program. She also assists clients in maintaining compliance with the FAR and small business regulations.

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Overview

- Joint Ventures
- Mentor-Protégé Program

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Joint Ventures

What Is a Joint Venture?

- In general: a limited purpose entity
- "A joint venture: Must be in writing; must do business under its own name and be identified as a joint venture in the System for Award Management (SAM) for the award of a prime contract; may be in the form of a formal or informal partnership or exist as a separate limited liability company or other separate legal entity; and, if it exists as a formal separate legal entity, may not be populated with individuals intended to perform contracts awarded to the joint venture (i.e., the joint venture may have its own separate employees to perform administrative functions, including one or more Facility Security Officer(s), but may not have its own separate employees to perform contracts awarded to the joint venture)." 13 C.F.R. §121.103(h)

Advantages for Joint Ventures

- The government can look to the resources of two (or more) companies to perform the work
  - Government must take into consideration capabilities, past performance, experience, business systems, and certifications \ of all joint venturers on set-aside contracts
- A minority joint venture member can exert more control over contract performance to protect its interests than in a traditional prime/sub relationship
- May allow the minority joint venture member to participate in a set-aside contract that it might not otherwise be eligible for
- Attribute only the revenues to each company for the work that it performs for the joint venture, not all the revenues like a prime/sub relationship

Structuring of a Joint Venture

- "Corporate" forms
  - Partnership
  - Limited Liability Company
  - Corporation
- Other considerations
  - Populated v. Unpopulated Joint Ventures
  - Limitations on Subcontracting

Joint Venturing for Set-Asides

- General rule: when companies form a strategic alliance and have an identity of interest with one another, they are affiliated. Therefore, the default is that forming a joint venture will give rise to affiliation
- HOWEVER, 13 C.F.R. § 121.103(h) lays out the exemptions to affiliation for joint ventures:
  - Joint venture of two or more businesses may submit an offer as a "small business" so long as each is small under NAICS code assigned to the contract
    - And for other socioeconomic designations, the joint venture agreement complies with applicable SBA regulations
  - Joint venture of one small business and one other-than-small business may submit an offer as a "small business" so long as the other-than-small business is the SBA-approved mentor, and the joint venture agreement complies with applicable SBA regulations
  - "2-year rule"

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Joint Venturing for Set-Asides

- At least one partner must have the socioeconomic status as the applicable type of set-aside and be the majority owner
  - I.e. – if SDVOSB set-aside, the managing venturer should be an SDVOSB
- All partner venturers must be small businesses or large business if SBA-approved mentor
- Responsible manager must be an employee of managing venturer (cannot hire from mentor)
- Managing venturer must receive profits commensurate with work performed (at least)
- Joint venture must comply with limitations on subcontracting and managing venturer must perform at least 40% of the work performed by the joint venture
- The joint venture must be registered in SAM prior to proposal submission and be designated as a joint venture
- SBA approval now required only for 8(a) sole source

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Mentor-Protégé Program

Mentor-Protégé Program: Benefits Of Mentor-Protégé

- One SBA Mentor-Protégé program (used to be two)
- Mentor may provide protégé with various forms of financial, technical, and/or management assistance
- Mentor and protégé may enter into subcontracts
- Mentor may own up to 40% of the protégé
- Mentor and protégé are exempt from affiliation based on the assistance provided under the mentoring relationship
  - **KEY:** this means the mentor and protégé may form joint ventures for set-aside contracts

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Mentors

- Must be capable of providing mentoring
- Possess good character, not suspended or debarred
- May be large or small business
- May be protégé and mentor at the same time
- Non-profits are not eligible
- Generally, no more than one protégé at a time
  - **But** could have up to three protégés at one time if there is no adverse impact on any protégé and protégés are not competitors
  - **No** limit on number of protégés in the life of the mentor

Protégés

- Must be small under its primary NAICS code <u>or</u> small under a secondary NAICS code
  - If seeking approval under a secondary NAICS code, protégé must demonstrate prior experience and logical business progression in that code
- Generally, only one mentor at a time
  - SBA will approve a second mentor only if the second relationship pertains to an unrelated NAICS code and the protégé seeks to acquire specific expertise that the first mentor does not possess
- Only two SBA mentor-protégé relationships **<u>ever</u>**
  - But, possibility for annulment

Participation Period

- Maximum term is six years in each mentor-protégé relationship
  - Parties must commit to one year – after that, either party may terminate the Mentor-Protégé Agreement upon 30 days notice
  - SBA must approve continuation of the relationship each year and can terminate at any time
  - Have to provide annual report

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How to Apply

- Electronic application only
  - Submitted to www.certify.sba.gov through protégé account
- Applicants must:
  - Execute and submit a Mentor-Protégé Agreement consistent with SBA's rules
  - Be registered with SAM.gov
  - Complete online training module
  - Submit other documents to substantiate eligibility

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Questions?

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