



SBA and Joint Ventures

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SBA's Concerns:

- Meeting the Size Requirements in Joint Ventures
- 8(a) Joint Ventures
- 8(a) Mentor Protégé Program

Meeting the Size Standard in Joint Ventures

- ☛ Size Counts:
 - Set-Asides and 8a Procurements
- ☛ Be careful about meeting the size standard of the solicitation
- ☛ A large business cannot be a JV participant on a Set Aside Procurement with one exception: 8(a) Mentor Protege

Joint Venture = Affiliation

- 13 CFR 121.103(h): In joint ventures, the joint venture partners are affiliated with regards to that procurement, and the revenue/employees will be combined to determine size, unless....

Joint Venture Exclusion from Affiliation Rule

- 13 CFR 121.103(h)(3):

- JV partners will not be found affiliated if:

Each concern is small and

(1) The procurement is a bundled procurement

(2) The procurement is not bundled but is a large procurement:

(a) Revenue based size standard: the dollar value of the procurement, including options, exceeds half the size standard of the procurement

(b) Employee based size standard: dollar value of the procurement, incl. options, is over \$10 M

Example

Small Business Set Aside: Engineering Services, NAICS 541310.

\$3.5 M estimated value of contract award.

Size Standard for NAICS 541310 is \$4M.

Joint Venture Team:

1. 8a Firm – 20% (average annual receipts \$1M)
2. Small Business – 70% (aar \$3M)
3. Small Business – 10% (aar \$1M)

This JV team can bid on the project and still be considered small since the dollar value of the procurement (\$3.5M) exceeds half the size standard (half of \$4M is \$2M).

8(a) Competitive Joint Ventures

- 13 CFR 124.513(b)(1)
- An 8a firm and one or more other businesses may submit an offer for an 8a competitive procurement without regard to affiliation provided that:
 - Each concern is small
 - The size of at least one 8a participant in the JV is less than $\frac{1}{2}$ the size standard AND
 - Revenue based: size of procurement is at least $\frac{1}{2}$ the size standard
 - Employee based: size of procurement > \$10M

SBA 8a Joint Ventures

- SBA must approve an 8(a) Joint Venture agreement prior to award of an 8a contract (not prior to bidding)
- 8(a) Joint Ventures may now be approved by the local SBA District Office (SBA Procedural Notice 8000-596)

8(A) Mentor Protégé Program

- ☛ 13 CFR 121.103(h)(3)(iii):
- ☛ Two firms approved by SBA to be a mentor and a protégé under 13 CFR 124.520 may JV as small, provided the protégé qualifies as small for the procurement (and if an 8a sole source procurement, has not met the dollar limit).

Limitations on Subcontracting

- ☛ 13 CFR 125.6
- ☛ The prime contractor must perform a certain percentage of work themselves:
 - Services – 50% of cost of contract incurred for personnel with its own employees
 - Supplies/Products – 50% of the cost of manufacturing the supplies or products (not including the cost of materials)
 - General Construction – 15% of the cost of the contract with its own employees (not including the cost of materials)
 - Specialty Construction – 25% of the cost of the contract with its own employees (not including the cost of material)

Applies to

- Small Business Set-Asides, Including HUBZone and Service Disabled Veteran Set-asides
- 8a Procurements
- DOES NOT APPLY TO UNRESTRICTED PROCUREMENTS

Joint Ventures and the Percentage of Work

- When the “exclusion from affiliation rules” (including Mentor Protégé) apply:
The performance of work requirements apply to the cooperative effort of the team or joint venture partners, not its individual members.

Example

- Small Business Set-Aside
- To provide a service
- Small Business A: can only do 25% of job with his own people
- Small Business B: can only do 25% of job with his own people
- Neither A nor B can bid the job alone.
- However, if they form a Joint Venture, they can combine their efforts, doing 50% with their own people, and can bid the job.

References

1. SBA Mentor Protégé Guidelines, FACT Sheet, Power Point
 - www.sba.gov/8abd
2. Code of Federal Regulations
<http://www.access.gpo.gov/nara/cfr/>
 - SBA Size Rules: 13 CFR 121
 - SBA 8a Joint Venture Rules: 13 CFR 124.513
 - SBA Mentor Protégé: 13 CFR 124.520
3. NAICS Codes/Size Standards – search by keyword
 - https://eweb1.sba.gov/naics/dsp_naicssearch2.cfm