



U.S. Small Business
Administration

Joint Ventures and Mentor Protégé Program

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Topics

1. Introduction: Teaming in the FAR and the SBA definition of a joint venture
2. Size standards, affiliation, and exceptions
3. Limitations on subcontracting and ostensible subcontracting
4. Joint ventures and types of small business
5. Mentor protégé
6. What next?

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)

Contract Teaming Agreement

Only two types:

- Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
- A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified government contract or acquisition program.

Applies to large and small business

Why JV?

- JVs maintain competition from small business
- 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

Risks

- ❖ Finding the right joint venturers
 - ❖ <https://www.epls.gov/>
 - ❖ Existing relationship
 - ❖ New relationship
- ❖ Creating a relationship
 - ❖ Imbalance in the level of expertise, investment or assets
- ❖ Not having the JV agreement in writing
 - ❖ Objectives are not clear

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	\$33.5	
236220	Commercial and Institutional Building Construction	\$33.5	
237310	Highway, Street, and Bridge Construction	\$33.5	
315232	Women's and Girls' Cut and Sew Blouse and Shirt Mfg		500
323114	Quick Printing		500
336212	Truck Trailer Manufacturing		500
337211	Wood Office Furniture Manufacturing		500
484110	General Freight Trucking, Local	\$25.5	
492110	Couriers and Express Delivery Services		1500
493110	General Warehousing and Storage	\$25.5	
531110	Lessors of Residential Buildings and Dwellings	\$7.0	
541511	Custom Computer Programming Services	\$25.0	
541611	Admin Management and General MGMT Consulting Svcs	\$7.0	
541620	Environmental Consulting Services	\$7.0	

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

☐ 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).
- ❖ 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
- Applies only to the contract at hand

Affiliation

13 CFR 121.103

- ❖ Power to control
- ❖ Common managers
- ❖ Identical business interests
- ❖ Common stockholders
- ❖ Ownership of multiple businesses
- ❖ Contractual relationships
- ❖ JV arrangements

The “Relaxed Rule” (exception to affiliation on JVS)

As long as each JV partner individually qualifies as a small business, then the JV counts as small.

The “Relaxed Rule” is applicable to:

Bundled procurement of any dollar value

Large procurement:

- Revenue based size standard: the dollar value of the procurement, including options, exceeds half the size standard of the procurement.
- Employee based size standard: dollar value of the procurement, with options, is over \$10 million.

Joint Venture & Affiliation

Small business set-aside with NAICS of 541620

Size standard for 541620 is \$14.0m

Est. value of award is \$6.5m

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?

Exception to Affiliation

Small business set-aside with NAICS of 541620

Size standard for 541620 is \$14.0m

Est. value of contract is \$7.5m

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?

Ostensible Subcontractor

A subcontractor that performs primary and vital requirements or a subcontractor upon which the prime contractor is unusually reliant.

Risk Factors

- ❖ Division of work
- ❖ Incumbency
- ❖ Management
- ❖ Proposal terminology
- ❖ Proposal preparation
- ❖ Terms of the teaming agreement
- ❖ Relative experience and expertise
- ❖ Location of the parties
- ❖ Transferred employees
- ❖ Bonding, financing and equipment
- ❖ Profit sharing

Limitations on Subcontracting (FAR 52.219-14)

Services – 50% of personnel costs

Supplies – 50% of cost of manufacturing, 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

What Should be in a JV Agreement?

- ❖ A provision setting forth the purpose of the JV
- ❖ A provision designating someone as the Managing Venturer
- ❖ A provision stating the distribution of profits/losses
- ❖ A provision providing for the establishment of a special bank account
- ❖ 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.

More Parts of a JV

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 for handling substitution or addition of co-venturers

A provision for handling disputes

A provision for handling the termination of the JV

ALL Small Mentor Protégé Program (ASMPP)

Definitions

MENTOR

A wise and trusted counselor or teacher

An influential senior sponsor or supporter

PROTÉGÉ/PROTEGEE

A person under the patronage, protection or care of someone interested in his or her career or welfare.

ASMPP Background

Authorized under the 2010 Small Business Jobs Act and the 2013 NDAA

- Rather than creating programs for separate constituencies – SDVOB, WOSB, HUBZones - SBA created a single, all-inclusive Mentor-Protégé Program modeled on its 8(a) program.
- The All Small Mentor-Protégé Program's (ASMPP) aim is two-fold:
 - develop strong Protégé firms through Mentor-provided business development assistance;
 - enhance the ability of Protégé firms to successfully compete for government contracts.

Rule Highlights

- ❖ Final Rule Effective Date: August 24, 2016
 - **Creates the All Small Mentor Protégé Program (ASMPP)**
 - **Streamlines the rules for the 8(a) Mentor-Protégé Program and made them consistent with the ASMPP**
 - Prescribes content for Joint Venture Agreements under both programs
 - **Authorizes the SBA to evaluate other Federal Agency Mentor-Protégé Programs**

ASMPP Update

Please note that a Mentor-Protégé relationship should be established before starting the application.

The ASMPP is not a matching program.

- The SBA began accepting applications on October 1, 2016.
- Applications must be submitted via certify.sba.gov. No paper applications will be accepted.
- Website:
<https://www.sba.gov/allsmallmpps>

Program Administration

- ❖ Centralized in HQ, rather than the distributive 8(a) model
- ❖ Online Application – certify.sba.gov
- ❖ Online course tutorial requirement
- ❖ Annual Review and Evaluation
- ❖ Template agreements i.e. MPA, joint venture
- ❖ Incremental staff augmentation at HQ – demand driven

ASMPP Highlights

- ❖ Generally, Protégé may only have one Mentor at a time, and a maximum of two.
- ❖ Mentors cannot have more than 3 Protégés in the aggregate.
- ❖ Protégés and Mentors must either be for-profit entities or agricultural cooperatives.
- ❖ Participants can be both a Protégé and a Mentor if no competition or conflict exists.
- ❖ Participants self-certify as small in the NAICS in which they're seeking business development assistance.

More ASMPP Highlights

- ❖ SBA won't authorize MPAs in secondary NAICs in which the firm hasn't performed work.
- ❖ No reapplication required for 8(a) firms in the last 6 months of the 8(a) program wishing to transfer their existing MPA to the ASMPP.
- ❖ No financial statements or tax returns required.
- ❖ Business plan (SBA-approved or other) required for consideration.

Approved Forms of Mentor Assistance

- ❖ Management & Technical Assistance (internal business management systems)
- ❖ Financial Assistance (in the form of equity investments and/or loans)
- ❖ Contracting Assistance (contracting processes, capabilities acquisitions & performance)
- ❖ Trade Education (learn how to export, IT business plan, finding markets)
- ❖ Business Development Assistance (strategy, finding contracting and partnership opportunities)
- ❖ General and/or Administrative Assistance (business processes and support)

Note: May be one, two, or all areas of assistance

How Do I Find a Good Mentor?

- Research – Make sure the mentor has a good reputation and is willing to provide coaching, as needed.
- Verify that the Mentor is not just looking for access to federal small business set-aside contracts
- Verify if the mentor has good supplier relationships
- Verify if the mentor has experience working with the federal government
- Be clear and concise about the goals and objectives outlined in the agreement
- Make certain the goals and objectives align with the business plan to provide growth for the company

Small Business Joint Ventures

- ▶ An approved Protégé and Mentor may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement.
- ▶ The ASMPP does not review, evaluate or approve joint venture entities or joint venture agreements.
- ▶ In order to receive the exclusion from affiliation, the joint venture must meet the requirements outlined in 13 CFR 125.8(b)(2), (c), and (d).

Resources

- ❖ SBA webpage :
<https://www.sba.gov/allsmallmpp>
- ❖ All Small Mentor Protégé Program Tutorial :
<https://www.sba.gov/tools/sba-learning-center/training/sbas-all-small-mentor-protege-program>
- ❖ For more information on the ASMPP:
allsmallmpp@sba.gov

Questions???

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