



U. S. SMALL BUSINESS ADMINISTRATION

ANCHORAGE DISTRICT OFFICE

510 L Street, Suite 310

ANCHORAGE AK 99501-1952

907-271-4022 • 907-271-4545 (FAX) • 907271-4005 (TDD)

October 9, 2009

Via Email:

Subject: Joint Venture Restrictions

Dear Mr:

The following information, pursuant to 13 CFR 124.513 and SBA Standard Operating Procedures 80-05(3), is being provided to you regarding a proposed Joint Venture Agreement between XXX and your proposed JV partner.

A Joint Venture Agreement formed under the SBA's 8(a) Business Development program is an agreement between an eligible 8(a) Participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the Participants.

A Joint Venture Agreement is permissible only when the 8(a) Participant lacks the capacity to meet the quality, quantity and time requirements of the contract, when the Joint Venture arrangement is fair and equitable, when the Joint Venture will be of substantial benefit to the 8(a) Participant; and when the 8(a) Participant brings substantial resources and/or expertise to the Joint Venture. A Joint Venture agreement will not be approved if the 8(a) partner has only minimal qualifications to perform the contract on its own.

The Joint Venture must meet the size standard for the NAICS CODE applicable to the proposed contract. For size purposes, an 8(a) concern entering into a Joint Venture Agreement with another concern is considered to be affiliated with the other concern with respect to performance of the 8(a) contract. As such, the annual receipts or number of employees of the other concern are included in determining size. Under an approved 8(a) Mentor Protégé Agreement the Joint Venture will be deemed small provided the protégé is small under the size standard for the applicable NAICS Code and otherwise meets relevant eligibility requirements.

You are hereby advised of the provisions and restrictions imposed by the SBA on Joint Venture Agreements under the 8(a) Program, including those between Mentor and Protégé. A violation of any of the required provisions of a Joint Venture Agreement may cause the SBA to direct you to cancel the Agreement.

You are required to provide the following information:

1. The 8(a) Participant shall forward the original of the proposed Joint Venture Agreement including all checklists and supporting documentation to the SBA Alaska District Office.
2. The Joint Venture Agreement and all supporting documents [i.e. tax returns, financial statements, narratives addressing the new contract requirements, checklists addressing the new contract requirements etc] must be submitted as soon as possible but no less than twenty (20) working days prior to the scheduled date for contract award. Incomplete

packages will be returned without action.

3. **COVER LETTER:** The 8(a) Participant must include a statement on firm's letterhead addressing the following.
 1. Explanation of any value the 8(a) participant brings to the joint venture, other than its 8(a) status.
 2. Identify strengths the 8(a) participant brings to the joint venture such as past performance, bonding, and/or financing (must be more than a one sentence explanation).
 3. Identify capabilities the 8(a) participant brings to the joint venture. Address in detail equipment, personnel, expertise, bonding, finances, management capabilities, and facilities.
 4. Explain how this contract will create jobs for the participant firm.
 5. Identify the 8(a) participant's weaknesses such as past performance, bonding, financing as it directly relates to the successful performance of this contract.
 6. Identify the strengths of the non-managing joint venture partner and what that partner will bring to the joint venture to assist the 8(a) participant in successful performance of the contract.
 7. Identify the benefits this arrangement will have to the 8(a) participant other than revenue if this joint venture is approved. Note that benefits must be substantial and create lasting effects.
4. **COVER LETTERS:** The 8(a) Participant and the JV Partner must include a statement on respective firm's letterhead acknowledging their understanding of the following .
 - a. SBA requires the joint venture and the 8(a) Participant to perform a percentage of work in accordance with the industry NAICS the awarding agency is applying to the requirement.
 - b. The 8(a) Participant must be able to perform a significant portion of the work inclusive of the required percentage with their own employees.
 - c. Each JV partner must acknowledge compliance with FAR Clause 52.219.14 and 13 CFR 124.510 (copies attached).
5. Complete questionnaire attachment titled, *JOINT VENTURE PARTNERS' RESPONSES TO PREVIOUSLY PERFORMED JOINT VENTURES, ACTIVE JOINT VENTURES, PROPOSED JOINT VENTURE*.

IMPORTANT: The Joint Venture and all supporting documents must be **approved by SBA prior to award of any resulting contract**. Failure to obtain SBA's approval of the complete JVA package prior to award will result in SBA's request to the buying activity to terminate the award.

Please contact me directly with any questions or concerns at (907) 271-4022 or by email at joyce.courtney@sba.gov.

Sincerely,

Joyce Courtney

Joyce Courtney
Business Development Specialist
8(a) Business Development

Enclosures: Sample Joint Venture Agreement
Joint Venture Agreement Checklist/Required JVA Provision
Lead 8(a) Participant Supporting Documentation Checklist
Joint Venture Partner Checklist Supporting Documentation Checklist
SBA Forms 1623; 912; 355 and 4506-T

QUESTIONNAIRE
PREVIOUSLY PERFORMED JOINT VENTURES, ACTIVE JOINT VENTURES,
PROPOSED JOINT VENTURE
(To Be Completed by Each Joint Venture Partner)

1. What was your firm's gross revenue for your last fiscal year end?
Fiscal Year Ending _____ Gross Revenue \$ _____
2. How much of this revenue was generated via joint venture agreements? \$ _____
3. Under what NAICS Codes were these joint ventures performed? _____
4. How much of this revenue was generated via joint venture agreements with this proposed joint venture partner? \$ _____
5. Is the proposed joint venture partner your Mentor? Yes _____ No _____ or proposed Protégé? Yes _____ No _____ Under what program (SBA, DoD or other)? _____

6. How many joint ventures did your firm perform during last fiscal year? _____
How many remain active? _____ What NAICS codes were these performed under? _____
7. How many joint ventures did your firm perform since it was certified as an 8(a) participant (if applicable)? _____
8. How many 8(a) contracts are being performed under a joint venture? _____
What is the total value? \$ _____
9. How many 8(a) contracts that are closed were performed under a joint venture? _____
What is the total value? \$ _____
10. How many, for whom and what is the value of any contracts performed under the NAICS code assigned to this requirement? _____

11. Is there is an incumbent contractor on the requirement to be performed under this joint venture? Yes _____ No _____ Who is the incumbent? _____

12. How many employees will your firm provide to the joint venture? _____
What disciplines (type of work) will they provide? _____

13. How many employees will be hired into the joint venture? _____
What disciplines (type of work) will they provide? _____

124.510 What percentage of work must a Participant perform on an 8(a) contract?

(a) To assist the business development of Participants in the 8(a) BD program, an 8(a) contractor must perform certain percentages of work with its own employees. These percentages and the requirements relating to them are the same as those established for small business set-aside prime contractors, and are set forth in §125.6 of this title.

(b) A Participant must certify in its offer that it will meet the applicable percentage of work requirement. SBA will determine whether the firm will be in compliance as of the date of award of the contract for both sealed bid and negotiated procurements.

(c) *Indefinite quantity contracts.* (1) In order to ensure that the required percentage of costs on an indefinite quantity 8(a) award is performed by the Participant, the Participant must demonstrate semiannually that it has performed the required percentage to that date. For a service or supply contract, this does not mean that the Participant must perform 50 percent of the applicable costs for each task order with its own force, or that a Participant must have performed 50 percent of the applicable costs at any point in time during the contract's life. Rather, the Participant must perform 50 percent of the applicable costs for the combined total of all task orders issued to date at six month intervals.

Example to paragraph (c)(1). Two task orders are issued under an 8(a) indefinite quantity service contract during the first six months of the contract. If \$100,000 in personnel costs are incurred on the first task order, 90% of those costs (\$90,000) are incurred for performance by the Participant's own work force, and the second task order also requires \$100,000 in personnel costs, the Participant would have to perform only 10 percent of the personnel costs on the second task order because it would still have performed 50% of the total personnel costs at the end of the six-month period (\$100,000 out of \$200,000).

(2) Where there is a guaranteed minimum condition in an indefinite quantity 8(a) award, the required performance of work percentage need not be met on task orders issued during the first six months of the contract. In such a case, however, the percentage of work that a Participant may further contract to other concerns during the first six months of the contract may not exceed 50 percent of the total guaranteed minimum dollar value to be provided by the contract. Once the guaranteed minimum amount is met, the general rule for indefinite quantity contracts set forth in paragraph (c)(1) of this section applies.

Example to paragraph (c)(2). Where a contract guarantees a minimum of \$100,000 in professional services and the first task order is for \$60,000 in such services, the Participant may perform as little as \$10,000 of the personnel costs for that order. In such a case, however, the Participant must perform all of the next task order(s) up to \$40,000 to ensure that it performs 50% of the \$100,000 guaranteed minimum (\$10,000 + \$40,000 = \$50,000 or 50% of the \$100,000).

(3) The applicable SBA District Director may waive the provisions in paragraphs (c)(1) and (c)(2) of this section requiring a Participant to meet the applicable performance of work requirement at the end of any six-month period where he or she makes a written determination that larger amounts of subcontracting are essential during certain stages of performance, provided that there are written assurances from both the Participant and the procuring activity that the contract will ultimately comply with the requirements of this section. Where SBA authorizes a Participant to exceed the subcontracting limitations and the Participant does not ultimately comply with the performance of work requirements by the end of the contract, SBA will not grant future waivers for the Participant.

52.219-14 -- Limitations on Subcontracting.

As prescribed in [19.508\(e\)](#) or [19.811-3\(e\)](#), insert the following clause:

Limitations on Subcontracting (Dec 1996)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror / Contractor agrees that in performance of the contract in the case of a contract for --

(1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a non-manufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of Clause)

CHECKLIST

REQUIRED JOINT VENTURE AGREEMENT PROVISIONS

IMPORTANT: The following list of provisions must be added to the Joint Venture Agreement.

DO NOT modify wording of provisions.

Complete this form by noting Section, Article and/or Paragraph No. where each provision can be located within the Joint Venture Agreement

[Reference 13 CFR 124.513 & SOP 80-05(3)]

Company Name

Company Name

TITLE OF JOINT VENTURE

- 1) _____ A provision setting forth the purpose of the Joint Venture (i.e. to perform the contract – identify the specific contract). [13 CFR 124.513 (c)(1)]
- 2) _____ A provision stating the name of the Joint Venture.
- 3) _____ A provision designating the 8(a) participant as the managing venturer. 13 CFR 124.513 (c)(2)]
- 4) _____ A provision designating an employee of the 8(a) Participant as project manager responsible for contract performance. Name of project manager must be included. [13 CFR 124.513(c)(2)]
- 5) _____ A provision stating that not less than 51 percent of the net profits earned by the Joint Venture shall be distributed to the 8(a) participant. [13 CFR 124.513(c)(3)]
- 6) _____ A provision providing for the establishment and administration of a special bank account in the name of the Joint Venture. [13 CFR 124.513 (c)(4)]
- 7) _____ A provision that the special bank account shall require the signature of all parties to the Joint Venture or designees for withdrawal purposes [13 CFR 124.513 (c)(4)]
- 8) _____ A provision that all payments due the Joint Venture for the performance on the 8(a) contract shall be deposited in the special account from which all expenses incurred under the contract shall be paid. [13 CFR 124.513 (c)(4)]
- 9) _____ An itemized list with descriptions of all major equipment, facilities and other resources to be furnished by the 8(a) Participant with a detailed schedule of cost or value of each item provided as Exhibit A. [13 CFR 124.513 (c)(5)]
- 10) _____ An itemized list with descriptions of all major equipment, facilities and other resources to be furnished by the Joint Venture Partner (not 8(a)) with a

detailed schedule of cost or value of each item provided as Exhibit B. [13
CFR 124.513 (c)(5)]

- 11) _____ A provision specifying the responsibilities of parties with regard to contract performance.
- 12) _____ A provision specifying the responsibilities of the parties with regard to sources of labor for the 8(a) contract. Include a list of labor categories that will be maintained on each firm's respective payrolls during performance of contract. Example: JV Partner 1 to provide heavy equipment operators, painters and roofers; JV Partner 2 to provide masonry and site workers and carpenters) [13 CFR 124.513 (c)(6)]
- 13) _____ A provision specifying the responsibilities of the Joint Venture parties with regard to negotiation of the 8(a) contract. [13 CFR 124.513(c)(6)]
- 14) _____ A provision that in the event one member of the Joint Venture withdraws and ceases performance on the contract due to death, bankruptcy, dissolution or otherwise, the other Joint Venture party will continue to ensure uninterrupted performance on the contract. [13 CFR 124.513 (c)(7)]
- 15) _____ A provision that all accounting and other administration records related to the Joint Venture be kept in the office of the 8(a) Participant, unless a written request for an alternate location is approved in writing by the SBA District Office's District Director or his/her designee. [13 CFR 124.513 (c)(8)]
- 16) _____ A provision requiring the final original records be maintained by the managing venturer (8(a) Participant) upon completion of the 8(a) contract performed by the joint venture. [13 CFR 124.513 (c)(9)]
- 17) _____ A provision that quarterly financial statements showing cumulative contract receipts and expenditures, including salaries of the Joint Venture's principals, shall be submitted to SBA no later than 45 days after each operating quarter of the Joint Venture. [13 CFR 124.513 (c)(10)]
- 18) _____ A provision that a project-end profit and loss statement including a statement of final profit distribution, be submitted to SBA no later than 90 days after completion of the contract. [13 CFR 124.513 (c)(11)]
- 19) _____ A provision that the Joint Venture Partners agree that the Joint Venture, including those between Mentors and Proteges authorized by CFR Section 124.520, must perform _____% (the applicable percentage) of the cost of the contract, not including cost of materials, with its own employees as required by CFR Section 124.510 and that the 8(a) partner to the Joint Venture must perform a significant portion of the contract. (13 CFR 124.513 (d))

Required Percentage of Work by Industry/NAICS Code

50% - Services Professional/Non-professional

50% - Manufacturing

15% - General Construction

25% - Special Trades Construction

- 20) _____ A provision that SBA must approve the Joint Venture Agreement prior to the award of the contract on behalf of the Joint Venture. [13 CFR 124.513(e)]
- 21) _____ A provision that when the SBA has approved the Joint Venture, the procuring activity will execute the contract in the name of the Joint Venture entity.
- 22) _____ A provision acknowledging the Joint Venture Agreement may be amended from time to time by written amendment as entered into by the parties, but all amendments, extensions and modifications to and deviations from the requirements of the agreement must have the prior written approval of SBA. [13 CFR 124.513 (g)]
- 23) _____ A provision that SBA shall have the right to inspect the records of the Joint Venture without notice at any time deemed necessary. [13 CFR 124.513 (h)]
- 24) _____ A provision for the establishment of a working capital fund at the onset of contract performance.
- 25) _____ A provision to establish the initial amount of the working capital fund, the amount of each participant's contribution, and that the working capital fund will be maintained throughout performance of the contract with additional funds contributed according to each participant's percentage of ownership in the joint venture.
- 26) _____ A provision providing that in the event of any dispute between the 8(a) Participant, JV-1, and the joint venture partners, with respect to performance of this joint venture, the parties agree to submit the dispute for "Alternative Dispute Resolution" (ADR) to a disinterested party.
- 27) _____ The provision containing the ADR statement must include the following sentence. *"However, the arbitrator/disinterested party designated acting under this Agreement shall have no power to depart from, amend or change any of the provisions of this Agreement."*
- 28) _____ A provision that the parties shall be responsible for continuing performance of said contract while any such dispute is being resolved.

Form Check List

- _____ *Lead 8(a) Participant Supporting Documentation Checklist*
- _____ *Joint Venture Partner Supporting Documentation Checklist*
- _____ *SBA Form 1623*
- _____ *SBA Form 912*
- _____ *SBA Form 355*

_____ *Form 4506-T*

8(a) PARTICIPANT SUPPORTING DOCUMENTATION CHECKLIST

*

Checklist to be completed with all questions answered, signed by the 8(a) firm, and returned with JV Package

*

(Reference 13 CFR 124.513 and SOP80-05)

- _____ SBA Form 355 *“Application for Small Business Size Determination”*
- _____ SBA Form 1623 *“Certification Regarding Debarment, Suspension and Other Responsibility Matters”*
- _____ SBA Form 4506-T *“Request for Copy of Transcript or Tax Return”*
- _____ SBA Form 912 *“Statement of Personal History and Resume for the Project Manager*
- _____ Three (3) years of firm’s Financial Statements **signed, dated and certified as “True and Correct”**
- _____ Three (3) years of firm’s Federal Tax Returns including all schedules and attachments **signed, dated and certified as “True and Correct”**.
- _____ A letter from firm’s Bonding Company indicating ability to obtain payment and performance bonding to cover this requirement (if applicable to the contract) and specifying single and aggregate bonding limits.
- _____ Number of Employees – Part-time and temporary employees are counted as full-time employees for each applicable pay period. A written breakout identifying the pay period and number of employed employees is required for the preceding 12 months.
- _____ A copy of the Fed Biz Ops synopsis.

WRITTEN STATEMENTS The following questions can be provided directly on the form or provided in a separate written statement.

a) What is the name of the Joint Venture?

b) What does your firm lack in capacity and/or capabilities that necessitates a Joint Venture to ensure project performance?

(Note: Capacity is the ability to meet the quality, quantity and time requirements of the contract. Areas to address are bonding, financial resources, technical expertise to include management and laborers, past experience with similar requirements, access to specialized and/or required equipment and access to appropriate facilities.)

c) In what capacity do you foresee your Joint Venture Partner providing to assist in overcoming your weakness(es)?

d) What substantial benefits will you receive (in addition to contract revenue) from participating in the Joint Venture, and how will these benefits affect the firm?

e) List the resources and/or expertise you bring to the JV arrangement. **Note:** The 8(a) firm's contribution must be substantial and must show it can perform at a minimum the basic requirements of the contract. The JV partner is prohibited from providing all the expertise, etc. to perform.

f) What is the Employment Identification Number (EIN) of the Joint Venture? If not applied for, note when it will become available and when SBA can expect to be notified.

g) What is the Business Credit Report Number (formerly known as the DUNS #) of the Joint Venture?

h) What is the name(s), address, contact person, telephone number and email address of the Joint Venture partner(s)?

i) Provide a brief description of the primary industry of your firm and attach a Brochure if available.

j) Provide a brief description of your business.

k) Provide a brief description of the primary industry of the Joint Venture Partner.

l) Provide a brief description of the Joint Venture Partner's business.

m) Provide the name of the federal agency and a brief description of the requirement, size and dollar value of the requirement, expected award date, and the performance period.

Agency Name: _____

Description of Requirement: _____

Size and Dollar Value: _____

Award Date: _____

Performance Period: _____

Type of Project (ie, general or special trade construction, janitorial, security services, etc).

n) What are the requirements for successful performance of the contract? (What is needed other than this JV)

o) Name of Project Manager (must complete) _____

- Employee of your business? _____ Yes _____ No
- Copy of Project Manager's resume provided? _____ Yes _____ No
- SBA Form 912 *Statement of Personal History* completed, signed and dated by Project Manager? Yes _____ No

p) Explain why and how the Joint Venture is fair, equitable and beneficial to both firms.

q) List the financial resources you have available for job performance including Credit Lines, Bank name, limit amount, balance owed and collateral held.

r) Provide a statement of relevant experience and professional licenses directly related to performance of this project.

s) Name of Bonding Company, Address, Capacity (Provide regardless if the contract will require Bonding)

Company Name: _____

Address: _____

\$ _____ Single \$ _____ Aggregate _____

t) What effect will this Joint Venture and award of the contract have on your performance of existing contracts in terms of cash flow, personnel, equipment and facilities?

(1) Cash Flow _____

(2) Personnel _____

(3) Equipment _____

(4) Facilities _____

u) Copy of Statement of Work provided? _____ Yes _____ No

Copy of FedBizOps synopsis attached? _____ Yes _____ No

Copy of the draft or final of bid proposal or offer attached? _____ Yes _____ No

I certify this Joint Venture is fair, equitable, and beneficial to the Joint Venture Partners and I attest to the accuracy of the information as provided by me in the Joint Venture Agreement and applicable checklists, and fully understand the regulations and requirements of the Joint Venture as stated in 13 CFR 124.513 and SOP 80-05.

Signature of Authorized Signer

Date

JOINT VENTURE PARTNER SUPPORTING DOCUMENTATION CHECKLIST

*

*

Checklist to be completed with all questions answered, signed by the non-8(a) firm, and returned with Joint Venture Package

(Reference 13 CFR 124.513 and SOP80-05)

- _____ SBA Form 355 “*Application for Small Business Size Determination*” **NOTE:** If firm is a large business, write on front page of form “*Not a Small Business*” and sign, date and return to SBA.

- _____ SBA Form 1623 “*Certification Regarding Debarment, Suspension and Other Responsibility Matters*”

- _____ SBA Form 4506-T “*Request for Copy of Transcript or Tax Return*”

- _____ Three (3) years of firm’s Financial Statements – **signed, dated and certified as “True and Correct”**

- _____ Three (3) years of firm’s Federal Tax Returns including all schedules and attachments – **signed, dated and certified as “True and Correct”**.

- _____ Number of Employees – Part-time and temporary employees are counted as full-time employees for each applicable pay period. A written breakout identifying the pay period and number of employed employees is required for the preceding 12 months.

- _____ A resume for the employee assisting the project manager, if applicable.

- _____ A letter from firm’s Bonding Company indicating ability to obtain payment and performance bonding to cover this requirement (if applicable to contract) and specifying single and aggregate bonding limits.

- _____ If a current 8(a) Firm, provide a letter from your SBA servicing office indicating you are in compliance with 8(a) requirements and eligible for contract award. If a graduated 8(a) Firm, the name of your servicing office.

WRITTEN STATEMENTS Your answers to the following questions may be provided directly on this form or on a separate piece of paper.

- a) Provide a list and the value of each current contract you are performing in the same NAICS code as that assigned to this requirement.



b) A statement of relevant experience and professional licenses you have that are directly related to this type of requirement.

c) Name of Bonding Company, Address, Capacity (Provide regardless if the contract will require Bonding)

Company Name: _____

Address: _____

\$ _____ Single _____ \$ _____ Aggregate _____

d) Provide an analysis of the project that describes the anticipated cash flow, personnel required and facility requirements.

Cash Flow _____

Personnel _____

Facility _____

e) What effect will this Joint Venture and the resulting contract have on your company's performance of existing contracts in terms of the following?

(1) Cash Flow _____

(2) Personnel

(3) Equipment/Other

(4) Facility

f) How will the Profits of the resulting contract be distributed?

h) List the financial resources you have available for job performance including Credit Lines, Bank name, limit amount, balance owed and collateral held.

i) If the business is incorporated, when and where was it incorporated and location of the primary/headquarter office.

I certify this Joint Venture is fair, equitable, and beneficial to the Joint Venture Partners and I attest to the accuracy of the information as provided by me in the Joint Venture Agreement and applicable checklists, and fully understand the regulations and requirements of the Joint Venture as stated in 13 CFR 124.513 and SOP 80-05.

Signature of Authorized Signer

Date

PLEASE NOTE

The following sample Joint Venture Agreement must be adhered to when creating your agreement. Paragraphs 1 through 18 and Exhibits A and B have been formatted to comply with SBA's requirements for Joint Venture Agreements.

A change in wording (such as *shall*, *will*, etc.) or omission of required provisions which alter the intent of any provision will result in the Joint Venture Agreement being recommended for decline and returned without action.

It is acceptable to have additional provisions tailored to meet the needs of each particular situation. However, the additions must be consistent with Paragraphs 1 through 18

If the Joint Venture will be a LLC, please ensure a copy of the *Operating Agreement* is included. Please do not incorporate the agreement into the Joint Venture Agreement as these documents must be presented as separate documents. However, the operating agreement must be consistent with the JV Agreement and cannot take precedence over it.

JOINT VENTURE AGREEMENT

INTRODUCTION

This Joint Venture Agreement is made and entered into this _____ day of _____, 200____, by and between _____, hereafter referred to as JV 1, which is an 8(a) concern, and _____ hereafter referred to as JV 2. This Joint Venture Agreement is subject to the written approval of the _____ and must be approved prior to contract award.

In consideration of the mutual promises and agreements herein set forth, the parties do agree and constitute themselves as Joint Venturers for the proposal, negotiation and performance of that certain Small Business Administration (hereafter referred to as "SBA") Section 8(a) contract (hereafter referred to as the "contract") which the Joint Venture Partners anticipate will be awarded to their Joint Venture, pursuant to the following terms, conditions and provisions.

1.0 PURPOSE

The purpose of this Joint Venture is to propose, negotiate, and perform the contract to provide _____ to the _____ under NAICS Code _____.

2.0 JOINT VENTURERS

The parties of this Joint Venture Agreement hereby associate themselves as joint venturers for the purpose of this Joint Venture, as set forth above.

3.0 JOINT VENTURE NAME

This Joint Venture shall be known as _____.

4.0 MANAGING PARTNER / PROJECT MANAGER

The 8(a) participant is designated as the managing venturer of the Joint Venture. An employee of the managing venturer shall be designated as the Project Manager responsible for performance of the 8(a) contract. The name of the Project Manager is _____
_____.

5.0 DISTRIBUTION OF PROFITS

It is agreed and understood that not less than fifty-one (51) percent of the net profits earned by the Joint Venture will be distributed to the 8(a) Participant(s).

6.0 SPECIAL BANK ACCOUNT

A special bank account in the name of the Joint Venture will be established and administered. This account must require the signature of all parties of the Joint Venture or designees for withdrawal purposes. All payment due the Joint Venture for performance on the contract will be deposited in the special account and all expenses incurred under the contract will be paid from the account as well.

7.0 MAJOR EQUIPMENT, FACILITIES AND OTHER RESOURCES

Exhibit A, which is attached hereto and incorporated herein by reference, is an itemized list of all major equipment, facilities and other resources furnished by the 8(a) Participant with a detailed schedule of cost or value of each item.. **Exhibit B**, which is attached hereto and incorporated herein by reference, is an itemized description of all major equipment facilities and other resources furnished by the Joint Venture partner(s) with a detailed schedule of cost or value of each item.

8.0 RESPONSIBILITIES REGARDING NEGOTIATIONS, CONTRACT PERFORMANCE AND SOURCE OF LABOR

a. The responsibilities of the parties with regard to the negotiation of the 8(a) contract shall be as follows:

b. The responsibilities of the parties with regard to contract performance shall be as follows:

-
-
- c. The responsibilities of the parties with regard to source(s) of labor for said contract shall be as follows:
-
-
-

9.0 CONTINUANCE OF PERFORMANCE

The parties agree that in the event that one of the members to the Joint Venture withdraws and ceases performance on the contract due to death, bankruptcy, dissolution or otherwise, the other party will continue, despite the withdrawal, to ensure performance on said contract..

10.0 RECORDS

- a. All of the accounting and other administrative records relating to the Joint Venture shall be maintained in the office of the managing venturer (the 8(a) Participant), unless prior written approval to keep them elsewhere is granted by the SBA District Director or his/her designee upon written request.
- b. The final original records shall be retained by the managing venturer (the 8(a) Participant) upon completion of the 8(a) contract performed by the Joint Venture.
- c. Quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to Small Business Administration not later than 45 days after each operating quarter of the Joint Venture.
- d. A project-end profit and loss statement, including a statement of final profit distribution, shall be submitted to SBA no later than 90 days after completion of the contract.

11.0 PERFORMANCE OF WORK

The Joint Venture partners must agree that the Joint Venture, including those formed between mentors and protégés as authorized by CFR Section 124.520, must perform _____% (the applicable percentage of work) of the cost of the contract, not including cost of materials, and with its own employees as required by 13 CFR 124.510, and the 8(a) partner(s) to the Joint Venture must perform a significant portion of the contract.

12.0 JOINT VENTURE AGREEMENT APPROVAL

The SBA must approve this Joint Venture Agreement prior to the award of the contract on behalf of the joint venture.

13.0 CONTRACT EXECUTION

Where SBA has approved a Joint Venture, the procuring activity will execute the 8(a) contract in the name of the Joint Venture entity.

14.0 AMENDMENTS

The Joint Venture Agreement may be amended from time to time by a written amendment entered into by the parties, but all amendments, extensions and modification to and deviations from the requirements of this agreement must have the prior written approval of the SBA.

15.0 INSPECTION OF RECORDS

SBA may inspect the records of the Joint Venture without notice at any time deemed necessary.

16.0 WORKING CAPITAL FUND

The parties shall provide for the establishment of a working capital fund at the onset of contract performance as follows: (a) The amount of the initial working capital fund is \$ _____ with the 8(a) Participant (JV 1) will contribute _____ % and the JV partner (JV 2) will contribute _____ %; (b) The parties shall maintain and add to the working capital fund throughout performance of the contract contributing funds according to each participant's percentage of ownership in the Joint Venture.

17.0 SIGNATURES

An authorized representative of the 8(a) Participant (JV 1) and an authorized representative of the Joint Venture Partner (JV 2), will sign the contract, all modifications to the contract which require the signature of the contractor, and all certifications of claims where certifications are required. For the purpose of this paragraph, "authorized representative" means the sole proprietor in a sole proprietorship, a general partner in a partnership, president or managing

member of a Limited Liability Company, or an officer of a corporation.

18.0 ALTERNATIVE DISPUTE RESOLUTION (ADR)

In the event of any dispute between the 8(a) Participant, JV-1, and the Joint Venture Partner(s), JV-2, with respect to performance of this joint venture, the parties agree to submit the dispute to a disinterested party, for "Alternative Dispute Resolution" (ADR). The disinterested party shall delineate duties and responsibilities for continuing performance of said contract while any such dispute is being resolved. However, the arbitrator/disinterested party designated acting under this Agreement shall have no power to depart from, amend or change any of the provisions of this Agreement.

JOINT VENTURE PARTNER 1

JOINT VENTURE PARTNER 2

COMPANY NAME

COMPANY NAME

Signature

Signature

Typed Name

Typed Name

Title

Title

Email Address

Email Address

Phone / Fax

Phone / Fax

Date

Date

EXHIBIT A

Must be completed and returned

The following is an itemized description of all major equipment, facilities and other resources to be furnished by the 8(a) Participant (**JV 1**) with a detailed schedule of cost or value:

Each contract requires some type of resource to perform. On open ended projects, you must indicate those items that are required to perform a very basic order.

Initials of JV 1 _____
JV 2 _____

EXHIBIT B

Must be completed and returned

The following is an itemized description of all major equipment, facilities and other resources to be furnished by the Joint Venture Partner (**JV 2**) with a detailed schedule of cost or value:

Each contract requires some type of resource to perform. On open ended projects, you must indicate those items that are required to perform a very basic order.

Initials of JV 1 _____

JV 2 _____

§ 124.513 Under what circumstances can a joint venture be awarded an 8(a) contract?

(a) *General.* (1) If approved by SBA, a Participant may enter into a joint venture agreement with one or more other small business concerns, whether or not 8(a) Participants, for the purpose of performing one or more specific 8(a) contracts.

(2) A joint venture agreement is permissible only where an 8(a) concern lacks the necessary capacity to perform the contract on its own, and the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern. However, where SBA concludes that an 8(a) concern brings very little to the joint venture relationship in terms of resources and expertise other than its 8(a) status, SBA will not approve the joint venture arrangement.

(b) *Size of concerns to an 8(a) joint venture.* (1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(i) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC code assigned to the contract; and

(ii)(A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million;

(2) For sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b)(1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code assigned to the 8(a) contract.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, a joint venture between a protege firm and its approved mentor (see §124.520) will be deemed small provided the protege qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and has not reached the dollar limit set forth in §124.519.

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform an 8(a) contract, including those between mentors and proteges authorized by §124.520, must contain a provision:

(1) Setting forth the purpose of the joint venture;

(2) Designating an 8(a) Participant as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the 8(a) contract;

(3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the 8(a) Participant(s);

(4) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;

(5) 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 of each;

(6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract;

(7) 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;

(8) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;

(9) Requiring the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the joint venture;

(10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

(11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) *Performance of work.* For any 8(a) contract, including those between mentors and proteges authorized by §124.520, the joint venture must perform the applicable percentage of work required by §124.510, and the 8(a) partner(s) to the joint venture must perform a significant portion of the contract.

(e) *Prior approval by SBA.* SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture.

(f) *Contract execution.* Where SBA has approved a joint venture, the procuring activity will execute an 8(a) contract in the name of the joint venture entity.

(g) *Amendments to joint venture agreement.* All amendments to the joint venture agreement must be approved by SBA.

(h) *Inspection of records.* SBA may inspect the records of the joint venture without notice at any time deemed necessary.

[63 FR 35739, June 30, 1998, as amended at 69 FR 29208, May 21, 2004]

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CHAPTER 8: JOINT VENTURES AND TEAMING ARRANGEMENTS

What Is a Joint Venture Agreement?

For purposes of this SOP chapter, a Joint Venture Agreement (JVA) is an agreement between an eligible 8(a) participant and one or more other business concerns to establish a new legal entity solely for the purpose of performing a specific 8(a) contract. The contract is then awarded to the Joint Venture entity rather than to one or more of the participants.

When Are Joint Ventures Permitted?

Joint Ventures are permitted only when:

The 8(a) participant lacks the capacity to perform the contract on its own;

The Joint Venture arrangement is fair and equitable;

The Joint Venture will be of substantial benefit to the 8(a) participant; and

The 8(a) participant brings substantial resources and/or expertise to the Joint Venture.

What Does Capacity Mean?

"Capacity" means the overall ability of a business concern to meet the quality, quantity and time requirements of the contract. Generally, capacity is the firm's ability to provide adequate and appropriate management, labor, equipment, plant, bonding and financial resources to successfully complete the contract. (38 Comp. Gen. 864, affirmed Nov. 6, 1959; B149122, July 31, 1962; B149096, Aug. 9, 1962; B154734, Aug. 26, 1964.)

Some of the areas of capacity include:

Adequate bonding (if necessary);

Adequate financing;

Technical expertise;

Experience with similar requirements;

Access to specialized/required equipment; and

Access to appropriate facilities.

What Role Must the 8(a) Participant Have in the Joint Venture?

An 8(a) participant must be designated as the managing (or lead) venturer, and an employee of the managing venturer must serve as the project manager responsible for performance of the 8(a) contract.

How Does SBA Determine if the Joint Venture Is Small?

Except in the case of Joint Ventures under SBA's Mentor/Protégé program, for all sole source requirements and for competitive 8(a) procurements that are equal to or less than one half the size standard of the North American Industry Classification System (NAICS) code assigned to the requirement or are \$10 million or less for employee-based size standards:

The 8(a) concern is considered to be affiliated for size purposes with the other concern(s); and

The combined annual receipts or number of employees of all concerns in the Joint Venture must not exceed the size standard for the NAICS code assigned to the 8(a) procurement.

For an 8(a) competitive procurement that exceeds half the size standard of the assigned revenue-based NAICS code, or \$10 million for an employee-based NAICS code, a Joint Venture of at least one 8(a) participant and one or more other business concerns may submit an offer as a small business so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contact. See 13 CFR 124.513(b). See also 13 CFR 124.513(b)(3)) and Question 6 of this chapter for special size rules for Joint Ventures between Mentors and Protégés under SBA's Mentor/Protégé program.

How Does SBA Determine if the Joint Venture is Small Under the Mentor/Protégé Program?

A Joint Venture between a Protégé 8(a) firm and its approved Mentor will be deemed small provided that the Protégé is small under the size standard for the NAICS code assigned to the procurement and otherwise meets relevant eligibility requirements. See 13 CFR 124.513(b)(3). This means that under the Mentor/Protégé program, the combined size of the Mentor and its approved Protégé may exceed the size standard applicable to the project for either sole source or competitive projects, as long as the Protégé is small under the size standard for the NAICS code assigned to the procurement.

What Office Must a Participant Notify if it Intends to Enter into a Joint Venture Agreement and What Information Will be Provided to the Participant?

An 8(a) participant must notify and request approval from the servicing District Office for any contemplated agreements, arrangements or understandings, regardless of type, that may in any way give an interest to any person, other than those upon whom eligibility is based, in the operation, management or control of the 8(a) concern. This includes JVAs.

The District Office must provide the participant and any other parties to the Agreement notice of all provisions required by SBA in the JVA and all restrictions imposed by SBA on such agreements.

What Are the General Requirements for Submitting and Obtaining SBA Approval of Joint Venture Agreements?

The Joint Venture applicants must submit all required information to the managing 8(a) participant's servicing District Office as soon as possible, but no fewer than 20 working days prior to the scheduled date for contract award. Incomplete packages will be returned to the participant without action. The managing participant is the managing partner or lead venturer.

The JVA must be approved by SBA prior to the award of an 8(a) contract to the Joint Venture.

Failure to obtain SBA approval of the JVA prior to award of the contract will result in SBA's request that the buying activity terminate the award to the Joint Venture.

SBA must approve in advance all proposed amendments, modifications, or extensions to a JVA.

What Documentation Must be Submitted by the Joint Venture Applicants to the District Office for Approval of a Joint Venture?

The managing 8(a) participant in the Joint Venture must submit the following information to its servicing District Office:

The Joint Venture Agreement (the agreement must meet all the requirements set forth in 13 CFR 124.513(c) and the Question 10 of this chapter);

Three years of signed company year end financial statements and federal tax returns for each participant;

A letter from the managing 8(a) participant stating:

What the 8(a) participant or participants lack in capacity and/or capability which makes the Joint Venture necessary for project performance;

What specific benefits the 8(a) firm will receive from participation in the Joint Venture (in addition to contract revenue) and how these benefits will affect the 8(a) firm; and

What resources the 8(a) participant will bring to the Joint Venture; and

The supplemental information Question 11 of this chapter.

What Must Be in the Joint Venture Agreement?

Every JVA to perform an 8(a) contract, including those between Mentors and Protégés, must contain a provision:

Setting forth the purpose of the Joint Venture;

Designating an 8(a) participant as the managing venturer of the Joint Venture, and an employee of the managing venturer as the project manager responsible for performance of the 8(a) contract;

Stating that not less than 51 percent of the net profits earned by the Joint Venture will be distributed to the 8(a) participant;

Providing for the establishment and administration of a special bank account in the name of the Joint Venture. This account must require the signature of all parties to the Joint Venture or designees for withdrawal purposes. All payments due the Joint Venture for performance on an 8(a) contract will be deposited in the special account, and all expenses incurred under the contract will be paid from the account;

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 of each;

Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiations of the 8(a) contract;

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;

Designating that accounting and other administrative records relating to the Joint Venture be kept in the office of the managing venturer, unless approval to keep them elsewhere is granted by the District Director or his or her designee upon written request;

Requiring that the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the Joint Venture;

Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the Joint Venture; and

Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA not later than 90 days after completion of the contract.

What Supplemental Information Must Be Submitted by the Joint Venture Applicants to the District Office?

Along with the JVA, the Joint Venture applicants must submit the following general identifying information:

The name of the Joint Venture (the new entity);

The EIN of the Joint Venture;

The business credit report (formerly the DUNS) number of the Joint Venture;

The names of the firms participating in the Joint Venture;

For each firm involved in the Joint Venture, submit:

The primary industry of the firm;

The current capabilities of the firm;

A brief description of the history of the firm;

SBA Form 355 (Application for Small Business Size Determination); and

SBA Form 1623 (Certification Regarding Debarment, Suspension and other Responsibility Matters).

The Joint Venture applicants must submit a description of the project that includes:

Customer agency;

Size and dollar value of project;

Type of project (general construction, janitorial, etc.);

Expected award date for the project;

Duration of project and requirements for performance;

Copy of the requirement's offer and acceptance letters;

Draft or final copy of bid proposal or offer;

An analysis (prepared by the Joint Venture participants) of the project that describes the anticipated cash flow, personnel, equipment and facility requirements;

A copy of the Statement of Work; and

The procurement's FedBizOpps synopsis.

For non-8(a) participants, the Joint Venture applicants must submit:

The number and value of contracts in the same NAICS code as that assigned to the procurement;

Relevant experience and professional licenses, etc.; and

Details of all previous Joint Ventures with 8(a) firms, including the names of all participants in those JVAs.

Each 8(a) Joint Venture participant must indicate the effect the JVA and the contract award will have on their performance of existing contracts in terms of the following:

Cash flow;

Personnel;

Equipment; and

Facilities.

The Joint Venture applicants must outline the distribution of profits for the Joint Venture and must demonstrate that the combined 8(a) participants will receive at least 51 percent of the profits earned by the Joint Venture.

The Joint Venture applicants must demonstrate that the Joint Venture meets the relevant size requirements, and must analyze the percentages of work to be performed by each firm and each subcontractor. See 13 CFR 124.510, 124.513(d); 125.6.

The Joint Venture applicants must submit the following financial information and certifications:

Documentation indicating the establishment and administration of a special bank account in the name of the Joint Venture. See Question 10;

Amount and percentage of capital that each venturer is contributing;

Three years of signed company year end financial statements and federal tax returns for each participant; and

Where appropriate, evidence that the Joint Venture has sufficient bonding.

The Joint Venture applicants must submit the following employee information:

A list of the employees needed to perform the project (by position, type and number in each category);

The number and skills of employees supplied to the Joint Venture by each venturer; and

A brief description of the hiring and employee management responsibilities of each venturer.

The Joint Venture applicants must submit the following concerning project management and administration:

An explanation of how project management will be handled (the managing 8(a) participant must maintain project management control);

An explanation of the specific responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract; and

A breakdown of work tasks to be performed by each joint venturer.

The Joint Venture applicants must also submit:

A statement certifying that all the required provisions have been incorporated into the JVA, as set forth in 13 CFR 124.513(c);

A statement certifying that the provisions of the JVA are fair and equitable and will substantially benefit the 8(a) participant along with an explanation demonstrating this; and

A statement certifying that the 8(a) participant will bring substantial value to the Joint Venture in terms of resources and expertise other than 8(a) status.

What is the Review Process for a Joint Venture?

The Business Opportunity Specialist (BOS) in the District Office servicing the managing 8(a) participant has the following responsibilities:

Initial review of the entire package for completeness and of the JVA to ensure that all required provisions are included;

Review of the participant firms to ensure compliance with size standard requirements;

Review of the package to determine whether the Joint Venture is fair and whether it will substantially benefit the 8(a) Participants(s);

Review of the package to determine whether the 8(a) participant brings something of value to the Joint Venture in terms of resources and expertise other than its 8(a) status;

Review of the package to ensure the non-managing venturer(s) provides the lacking necessary capacity the managing venturer is missing. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the BOS must review the package to ensure the non-managing venturer provides this missing capacity. The JVA must address this missing capacity, and the non-managing venturer(s) must provide it;

Preparation of a summary report of findings;

Submission of the summary report and relevant supporting documents to the District Counsel for review for legal sufficiency; and

Submission of the report to the Assistant District Director for 8(a) BD (ADD/8(a)BD) for review and recommendation.

The District Counsel is responsible for reviewing the summary report, Joint Venture Agreement and supporting information for legal sufficiency.

The ADD/8(a)BD is responsible for reviewing the summary report, JVA and supporting documents, and makes a recommendation to the District Director.

The District Director or Deputy District Director is responsible for reviewing the summary report, JVA and supporting documents, and makes a final decision whether or not to approve the Joint Venture.

The District Office is responsible for notifying the participant and other interested parties of the decision to approve or deny the Joint Venture.

What Analysis Should the BOS Include in the Summary Report?

In assessing the appropriateness of the Joint Venture, the BOS should consider factors including, but not limited to, the following:

Whether it fits into the business development needs identified in the firm's approved business plan;

The purpose of the Joint Venture and specific benefits to be gained by the 8(a) firm. The BOS will review the package to ensure the non-managing venturer(s) provides the lacking necessary capacity the managing venturer is missing. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the BOS must review the package to ensure the non-managing venturer provides this missing capacity. The JVA must address this missing capacity, and the non-managing venturer(s) must provide it;

The size of the Joint Venture participants, and/or the Joint Venture;

The finances of each participant, and financing of the Joint Venture, including cash flow;

Affiliations of each participant;

Percentage of disadvantaged ownership;

Number of and skills of employees supplied to the Joint Venture by each venturer;

Type and value of equipment contributed by each venturer;

Number and value of contracts received by each participant in the NAICS code assigned to the requirement;

Relevant expertise or professional licenses, etc. of each venturer;

The 8(a) participant's compliance with business activity targets;

Each participant's history of Joint Ventures;

The breakdown of work or tasks to be performed by each participant; and

The impact of the Joint Venture requirement on performance of the 8(a) participant's existing contracts in terms of cash flow, personnel, equipment, and facilities.

What Must the District Office Summary Report Address?

The District Office review should be based on consideration of the factors outlined in the Question 13 above, and the summary report must address the following issues at a minimum:

The specific resources that the participant lacks which cause the Joint Venture to be necessary. See Question 3 of this chapter pertaining to capacity. In determining whether the 8(a) participant lacks sufficient capacity, the scope of prior contracts and past performance should be considered. The BOS's analysis will address the managing venturer's lacking resources. The analysis specifically addresses how the non-managing venturer(s) provides these lacking resources. Given that the JVA will only be permitted where an 8(a) concern lacks the necessary capacity to perform a specific contract on its own, the summary report addresses how the non-managing venturer(s) provides this missing capacity. The summary report must address this missing capacity and how the non-managing venturer(s) provides it.

Whether all required provisions specified in 13 CFR 124.513(c) have been incorporated into the JVA.

Whether all the provisions of the Joint Venture are fair and equitable and for the substantial benefit of the 8(a) participant. In order to determine whether the firm will substantially benefit from the Joint Venture, the BOS may consider, among other things, dollars earned on the project, and the likelihood that as a result of the Joint Venture the firm will improve capabilities, increase experience, acquire new equipment, acquire additional employees, be capable of handling larger procurements, obtain expertise in a new area, or acquire new skills.

The specific resources the 8(a) participant brings to the Joint Venture. In determining whether the 8(a) participant will bring substantial resources to the Joint Venture, the BOS should consider the equipment, personnel, expertise, bonding, financing, management capabilities, and facilities the 8(a) participant will contribute. For managing venturers, the BOS may also examine the expertise brought to the Joint Venture by the project manager. "Substantial" is not specifically defined, but is dependent on the nature of the procurement and the particular resources the 8(a) participant brings. However, if the 8(a) participant contributes far less than would warrant its receipt of 51 percent of the net profits of the Joint Venture, the presumption is created that the 8(a) participant is not contributing substantial enough resources to the Joint Venture.

Who in SBA Makes the Final Decision for Joint Venture Agreements When More than One District Office is Involved?

Joint Venture Agreements involving program participants having different servicing District Offices must be approved by the District Director of the servicing office of the managing 8(a) firm. Agreements will be forwarded from the ADD/8(a)BD of the District Office servicing the managing 8(a) firm (after comment) to the servicing offices of the secondary 8(a) participant firms. Those offices will be allowed 3 working days to append comments and recommendations. The agreement package will then be returned to the managing participant's servicing District Office for final decision by the District Director.

How Much of the Work Under a Requirement Must the Joint Venture Perform?

In order to be awarded an 8(a) contract, the Joint Venture must perform at least the following percentages of work:

Services (non-construction). 50% of the cost of the contract incurred for personnel with its own employees;

Supplies or 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); and

Special trade construction. 25 % of the cost of the contract with its own employees (not including the cost of materials). See 13 CFR 124.510, 13 CFR 125.6.

How Much of the Work of the Joint Venture Must the 8(a) Participant Perform?

The 8(a) participant (or the total of all 8(a) participants involved in the Joint Venture) must perform a significant portion of the contract. Significance must be determined on a case-by-case basis, factoring considerations such as:

The nature of the industry of the procurement;

The level of resources dedicated by the participant or participants (including man-hours, equipment, bonding, etc.); and

The ultimate business development benefits that the participant(s) will receive from their performance on the contract.

How Does SBA Review Joint Ventures After Approval?

The BOS for the managing participant will perform a review of financial information submitted quarterly and annually by the approved Joint Venture.

All Joint Ventures must be reviewed annually by the servicing District Office of the managing 8(a) participant. This review takes place as part of the managing participant's annual review. The review will commence with the participant's first annual review after the Joint Venture has been in effect and will result in a report containing the following information:

Whether the Joint Venture participants are complying with prime contractor performance requirements (see 13 CFR 125.6);

Whether financial records are being recorded and kept as required;

Whether the personnel of each Joint Venture participant is performing work as stipulated in the agreement and proposal;

Whether equipment is used and accounted for as stipulated;

Whether SBA has approved all amendments to the JVA; and

Whether the 8(a) participant(s) are receiving substantial benefit from the Joint Venture.

If there is more than one 8(a) participant in the Joint Venture, the BOS for each non-managing participant must examine the Joint Venture to determine whether the participant from that District Office is receiving substantial benefit from the Joint Venture and whether the participant is contributing substantial resources to the Joint Venture. The reviews for non-managing Joint Venture participants also take place during such participant's annual review.

SBA may inspect the records of the Joint Venture at any time, with or without notice.

A copy of the report described under item b., above, will be provided to the District Offices servicing the other participants, if any.

Are there Special Considerations for Contract Award and Execution?

Contract documents must list the name of the Joint Venture as the contractor. Signature approval of the contract is done with the following signatures unless awarded pursuant to a delegation of contract authority:

SBA;

Contracting activity;

Managing venturer (8(a) firm); and

All of the Joint Venture partners.

The client case number used in the SACS/MEDCOR system will be the managing participant's case number with added characters, in accordance with SACS/MEDCOR instructions. The BOS must immediately enter the Joint Venture's name, EIN and DUNS number, and the Agency's prime contract number into all relevant databases.

Can the Joint Venture Agreement be Amended?

The Joint Venture may be amended with advance approval from SBA. The members of the Joint Venture must submit the amendment(s) and justification(s) to the District Office servicing the managing participant for approval. The approval process is the same as for the original agreement (review and recommendation by BOS and ADD/8(a)BD, legal clearance from District Counsel, and the final decision by District Director).

What Actions Must be Accomplished After Contract Completion?

After contract completion, a final close-out meeting should be held with the Joint Venture participants to discuss the value of the Joint Venture with regard to increases in the firm's capacity and capability, whether the goals set forth at the inception of the Joint Venture were actually achieved and if not, why not, and any other concerns arising from the Joint Venture.

What is a Contractor Team Arrangement?

A teaming arrangement may be an arrangement in which a potential prime contractor agrees with one or more companies to have them act as its subcontractors under a specified Government contract or acquisition program or it may be a JVA. The requirements under the limitation of subcontracting must be maintained. See FAR §§ 9.601 9.602, and 52.219-14, 48 CFR 9.601, 9.602 and 52.219-14. To maximize the number and type of procurement opportunities, 8(a) firms are allowed and encouraged to team with both 8(a) and non-8(a) firms. However, the SBA is not normally involved with these arrangements, and the SBA is not required to review or approve them.

What is the Role of Teaming Arrangements in the 8(a) BD Program?

A teaming arrangement may be a desirable business development tool. However, it may affect a participant's eligibility if it results in circumstances of actual or negative control, affiliation, or loss of small business status. Consequently, a proposed teaming agreement must be carefully evaluated to determine the relationship of the parties.