Joint Ventures: *Rules, Reasons and Lessons-Learned*

**Presenters**

- Jay D. Carter, PG, Principal
- Kurt Gates, CIH, CHMM, President
- Michael Schwan, PE, LEED AP, BCEE, Sr. Vice President
- Dan Hargrove, Attorney/Q&A Panel
Late Night Reading

FAR 9.601(a)

13 CFR 121.103 (h)

13 CFR 125.5

FAR 52.219-14

13 CFR 125.15 (b)

13 CFR 126.616

13 CFR 124.513

13 CFR 124.1001 (f)

...just a few of the regulation references
Presentation Objectives:

1. Summarize the SBA regulations/rules related to the formation of Joint Ventures
2. **Advantages** and **Risks** of forming a JV versus standard teaming arrangements and the due diligence required
3. **Reasons** for contemplating entering into a JV...from a small business and large business perspective
4. JV **options and considerations**
5. Our **experience/lessons-learned** in forming and performing in JVs
6. Questions and Answers
Regulations/Rules for JVs

- **SBA definition** of a small business joint venture
- **Size** standards
  - **Types** of small business set-asides, unrestricted competition and joint ventures
  - **Mentor/Protégé** and 8(a) exception
SBA Definition of a Joint Venture

An *association of individuals and/or concerns* with interests in any degree or proportion by way of contract, expressed or implied.

*Combining* efforts, property, money, skill, or knowledge.

JVs operate for a *limited period of time* or *specific purpose* and should not be considered as the “default” business model.
Size Standards

**NAICS** (North American Industry Classification System) code for the acquisition

SBA size standard: **3 year average annual revenues**

SBA size standard: **# of employees over the last 12 months**

...Special rules apply for SBA 8a Mentor/Protégé Program, and Tribal and Alaskan Native Corporations
“Affiliation” or combined revenue and employee size does not apply to the following Federal procurements:

“Bundled” procurement

Other than “Bundled” procurement and:

Receipts-based size standard: dollar value of procurement exceeds half the size standard (i.e., NAICS is $6.5M, Procurement Value >$3.25M)

Employee-based size standard: dollar value of procurement (including options) exceeds $10M
## Joint Ventures or Teaming Agreements

<table>
<thead>
<tr>
<th>Features of a JV</th>
<th>Features of Teaming Agreements</th>
</tr>
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<tbody>
<tr>
<td>JV is higher level of <em>commitment</em> (marriage)</td>
<td>Teaming Agreements require <em>less commitment</em></td>
</tr>
<tr>
<td><em>Shared</em> Financial Risk/Reward, Joint and severable liability</td>
<td>Financial risk and reward can be <em>separated</em></td>
</tr>
<tr>
<td><em>Enforceable</em> Legal Document</td>
<td>Enforcing teaming agreements <em>difficult</em></td>
</tr>
<tr>
<td><em>Improve</em> Qualifications of Prime (JV Lead)</td>
<td>Prime <em>qualifications separate</em> from team subs</td>
</tr>
<tr>
<td>Requires <em>More Effort</em> to Manage</td>
<td>Typically <em>simple</em> to manage</td>
</tr>
<tr>
<td><em>Reputations</em> joined</td>
<td>Reputations can be <em>independent</em></td>
</tr>
<tr>
<td>More <em>Flexibility</em> in Pricing Approach</td>
<td>Prime/Subcontractor <em>pricing model</em></td>
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JV vs standard Teaming Arrangement?

Considerations include:
- Similar **cultures** and **values**
- **Existing** proven and successful relationship
- **Financial stability** of both firms, particularly for the small or disadvantaged firm
- Which firm will **bond**? Can the disadvantaged firm bond?
- Does the disadvantaged firm have the **resource/processes** in place to manage the JV?

...Bottom line is the **level of trust and commitment for a JV is much greater** than that required for a standard teaming arrangement
Reasons for Considering a JV from a Small Business Perspective

- Need additional geographic **coverage**, **resources**, **capabilities**, and **qualifications** to address the SOW/RFP requirements

- **Leverage** capabilities and capital

- Share or reduce **risks**

- Need JV partner to **penetrate market opportunity**....SB, SDVOB, 8a, WOB, etc.

- Need a “mentor” to assist in the upgrading of **internal systems** to prepare for the rigors of federal work

- SB may be a “start up” and needs the **guidance/mentoring** of another more mature firm
**Don’t forget what the SB must perform!**

- **Limitations on subcontracting** apply to small businesses and small business joint ventures too.

<table>
<thead>
<tr>
<th>Services</th>
<th>Supplies</th>
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<tbody>
<tr>
<td>Provide 50% of personnel costs</td>
<td>Provide 50% of cost of manufacturing, excluding materials</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>General Construction</th>
<th>Special Trade Construction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perform 15% of cost of contract with own employees, excluding materials</td>
<td>Perform 25% of cost of contract with own employees, excluding materials</td>
</tr>
</tbody>
</table>
# JV Options and Considerations for SBs

<table>
<thead>
<tr>
<th>Small Business Type</th>
<th>Sole source</th>
<th>Competitive set-aside</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. SB</td>
<td><strong>No</strong></td>
<td>Yes</td>
<td>Two SBs can JV subject to size restrictions</td>
</tr>
<tr>
<td>2. 8a</td>
<td>Yes</td>
<td>Yes</td>
<td>8a and JV with 8a, SB or LB subject to size restrictions <strong>8a in SBA MPP can JV with Mentor to create 8a with size restrictions waived</strong></td>
</tr>
<tr>
<td>3. HUB Zone</td>
<td>Yes</td>
<td>Yes</td>
<td>Two HUB Zones can JV subject to size restrictions HUB Zones cannot JV with non-HUB Zone firms</td>
</tr>
<tr>
<td>4. SDV</td>
<td>Yes</td>
<td>Yes</td>
<td>SDVOBs can JV with other SB firms subject to size restrictions</td>
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</table>
CAPE’s JV Experience…
And Proof That It Works

CAPE is currently a member of 3 JVs

- C/P/E which was formed for Department of Energy (DOE) Environmental Management Contract
- CDM/CAPE JV which was formed for large business DoD construction pursuits
- HCR/CAPE JV which was formed for 8(a) construction pursuits under SBA’s Mentor-Protégé program
CAPE’s JV Experience... And Proof That It Works

**Target:** A DOE multiple award remediation contract

**Challenge:** CAPE had the expertise and federal resume to pursue, but lacked DOE experience
CAPE’s JV Experience... And Proof That It Works

Solution: Formed a JV that combined 3 SBs...

CAPE
TerranearPMC (Formerly PMC)
ECOR ...that still qualified as a SB. The combined quals of the JV included the expertise, past performance and DOE-specific specific experience.

Result: Awarded a SB contract ($800M program value)

$2M ID/IQ contract at Los Alamos National Lab
Two TOs totaling $1M at Idaho National Lab
$12M TO at Stanford Linear Accelerator Center (SLAC)
CAPE’s JV Experience… And Proof That It Works

Target: Air Force Construction, and specifically the AFCEE HERC and AFCESA SATOC

Challenge: CAPE is a LB under construction NAICS code. CAPE had the AF resume but lacked world-wide resources and bonding (>100M available capacity) when compared to larger LBs
CAPE’s JV Experience... And Proof That It Works

Solution: Formed CDM/CAPE JV, which synergistically drew from both firm’s strengths to create an entity with AF resume, worldwide resources and financial stability

Result: Awarded AF Construction ID/IQ contracts
- AFCEE HERC - $6B total program value
- AFCESA SATOC - $2B total program value
- AFRC COMPEC - $97.5M total program value
**CAPE’s JV Experience... And Proof That It Works**

**Target:** DOD Construction market

**Challenge:** CAPE graduated from 8(a) program and has outgrown construction NAICS code as a small business.

One of our partner firms, HCR, is a successful small construction company, but lacked the resources to pursue mid- and large-size projects.
CAPE’s JV Experience…
And Proof That It Works

Solution: Entered into an SBA-approved mentor-protégé relationship with HCR

Result: Currently competing for three 8(a)-set aside projects through the JV (*A part of the pie is better than no pie at all!* )
Bhate Experiences and Lessons-Learned

- **Bhate** is in a SBA Mentor-Protégé Program with NationView, LLC, an 8a Native American small business

- We have formed JVs resulting in:
  - $5.1M NPS Renovation of Tuskegee Airmen, Moton Field, AL
  - $10M Omaha District Compliance MATOC
  - $147M Huntsville District/Child Youth Centers MATOC

- We have teamed/supported NationView resulting in:
  - $3.5M Los Angeles District Restoration Contract
  - $3.5M Huntsville Center Compliance Contract
  - $3.5M Mobile District BEST contract
Bhate Experiences and Lessons-Learned (Con’t)

- **Bhate** has also JV’d with two other 8a firms, subject to size revenue restrictions.
  - JV’d with 8a to secure a $112M Huntsville Center Facility Renovation and Repair Contract (met size restrictions)
  - JV’d with private sector firm, no SBA regulations applied to win a contract for demolition of older homes in the flight path of Birmingham International Airport
What is in it for Bhate?

The ability to create a very strong resume for the new JV LLC and participate in opportunities in the 8a marketplace.

Subcontracting opportunities (regulated by the terms of the JV and in strict accordance with SBA and DOD guidelines) that we would not otherwise have had.

Pride in helping to “stand up” a firm comprised of owners that you have a long relationship with, trust and want to help establish a viable, qualified, and capable 8a firm. Teaming is dating, JV is a marriage. Pick your bride/husband carefully!
Bhate Experiences and Lessons-Learned (Con’t)

What has NationView gained from Bhate’s support?

- Valuable **insight** from a former 8a (graduated in 2003) on how to operate within the 8a program
- Upfront **infrastructure/MIS support** to put systems in place immediately, get off Quick Books and prepare the firm for third party and DCAA audits
- **Introduction** to our clients and business development support in writing **proposals**, participating in “Red Teams” and **pricing** review
- The ability to obtain **increased bonding capacity**, as permitted by SBA MPP
**Bhate Experiences and Lessons-Learned (Con’t)**

- **Day-to-Day interaction** with Mentor to answer questions
- **Assist** Protégé in fleshing out the specifics of a GO-NO GO on proposals
- Assist the Protégé in a deeper understanding the **Balance Sheet/Income Statement** and it’s performance relationship to securing additional capital/line of credit, bonds, etc.
- Assist the Protégé in identifying **staffing** needs
- Be there for the Protégé when they need reassurance and **calm them down** when they become overwhelmed
Bhate Experiences and Lessons-Learned (Con’t)

What would we have done differently?

- Made better **GO-NO GO decisions** on the first JV slots. Everyone was excited to “go get’em”

- Been a little **less specific** on the opportunity identified in the JV (three slots/opportunities per JV)

- Use **JV/attorney experts upfront**, as a means of reviewing your plans
Increasingly solicitations/RFPs are coming out Small Business (8a, SDVOB, Hub Zone) and Large Businesses need contract vehicles to access new work.

JVs are a means of securing a dedicated portion of the work brought in by the JV. A more secure position than a teaming agreement operating as a subcontractor.

Creates a stronger team, particularly if two large businesses JV in the full & open market.

If the JV is sanctioned by the SBA 8a Mentor/Protégé Program, a very strong firm (new LLC) is created with size and revenue restrictions waived.
What does **CDM**, a Large Business, look for in a SB JV Partner

- Leverage
  - Leverages *unique* SB technical skills, client contacts and capabilities with those of the LB and their geographic coverage to meet specific RFP requirements – fill the “gaps”
  - Leverages *strong separate qualifications* (experience and resumes) into a stronger joint RFP submittal
- Risk Management (JV risk is joint and severable)
  - Similar Corporate “**Core Values**”
  - **Trust** – date first, then a JV
  - Financial **health and stability**
What does CDM, a Large Business, look for in a JV Partner

- Executive Commitment
  - Senior staff from both firms have **mutual understanding and solid working relationship** to resolve issues
  - Commitment to make JV work

- Similar Work Standards
  - Client satisfaction, Quality, and Safety
  - Able to direct staff to meet critical needs in timely manner
  - **Fixes their own problems** – keeps us informed
Questions and Answers