



# GIVE ME 5: GAIN YOUR COMPETITIVE ADVANTAGE WITH JOINT VENTURES

GUEST SPEAKERS:

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April 5, 2018

# ABOUT WIPP

- Founded in 2001, Women Impacting Public Policy (WIPP) is a national, nonpartisan organization advocating on behalf of women entrepreneurs
- We work to strengthen women business owners' impact on our nation's public policy, create economic opportunities and forge alliances with other business organizations
- Our collective voice, including 79 women's organizations, has a powerful influence on Capitol Hill and with the Administration



# ABOUT GIVE ME 5

- National program from WIPP & American Express OPEN designed to educate women business owners on how to apply for and secure federal procurement opportunities.
- Give Me 5 works to increase the representation of Women Business Owners that win government contracts. We provide accessible business education tools to assist both new and experienced federal contractors.
- Women Business Owners could gain more than \$4 billion in annual revenues if the 5% contracting goal set by Congress was reached.





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# GIVE ME 5: JOINT VENTURES

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# WHAT IS A JOINT VENTURE?

- In general: a limited purpose entity
- SBA's definition: "A joint venture is an association of individuals and/or concerns with interests in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a two year period, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally." 13 C.F.R. § 121.103(h).

# WHY DO COMPANIES JOINT VENTURE?

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

# WHAT ARE THE DOWNSIDES TO A JOINT VENTURE?

- Lead Contractor gives up substantial control
- The Government may view the joint venture as lacking a clear point of contact, thus raising concerns regarding control, authority, and accountability
- Longer, deeper commitment than traditional teaming
- Confusion over how the work is supposed to be split amongst the venturers



# STRUCTURING A JOINT VENTURE

- “Corporate” forms
  - Partnership
  - Limited Liability Company
  - Corporation
- Other considerations:
  - Populated v. Unpopulated Joint Ventures
  - Limitations on Subcontracting
  - Management of Joint Venture

# JOINT VENTURES UNDER SBA REGULATIONS

- General rule: when companies form a strategic alliance and have an identity of interest with one another, they are affiliated. Therefore, the default is that forming a joint venture will give rise to affiliation.
- HOWEVER, 13 C.F.R. § 121.103(h) lays out the exemptions to affiliation for joint ventures:
  - Joint venture of two or more businesses may submit an offer as a “small business” without regard to affiliation so long as each is small under NAICS code assigned to the contract
  - Joint venture of one small business and one other-than-small business may submit an offer as a “small business” without regard to affiliation so long as the other-than-small business is the SBA-approved mentor and the joint venture agreement complies with applicable SBA regulations
  - Must comply with “3-in-2” rule (question about MP JVs?)

# JOINT VENTURE AGREEMENT

- Regulations provide specific requirements regarding the content of the Joint Venture Agreement (JVA) – check relevant regulations:
  - Small Business: 13 C.F.R. § 125.8
  - 8(a): 13 C.F.R. § 124.513
  - SDVOSB: 13 C.F.R. § 125.18
  - HUBZone: 13 C.F.R. § 126.616
  - ED/WOSB: 13 C.F.R. § 127.506
- Important to make sure that JVA includes all required elements in case size or socioeconomic status of Joint Venture is protested

# JOINT VENTURING FOR 8(A) SET-ASIDES

- At least one partner must be an 8(a) firm (majority owner)
- All partners must be small businesses or large business is SBA-approved mentor
- 8(a) firm must do 40% of Joint Venture's work
- The SBA must approve the Joint Venture Agreement
  - 8(a) firm must manage
  - 8(a) employee must be project manager
  - 8(a) company must receive profits commensurate with work performed
- Joint Venture must be registered in SAM as a joint venture

# JOINT VENTURING FOR ED/WOSB SET-ASIDES

- At least one partner must be an ED/WOSB (majority owner)
- All partners must be small businesses or large business is SBA-approved mentor
- ED/WOSB firm must do 40% of Joint Venture's work
- The SBA does not approve the Joint Venture Agreement; however, the Joint Venture Agreement must be uploaded to WOSB repository
- Joint Venture must be registered in SAM as a joint venture

# JOINT VENTURING FOR HUBZONE SET-ASIDES

- At least one partner must be a HUBZone firm (majority owner)
- All partners must be small businesses or large business is SBA-approved mentor
  - Not yet in FAR
- HUBZone firm must do 40% of Joint Venture's work
- The SBA does not approve the Joint Venture Agreement
- Joint Venture must be registered in SAM as a joint venture

# JOINT VENTURING FOR SDVOSB SET-ASIDES – NON-VA

- At least one partner must be a SDVOSB (majority owner)
- All partners must be small businesses or large business is SBA-approved mentor
- SDVOSB firm must do 40% of Joint Venture's work
- The SBA does not approve the Joint Venture Agreement
- Joint Venture must be registered in SAM as a joint venture

# JOINT VENTURING FOR SD/VOSB SET-ASIDES – VA

- At least one partner must be a SD/VOSB (majority owner)
- All partners must be small businesses or large business is SBA-approved mentor
- CVE must approve the Joint Venture



# THANK YOU TO OUR SPEAKERS

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# THANK YOU FOR PARTICIPATING!

Following this call you will receive links to the podcast of this session.

For questions, please contact Lin Stuart at  
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# GET INVOLVED!

- Learn how policy can impact your business growth
- Join countless other women entrepreneurs making their voices heard at the public policy table
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- Receive weekly/monthly policy updates and briefings
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