



GOVERNMENT CONTRACTORS
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How to Make Teaming Agreements,
Joint Ventures & Mentor Protégé
Pay Off for Small Business

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INTRODUCTION

Panelists



Carl A. Gebo is the President and Founder of the Government Contractors Assistance & Resource Line LLC (GCARL) and a partner at the Gebo Law Group, a Government Contracts Law Firm.



Roderick N. Hagen is a Senior Project Engineer with Lockheed Martin Space Systems Company at Cape Canaveral Air Force Station, Florida and a GCARL Contributor. Rod has experience as an owner and program manager for multiple SDVOSBs, WOSBs, HUBZone SBs, and 8(a) SBs.

Our Discussion

- 1) Mentor-Protégé Programs**
- 2) Joint Ventures**
- 3) Teaming Agreements**

Mentor-Protégé Programs

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Mentor Protégé: The Basics

I. Definition

II. Controlling Law

- A. SBA 8(a) Business Development Mentor Protégé Program -- 13 CFR §124.520 (awaiting new reg. from SBA)
- A. VA Mentor Protégé Program – 48 CFR §852.219-71. Expired Dec. 30, 2014 (awaiting new reg. from SBA)
- A. 11 Other Federal Agencies including: DOD; State; GSA; NASA; DHS; Treasury; FAA; EPA; Energy; USAID; and HHS – See agency websites, regulations, and manuals

III. Special Mentor Protégé: SBA 8(a) BD program

Currently only SBA gives Affiliation Exclusion for 8(a) & non 8(a) procurements. Mentor Protégé Agreement (MPA) must be approved and JV must comply with 13 CFR §124.513(c). See 13 CFR §124.520(d)(1)(ii)

Mentor Protégé: Benefits

I. Mentors – “Intangibles”

1. Long-term relationship with trusted business partner
2. Avoid Competitively Bidding Subcontracts
3. Reputational Enhancement with Federal Agencies

II. Mentors – “Tangible”

1. Direct & Indirect Cost Reimb. of Dev. Assistance Costs (DOD /DOE/GSA FAA)
2. Ownership of Protégé – Up to 40%
4. Allowed to Compete for Set-Aside Contracts as part of JV/ Set-Aside Procurements
5. Award Fee (NASA & DOE)

Mentor Protégé: Benefits

I. Protégés – Tangibles

- A. Increased Financial Capability – Capital, Cash Flow & Bonding Capacity
- B. Subcontracts – Can Build Experience/Past Performance
- C. Leverage Mentor's Employees, Supervisors, Managers & Suppliers

II. Protégés -- Intangibles

- A. Technology/Knowledge Transfers Esp. Engineering & Technical Matters
- B. Enhanced Competitiveness – Especially Past Performance
- C. Networking/Marketing/Biz Development & Biz Planning

Mentor Protégé: Characteristics of Successful Mentor-Protégé Relationship

The quality of a relationship is a function of how well it meets the needs of those involved.

-- Dr. Phil



1. Mentor-Protégé Agreement

- a) Agency Templates = Necessary But Not Necessarily Sufficient
 - i) Address Mentor's Needs
 - ii) Explain Anticipated Assistance & Types of Projects Covered
 - iii) Affiliation Exclusion Only Applies to Assistance Received under MPA
- b) MPA's Governed by State Law & Subject to Federal Law – FCA, etc.

2. Tetra Tech & Houghton Assocs. Inc. / Raytheon & Enser

- a) First. Fill Holes.
- b) Clear Areas of Responsibility & Flexibility to Grow, Evolve & End MP Relationship
- c) Development Assistance Description Anticipates All Scenarios

3. Readable & Workable Ancillary Agreements

- a) Joint Venture Agreement
- b) Subcontractor Agreement

Mentor Protégé: Why Mentor Protégé Relationships Fail

Coaching a spouse is like baptizing a cat.

-- Dr. Phil



I. Insurmountable Incompatibility

- A. Greedy Mentor – Okland Construction Co., Inc.
- B. Disengaged or Covetous Mentor – Alpha Data Center v. HX5

II. Different Expectations & Goals

- A. Overly Optimistic Representation of Protégé's Product or Capabilities
- B. Protégé Inability or Unwillingness to Take on Additional Requirements – Post-Katrina Investigations of FEMA Reconstruction Projects

Joint Ventures

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Joint Venture: The Basics

I. Definition

FAR 9.601(1): “Contractor team arrangement,” means an arrangement in which—

(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor.

A Joint Venture is an association of individuals and/or concerns with interest in any degree or proportion by way of contract, express or implied, 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 CFR 121.103(h)

II. Controlling Law

Depends on the Solicitation.

III. Affiliation

Concerns and entities are affiliates of each other when one controls or has the power to control the other, or a third party or parties controls or has the power to control both. It does not matter whether control is exercised, so long as the power to control exists.

Joint Venture: Benefits

- **Enables companies lacking capacity or diversity to compete for large contracts**
- **Each party may have voice in management**
- **Each party shares in profits and risks**
- **JV entity has privity of contract with the government**
- **Access to new technologies**
- **Access to improved management approaches/techniques**
- **Knowledge gained from associations established and guidance provided as a result of the venture**
- **Access to well-established distribution channels**
- **Establishment of and entry into new markets**
- **Development of new product lines**

Joint Venture: Creating a Viable JV

- 1. Choose right form for your goals**
- 2. Determine Ownership, Approval, Management & Operational Issues**
- 3. Determine Profit Sharing and Contributions**
- 4. Carefully Draft Agreements**
- 5. Mind Set-Aside Requirements**
- 6. Check relevant State Laws**

Joint Venture: Characteristics of Successful JVs

- **The Facts:**
 - ❑ SDVOSB / EDWOSB construction contractor working hard and winning some smaller contracts
 - ❑ Personnel trained and experience in much larger projects but entity lacks past performance
 - ❑ Limited bonding capacity
- **JV was the answer for this SDVOSB / EDWOSB.**
- **The Challenge: compatibility**
 - ❑ Find a partner that fit what they needed substantively and that would agree to form the JV in a way that qualified it as an SDVOSB JV verifiable by the VA's CVE.
- **The JV Partner:**
 - ❑ Larger company with greater Past Performance on directly relevant projects. Greater financial capacity, including bonding.
 - ❑ Not completely duplicative of abilities, experience but healthy overlap so truly collaborative efforts generate “best of both”
- **The Result:**
 - ❑ The JV made it into the competitive range on a procurement that the Government Estimated at \$40 Million.
 - ❑ The got out of the Low Bid world and into the Best Value Arena.

Joint Venture: Desperately Seeking Approval

- **Background:**
 - ❑ Lukos, LLC ("Lukos") and Visual Awareness Technologies and Consulting, Inc. ("VATC") executed a mentor-protégé agreement ("MPA") so their JV could get approved for and admitted to the 8(a) Program.
 - ❑ Lukos learned that the MPA looked good and was on its way up the chain at SBA.
 - ❑ Lukos and VATC formed the unpopulated joint venture, LVJV.
 - ❑ While the SBA continued to process the MPA for approval, SOCOM issued solicitation for NAICS code 541990, with a size standard of \$14 million. The procurement was a 100% set-aside for 8(a) Program participants.
 - ❑ The Area Office found that the MPA was not approved until **after** the Solicitation closed.
 - ❑ LVJV appealed to OHA. OHA affirmed the Area Office's determination.
- **Rule:**
 - ❑ LVJV relied on language in the SOP that allowed the ADD/8(a) BD or the District Director to deny an MPA, not to approve it. *Lukos Vatec JV LLC v. United States*, 116 Fed. Cl. 108, 114-115 (Fed. Cl. 2014).

Teaming Agreements

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Teaming Agreement: The Basics

I. Definition

“Contractor team arrangement,” means an arrangement in which— 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.

See FAR 9.601(2)

II. Controlling Law- State Law with Little Recourse

Under most States’ laws, “agreements to agree” are not binding contracts.

Benefits of a Teaming Arrangement

- Complement each other's capabilities
- Offer the Government the best combination of performance, cost, and delivery
- Provides small businesses with government contracting opportunities and experience that it otherwise would not have
- Opportunity for large prime to satisfy subcontracting goals or to participate in small business set-aside opportunities (teaming agreement only)

Teaming Agreements: Major Considerations

- Size Determinations and Affiliation Issues
- Exclusivity of the Teaming Agreement
- Enforceability of Teaming Agreement
- Protecting Proprietary Information

Teaming Agreement: Characteristics of Successful Teaming Agreements

- Identify the solicitation
- Specify proposal preparation responsibilities
- Use language of Solicitation
- Responsibilities and Percentage of Work
- Duties if Award or No Award
- Terms of Subcontract
- Division of Statement of Work
- Pricing
- Exclusivity
- Specify each party's responsibilities in proposal preparation
- Exclusivity
- Process for entering into a subcontract
- Terms of Subcontract
 - Division of Statement of Work
 - Pricing

Teaming Agreement: Arrangements Gone Wrong

Example 1:

Background:

- SBI proposed incumbent as sub for 40% of work
- SBI's 51% of work
- All key employees were from incumbent sub

Lesson Learned:

- Due Diligence of all subs
- Past performance
- Team hierarchy and key roles
- Executive Order 13,495

Comparing Mentor Protégé Relationship, Joint Ventures and Teaming Agreements

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What Kind of Relationship are You Ready For?

Mentor Protégé	Joint Venture	Teaming Agreement
Engaged w/ prenuptial agreement	Married	Living together

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QUESTIONS?

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- Special Lagniappe Just for NVSBE 2015 Attendees

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