JOINT VENTURES & STRATEGIC PARTNERSHIPS

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Bill Walters, Partner
Bill.walters@dhgllp.com
1430 Springhill Road, Suite 300
McLean, VA 22102
Tel: 703-970-0509
Fax: 703-970-0401

Antonio Franco, Partner
afranco@pilieromazza.com
888 17TH Street NW, 11th Floor
Washington, DC 20006
Tel: 202-857-1000
Fax: 202-857-0200

DIXON HUGHES GOODMAN LLP
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PILIERO MAZZA PLLC
ATTORNEYS AT LAW

WHAT IS A JOINT VENTURE

- A Joint Venture is:
  - “A joint venture is an association of individuals and/or concerns with interests in any degree of proportion by way of contract, express or implied, consorting to engage in any carry out no more than three specific or limited-purposes 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.”

JOINT VENTURE AGREEMENT

- Purpose
- Legal Structure
- Governance
- Contractual Compliance
- Systems and Records
- Profit and Losses

TEAMING AGREEMENT *vs.* JOINT VENTURE

- **Liability**
  - JV partners jointly responsible for contract performance, and except in LLC, jointly and severally liable.
  - Subcontractor only responsible for portion of work it performs, limited liability.
- **Control**
  - Shared by JV partners.
  - Prime Contractor has control over teaming relationship.
- **Bonding**
  - JVs typically able to obtain bonding based on combination of all partners.
  - Prime/sub may work also, but likely requires agreement of all parties to be bound and collateral from owners.

STRUCTURING A JOINT VENTURE

- Choice of Structure
  - LLC
  - Partnership
- Other considerations:
  - Populated v. unpopulated joint ventures
  - Limitations on Subcontracting – for set-asides
  - Avoiding “general” affiliation

JV PARTNERSHIP VS LLC

- **Partnership**
  - **Liability–Partners are jointly and severally liable on debts of the partnership.**
- **Limited Liability Company**
  - **Liability–Members not liable (beyond capital contributions) to third parties for actions of the LLC.**
  - **Documentation–Articles of Organization and Operating Agreement need to be drafted.**

Accounting System

- **Accounting System**
  - JV Accounting System must past pre-award audit.
  - System must be able to segregate and allocate allowable and unallowable costs.
  - System must be able to invoice in accordance with contract provisions.
  - System must be able to readily calculate contract direct and indirect costs.

Other Financial Requirements

- Profit and & Loss
  - 51% of net profits earned by JV must be distributed to small business venturer.
  - 8(a) must receive profits from the JV commensurate with their ownership interest in JV.
- Audited Financial Statements
  - 8(a) participants with gross receipts > $10M
    - Native owned 8(a) may submit audited statements for parent company and unaudited for 8(a).

JOINT VENTURES: SMALL BUSINESS SET-ASIDES

- The "3-in-2" Rule; JV is eligible for three awards in two years.
- Government can award to JV if contract:
  - Exceeds ½ of revenue-based size standard.
  - Exceeds $10M (employee-based size standard).
  - All partners must be small, except for SBA-approved 8(a) Mentor-protégé relationship.

JOINT VENTURES – EXEMPTION TO AFFILIATION

- **Two years starting from the date of the award of the first contract; but compliance (after the first contract award) determined as of the date of the initial offer including price.**
  - **May ultimately be awarded more than 3 contracts.**
    - **After 2nd award but within 2-year period, submits offers for 3 procurements; may be awarded a contract in response to all 3 of those offers, giving the joint venture 5 total contracts.**
  - **May be awarded a contract beyond the 2-year period provided the offer occurred prior to the 2 years from the date of the first contract award.**

JOINT VENTURES – EXAMPLE 1

- JV ABC has 2 contracts.
- In June & July, JV ABC submits offers on 3 solicitations.
- In September, JV ABC is successful offeror for all 3 solicitations.
- JV ABC now has 5 contract awards, but no affiliation is found.
    - ➢ JV ABC had not yet received 3 contract awards as of the dates of the offers for each of the 3 solicitations at issue.

JOINT VENTURES – EXAMPLE 2

- JV XYZ receives contract on Dec. 19, year 1.
  - It may receive 2 additional contracts through Dec. 19, year 3.
- On Aug. 6, year 2, JV XYZ receives 2nd contract award.
  - It receives no other contracts through Dec. 19, year 3 and has submitted no additional offers.
- JV XYZ cannot receive an additional contract award.
  - Must form new JV to seek additional contracts.

JOINT VENTURES – EXAMPLE 3

- JV XYZ receives contract on Dec. 19, year 1.
- On May 22, year 2, JV XYZ submits an offer for Solicitation 1.
- On June 10, year 2, JV XYZ submits an offer for Solicitation 2.
- On June 19, year 2 receives contract award for Solicitation 1.
- JV XYZ not awarded contract for Solicitation 2.
- On Dec. 15, year 3, JV XYZ submits an offer for Solicitation 3.
- JV XYZ is eligible for the contract award because compliance with the 3 awards in 2 years is determined as of the date of the initial offer.