

# Driven to Team: A Brief Look into Joint Ventures in Pursuit of Government Contracts

By James A. Van Horn

## Introduction

“[A] joint proposal, the result of honest co-operation though it might prevent the rivalry of the parties, and thus lessen competition, is not an act forbidden by public policy. Joint adventures are allowed.”<sup>1</sup>

This dictum, dating back to 1870 in an opinion by Judge Folger writing for the majority of the Court of Appeals of New York, appears to be one of the earliest affirmations of the use of joint venture vehicles in pursuit of government contracts. Although the focus in this case was whether two separate bidders illegally colluded while bidding on a New York public service contract, Judge Folger not only validated the use of a joint venture in a government contract, but also described some of the hallmarks of a legitimate joint venture stating: “[joint adventures] are public and avowed and not secret. The risk as well as the profit, is joint and openly assumed. The public may obtain at least the benefit of the joint responsibility, and the joint ability to do the service.”<sup>2</sup> Today, 142 years later, government contractors are still exploring and experimenting with the use of “joint adventures” in the pursuit of public contracts and the government is still benefiting from the joint responsibility and joint ability that joint ventures offer.

## What is a Joint Venture?

Before there can be any meaningful discussion on joint ventures in pursuit of a government contract, the concept of a *joint venture* must be defined. As touched upon above, for well over a century contractors have been combining their individual resources, skills and expertise to form a single “contractor” for purposes of pursuing a particular government project. The concept of multiple contractors combining their resources for a single purpose has played out through a myriad of distinguishable but related forms of joint venture associations.

Some of the most common terms used to describe these different forms of joint venture associations include consortiums, joint adventures, joint ventures, unincorporated joint ventures, partnerships, limited partnerships, teaming arrangements, corporations, and limited liability companies. Further complicating this concept is whether the entity is “populated” (generally meaning it has its own employees and/or assets within the entity) or “unpopulated” (generally meaning it will not have any employees or assets and must rely on the parent or an affiliate or other third party to carry out the actual work). In fact, all of the different joint venture forms and their associated definitions give rise to significant confusion in this area, which is not entirely necessary.

In an attempt to simplify the matter and to avoid confusion in this article, I will use the term “joint venture” in a generic sense to refer collectively to all of these above

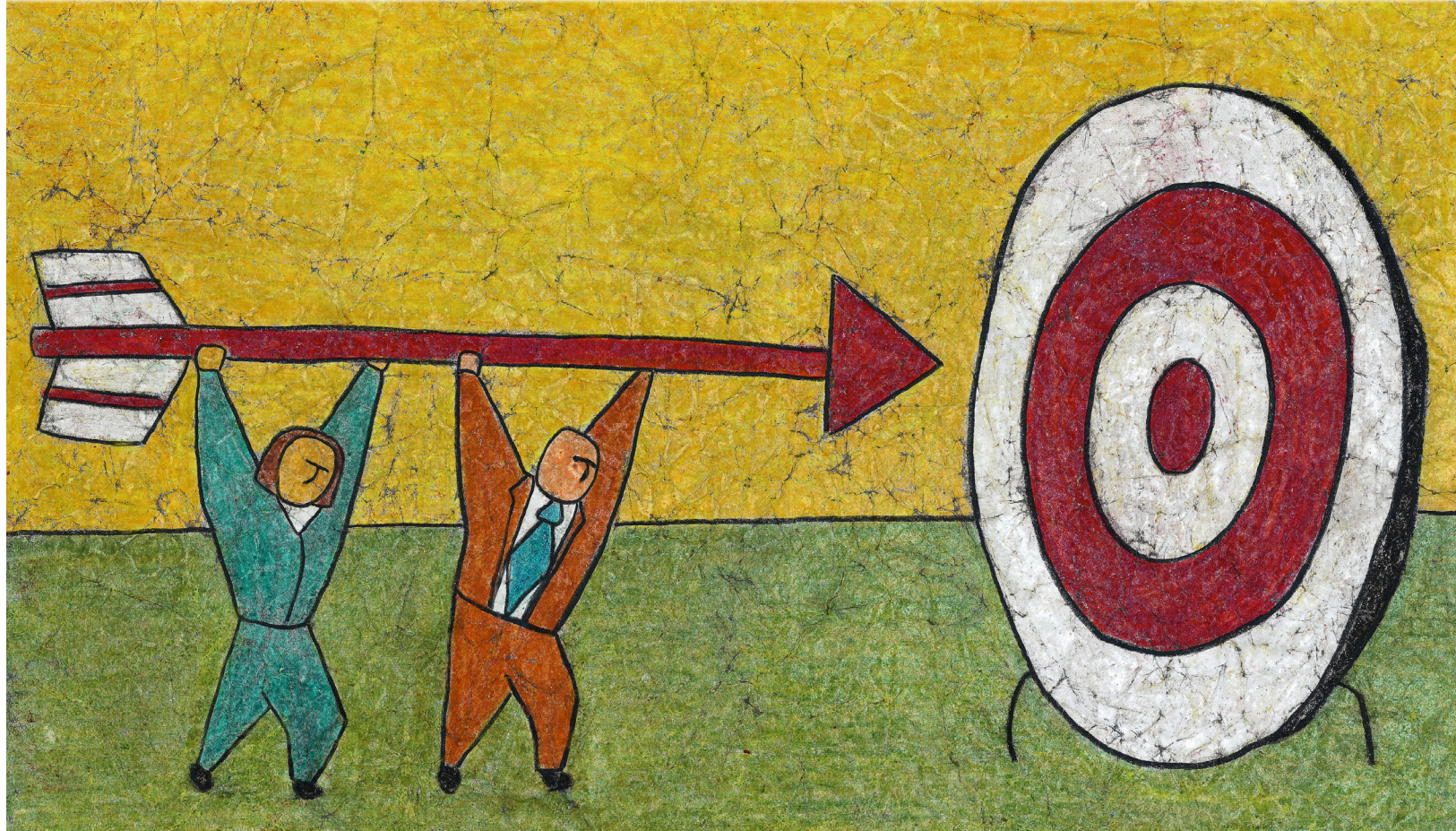
referenced joint venture associations and focus this article on general matters of a joint venture without regard to all of the individual legal variations. This is not meant to downplay the fact that there are significant legal differences between these joint venture associations, but rather to focus the scope and purpose of this article so that it is manageable. Even though there are substantial variations on the concept of a joint venture, there is one common thread with respect to pursuit of a federal government solicitation—joint ventures increase the likelihood of submitting a successful offer.

## How Courts Have Defined Joint Ventures

In looking at the evolution of the concept of a joint venture in the government contract arena, the relevant case law and regulations illustrate the challenges associated with semantics and mechanics when courts and rule-making bodies try to capture this dynamic concept with a single name and definition. The description of a “joint adventurer” provided by the New York Court of Appeals in 1870 is not incorrect; however, it may be a bit dated and too simplistic, as contractors have come a long way since earlier notions of joint ventures in government contracts.

Perhaps a more contemporary and comprehensive definition of a joint venture is provided by the U.S. Claims Court in *Lentz v. U.S.* finding that a joint venture is “generally an association of persons by way of contract to engage in and carry out a single business adventure for joint profit, combining their efforts, property, money, skill and knowledge without creating a partnership or a corporation.”<sup>3</sup> This definition more clearly characterizes the partners taking steps to combine their resources, but it is somewhat limiting in that it excludes creation of a corporation or corporate entity. In the modern era of joint ventures, two or more contractors combining resources to pursue a single government contract may very well take the form of a limited liability company (LLC) or other corporate entity and it is still common (outside of the legal world) to refer to the arrangement as a “joint venture” to recognize the dominant characteristic of the entity as being the combination of two otherwise separate and distinct associations or persons. However, the court in *Lentz v. U.S.* did readily concede that there is no certain, satisfactory, or all-inclusive definition, and that the decisions have not established any fixed or certain boundaries to the legal concept of a joint venture.<sup>4</sup>

Also, it is worth noting that the Claims Court’s successor, the U.S. Court of Federal Claims, has promoted the following simple definition: “In government contract law, a joint venture is a single entity, comprised of more than one individual or organization, which contracts with the government.”<sup>5</sup> This definition is unassuming and non-



restrictive and is consistent with the notion that there is a need, if only for purposes of discussing the concept, to view a joint venture generally without regard to corporate form.

### How Rules/Regulations Have Defined Joint Ventures

Taking a step away from the courts and looking to rules and regulation, the Federal Acquisition Regulation (FAR) does not define the term “joint venture.” It does, however, define the more basic concept of a “Contractor team arrangement,” as “an arrangement in which—(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or (2) 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.”<sup>6</sup> Curiously, this concept of a contractor team arrangement is painted with a broad brush and does not account for the significant differences between the different types of joint ventures, and it further appears to put a joint venture on equal footing with a prime-sub relationship. As we will see later in this article, that is not always the case.

The U.S. Small Business Administration (SBA) may be the most sophisticated agency when it comes to matters of addressing and describing joint ventures. Under current regulations, which articulate how the SBA will determine affiliation, the SBA defines a joint venture as 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.”<sup>7</sup>

This definition has elements to it that are very prescriptive and the requirement to stay under three business ventures over a two year period is only relevant in SBA contracting space. Nevertheless, it is a rather comprehensive definition that does not preclude the use of a corporate entity. In this same regulation, the SBA further elaborates on the concept of a joint venture, stating that for purposes of this particular regulation, “a joint venture must be in writing and must do business under its own name, and it may (but need not) be in the form of a separate legal entity.”<sup>8</sup> Note that the SBA is expressly stating that the concept of a joint venture may take the form of a separate legal entity (e.g., an LLC) but that the SBA will also recognize the validity of a joint venture that does not. Thus, the SBA regulations appear to be in sync with the practical aspects of modern day joint venture concepts, which are more concerned with the dominant trait of a joint venture being the “association of individuals and/or concerns” and not the legal corporate distinctions.

Further, and this appears to be the first time that this concept appears in a government regulation, the SBA acknowledges differences between a populated and unpopulated joint venture stating that it “may (but need not) be populated (i.e., have its own separate employees).”<sup>9</sup> Indeed, the SBA, in a separate regulation related to award of an 8(a) contract to a joint venture, has gone as far as spelling out some of the differences between a populated and an unpopulated joint venture, clarifying that in an unpopulated joint venture, both of the partners are considered to be “technically subcontractors” for SBA purposes and also alluding to a sub-category of unpopulated joint ventures which is only populated with administrative personnel.<sup>10</sup>

These are all relevant joint venture concepts that transcend small business issues, but there is a dearth of federal regulation on these concepts outside of the SBA world. That the SBA addresses these nuances such as populated vs. unpopulated, and to some extent defines them, validates that these nuances within the general concept of a joint venture have an impact on government contracting.

### Ancillary Material

One last area of importance comes from neither case law nor regulation, but rather the Defense Contract Audit Agency's (DCAA) Contract Audit Manual (DCAM), which is an internal government document that provides guidance to the DCAA. The DCAM defines joint venture in relevant part as:

An enterprise owned and operated by two or more businesses or individuals as a separate entity (not a subsidiary) for the mutual benefit of the members of the group. Joint ventures possess the characteristics of joint control; e.g., joint property, joint liability for losses and expenses, and joint participation in profits. Joint ventures can be either incorporated or unincorporated. The incorporated joint venture involves the issuance of stock and is most common on large construction type contracts. These joint ventures possess the typical characteristics of a corporation. The unincorporated joint venture can be a partnership or teaming arrangement between two or more corporations usually involved in large research and development and/or major weapons systems contracts. Usually in this type of joint venture, the joint venture is the contracting entity and is designated to act as the prime contractor.<sup>11</sup>

This definition is far more detailed than the other relevant case law and regulations covering joint ventures in a government contracting setting and it contemplates that a joint venture may be incorporated or unincorporated. The DCAM goes on to distinguish further between the characteristics of an incorporated vs. an unincorporated joint venture stating “[a]n incorporated joint venture normally has characteristics common to a corporation. ... It is a separate legal entity and acts as a contracting party.” Clearly this would apply to an LLC or any other corporate entity that the joint venture chooses. The DCAM further provides that “[a]n unincorporated joint venture usually is either a partnership or a teaming arrangement and most often has: (1) few or no employees hired and paid by the joint venture, (2) little or no assets or separate facilities, (3) no separate financial statements, and (4) little or no

G&A, B&P, or material handling expenses. All contract work is performed by the venturing organizations or other subcontractors. Employees are paid by their respective companies. The terms of the formation, operation, and dissolution of the venture are usually specified in a written agreement between the venturing organizations.”<sup>12</sup>

As these definitions are from a DCAA manual, they are obviously more focused on accounting and cost aspects as opposed to legal aspects, but they are very specific and clearly convey how the DCAA views joint ventures.

### Factors Influencing Contractors to Form a Joint Venture

Although increasing the likelihood of the joint venture's chance of being the successful offeror is the overall goal, it may be an oversimplification of the driving forces that cause contractors to choose a joint venture approach. In fact, within this general framework there are several unique forces that may play into the contractor's decision.

#### Reduced Risk

It is well known that joint venturing is a market entry strategy for businesses looking to break into new markets. However, that strategy may be explored more often in leaner markets as the joint venture partners can share the risks and associated costs. In other words, the incentive to use a joint venture as a market entry strategy may be stronger in a more competitive market due to the reduced risk and reduced cost compared to a business entering a new market alone. Government contractors are no exception to these general market forces as they are also incentivized to explore joint ventures to gain relevant experience in a new field or to get in front of a new client. A joint venture can be an excellent way for a newcomer to break into the govern-



ment market or even for an established government contractor that is looking to get its foot in the door for opportunities with new agencies or clients within the government.

A joint venture may provide that critical first contract with a new client as well as the added benefit of a mentorship (meant in the general sense and not specifically a government-approved mentor protégé program) with another firm that has more experience and familiarity with a certain client. Of course the real difficulty would be finding a “mentor” firm that is in need of the protégé’s services to such a degree as to warrant the formation of a joint venture. Small businesses, by their very definition, will generally have fewer resources than “other than small business” contractors and therefore are natural candidates for exploring joint venture options. One could easily write an entire book about the nuances of small business teaming and the special affiliation rules that apply under the SBA regulations. However, for the purposes of this article, I would like to drill down into the more fundamental influences over firms of all sizes that drive them into joint venture teaming arrangements.

### ***Lack of Resources***

When a contractor is exploring a teaming arrangement, one of the very first determinations that must be made is whether to choose a joint venture or a more traditional prime contractor-subcontractor teaming arrangement (prime-sub). By most all accounts, a prime-sub arrangement is a much simpler arrangement for both the prime contractor and the subcontractor. Perhaps the most obvious driver for the decision to form joint ventures surfaces when we take a look at a consistent theme in the definitions explored above, namely that joint venturers combine their efforts, property, money, skill or knowledge. The inference that can be taken from this definition is that a single venturer alone lacks the requisite capability, property, financial means, skill or knowledge and therefore is not qualified and/or is unlikely to win the contract alone. This illustrates the most basic incentive for a contractor to look into a joint venture to qualify and/or be evaluated highly enough to win and to perform a certain contract or type of work. Of course, a threshold question that must be answered before the contractor settles on a joint venture is whether the lack of resources can be filled through strategic subcontracting. Generally, if the holes to fill are too great, subcontracting may not be a viable solution.

### ***Responsibility Criteria and Capability Factors***

Another, more subtle influence on the decision of whether to form a joint venture or a prime-sub relationship is the effect of some of the inherent intricacies of government contracting concerning “contractor qualification” as well as the some of the typical RFP evaluation factors that may be expected in a FAR part 15 negotiated procurement. The contractor qualification hurdle that all government contractors must satisfy is an affirmative responsibility determination. FAR 9.103(b) states “[n]o purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility.” Responsibility

determinations can be broken down into two basic issues: 1) whether the prospective contractor will perform the contract and 2) whether the prospective contractor meets the eligibility requirements imposed by statute or regulation for the type of procurement.<sup>13</sup>

Responsibility determinations of the first variety further fall into two sub-categories. The first sub-category is the satisfaction of general standards of responsibility covered in FAR 9.104-1, which covers a broad list of criteria that one would expect a prudent business person to be concerned about when selecting a contractor. One of the standards appears in FAR part 9.104-1(e) which provides that “to be determined responsible, a prospective contractor must ... have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them.” The general standards in FAR 9.104-1 that are considered in making a responsibility determination are not unique to a particular government contract solicitation, but rather satisfying each one of them is a prerequisite to any government award.

The second sub-category is the satisfaction of special standards (a.k.a. “definitive criteria”) as identified in FAR 9.104-2, which are imposed only in unique circumstances such as when unusual expertise is needed for contract performance. It is left to the discretion of the contracting officer when to use the definitive criteria and how to develop these standards. Once the contracting officer has made the affirmative decision to include definitive criteria, the standards must be set forth in the solicitation and apply to all offerors.<sup>14</sup> It is often this definitive criteria that trips up a prime-sub teaming arrangement so that the prime contractor cannot benefit from the experience, expertise or resources of a subcontractor in the same way that it would if they were in a joint venture in which their collective expertise, experiences and resources would be evaluated as that of a single prime contractor.

There is not much guidance in the FAR or other relevant regulations related to evaluation criteria and the crafting of solicitation requirements with regard to evaluation of the definitive criteria standards and whether an offeror meets them, nor is there much guidance regarding the proper importance or weight to give to a prime contractor’s proposed team subcontractor. However, what does appear clear is that the agencies have much discretion in deciding how much weight to afford a subcontractor and whether or not its capabilities should be considered at all.

Definitive responsibility criteria are specific and objective standards established by an agency as a precondition to award that are designed to measure a prospective contractor’s ability to perform the contract.<sup>15</sup> This is an area where an agency may decide that it will not accept a team subcontractor’s or consultant’s experience as the basis to make a responsibility determination on behalf of the prime contractor.

The GAO has deferred to the contracting agency finding that the agency has broad discretion in determining whether bidders meet definitive responsibility criteria since the agency must bear the burden of any difficulties experienced in obtaining the required performance.<sup>16</sup>

Agencies have used this discretion to allow consideration of the resources of a subcontractor. The GAO has held that “[g]enerally, the experience of a technically qualified subcontractor may be used to satisfy definitive responsibility criteria relating to experience for a prime contractor.”<sup>17</sup> However, agencies have just the same used this discretion to set up the solicitation so that a subcontractor’s experience may not be considered and the GAO has supported this determination as well, finding that “where a solicitation contains a criterion which by its express language prohibits satisfying a particular experience requirement through the experience of a prospective subcontractor, such a provision limits a prime contractor from relying on a subcontractor to comply with the experience criterion.”<sup>18</sup> It is in this latter scenario that a prime contractor may only satisfy the solicitation’s experience criterion with the experience that resides directly in the joint venture, as opposed to a team subcontractor.

The GAO has upheld this concept stating “the justification for inclusion in an invitation for bids of any experience requirement designed to indicate a bidder’s competency to perform the contract must necessarily be based upon determining whether the bidder himself has the qualifications required, and not upon a determination of whether the bidder is capable of, or intends to, procure the services of a number of subcontractors whose combined experience is sufficient meet the experience requirements set out in the invitation for bids.”<sup>19</sup> The GAO has explained that “the Government looks to the responsibility and competency of its prime contractors. This must be determining in the first instance by the performance of the bidder’s own organization and only secondarily by the qualifications of subcontractors which the bidder proposes to use.”<sup>20</sup>

In contrast to the responsibility determination, “capability factors” are factors that will be used to evaluate the relative ability of the competing offerors to perform a particular contract pursuant to a FAR part 15 negotiated procurement. Capability factors are typically very similar if not identical to responsibility factors and include experience, management and technical capacity, financial capability and past performance. The critical difference is that evaluation of capability factors does not officially constitute a responsibility determination and must be evaluated on a variable basis.<sup>21</sup> A variable basis could be made through the assignment of adjectival ratings such as good, marginal, excellent, etc. Therefore, there is the potential to be found responsible, but not as highly rated as other offerors. Just as with definitive criteria, agencies are given discretion as to how to evaluate the capability factors of one of a team of subcontractors (or whether to evaluate them at all) when constructing their solicitation evaluation criteria. In a recent example, the GAO upheld an agency’s RFP which “informed offerors that while they could form ‘contractor team arrangements’ (CTA) as defined by Federal Acquisition Regulation (FAR) § 9.601, the agency would not consider the experience of proposed subcontractors in evaluating the technical understanding and capability factor.”<sup>22</sup>

With that understanding, both responsibility standards

and capability factors may heavily influence whether a contractor is going to pursue a joint venture or whether a prime-sub relationship will suffice. All of the above evidences suggest that the evaluation framework is such that any two contractors may be enticed to form a joint venture instead of a prime-sub relationship in order either to decrease the likelihood of a non-responsible finding should only one of their credentials be evaluated or to increase the likelihood of a higher rating on a capability factor in the joint venture’s proposal by combining the venturers’ abilities to address that capability factor in a given solicitation.

### **Small Business Subcontracting Goals**

The requirement that government contractors meet certain small business subcontracting goals also acts as a significant influence over the decision to form a joint venture in lieu of a prime-sub teaming arrangement. This may not be very obvious at first glance and certainly would not have been an intended consequence of the government’s policy to aid small businesses. Nonetheless, the government mandates that certain solicitations for contracts that offer subcontracting opportunities contain a requirement that the awardee submit a small business subcontracting plan that incorporates, among other things, the percentage goals for utilization of small business concerns as subcontractors to the procuring agency.<sup>23</sup> In fact, the submission of such a small business plan becomes an issue of responsibility, since the failure of an awardee to submit the required subcontracting plan makes the awardee ineligible to be awarded the contract.<sup>24</sup>

Now, let us take the scenario where a large business prime contractor (LB Prime), which is otherwise deemed responsible to perform the work and evaluated highly enough to be awarded a contract as a prime contractor, but will nonetheless have to subcontract some portion of the work to another large business (LB Sub) because of some special expertise that LB Sub holds or any other of a host of legitimate business reasons. Let us further assume that in this particular solicitation there is a requirement to subcontract sixty percent of all subcontract dollars to small business concerns. If LB Prime plans on subcontracting work to LB Sub that is worth \$400,000, then the LB Prime must subcontract another \$600,000 directly to small business concerns in order to meet the minimum goals. If the LB Prime had only planned on subcontracting out \$500,000 to subcontractors outside of the \$400,000 subcontract to LB Sub, then the LB Prime would have to revise its make/buy decision and subcontracting plan and perhaps subcontract out more than it needs to solely to meet the small business plan goals.

However, if the LB Prime and the LB Sub formed a joint venture to propose as the prime contractor, then the \$400,000 that would have counted against the small business subcontract goals would now be self-performance and would not be counted at all against the small business subcontract goals. The joint venture could then proceed with its plan to subcontract \$500,000 worth of work and as long as \$300,000 of that went to a small business concern,

the joint venture would be meeting its small business subcontracting goal of sixty percent.

This would appear to be an unintended influence on prime contractors to consider a joint venture in lieu of a prime-sub relationship. However, given the practical reality of a typical FAR part 15 procurement (for example a best value evaluation where small business subcontracting is an evaluation factor) and prime contractors striving to submit a proposal that is the best value to the government, the small business subcontracting goals could be a driving factor in the choice to form a joint venture.

### **Administrative Issues**

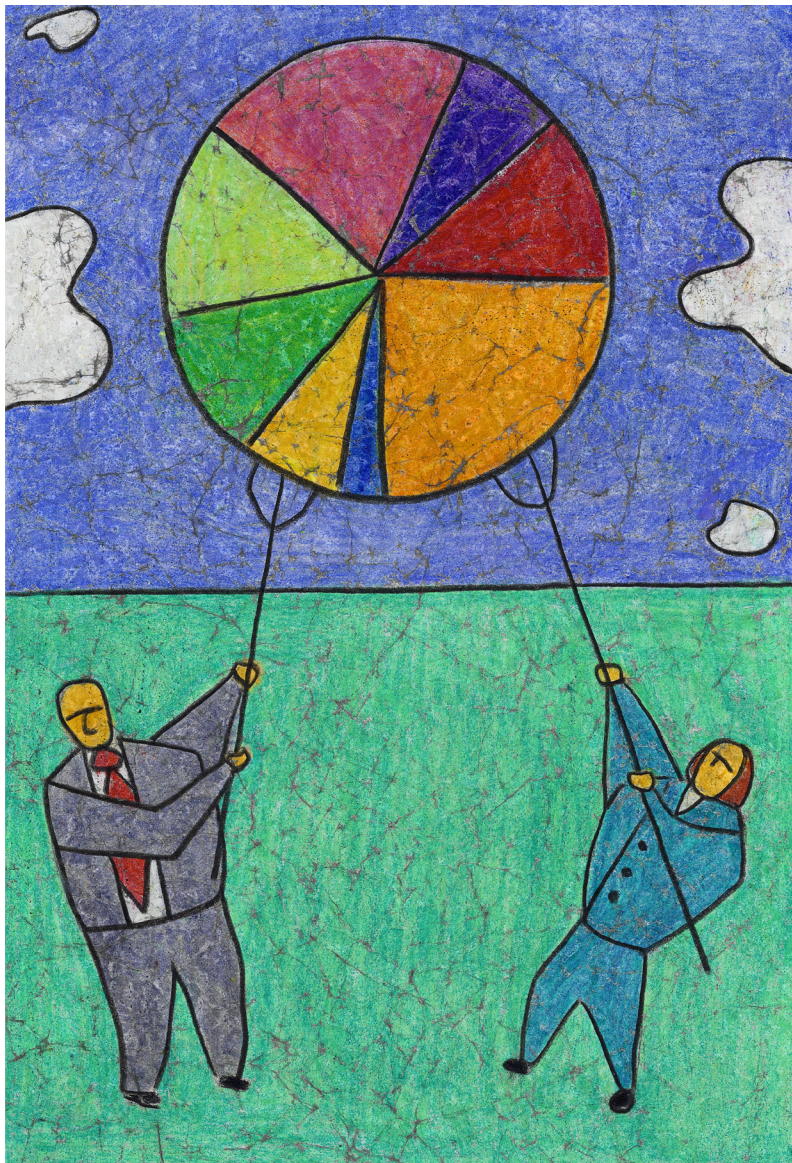
There is one last consideration worth raising in this article and although it may appear to be administrative in nature, it has the potential to have rather serious consequences if it is overlooked. In the event that a contractor selects a joint venture as the most appropriate choice to pursue a government contract, the joint venture must look closely at the solicitation requirements to determine all of the registration and administrative requirements and the timing associated with those requirements. The solicitation may require the “offeror,” which would be the joint venture, to provide its Tax Identification number, DUNS number, complete registration in the Central Contractor Registration (CCR) and complete Online Representations

and Certifications Application (ORCA). If the joint venture will be incorporated as a newly formed entity, such as an LLC, then the member companies will have to organize the entity in the state of their choosing. After the LLC has been established, it can file for an Employer Identification Number (EIN) with the Internal Revenue Service (IRS). An EIN is also known as a Federal Tax Identification Number and is used to identify a business entity. Generally, businesses need an EIN.<sup>25</sup>

The government uses DUNS numbers to identify contractors in the Federal Procurement Data System (FPDS) as well as for Federal Funding Accountability and Transparency Act reporting to USAspending.gov. DUNS numbers are assigned by Dunn & Bradstreet and are generally assigned relatively quickly once requested.

A typical government solicitation may also include the FAR clause at 52.204-7 *Central Contractor Registration* and the provision at 52.204-8 *Annual Representations and Certifications*. These two regulations should be reviewed carefully as they may influence the timing under which a contractor must act. 52.204-7 is a clause that imposes an obligation on an offeror to register in CCR database “prior to award, during performance, and through final payment of any contract ... resulting from this solicitation.” As the language in this clause indicates, it does not impose any obligation on the offeror as a condition to submitting an offer, but only at some point prior to award. 52.204-8 states in relevant part: “[i]f the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.” Paragraph (d) states “The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website ... the offeror *verifies by submission of the offer* that the representations and certifications currently posted electronically that apply to this solicitation ... have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation” (emphasis added).

All of the above may seem innocuous, but there is an inherent dilemma that every newly formed joint venture may face when navigating these clauses and provisions. 52.204-8 puts an obligation on the offeror to verify by the very act of submitting an offer that the joint venture has completed ORCA. The problem is that a contractor cannot complete ORCA until it has cleared registration in CCR. Registration in CCR requires that a registrant provide its Tax Identification Number or TIN for validation and without a validated TIN the registrant cannot have an active CCR registration. The TIN matching process is a joint effort among the General Services Administration (GSA), Department of Defense (DOD) and the IRS to improve the quality of data in government acquisition systems.<sup>26</sup> The long lead item is that in the case of a newly formed entity that has just filed for a new TIN with the IRS, the TIN matching process may take between two and five weeks to validate from the time that the TIN is assigned to the new company. This process is confirmed in the Central Contractor Registration User Guide which states “[y]ou may apply for a new TIN/EIN online or by phone, and it will be assigned immediately.



However, it may take two to five weeks before you receive the CP-575 form letter from the IRS confirming that your EIN is active and valid for processing in CCR.<sup>27</sup>

So to recount the time line, assuming that the joint venture will take the form of an LLC, the LLC must first be organized, which if done on an expedited basis may be as quick as 1-2 days. Next, the LLC must apply for a new EIN, followed by applying for a DUNS number which may take a few days. Then, registering in CCR, which pending EIN validation may take 2 to 5 weeks to complete. Once CCR is complete, the joint venture can then complete the ORCA process that is required prior to submission of the proposal.

Overall, the entire process from creation of the newly formed corporate entity until ORCA can be completed may take 6 weeks or more (roughly 42 days). A typical government solicitation may require that the proposal is received within 45 days of RFP release date. That means that joint venture partners must be ready to form the entity at on a date that coincides with the RFP release date. Practically speaking, most joint venture partners will take time to negotiate the joint venture agreement or operating agreement and will almost certainly want the benefit of reviewing the RFP terms and conditions as those may very well have a direct influence on certain aspects of the joint venture agreement or operating agreement.

Therefore, the timeline of this process from a contractor's perspective is extremely compressed and most joint venture partners will have to make the decision whether they want to finalize an operating agreement, form a new joint venture entity and start all registration processes before the RFP is even released. Otherwise, if the joint venture partners decide to wait until they have a chance to review the RFP and understand the requirements for the contract that the joint venture is going to be created to perform, then there is the risk that the CCR registration will take the full five weeks, which may preclude completion of ORCA before the proposal due date and perhaps cause the joint venture to submit an offer that is technically noncompliant.

## Conclusion

Irrespective of the underlying driving factors, the use of a joint venture in the pursuit of a government contract is an option that is not going away anytime soon. Understanding the specific drivers that go into making the decision to form a joint venture is important for the modern day government contractor. Similarly, it is important for the government to understand how its regulations are affecting contractors so that if an unintended consequence becomes apparent, such as an inadvertent influence on contractors driving them into joint ventures as a collateral effect, then the government can decide whether it wants to address this effect through regulation or other methods. Overall, the concept of a joint venture to pursue a government contract is well established in the government contracting arena and appears to be embraced by both the government and industry. **TFL**

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## Endnotes

<sup>1</sup>*Atcheson v. Mallon* 1870 WL 7761, 1 (N.Y. 1870).

<sup>2</sup>*Id.*

<sup>3</sup>*Lentz v. United States*, 346 F.2d 570, 575-76 (Ct. Cl. 1965).

<sup>4</sup>*Id.*

<sup>5</sup>*Eastern Trans-Waste of Maryland Inc. v. United States*, 27 Fed. Cl. 146, 149 (1992); see also *KDH Corp. v. United States*, 23 Cl. Ct. 34, 38 (1991); *Ward-Schmid Co., Inc. v. United States*, 18 Cl. Ct. 572, 575 (1989); *Pine Products Corp. v. United States*, 15 Cl. Ct. 11, 14 (1988).

<sup>6</sup>FAR 9.601.

<sup>7</sup>13 C.F.R. § 121.103.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>13 C.F.R. § 124.513.

<sup>11</sup>DCAM § 7-1802(b), available at [www.dcaa.mil/cam/Chapter\\_07\\_-\\_Selected\\_Areas\\_of\\_Cost.pdf](http://www.dcaa.mil/cam/Chapter_07_-_Selected_Areas_of_Cost.pdf).

<sup>12</sup>DCAM § 7-1803, available at [www.dcaa.mil/cam/Chapter\\_07\\_-\\_Selected\\_Areas\\_of\\_Cost.pdf](http://www.dcaa.mil/cam/Chapter_07_-_Selected_Areas_of_Cost.pdf).

<sup>13</sup>John Cibinic Jr. & Ralph C. Nash Jr., *Formation of Government Contracts*, 406 (3d ed. 1998).

<sup>14</sup>FAR 9.104-2.

<sup>15</sup>*Vador Ventures, Inc.* 2005 WL 1876113, at \*2.

<sup>16</sup>*Matter of Gelco Services, Inc.* 1993 WL 376637, at \*4.

<sup>17</sup>*Id.*

<sup>18</sup>*Matter of Tutor-Saliba Corp., Perini Corp., Buckley & Co. Inc., and O & G Industries Inc., A Joint Venture* 1994 WL 108489, at \*3.

<sup>19</sup>To the Administrator, General Services Administration 39 Comp. Gen. 173, 176.

<sup>20</sup>*Id.*

<sup>21</sup>John Cibinic Jr. & Ralph C. Nash Jr., *Formation of Government Contracts*, 731-33 (3d ed. 1998).

<sup>22</sup>*Matter of: Digicon Corporation; Intelligent Decisions Inc.*, 2012 WL 937391, at \*2.

<sup>23</sup>15 U.S.C.A. § 637(d).

<sup>24</sup>15 U.S.C.A. § 637(d)(5)(B).

<sup>25</sup>IRS Website, available at: [www.irs.gov/businesses/small/article/0,,id=98350,00.html](http://www.irs.gov/businesses/small/article/0,,id=98350,00.html) (last visited July 23, 2012).

<sup>26</sup>Central Contractor Registration User Guide: Creating Your User Account and Registering in CCR, October 2011, available at [www.bpn.gov/ccr/doc/CCRUsersGuide.pdf](http://www.bpn.gov/ccr/doc/CCRUsersGuide.pdf) (last visited July 23, 2012).

<sup>27</sup>Central Contractor Registration User Guide: Creating Your User Account and Registering in CCR, October 2011, available at [www.bpn.gov/ccr/doc/CCRUsersGuide.pdf](http://www.bpn.gov/ccr/doc/CCRUsersGuide.pdf) (last visited July 23, 2012).