

THE GOVERNMENT  
TECHNOLOGY & SERVICES  
COALITION



MARKET SOLUTIONS SERIES:  
FOCUS ON JOINT VENTURE STRUCTURES &  
IMPLEMENTATION  
JUNE 6, 2013

# WHAT IS A JOINT VENTURE (JV)?

## ■ Contractor Team Arrangement under FAR Part 9.6

- ✓ “Contractor Team Arrangement” defined as (1) partnership/joint venture or (2) prime/sub
- ✓ Distinguishable from GSA use of Contractor Team Arrangement (“CTA”)
- ✓ FAR states that “the Government will recognize the integrity and validity of contractor team arrangements”

## ■ SBA Joint Venture Definition:

“[A]n association of individuals and/or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out no more than [(3) three] specific or limited purpose business ventures for joint profit over a [(2) 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.”

## ■ 3 in 2 rule; “limited purpose entity”

- ✓ Up to **3** contract awards
- ✓ Limited purpose
- ✓ During a **2** Year period

# ADVANTAGES OF A JV

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- **One face to the Govt., yet the Govt. receives the resources of 2 (or more) companies to perform the work**
- **Minority member can exert more control over contract performance than if it were a subcontractor**
- **Small business gets “prime” past performance record**
- **Small business gets to use past performance record of partners**
- **Small business can remain “small” longer**

- **Members share control; former “prime” gives up substantial control**
- **Joint and several liability (if partnership)**
- **Govt. may be concerned there is no single point of contact, unless there is a solid governance model with the managing/lead member**
- **More difficult to terminate than other teaming arrangements**
- **Greater complexity and more costly to the contractor (not the government) than a Prime/Sub approach**
  - ✓ Legal Fees

- **Co-Management**
- **Sharing of Profits and Losses**
- **Limited Duration**
- **A separate legal entity**
  - ✓ **Partnership, LLC or Corporation**
  - ✓ **Need TIN; must register in SAM (formerly CCR, ORCA)**
- **Populated JV (used more for commercial JVs than government)**
- **Unpopulated JV (used more government)**

# CHARACTERISTICS OF AN SBA JV

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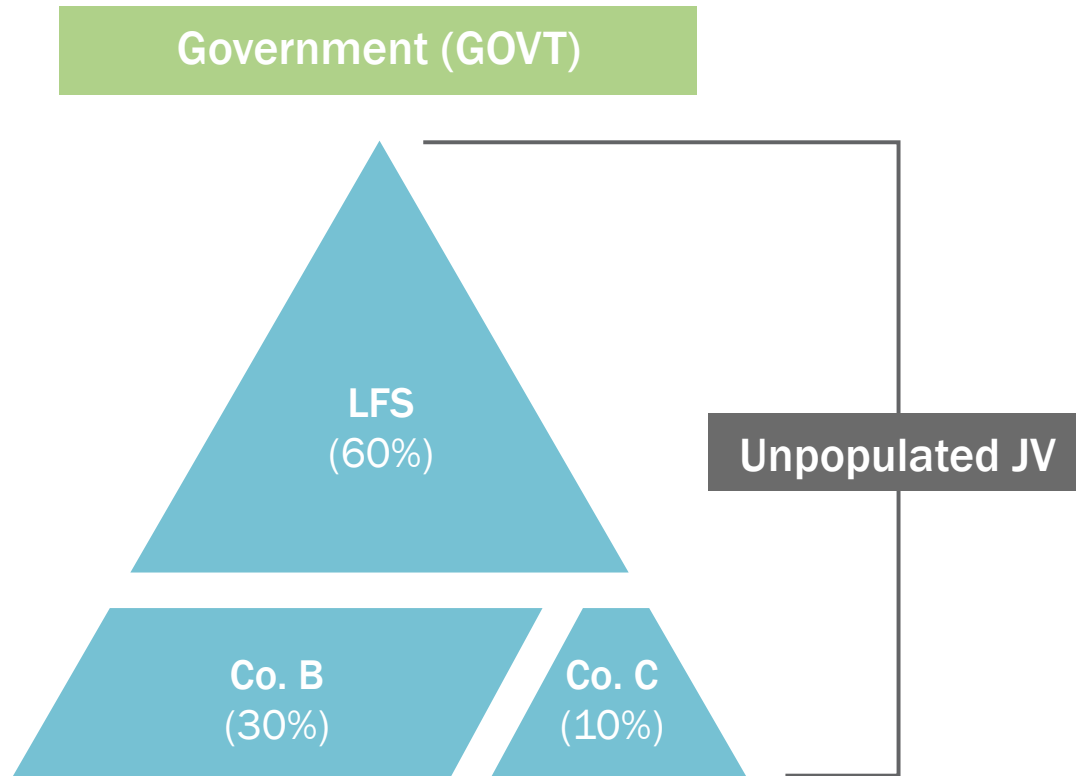


- **JV agreement must be in writing**
- **JV may be informal (by agreement)**
- **JV may be formal (LLC or corporation)**
- **JV may be populated or unpopulated**
- **JV members and relationship must be disclosed in proposal**

- **Affiliation**
  - ✓ **General rule is that members are affiliated**
  - ✓ **Size of JV determined by aggregating the revenues or employees of all members**
  
- **Exceptions to Affiliation**
  - ✓ **SBA-approved Mentor/Protégé JVs (8(a)/DoD)**
  - ✓ **Both members are small under NAICS code assigned procurement *and***
    - **Procurement is a bundled requirement *or***
    - **Procurement valued more than \$10 million if size standard is employee-based or procurement value is more than ½ of a revenue-based size standard**
  
  - **Ex., if \$14M is size standard, then the contract value for the life of the contract would have to be over \$7M**

- **Limitations on Subcontracting restrictions apply**
- **Special “size” accounting**
  - ✓ **For size purposes, a small business concern must include in its receipts or in number of employees its proportionate share of joint receipts or joint employees, as applicable**
- **JVs permitted under SBA’ s 8(a), HUBZone, Women-Owned and SDVOSB Programs**
  - ✓ **Special rules for each program, *especially 8(a) Program***







Government (GOVT)

LFS JV

Co. B

Co. C

LFS Inc.

Co. D

Co. E

- **Limited Purpose:** “The Company is formed for the purpose of submitting a Proposal in response to the RFP and performing any resulting Contract, and not for any other purpose, it being expressly understood the Members are not making any permanent Membership or joint venture or any other agreement for any purpose other than the one stated herein.”
  
- **Formal legal entity – Limited Liability Company**
  - ✓ **Separate Federal ID #, Separate SAM**
  
- **Unpopulated – no employees**
  - ✓ **No separate overhead (workman’s comp., benefits – employees get use of managing members benefits)**
  - ✓ **No G&A**
  - ✓ **Governance by managing lead member**
  
- **Labor will be performed by Member employees pursuant to Purchase Order/ Subcontract between JV and Member**
  
- **Management and Management Fee paid pursuant to Services Agreement with Lead/Managing Member**
  - ✓ **File articles of organization with the state**

- **Most JV LLCs are Member Managed and Majority Member appoints Manager to conduct business of JV**
  - ✓ **Manager's authority may be limited by voting provisions of Operating Agreement**
  
- **LFS FloodSmart JV is Member Managed but *contract issues* managed by individuals appointed by Members**
  - ✓ **Appointment of "Lead Member" (LFS)**
  - ✓ **Appointment of "Program Manager" (LFS Employee)**
  
- **LFS FloodSmart JV requires Members to exercise management control through voting**

- **Membership Interest**
  - ✓ **Members vote in relative proportion to their ownership stake in the JV**
  
- **Quarterly Meetings**
  - ✓ **Need meeting with a quorum, which is presence at the meeting of 70% of the Membership Interests**
  
- **Voting Requirements**
  - ✓ **Simple Majority**
    - **Action authorized by vote by greater than 50% of the JV Membership Interests upon a quorum**
  
  - ✓ **Super Majority**
    - **Vote by greater than 70% of the JV Membership Interests**
  
  - ✓ **Unanimous**
    - **All Members must agree and all Membership Interests vote in the same manner**

- **Simple Majority**
  - ✓ **All decisions not otherwise decided by Super Majority or Unanimous Vote decided by Simple Majority**
    - **Primarily contract issues, including operations, administration and management**

- **Super Majority**
  - ✓ **Appointment or replacement of the Program Manager**
  - ✓ **Releasing, compromising, assigning, or transferring any claims, rights, or benefits of the JV in an amount up to \$5,000 per month; or**
  - ✓ **Expulsion of a Member upon motion of the Lead/Managing Member, using its discretion in good faith to assert such Member is no longer capable of providing the technical expertise or providing the necessary management of the contract**

- **Unanimous Consent**
  - ✓ **Modification of the contract;**
  - ✓ **Taking any act in contravention of the Operating Agreement;**
  - ✓ **Appointment of the Lead/Managing Member;**
  - ✓ **Requiring any Member to contribute any additional capital to the JV;**
  - ✓ **Causing or permitting the JV to extend credit to or to make any loans;**
  - ✓ **Causing or permitting the JV to incur any indebtedness to any party**
  - ✓ **Releasing, compromising, assigning, or transferring any claims, rights, or benefits of the JV in excess of \$5,000 per month; or**
  - ✓ **Distributing any cash or property of the JV, other than as expressly provided in the Operating Agreement, or pursuant to the contract or any subcontract**



- **JV is, for the most part, a pass-through vehicle**
- **Capital Contribution reflecting pro rata Membership Interest required**
- **Lead/Managing Member keeps Books and Records of JV**
  - ✓ **Members able to audit/inspect Books and Records**
- **Lead/Managing Member authorized to make withdrawals from JV Bank Account**
- **Company prepares Financial Statements for Members**
  - ✓ **Annual Financial Statements reviewed by CPA**
- **Lead/Managing Member responsible for invoicing Customer**
- **Lead/Managing Member Tax Member**
  - ✓ **JVs that are LLCs typically are taxed as a partnership**

- **“Educated Consumer”**
  
- **“Shared Vision”**
  - ✓ **Focus on Customer**
  - ✓ **Understanding of JV purpose**
  - ✓ **Understanding of JV agreement**
  
- **Written Agreement**
  - ✓ **Clear roles for Members with respect to management of JV operations, management of contract operations, management of books/records and finances**
  - ✓ **Clear language regarding voting**
  - ✓ **Clear language regarding termination, dispute resolution**

- **Uneducated “Consumer”**
- **No Single Objective**
- **No Single Point of Contact**
- **No Lead /Managing Member**
- **No Written Agreement/General Agreement**
- **Different expectations of Members**
- **Different corporate cultures/operational styles**
- **Imbalance in expertise/resources/investment by Members**

# MORE QUESTIONS?

GTSC 

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