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## **TITLE 13--BUSINESS CREDIT AND ASSISTANCE**

### **CHAPTER I--SMALL BUSINESS ADMINISTRATION**

#### **PART 124--8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS**

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Subpart A--8(a) Business Development

Sec. 124.513 Under what circumstances can a **joint venture** be awarded an 8(a) contract?

(a) General.

(1) If approved by SBA, a Participant may enter into a joint venture agreement with one or more other small business concerns, whether or not 8(a) Participants, for the purpose of performing a specific 8(a) contract.

(2) A joint venture agreement is permissible only where an 8(a) concern lacks the necessary capacity to perform the contract on its own, and the agreement is fair and equitable and will be of substantial benefit to the 8(a) concern. However, where SBA concludes that an 8(a) concern brings very little to the joint venture relationship in terms of resources and expertise other than its 8(a) status, SBA will not approve the joint venture arrangement.

(b) Size of concerns to an 8(a) joint venture.

(1) A joint venture of at least one 8(a) Participant and one or more other business concerns may submit an offer as a small business for a competitive 8(a) procurement so long as each concern is small under the size standard corresponding to the SIC code assigned to the contract, provided:

(i) The size of at least one 8(a) Participant to the joint venture is less than one half the size standard corresponding to the SIC code assigned to the contract; and

(ii) (A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the SIC code assigned to the contract; or

(B) For a procurement having an employee-based size standard, the procurement exceeds \$10 million;

(2) For sole source and competitive 8(a) procurements that do not exceed the dollar levels identified in paragraph (b)(1) of this section, an 8(a) Participant entering into a joint venture agreement with another concern is considered to be affiliated for size purposes with the other concern with respect to performance of the 8(a) contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the SIC code assigned to the 8(a) contract.

(3) Notwithstanding the provisions of paragraphs (b)(1) and (b)(2) of this section, a joint venture between a protégé firm and its approved mentor (see Sec. 124.520) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the SIC code assigned to the procurement and has not reached the dollar limit set forth in Sec. 124.519.

(c) **Contents of joint venture agreement.** Every joint venture agreement to perform an 8(a) contract, including those between mentors and protégés authorized by Sec. 124.520, must contain a provision:

- (1) Setting forth the purpose of the joint venture;
- (2) Designating an 8(a) Participant as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the 8(a) contract;
- (3) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the 8(a) Participant(s);
- (4) Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature of all parties to the joint venture or designees for withdrawal purposes. All payments due the joint venture for performance on an 8(a) contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well;
- (5) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each;
- (6) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the 8(a) contract;
- (7) Obligating all parties to the joint venture to ensure performance of the 8(a) contract and to complete performance despite the withdrawal of any member;
- (8) Designating that accounting and other administrative records relating to the joint venture be kept in the office of the managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request;
- (9) Requiring the final original records be retained by the managing venturer upon completion of the 8(a) contract performed by the joint venture;
- (10) Stating that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and
- (11) Stating that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 days after completion of the contract.

(d) Performance of work. For any 8(a) contract, including those between mentors and protégés authorized by Sec. 124.520, the joint venture must perform the applicable percentage of work required by Sec. 124.510, and the 8(a) partner(s) to the joint venture must perform a significant portion of the contract.

(e) Prior approval by SBA. SBA must approve a joint venture agreement prior to the award of an 8(a) contract on behalf of the joint venture.

(f) Contract execution. Where SBA has approved a joint venture, the procuring activity will execute an 8(a) contract in the name of the joint venture entity.

(g) Amendments to joint venture agreement. All amendments to the joint venture agreement must be approved by SBA.

(h) Inspection of records. SBA may inspect the records of the joint venture without notice at any time deemed necessary.