§ 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 one or more specific 8(a) contracts.

(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 protege firm and its approved mentor (see §124.520) will be deemed small provided the protege 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 §124.519.

(c) Contents of joint venture agreement. Every joint venture agreement to perform an 8(a) contract, including those between mentors and proteges authorized by §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...
§ 124.514  Exercise of 8(a) options and modifications.

(a) Unpriced options. The exercise of an unpriced option is considered to be a new contracting action.

(1) If a concern has graduated or been terminated from the 8(a) BD program or is no longer small under the size standard corresponding to the SIC code for the requirement, negotiations to price the option cannot be entered into and the option cannot be exercised.

(2) If the concern is still a Participant and otherwise eligible for the requirement on a sole source basis, the procuring activity contracting officer may negotiate price and exercise the option provided the option, considered a new contracting action, meets all regulatory requirements, including the procuring activity’s offering and SBA’s acceptance of the requirement for the 8(a) BD program.

(3) If the estimated fair market price of the option exceeds the applicable threshold amount set forth in §124.506, the requirement must be competed as a new contract among eligible Participants.

(b) Priced options. The procuring activity contracting officer may exercise a priced option to an 8(a) contract whether the concern that received the award has graduated or been terminated from the 8(a) BD program or is no longer eligible if to do so is in the best interests of the Government.

(c) Modifications beyond the scope. A modification beyond the scope of the initial 8(a) contract award is considered to be a new contracting action. It will be treated the same as an unpriced option as described in paragraph (a) of this section.

(d) Modifications within the scope. The procuring activity contracting officer...