Joint Ventures

Issue: How can a Joint Venture be eligible for verification?

The Regulations

38 CFR § 74.1

- *Joint venture* is an association of two or more small business concerns to engage in and carry out a single, specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. For VA contracts, a joint venture must be in the form of a separate legal entity.

38 CFR § 74.3

- (d) Profits and distributions. One or more veterans or service-disabled veterans must be entitled to receive:

- (2) At least 51 percent of the net profits earned by a joint venture in which the applicant or participant is the lead concern;

38 CFR § 74.4

- (c)(1) An applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the applicant which demonstrates that such activities will not have a significant impact on the owner's ability to manage and control the applicant concern. Applications from joint-ventures are exempt from the requirement to submit a supplemental written statement.

The Joint Venture also must meet the requirements of VA's SDVOSB and VOSB set-aside clauses in the VA Acquisition Regulation (VAAR) reference SBA's regulation on the character of a joint venture, substituting VOSB for this type of set-aside.

13 CFR § 125.15 (b) *Joint ventures*.

An SDVO SBC may enter into a joint venture agreement with one or more other SBCs for the purpose of performing an SDVO contract.

- **(b)(1) Size of concerns to an SDVO SBC joint venture.**
- (b)(1)(i) A joint venture of at least one SDVO SBC and one or more other business concerns may submit an offer as a small business for a competitive SDVO SBC procurement so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided:
- (A) For a procurement having a revenue-based size standard, the procurement exceeds half the size standard corresponding to the NAICS code assigned to the contract; or
- (B) For a procurement having an employee-based size standard, the procurement exceeds $10 million;
- (b)(1)(ii) For sole source and competitive SDVO SBC procurements that do not exceed the dollar levels identified in paragraphs (b)(1)(i)(A) and (B) of this section, an SDVO SBC 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 SDVO contract. The combined annual receipts or employees of the concerns entering into the joint venture must meet the size standard for the NAICS code assigned to the SDVO contract.

- **(b)(2) Contents of joint venture agreement. Every joint venture agreement to perform an SDVO contract must contain a provision**:
- (i) Setting forth the purpose of the joint venture;
- (ii) Designating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the SDVO contract;
- (iii) Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the SDVO SBC(s);
- (iv) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the SDVO contract;
- (v) Obligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member;
- (vi) Requiring the final original records be retained by the managing venturer upon completion of the SDVO contract performed by the joint venture;
- **(b)(3) *Performance of work.* For any SDVO contract, the joint venture must perform the applicable percentage of work required by §124.510 of this chapter**."

What This Means
In order for a Joint Venture to be eligible for verification, it must meet the following standards:

- A joint venture must be a separate legal entity
- A joint venture must be controlled by a verified VOSB or SDVOSB concern
- A joint venture must be separately verified
- The SDVOSB or VOSB must earn at least 51%of the profits earned by the joint venture
- In every joint venture, at least one of the businesses must be a verified SDVOSB, in accordance with the Verification Program requirements found in 38 CFR Part 74.
- The verified SDVOSB must be the Managing Venturer of the applicant and have control over all decisions of the joint venture.
- Additionally, all joint venture agreements must contain the provisions stated in 13 CFR § 125.15(b)(2).

Excerpts from Current Denial Letters

- "In order for a Joint-Venture to qualify as a SDVOSB the management and control of the Joint-Venture must be handled by the SDVOSB firm. In this instance, your business, XXX, LLC is a verified SDVOSB, but the supplied documentation for the Joint-Venture shows that it is not in control of the management as is required by the regulations.

You supplied a Joint-Venture Agreement. CVE found in your Articles that, [t]he business and affairs of the Venture shall be managed by an executive committee composed of two persons who shall be responsible for the management of the Venture (the "Executive Committee")." This executive committee is made up of two members, one from each business comprising the Joint-Venture- and according to subsequent provisions -requires unanimous consent of the members to take action. As only one of the two representatives is from the verified SDVOSB member of the Joint Venture, CVE is unable to conclude that you meet the control requirements set forth in 38 CFR § 74.4 and 13 CFR § 125.15."

- "In order for a joint venture to be included in the VA VetBiz Vendor Information Pages (VIP) Verification Program as a verified SDVOSB one of the businesses forming the joint venture must be a verified SDVOSB. You applied for SDVOSB status with YYY, LLC, however, this business was denied inclusion in the database as it failed meet the eligibility requirements of 38 CFR Part

74. Because neither of the businesses that form the joint venture is verified as a SDVOSB, CVE is unable to conclude that ZZZ Joint Venture meets the requirements of the regulations."

- "CVE is unable to conclude that XXX, Inc. has complete control of the management of the joint-venture. One section of the Joint-Venture Agreement assigns primary and alternate representatives for each business. You are designated as the primary representative for XXX, Inc. and Mr. John Doe, a non-Veteran, is designated as the primary representative for YYY LLC. The pertinent section goes on to state that, "[t]he representative of XXX and the representative of YYY shall comprise the "Committee" of the Joint Venture. The Committee shall be responsible for making decisions for and on the behalf of the Joint Venture." A subsequent section of the Joint-Venture Agreement states that, "…all decisions, commitments, agreements, understandings and other matters pertaining to the performance of the Contract shall be decided by mutual agreement." This indicates that both you and Mr. Doe have an equal say in the decisions pertaining to the joint-venture. For these reasons CVE is unable to conclude that you meet the requirements of the regulations."