



March 2023 Newsletter



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Tip of the Month:

Drafting Compliant Joint Venture Agreements

For federal government contractors, joint ventures have become increasingly popular as companies look for ways to expand their capabilities, enhance their past performance records, and increase their chances of successfully pursuing and performing contracts. However, for companies pursuing small business set-aside contracts and/or socioeconomic set-aside and sole source contracts, forming a compliant joint venture can be challenging.

The SBA's regulations require a joint venture agreement to contain many mandatory provisions. Failure to fully comply with even one mandatory item will make the joint venture [ineligible](#). A joint venture agreement is a binding legal document; as such, contractors should obtain assistance from a qualified attorney. But in this newsletter, let's get the ball rolling by taking a brief, high-level look at the requirements and a few additional tips.

Mandatory JV Agreement Provisions

Each SBA program specifies its own set of requirements for joint venture agreements. While these requirements are very similar, they are not necessarily identical, so it is important to follow the rules for the contract(s) the joint venture will pursue:

- If the joint venture will pursue small business set-aside contracts, the joint venture agreement must comply with [13 CFR § 125.8\(b\)](#).
- If the joint venture will pursue 8(a) contracts, the joint venture agreement must comply with [13 CFR § 124.513\(c\)](#).
- If the joint venture will pursue service-disabled veteran-owned small business or veteran-owned small business contracts, the joint venture agreement must comply with [13 CFR § 125.18\(b\)\(2\)](#).
- If the joint venture will pursue HUBZone contracts, the joint venture agreement must comply with [13 CFR § 126.616\(c\)](#).
- If the joint venture will pursue woman-owned small business or economically disadvantaged woman-owned small business contracts, the joint venture agreement must comply with [13 CFR § 127.506\(c\)](#).

The SBA strictly construes and enforces these requirements, so make sure your joint venture agreement contains the mandatory provisions for the types(s) of contracts you pursue.

Additional Tips

If you’re thinking about forming a joint venture, here are three additional tips to keep in mind:

- Don’t assume that your partner’s joint venture “template” is compliant – even if your partner is a large business! Get legal assistance if possible, and if nothing else, check the draft agreement against the regulatory requirements.
- Don’t reuse an old joint venture agreement for a new contract without rechecking the rules. The SBA can and does change them from time to time.
- Check any supplemental agreements – like operating agreements -- for terms that could undermine or contradict one or more of the mandatory items.

Your Apex Accelerator counselor may be able to offer additional assistance with a joint venture. Schedule an appointment to talk it over!

NICC APEX Accelerator News You Can Use:

The Cybersecurity Maturity Model Certification (CMMC) requirement continues to draw ever closer, although getting CMMC online has taken much longer than originally anticipated. When the Department of Defense first unveiled CMMC, the plan was to begin certifying contractors as early as 2020. That still hasn’t happened, but it doesn’t mean CMMC is dead. Instead, the process continues moving forward, with experts now saying they tentatively expect certifications to begin in 2024. Read more about where the CMMC process stands in [this article discussing the state of CMMC in 2023](#).

Govology Webinars

*Please use the new code **20NICC23** when registering for Govology webinars.*



Effective Utilization of Debriefings and Asserting Bid Protests

Date: March 2, 2023
Time: 1:00 pm EST
Presenter: Maria Panichelli, McCarter & English LLP

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Creating a Killer Capability Statement That Communicates Value

Date: March 7, 2023
Time: 1:00 pm EST
Presenter: Joshua Frank, RSM Federal

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A Step-By-Step Guide to Registering as a Veteran Owned Small Business

Date: March 14, 2023

Time: 1:00 pm EDT

Presenter: Shana Nicholson, Rescue Me, LLC

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Understanding and Obtaining HUBZone Certification (2023 Update)

Date: March 21, 2023

Time: 1:00 pm EDT

Presenter: Nicole Pottroff and John Holtz, Koprince McCall Pottroff LLC

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Eligibility Criteria and New Rules for SBA 8(a) Certification Program

Date: March 28, 2023

Time: 1:00 pm EDT

Presenter: Steven Koprince, Govology Legal Analyst

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Recommended Readings:

Ensuring Only Approved Software is Acquired and Used at GSA

In January, the General Services Administration published an Acquisition Letter to clarify and strengthen GSA's policies regarding the acquisition of software. The Acquisition Letter states, among other things, that for existing contracts, GSA will provide a list of approved software and begin requiring contractors to attest to using such software in June. If an incumbent contractor's software was previously approved but is no longer approved, "any future period of performance (e.g., option year, extension, task order) cannot be exercised or issued, and the requirement must be re-procured." Read the full [GSA Acquisition Letter here](#).

New Law Mandates Overhaul of FAR Conflict of Interest Rules

The FAR's conflict of interest rules will be overhauled and strengthened in the coming months, thanks to a new law enacted in late 2022. On December 27, with little fanfare, the President signed the bipartisan "Preventing Organizational Conflicts of Interest in Federal Acquisition Act," which directs the FAR Council to make substantial changes to the conflict of interest rules within 18 months. These changes will give contractors more guidance about what constitutes a conflict of interest—but will also shift some of the burden of identifying conflicts from Contracting Officers to contractors. Read more about [the pending changes here](#).

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