



# Growth Through Joint Ventures and Mentor-Protégé Relationships

---

Peter Ford, Partner  
Government Contracts  
PilieroMazza PLLC

December 14, 2020

# Peter Ford

---



Peter Ford  
Partner  
Government Contracts  
Pilieromazza PLLC  
303.501.1300  
pford@pilieromazza.com

Peter advises government contractors and commercial businesses on a broad range of federal procurement matters. He is adept at navigating issues related to eligibility for, and continued participation in, small business programs such as SBA's 8(a) BD, SDVOSB, WOSB, and HUBZone programs and the VA's VetBiz VIP program. He represents clients in actions before OHA, GAO, and ODRA. He also counsels federal contractors on FAR and small business regulation compliance, which includes auditing clients for potential size and affiliation issues.

# About PilieroMazza

---

PilieroMazza—a business law firm—serves as a strategic partner to government contractors and commercial businesses from across the United States in numerous industries.

We deliver results for our clients by implementing legal and business solutions that take the client’s best interests into consideration. Moreover, PilieroMazza’s efficient operational structure and lean approach to staffing matters translate into competitive pricing for our clients, while providing the highest standard of client service and legal acumen.

PilieroMazza is privileged to represent clients in the following areas:

- Audits & Investigations
- Business & Corporate
- Business Succession Planning
- Corporate and Organizational Governance
- Cybersecurity & Data Privacy
- Debt Financing
- Employee Incentive and Bonus Plans
- False Claims Act
- Government Contracts
- Government Contract Claims & Appeals
- Intellectual Property & Technology Rights
- Labor & Employment
- Labor & Employment for Government Contractors
- Litigation & Dispute Resolution
- Mergers & Acquisitions
- Native American Law & Tribal Advocacy
- Private Equity & Venture Capital

# Overview

---

- Joint Ventures
- Mentor-Protégé Program
- Looming Changes to Joint Venture and MPA Regulations

# Joint Ventures

---

# What Is a Joint Venture?

---

- In general: a limited purpose entity
- SBA’s definition: “A joint venture is an association of individuals and/or concerns with interests in any degree or proportion consorting to engage in and carry out no more than three specific or limited-purpose business ventures for joint profit over a 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.” 13 C.F.R. §121.103(h).

# Advantages for Joint Ventures

---

- The Government can look to the resources of two (or more) companies to perform the work
  - New rule that the Government must take into consideration is past performance of all joint venturers on set-aside contracts
- A minority joint venture member can exert more control over contract performance to protect its interests than in a traditional prime/sub relationship
- May allow the minority joint venture member to participate in a set-aside contract that it might not otherwise be eligible for
- Attribute only the revenues to each company for the work that it performs for the joint venture, not all the revenues like a prime/sub relationship

# Disadvantages for Joint Ventures

---

- Lead Contractor gives up substantial control
- The Government may view the joint venture as lacking a clear point of contact, thus raising concerns regarding control, authority, and accountability
- Longer, deeper commitment than traditional teaming
- Confusion over how the work is supposed to be split amongst the venturers

# Structuring of a Joint Venture

---

- “Corporate” forms
  - Partnership
  - Limited Liability Company
  - Corporation
- Other considerations
  - Populated v. Unpopulated Joint Ventures
  - Limitations on Subcontracting

# Joint Venturing for Set-Asides

---

- General rule: when companies form a strategic alliance and have an identity of interest with one another, they are affiliated. Therefore, the default is that forming a joint venture will give rise to affiliation.
- HOWEVER, 13 C.F.R. § 121.103(h) lays out the exemptions to affiliation for joint ventures:
  - Joint venture of two or more businesses may submit an offer as a “small business” without regard to affiliation so long as each is small under NAICS code assigned to the contract
  - Joint venture of one small business and one other-than-small business may submit an offer as a “small business” without regard to affiliation so long as the other-than-small business is the SBA-approved mentor and the joint venture agreement complies with applicable SBA regulations
  - Must comply with “3-in-2” rule (question about MP JVs?)

# Joint Venturing for Set-Asides

---

- At least one partner must have the socioeconomic status as the applicable type of set-aside and be the majority owner
  - I.e. – if SDVOSB set-aside, the managing venturer should be an SDVOSB
- All partners must be small businesses or large business is SBA-approved mentor
- Project manager must be an employee of managing venturer (cannot hire from mentor)
- Managing venturer must receive profits commensurate with work performed
- Joint venture must comply with limitations on subcontracting and managing venturer must perform at least 40% of the work performed by the joint venture
- The joint venture must be registered in SAM prior to proposal submission and be designated as a joint venture
- SBA must approve the Joint Venture Agreement (8(a) JVs only)
- Upload copy of joint venture agreement to certify (WOSB only)

# Mentor-Protégé Program

---

# All Small Mentor-Protégé Program: Benefits of Mentor-Protégé

---

- Modeled after 8(a) Mentor-Protégé Program
- Mentor may provide protégé with various forms of financial, technical, and/or management assistance
- Mentor and protégé may enter into subcontracts
- Mentor may own up to 40% of the protégé
- Mentor and protégé are exempt from affiliation based on the assistance provided under the mentoring relationship
  - **KEY:** this means the mentor and protégé may form joint ventures for set-aside contracts
- Agencies may provide incentives to offerors utilizing a protégé

# Mentors

---

- Must be capable of providing mentoring
- Possess good character, not suspended or debarred
- May be large or small business
- May be protégé and mentor at the same time
- Non-profits are not eligible
- Generally, no more than one protégé at a time
  - **But** could have up to three protégés at one time if there is no adverse impact on any protégé
  - **No** limit on number of protégés in the life of the mentor

# Protégés

---

- Must be small under its primary NAICS code or small under a secondary NAICS code
  - If seeking approval under a secondary NAICS code, protégé must demonstrate prior experience and logical business progression in that code
- Generally, only one mentor at a time
  - SBA will approve a second mentor only if the second relationship pertains to an unrelated NAICS code and the protégé seeks to acquire specific expertise that the first mentor does not possess
- Only two SBA mentor-protégé relationships ever
- SBA may examine protégé's SDVOSB/WOSB self-certification as part of application process

# Participation Period

---

- Maximum term is six years in one mentor-protégé relationship
  - Initial term of the Mentor-Protégé Agreement is for three years
  - One option for an additional three years
  - Parties must commit to one year – after that, either party may terminate the Mentor-Protégé Agreement upon 30 days notice
  - SBA must approve continuation of the relationship each year and can terminate at any time

# How to Apply

---

- Electronic application only
  - Submitted to [www.certify.sba.gov](http://www.certify.sba.gov)
- Applicants must:
  - Execute and submit a Mentor-Protégé Agreement consistent with SBA's rules
  - Be registered with [SAM.gov](http://SAM.gov)
  - Complete online training module
  - Submit other documents to substantiate eligibility
- Depending on application volume, SBA may institute open and closed enrollment periods

# Looming Changes to Joint Venture and MPA Regulations

---

# Latest with SBA's 8(a) Mentor-Protégé Programs

---

- SBA is proposing to eliminate the separate 8(a) mentor-protégé program by consolidating it with the All Small Mentor-Protégé Program
- SBA may do away with the requirement for SBA approval of joint ventures for 8(a) contracts
- SBA may relax maximum of 2 mentors in lifetime
- SBA is considering requiring 8(a) applicants to complete a tutorial to help determine if they are ready to be in the program
- SBA is seeking comment on whether to lift the restriction on mentors having more than three protégés at one time

# Questions?

---



Peter Ford  
Partner  
Government Contracts  
PilieroMazza PLLC  
303.501.1300  
pford@pilieromazza.com

## **Disclaimer**

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

## **Attorney Advertising**

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

© 2020 PilieroMazza PLLC  
All rights reserved.