Understanding Joint Venture and Mentor Protégé Eligibility

Overview:
The basic application process for the verification of a joint venture is no different than the application process for the verification of any other Veteran-Owned Small Business (VOSB). However, there are essential requirements that must be present for a joint venture to be verified as a Veteran-Owned Small Business or Service-Disabled Veteran-Owned Small Business (SDVOSB). To understand these requirements, please read this entire Verification Assistance Brief as well as any instructional materials concerning the application process.

At the outset, a joint venture may be organized as a partnership or any other separate legal entity. For purposes of the Veterans First Contracting Program, joint ventures may be either a VOSB or an SDVOSB. However, at least one VOSB or SDVOSB joint venture partner must be verified, in accordance with 13 CFR part 125 and 38 CFR part 74 and designated as the managing venture. An employee of the managing venture must be designated as the manager with ultimate responsibility for performance of the contract.

In general, each joint venture partner must be a small business in the NAICS Code(s) identified on the applicant’s Vendor Information Pages (VIP) application profile. However, if there is a mentor protégé agreement in place, approved by the SBA, the mentor does not have to qualify as a small business so long as the protégé qualifies as a small business, under its selected NAICS Codes. In addition, the twelve provisions identified in 13 CFR § 125.18(b)(2) (see below) must be contained in the joint venture agreement.

Requirements:
This brief explains the criteria that allows a joint venture to be eligible for verification and inclusion in the VIP database.

SDVO SBC as used in 13 C.F.R. § 125.18(b)(2) means a Service-Disabled Veteran Owned Small Business Concern. For purposes of verification, CVE applies 13 C.F.R. § 125.18(b) to both VOSBs and SDVOSBs.

The Regulations:
38 C.F.R. § 74.1 provides “joint venture is an association of two or more business concerns for which purpose they combine their efforts, property, money, skill, or knowledge in accordance with 13 C.F.R. part 125. A joint venture must be comprised of at least one veteran-owned small business. For VA contracts, a joint venture must be in the form of a separate legal entity.”

38 C.F.R. § 74.1 provides “small business concern (SBC) has the same meaning given to such term in 13 CFR part 125.”

38 C.F.R. § 74.5(b) provides “[j]oint ventures may apply for inclusion in the VIP Verification Program. To be eligible for inclusion in the VIP Verification Program, a joint venture must demonstrate that:

(1) The underlying VOSB upon which eligibility is based is verified in accordance with this part; and

(2) The joint venture agreement complies with the requirements set forth in 13 CFR part 125 for SDVOSBs. However, while 13 CFR part 125 is limited to SDVOSBs, CVE will apply the
same requirements to joint venture firms seeking verified VOSB status.”

13 C.F.R. § 121.103(a)(3) provides “[n]egative control includes, but is not limited to, instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.”

13 C.F.R. § 121.103(h) provides “[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)(1)(i) provides “[a] joint venture of two or more business concerns may submit an offer as a small business for a Federal procurement, subcontract or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract.”

13 C.F.R. § 121.103(h)(1)(ii) provides “[t]wo firms approved by SBA to be a mentor and protégé under §125.9 of this chapter may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement, and the joint venture meets the requirements of §124.513 (c) and (d), §125.8(b) and (c), §§125.18(b)(2) and (3), §126.616(c) and (d), or §127.506(c) and (d) of this chapter, as appropriate.”

13 C.F.R. § 125.11 provides “[e]xtraordinary circumstances...are only the following:

(1) Adding a new equity stakeholder;
(2) Dissolution of the company;
(3) Sale of the company;
(4) The merger of the company; and
(5) Company declaring bankruptcy.”

13 C.F.R. § 125.11 provides “small business concern means a concern that, with its affiliates, meets the size standard corresponding to the NAICS code for its primary industry, pursuant to part 121 of this chapter.”

13 C.F.R. § 125.11 provides “negative control has the same meaning as that set forth in § 121.103(a)(3) of this chapter.”

13 C.F.R. § 125.18(b) provides “[a]n SDVO SBC may enter into a joint venture agreement with one or more other SBCs or its SBA-approved mentor for the purpose of performing an SDVO contract.

(1) Size of concerns to an SDVO SBC joint venture.

   * * *

(ii) A joint venture between a protégé firm that qualifies as an SDVO SBC and its SBA-approved mentor (see § 125.9) will be deemed small provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the SDVO procurement or sale.”

13 C.F.R. § 125.18(b)(2) provides “…[e]very joint venture agreement... must contain a provision:

1. “Setting forth the purpose of the joint venture...”13 CFR § 125.18(b)(2)(i)

2. “Designating an SDVO SBC as the managing venturer of the joint venture, and designating a named employee of the SDVO SBC managing venturer as the manager with ultimate responsibility for performance of the contract (the “Responsible Manager”).

   (A) The managing venturer is responsible for controlling the day-to-day
management and administration of the contractual performance of the joint venture, but other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary.

(B) The individual identified as the Responsible Manager of the joint venture need not be an employee of the SDVO SBC at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the SDVO SBC if the joint venture is the successful offeror. The individual identified as the Responsible Manager cannot be employed by the mentor and become an employee of the SDVO SBC for purposes of performance under the joint venture.

13 C.F.R. § 125.18(b)(2)(ii)

(C) Although the joint venture managers responsible for orders issued under an IDIQ contract need not be employees of the protégé, those managers must report to and be supervised by the joint venture’s Responsible Manager.” 13 C.F.R. § 125.18(b)(2)(ii)

3. “Stating that with respect to a separate legal entity joint venture, the SDVO SBC must own at least 51% of the joint venture entity...”13 C.F.R. § 125.18(b)(2)(iii)

4. “Stating that the SDVO SBC must receive profits from the joint venture commensurate with the work performed by the SDVO SBC, or a percentage agreed to by the parties to the joint venture whereby the SDVO SBC receives profits from the joint venture that exceed the percentage commensurate with the work performed by the SDVO SBC...” 13 C.F.R. § 125.18(b)(2)(iv)

5. “Providing for the establishment and administration of a special bank account in the name of the joint venture. This account must require the signature or consent of all parties to the joint venture for any payments made by the joint venture to its members for services performed. All payments due the joint venture for performance on an SDVO contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account as well...” 13 C.F.R. § 125.18(b)(2)(v)

6. “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, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture...” 13 C.F.R. § 125.18(b)(2)(vi)

7. “Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (b)(3) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the
joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available…”13 C.F.R. § 125.18(b)(2)(vii)

8. “Obligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member….13 C.F.R. § 125.18(b)(2)(viii)

9. “Designating that accounting and other administrative records relating to the joint venture be kept in the office of the SDVO SBC managing venturer, unless approval to keep them elsewhere is granted by the District Director or his/her designee upon written request…”13 C.F.R. § 125.18(b)(2)(ix)

10. “Requiring that the final original records be retained by the SDVO SBC managing venture upon completion of the SDVO contract performed by the joint venture…” 13 C.F.R. § 125.18(b)(2)(x)

11. “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…” 13 C.F.R. § 125.18(b)(2)(xi)

12. “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.” 13 C.F.R. § 125.18(b)(2)(xii)

13 C.F.R. § 125.18(b)(3) provides:

“(i)[f]or any SDVO contract, including those between a protégé and a mentor authorized by §125.9, the joint venture must perform the applicable percentage of work required by §125.6.

(ii) The SDVO SBC partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture.

(A) The work performed by the SDVO SBC partner(s) to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience.

(B) The amount of work done by the partners will be aggregated and the work done by the SDVO SBC partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by a non-SDVO SBC partner, all work done by the non-SDVO SBC partner and any of its affiliates at any subcontracting tier will be counted.”

What This Means:

- A joint venture must be in the form of a separate legal entity.
- A joint venture may be in the form of a partnership that operates under a partnership agreement that satisfies the requirements of 13 C.F.R. § 125.18(b)(2).
- A joint venture may either be a VOSB or a SDVOSB.
- In every joint venture, at least one of the joint venture partners must be verified, in accordance with 38 CFR part 74 as either a VOSB or SDVOSB.
- All partners to the joint venture must qualify as a Small Business Concern, except if the joint venture has an SBA-approved mentor-protégé agreement.
- A CVE-verified concern may establish an SBA all small mentor-protégé agreement with a concern that is other than small and not CVE-verified, and then establish a CVE-verified joint venture with that same concern.
• It is not sufficient for a joint venture to be comprised of firms that have an SBA-approved mentor-protégé agreement. The joint venture must then apply for and receive verified status from CVE.
• The contents of the mentor protégé agreement will not be examined for affiliation but will be examined to determine whether the contents of the agreement conform to the control requirement of 13 C.F.R. part 125.
• All joint venture agreements must contain the twelve provisions stated in 13 C.F.R. § 125.18(b)(2).
• A joint venture must be at least 51 percent owned by one or more VOSB(s) or SDVOSB(s), as applicable.
• The SDVOSB or VOSB must receive a distribution of profits commensurate with the work it performs or an agreed upon amount not less than the work performed by the SDVOSB or VOSB.
• A verified VOSB or SDVOSB must be the managing venturer of the applicant.
• An employee of the verified VOSB or SDVOSB must serve as the manager for the managing venturer with ultimate responsibility for performance of the contract.
• “The individual identified as the Responsible Manager of the joint venture need not be an employee of the SDVOSB at the time the joint venture submits an offer, but, if he or she is not, there must be a signed letter of intent that the individual commits to be employed by the SDVOSB if the joint venture is the successful offeror.” 13 C.F.R. § 125.18(b)(2)(ii)(B)
• The joint venture must establish “a special bank account in the name of the joint venture. This account must require the signature or consent of all parties to the joint venture for any payments made by the joint venture to its members for services performed. All payments due the joint venture for performance under a contract will be deposited in the special account; all expenses incurred under the contract will be paid from the account.” 13 C.F.R. § 125.18(b)(2)(v)
• The managing venturer must have control over the activities of the joint venture except those activities that qualify as extraordinary circumstances.
• A non-SDVOSB cannot exert negative control over the joint venture.
• The SDVOSB/VOSB partner to the joint venture must perform at least 40% of the work performed by the joint venture and must be more than administrative or ministerial functions so that the Veteran concern gains substantive experience.

Fact Scenarios
• In order for a joint venture to qualify as a SDVOSB, there must be a managing venture. Example, LLC, is a verified SDVOSB, but the supplied documentation for the joint venture shows that the SDVOSB does not serve as the managing venturer. Therefore, CVE is unable to reasonably conclude that the verification requirements have been satisfied.
• In order for a joint venture to be included in the VIP database as a verified SDVOSB, one of the businesses forming the joint venture must be a verified SDVOSB. Example JV, LLC applied for SDVOSB status; however, Veteran Company, LLC, the managing venturer, was denied inclusion in the VIP database as it failed to meet the eligibility requirements of 13 C.F.R. part 125. Because neither of the businesses that form the joint venture are verified as an SDVOSB, CVE is unable to conclude that Example JV, LLC meets the requirements of the regulations.”
Decisions from the SBA Office of Hearings and Appeals:

The SBA Office of Hearings and Appeals issued the following four decisions:

1. **CVE Protest of Veterans Contracting, Inc.,** SBA No. CVE-107-P (2019)

From these decisions, OHA provided the following guidance.

- A joint venture need not meet the eligibility requirements of 13 C.F.R. §§ 125.12 and 125.13 but must meet the specific requirements governing joint ventures found at 13 C.F.R. § 125.18 (b)(2).
- A joint venture is not required to comply with the ordinary ownership and control requirements applicable to the verification of non-joint venture VOSBs and SDVOSBs.
- The regulations do not require the VOSB/SDVOSB members of the joint venture to possess the critical licenses needed for a joint venture to perform a contract.
- Although a critical license requirement is found under the control provisions of 13 C.F.R. § 125.13(i)(6) relating to non-joint venture VOSB/SDVOSBs, those requirements are not applicable to joint ventures.
- The joint venture regulations do not contain provisions for finding one joint venturer inordinately reliant upon another joint venturer.
- The regulations require the managing venturer to have control over the day-to-day operations of the joint venture.
- The non-Veteran joint venture partner cannot exert negative control over the joint venture.
- The managing venture must have control over the activities of the joint venture.
- When submitting a bid package on a set-aside procurement, the joint venture should submit to the Contracting Officer an amendment to its joint venture agreement to conform to the specific requirements of the solicitation, including the requirements relating to 13 C.F.R. § 125.18 (b)(2)

FOR INFORMATIONAL PURPOSES ONLY

This information has been provided by the U.S. Department of Veterans Affairs (VA) Office of Small and Disadvantaged Business Utilization (OSDBU) for general informational purposes and should not be construed as providing legal advice. You should contact your attorney to obtain advice with respect to any particular issue or problem. In addition, VA OSDBU makes no representation as to the accuracy or whether the above information is currently up to date. All applicants and participants must read the applicable regulations and determine how best to meet these requirements. This Verification Assistance Brief does not constitute legal notice or replace governing regulations.

For more information about VA Small and Veteran Business Programs, visit [http://www.va.gov/osdbu](http://www.va.gov/osdbu).

VA Office of Small and Disadvantaged Business Utilization
1–866–584–2344
Monday–Friday | 8 a.m. to 6 p.m. (Eastern)

Status Update:
verificationfollowup@va.gov
Profile Questions: vip@va.gov