



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. However, there are essential requirements that must be present for a joint venture to be verified as a Veteran-Owned Small Business (VOSB) or Service-Disabled Veteran-Owned Small Business (SDVOSB). To understand these requirements, please read this entire Verification Assistance Brief as well as any instructions concerning the general requirements for 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 (Program), joint ventures may be either a VOSB or a 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 venturer. An employee of the managing venturer must serve as the project manager.

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. In addition, the twelve provisions identified in 13 CFR § 125.18(b)(2) (see below) must be contained in the joint venture agreement.

An exception to the requirement that all partners to the joint venture must be small may occur when there is a mentor protégé agreement approved by the SBA and the mentor and protégé are the joint venture partners. CVE will not require that the mentor

qualify individually as a small business under its selected NAICS Codes for the purpose of verification.

Requirements:

This brief explains the criteria that allows a joint venture to be eligible for verification and inclusion in the Vendor Information Pages (VIP) database.

(An applicant refers to the business entity applying for verification. A participant refers to a business entity that has already been verified. For purposes of this Brief, when an applicant is mentioned, it applies equally to a participant).

(For purposes of this brief, the regulations when referring to Service-Disabled Veterans applies equally to Veterans)

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

The Regulations:

38 C.F.R. § 74.1 provides that a "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 CFR 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. § 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. § 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)(3)(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)(3)(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. § 121.103(h)(3)(iii) provides that “[t]wo firms approved by [the] SBA to be a mentor and protégé under § 124.520...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...has not reached the dollar limit set forth in § 124.519 of these regulations...”

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 and 124.520 of this chapter) 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 CFR § 125.18(b)(2) provides “...[e]very joint venture agreement... must contain” the following 12 provisions:

1. The Joint Venture agreement must contain a provision “[s]etting forth the purpose of the joint venture...” 13 CFR § 125.18(b)(2)(i)
2. The Joint Venture agreement must contain a provision “[d]esignating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venture as the project manager responsible for performance of the contract...” 13 CFR § 125.18(b)(2)(ii)
3. The Joint Venture agreement must contain a provision “[s]tating that with respect to a separate legal entity joint venture, the SDVO SBC must own at least 51% of the joint venture entity...” 13 CFR § 125.18(b)(2)(iii)
4. The Joint Venture agreement must contain a provision “[s]tating that the SDVO SBC must receive profits from the joint venture commensurate with the work performed by the SDVO SBC...” 13 CFR § 125.18(b)(2)(iv)
5. The Joint Venture agreement must contain a provision “[p]roviding 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 purposes. 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 CFR § 125.18(b)(2)(v)
6. The Joint Venture Agreement must contain provisions “[i]temizing 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, without a detailed

schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available...” 13 CFR § 125.18(b)(2)(vi)

7. The Joint Venture Agreement must contain provisions “[s]pecifying 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 CFR § 125.18(b)(2)(vii)

8. The Joint Venture Agreement must contain a provision “[o]bligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member....” 13 CFR § 125.18(b)(2)(viii)

9. The Joint Venture Agreement must contain a provision “[d]esignating 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 CFR § 125.18(b)(2)(ix)

10. The Joint Venture Agreement must contain a provision "[r]equiring 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 CFR § 125.18(b)(2)(x)

11. The Joint Venture Agreement must contain a provision "[s]tating 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 CFR § 125.18(b)(2)(xi)

12. The Joint Venture Agreement must contain a provision "[s]tating 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 CFR § 125.18(b)(2)(xii)

13 CFR § 125.18(b)(3)(i) provides:

"[f]or any SDVO contract, including those between a protégé and a mentor authorized by §125.9 or §124.520 of this chapter, 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. 13 CFR § 125.18(b)(2)(iii)
- A joint venture may be in the form of a partnership that operates under a partnership agreement that satisfies the requirements of 13 CFR § 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.
- A joint venture must be separately verified as either a VOSB or SDVOSB.
- All partners to the joint venture must qualify as a Small Business Concern per the SBA guidelines except if the joint venture has an SBA-approved Mentor-Protégé Agreement.
- CVE will consider verification eligibility of joint ventures comprised of a VOSB/SDVOSB protégé and an other-than-small mentor under 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 CFR part 125.

- A joint venture must be at least 51 percent owned by one or more VOSB(s) or SDVOSB(s).
- The SDVOSB or VOSB must receive a distribution of profits commensurate with the work it performs.
- 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 project manager for the managing venturer.
- All joint venture agreements must contain the twelve provisions stated in 13 CFR § 125.18(b)(2).
- The Veteran 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 VetBiz 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 CFR 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 three decisions:

1. *CVE Protest of Veterans Contracting, Inc.*, SBA No. CVE-107-P (2019)
2. *CVE protest of Valiant Construction, LLC*, SBA No. CVE-110-P (2019)
3. *CVE Protest of Commonwealth Home Health Care Inc.*, SBA No. CVE-116-P (2019)

From these decisions, OHA provided the following guidance.

- A joint venture need not meet the eligibility requirements of 13 CFR §§ 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 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.
- 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)

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For more information about VA Small and Veteran Business Programs, visit <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