

Joint Venture Guidelines for Owners, Primes, & MWBE Contractors

Part One: The Contractor's Perspective



Wendell R. Stemley, CMAA

- Founder/CEO of Black IPO Management, Inc.
- Emeritus Director and Former President, National Association of Minority Contractors
- 30 years' experience as a managing joint venture partner with such companies and clients as the University of California College System, Barnhart Construction, Balfour Beatty, and Heery International



Douglas E. Barnhart, CEO, Barnhart Construction (above left) & Wendell Stemley, CEO, Black IPO, JV Partners, Lincoln High School Builders, a \$108M reconstruction project servicing 2,800 students.

Upon completion, the new 24.4-acre campus measured 323,196 square feet and featured 77 classrooms, 16 science labs, 8 science prep rooms, 7 technology labs, 2 multimedia classrooms, and 2 gymnasiums.

Joint Venture Defined

A joint venture is a business entity formed by two or more independent companies for the purpose of pursuing a common objective, such as a prime contract.

The resulting business entity has additional resources and capacity, enhancing its ability to compete for larger awards.

A joint venture is generally characterized by shared ownership, shared returns and risks, and shared governance.

Elements of a Joint Venture

In a joint venture, the prime managing partner holds 51% or more interest in the business. Partner(s) hold less than 51% interest, but in most cases, not less than 20%

- Managing Partner Agreement
 - Quality time
- Partner Agreement
 - Value add, useful functions of the MWBE
 - Percentage of ownership, profit, and liability (owner)
- Confidentiality Agreement
 - Workers and property (intellectual and physical)
- Non-compete Clause
 - Additional work (owner)
- JV Tax ID (Disposition of new assets and liability)
- Financial Reporting (Schedule K-1)

Owner Requirements

Owner requirements may drive some of the prequalification requirements which the Joint Venture contractors need to meet.

- **RFI (Request for Information)**
 - Experience, team member's capacity, past performance

- **RFP (Request for Proposal)**
 - Shortlist, process, price, owner allowances
 - The owner's interview expectations
 - MWBE/DBE participation

Prime/MWBE Joint Venture Strategies

- **JV partners increase the capacity of the Team to compete for an owner's projects using all of these elements, including outreach, however outreach consulting is not in itself a joint venture**
- Delivery Methods
 - Bid build, design build, joint venture owns the design
 - Guaranteed Maximum Price (GMP), Construction Manager at Risk, Construction Manager Multi-Prime
- The team must identify the roles of each partner team member and understand the businesses' cultural differences
 - “Compatibility is key as the partners have to trust each other. You can't write trust into an agreement.” – Douglas Barnhart, Barnhart Construction*
- Quality assurance (QA)/Quality control (QC)
- Interactive value engineering, LEED & constructability meeting with partners

Prime/MWBE Joint Venture Strategies

- **Capacity Enhancement**
 - Financial Statements
 - Capital call
 - Bonding
 - Technology
 - Government relations
 - Resumés specific to the project

Evaluation,
Economic
Impact, &
Increasing
Diversity

- **Evaluation of the Joint Venture**
 - What role does the MWBE have in the joint venture?
 - Value add participation
 - What steps will the team take to increase MWBE utilization and local business/worker participation objectives?

- **Economic Impact**
 - Don't repeat to the owner the subcontractor participation requirements vs. impact
 - A project which needs 100 laborers at \$400/day x 264 days/year = \$10,560,000 min. per year
 - Estimated project engineering is \$80M with 23% MWBE = \$18,400,000 min. per year
 - Total impact: available participation \$28,960,000/year

Evaluation,
Economic
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- **Methods of Increasing Diversity**

- Use NAMC as part of your proposal
 - Example: *MGM Center City Development. As a joint venture prime bidder, we are partnering with the National Association of Minority Contractors (NAMC). As MGM is a NAMC Major Corporate Partner, we are excited about NAMC's role in our outreach efforts in workforce development, training and advocacy. As a joint venture, contractor mentoring sub-contractor/vendor supplier utilization is a major part of our delivery plan. In addition, NAMC will demonstrate its community advocacy for this project while working with the Team to meet the owner's diversity objective of inclusion.*
- Understanding community demographics
- Poverty zip codes and local worker programs
- MBE, WBE, DBE, DVBE and community-based organization utilization

**Joint Ventures should not hinder or decrease
MWBE participation**

Procurement
Agencies
& Strategies to
Increase
Competitiveness

Marketing joint ventures to owners, local, state, and federal procurement agencies.

- Joint Venture Branding
- Stadium Builders
- Hospital Builders
- Local Business Partners

Performance strategies with venture partners that can help increase your joint venture's competitiveness:

- Adding local partner(s)
- Design and engineering firms
- Outreach consultants

Teaming
Agreements are
not Joint
Ventures

A **teaming agreement** is an arrangement with a prime contractor and another company, which acts as a subcontractor or design consultant, who partner together to pursue a contract.

Teaming agreements place companies in a better position when bidding on contracts. This type of agreement can sometimes work well for smaller companies that want access to contracts they may not be able to obtain alone.

Teaming
Agreements are
not Joint
Ventures

In a teaming agreement, the **prime contractor** is primarily responsible for managing the overall project and must ensure the project's completion. The **subcontractor** or consultant is responsible for completing specific portions of the project as outlined in the subcontract.

Contractors and subcontractors remain independent instead of operating as a partnership. A subcontractor does not have **privity of contract** to the owner's contract. That is, the owner's contract cannot confer rights or impose obligations upon any person who is not a party to the owner's contract.

The subcontractor's fees are less due to limited sharing of profits.

Teaming
Agreements are
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Ventures

Some teaming agreements, such as prime/sub agreements, are not truly subcontractor contracts, but rather are a good faith agreement between the prime contractor and the subcontractor to work together to pursue a prime contract with the understanding and promise that they will enter into a binding subcontract agreement if the owner awards the prime contract to the team.

**Joint
Ventures:
Are you ready?**

Is your company ready for joint venture contracting opportunities?

- Joint venture audits
- K-1 Tax Returns
- Impact Size Standards
- MWBE Certification



Questions & Answers

