NATIONAL CENTER for VIP

Veteran Institute for Procurement

Veteran Institute for Procurement (VIP)

- Business training program for veteran-owned companies who sell to the Federal Government.

- Trains service-disabled and veteran-owned small business government contractors nationwide to adapt best business practices for success in government contracting.

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VIP Program Essentials

- 50 veteran business executives trained each session
- 3 sessions a year
  - o *October 2014 (completed)*
  - o *March 10-12, 2015*
  - o *June 9-11, 2015*
- 0 cost to participants
- 3 days of instruction and networking
- 27 hours of training
- 28 volunteer industry expert instructors

3-day, 27 hour Program

BOLGER CENTER

GRADUATION

CLASS INSTRUCTION

KEYNOTE LUNCH

Who We Serve

- **Owners & C-level executives in veteran-owned small businesses with:**
  - ❖ At least 2 years in operation
  - ❖ A minimum of 3 full-time employees
  - ❖ Less than $25 million in annual revenue
  - ❖ Experience with government contracts as a prime contractor or subcontractor

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VIP Curriculum

- Accounting/Budgets/ Developing Rates
- Compliance
- Contracting – Teaming, Joint Ventures
- Financing/Capital Management
- Human Resources
- Insurance
- Marketing – Capture & Proposal Management
- Program Management/ Internal Controls
- RFI/Sources Sought

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VIP is Unique

- Federal government contracting focus; an area in which veterans are uniquely qualified
- Fills the business gap between “start-ups” and “big leaguers”
- Market-based, real-time expert instruction
- Creates a national VIP alumni network
- VIP graduates receive congressional citations

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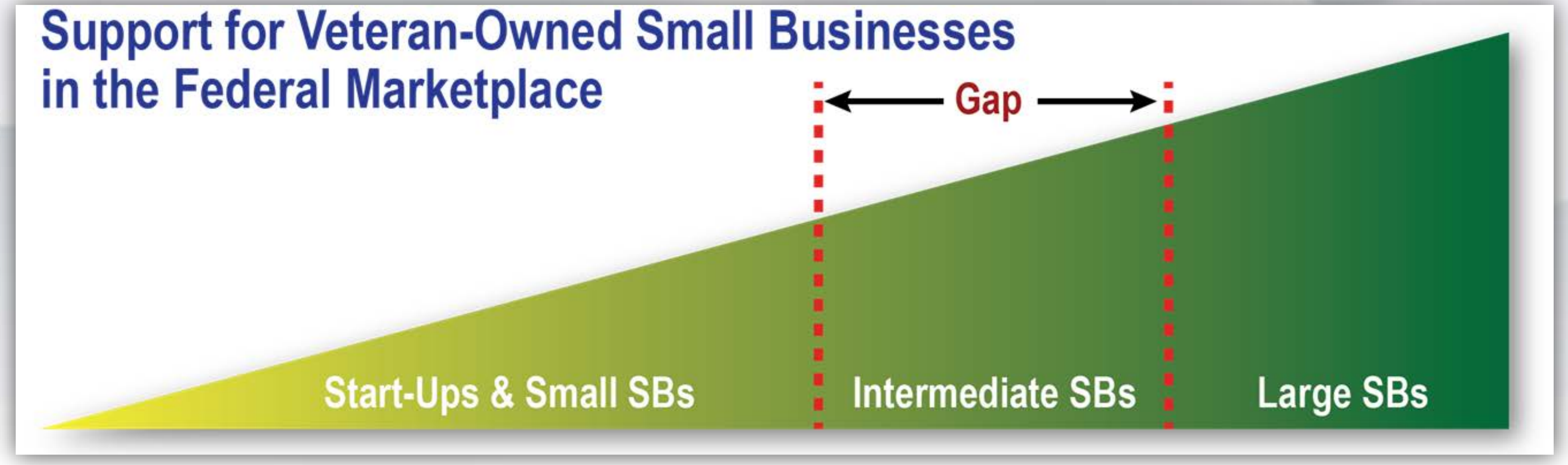
Fill the Gap



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397 VIP Graduates

Launched in 2009

- **Graduates represent 31 states and Washington, DC.**
  - 80% SDVOSB
  - 41% 8(a)
  - 54% minority-owned
  - 12% woman-owned
  - 11% HUB Zone
  - 100% veteran-owned

VIP Graduating Class
October 2013

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It’s Working!

- **184 VIP graduate survey reported:**
  - **JOBS:** Created 2018 jobs
  - **HIRE:** 55% of their employees are veterans
  - **GROWTH:** Increased their revenue by an average of 49% within 1 year after graduation
  - **CHANGE:** 82% improved the way they do business
- **3** *of the* **7 SDVOSB/VOSB winners** of the **VA t4-$12B contract** are **VIP graduates**
- **1** *of the* **10 SDVOSB winners** of the **NIH CIO-SP3 GWAC-$20B contract** is a **VIP graduate**

CLASS *of* 2014

www.NationalVIP.org

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Arming Vets to Win

APPLY TODAY !

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WHAT IS A JOINT VENTURE

- **A joint venture is**:

  An Association of an SDV firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the SDV is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risk, and profits of the joint venture are commensurate with its ownership interests

ABOUT JOINT VENTURES

- Main Characteristics:
  - Co-management
  - Sharing profits and losses
  - Limited duration
- Competing as a joint venture:
  - Joint ventures should be formed before submitting offer
  - Agreement should provide for contract performance
  - FAR requires disclosure in the proposal

ABOUT JOINT VENTURES

- Forms of Joint Venture:
  - Partnership
  - Limited Liability Company
  - Corporation (more formalities)

STRUCTURING A JOINT VENTURE

- Form of Joint Venture:
  - Traditional Joint Venture (partnership)
    - Can be informal
      - No employees or assessments
    - Legal Risk

STRUCTURING A JOINT VENTURE

- Alternative
  - Limited Liability Company
    - Advantages – easy to form; limited liability for partners
    - Disadvantages – requires capitalization and operation as separate entity
  - Corporation (more formalities)

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JOINT VENTURES: MANAGEMENT STRUCTURE AND LABOR

- What will be the management structure of the joint venture?
  - Management Committee?
  - Project Manager?
- Which party will be responsible for negotiating contracts?
- Which party will be responsible for negotiating subcontracts with subcontractors?

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JOINT VENTURES: MANAGEMENT STRUCTURE AND LABOR

- What are the sources of labor to be employed?
- How do the parties envision the division of labor on contracts?

GENERAL PROVISIONS THAT MUST BE INCLUDED IN MOST JOINT VENTURE AGREEMENTS

- Purpose of the Joint Venture
- Designation of SBC as managing venturer
- Not less than 51% of net profits earned by Joint Venture will be distributed to the SBC participant
- Responsibilities of the Parties
- Obliging parties to Joint Venture to ensure performance of government contract

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GENERAL PROVISIONS THAT MUST BE INCLUDED IN MOST JOINT VENTURE AGREEMENTS

- Designation that accounting/administrative records are kept by managing venturer and requirement that managing venturer retain records of contracts completed by Joint Venture
- Performance of Work

POPULATED JOINT VENTURE

PROS:

1. One seamless entity performs work
2. Reduces possible confusion in evaluating proposal
3. The Joint Venture subcontracts directly with subcontractors

CONS:

1. SBA's JV regulations are not consistent with populated Joint Venture Structure
2. If approval of Joint Venture Agreement is required, it may be delayed by proposed structure
3. The Minority Joint Venture partner (49%) may not be able to exercise control over workforce under PM-managed populated Joint Venture

UNPOPULATED JOINT VENTURE

➢ PROS:

1. Each Joint Venturer performs work independently as subcontractor to Joint Venture
2. Easier to explain structure to SBA for approval of Joint Venture Agreement
3. "Joint Venture" may charge handling fee at prime contract level for work subcontracted to subcontractors

➢ CONS:

1. May increase price if each Joint Venturer uses a subcontractor which in turn subcontracts to the 2nd tier subcontractors
2. Procuring Agency may not understand who is performing work if Joint Venture is unpopulated

LIMITED LIABILITY COMPANY

PROS:

1. Liability – Members not liable (beyond capital contributions) to third parties for actions of the LLC
2. Taxes – May be treated as partnership (or like an S Corp) for tax purposes
3. SBA – recognizes LLC as structure through which to operate joint venture

CONS:

1. Liability – individual members remain responsible to government for performance of contract under SBA regulations
2. Documentation – Articles of Organization and Operating Agreement need to be drafted
3. Past Performance – no past performance record of its own unless the solicitation allows members' past performance history to be considered
4. SBA – the regulations do not contemplate LLC structure, making it difficult to operate within regulations

JV PARTNERSHIP

PROS:

1. Taxes – Treated as a partnership (or like an S Corp) for tax purposes
2. Bid and Proposal Cost – recoverable by individual members
3. SBA – Structure with which the SBA is most familiar, making the review process less time consuming

CONS:

1. Liability – Partners are jointly and severally liable on debts of the partnership
2. Documentation – Joint Venture Agreement necessary for 8(a) purposes; serves as partnership agreement
3. Past Performance – no past performance record of its own unless the solicitation allow members' past performance history to be considered

TIMING OF PRENUPTIALS

- Joint Venturers should normally be formed before the offer is submitted
- Agreement should provide for performance of the contract – avoid “agreement to form a joint venture”
- FAR requires that nature of the joint venture be fully disclosed in the proposal

EXEMPTION TO AFFILIATION

- May but need not be in the form of a separate legal entity
- May but need not be populated (i.e., have its own separate employees)
- May not be awarded more than **3 contracts** over **2 year period** w/o a finding of general affiliation
- Same two entities may form additional joint ventures and each may be awarded 3 contracts over 2 years

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EXEMPTION TO AFFILIATION

- Two years starting from the date of the award of the first contract; but compliance (after the first contract award) determined as of the date of the initial offer including price
  - May ultimately be awarded more than 3 contracts
  - After 2nd award but within 2-year period, submits offers for 3 procurements; may be awarded a contract in response to all 3 of those offers, giving the joint venture 5 total contracts
  - May be awarded a contract beyond the 2-year period provided the offer occurred prior to two years from the date of the first contract award

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JOINT VENTURES: SDVO

- SDVO SBC must be managing venturer
- Employee of SDVO SBC must be project manager
- SDVO SBC must get 51% of net profits
- JV agreement must set forth responsibilities with respect to performance
- 13 C.F.R. § 125.15(b)

JOINT VENTURES: SDVO

- SDVO Firms can form separate entities under 121.103(h). Construction Engineering Services, LLC, SBA No. VET-213 (2011)
- SDVO SBC subcontractors may be used to meet limitations on subcontracting (performance requirements) 13 C.F.R. § 125.6(b)

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JOINT VENTURES: 8(A) SET-ASIDES

- Government can award 8(a) contracts to JV if:
  - One firm is 8(a) certified
  - All partners are SBs, unless in Mentor-Protégé
- The SBA must approve the Joint Venture agreement
  - 8(a) firm must manage
  - 8(a) must furnish project manager
  - 8(a) must receive at least 51% profits

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JOINT VENTURES: 8(A) SET-ASIDES

- Competing as a joint venture -- best practices
  - JV should be formed before submitting offer
  - Agreements should provide for contract performance
  - FAR requires proposal to disclose nature of joint venture

JOINT VENTURES: HUBZONE CONTRACTS

- All partners must be HUBZone
- All partners must be small
- The contract must meet certain size requirements

WATCHOUTS: WHERE SMALL IS A FACTOR

- Avoid affiliation
- Avoid violation of ostensible subcontractor rule
- Joint Venturing under small business/ 8(a)/SDV rules
- Mentor-protégé joint ventures
- Performance of Work

TEAMING AGREEMENTS *VS.* JOINT VENTURES

- Liability
  - JV partners jointly responsible for contract performance, and except in LLC, jointly and severally liable
  - Subcontractor only responsible for portion of work it performs, limited liability
- Control
  - Shared by JV partners
  - Prime has control over teaming relationship

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TEAMING AGREEMENTS *VS.* JOINT VENTURES

- Bonding
  - JVs typically able to obtain bonding based on combination of all partners
  - Prime/sub may work also, but likely requires agreement of all parties to be bound and collateral from owners

COMPREHENSIVE JOINT VENTURE AGREEMENTS

Any Questions?

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