

1. Each alliance member will incur all costs individually and no costs will be

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incurred by the alliance (the "unpopulated alliance" scenario).

- 2. The alliance will incur all costs and no alliance member will incur any costs (the "populated alliance" scenario).
- 3. Each alliance member will incur some costs as an individual entity, while some costs will be incurred by the alliance (the "hybrid alliance" scenario)

In the first scenario above, all costs (including costs of the alliance's as program management, billing, audit support, etc.) are infrastructure such alliance member and included on that member's billings incurred by an to the alliance entity. The alliance entity is simply a shell without any of its own costs, employees, or control systems. In the second scenario, the alliance is brought to life by infusing it with working capital, employees, and control systems. The alliance implements all necessary business systems, processing, purchasing, property control, etc. The alliance including payroll develop its own indirect rate structure and calculates is own indirect will cost rates, based on the direct and indirect costs it incurs. In such circumstances, the alliance may require its own Disclosure Statement. Finally, in the third scenario there are at least two structures involved—that of the alliance entity and those of the alliance members. Alliance members may operate as both owners and subcontractors, depending on how the work is allocated.

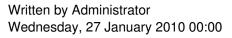
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Although there are several different forms of "alliance" (including teaming agreement or Special Business Unit), the most prevalent type is the joint venture.

Joint ventures (JVs) offer the opportunity to present a single, unified face to a customer, to create a separate cost structure and benefit packages, and to utilize the alliance members' past performance information for purposes of winning a proposal.

The DCAA Contract Audit Manual (CAM) discusses audit issues associated with JVs at 7-1800. According to the CAM—

joint venture, proposed and established as a separate business entity, Α should have its own set of books and supporting documentation sufficient for an audit trail. Transactions should be recorded consistent with the joint ensure that the joint venture venture agreement, and care must be taken to bears its equitable share of the costs. A joint venture, proposed and established as a separate business entity, should have its own set of books and supporting documentation sufficient for an audit trail. Transactions consistent with the joint venture agreement, and care should be recorded ensure that the joint venture bears its equitable share of must be taken to the costs.



More recently, in its role as adjudicator of bid protests, the GAO has addressed the need for a JV to have an adequate accounting system suitable for cost reimbursement contracts, as well as whether a JV needs to file a CASB Disclosure Statement.

In <u>PMO Partnership</u> <u>Joint Venture</u> (<u>B401973</u> <u>.3</u>, 1/14/2010), the Department of Considered the Words of the Words of the Joint Venture (<u>B401973</u> <u>.3</u>, 1/14/2010), the Union Transportation (DOT) rejected PMO's offer because it Union Uni

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Indirect cost rates were not projected for the PMO Partnership and used in the cost proposal in accordance with FAR 31.203. Instead the indirect cost rates for each partner were used separately in the cost proposal. A budget should have been developed for the partnership entity and projected indirect rates should have been calculated from the budget and used in the cost proposal. As a result the indirect costs included in the cost proposal are que stioned . . .

The cost proposal should be for the PMO Partnership Joint Venture Entity and should not list the costs for each partner separately. The PMO Partnership Joint Venture is a separate entity in and of itself and that is how the costs should be presented in the cost proposal. . . .

Because the JV's indirect structure was found unacceptable (and by the with CAS 401), the entity's offer was rejected and PMO way noncompliant contracting officer's decision. As a preliminary matter, DOT's protested the argument that the JV had violated CAS 401 was dismissed because the JV was a qualified small business concern, and thus exempt from the requirements of CAS 401. In addition, GAO noted that the Government had "not explained why the particular overhead rate structure proposed by PMO-JV would lead to an inconsistency in the application of cost accounting practices or a loss of financial control over costs during contract performance." Accordingly, the protest was sustained.

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Similarly, in McKissack+Delcan JV
                                        II (B401973.2, 1/13/2010) the JV's
offer
                                                                         to
DOT
                                                                               W
                 because the JV member maintaining the accounting records
as rejected
 (
Delcan
             utilize Canadian GAAP instead of US GAAP. Moreover,
) would
The proposal
                   submitted to the Government does not show that the joint
                   independent entity. An independent joint venture for
venture is an
                  contracting purposes would have employees committed from
Government
                    and the indirect rate structure would be unique to the joint
each company
               . . In addition, the indirect rate structure proposed is
venture...
Delcan's
: the
          proposal should contain an indirect rate structure specific
                                                                         to
McKissack
&
Delcan
                   11."
Joint Venture
However, as
                   the protest evolved the Government
                    initial position(s) and ended-up with the same arguments it
abandoned its
used with
               respect to PMO, namely that the JV's "
                 system is inadequate because MD-JV's failure to submit a
accounting
            indirect rate for the joint venture violates CAS
unique
                                                                401.
" As with
               PMO, the protest was sustained.
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In both protests above, DCAA failed to appreciate that a JV need not be "populated" and might simply consist of the costs of its members. On the other hand, companies wishing to enter into a JV or other strategic alliance should be mindful of the blind spot(s) in DCAA's audit approach, and take care to link proposed indirect costs to the form and substance of the alliance entity they have chosen.

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Finally, in Northrop Grumman/Textron (<u>B400837</u>, 2/17/2009) the two companies protested award of the Joint Light Tactical Vehicle (JLTV) contract to the GTV Joint Venture (a JV between General Dynamics Land Systems and AM General) because (among other things) GTV failed to submit a CASB Disclosure Statement for the JV. GAO noted that "

GTV's proposal indicated that 100 percent of the contract costs would be accounted for by subcontracts with the two joint venture members, apportio

ned between them equally.

GTV indicated in its proposal that a CAS disclosure statement had previously been submitted, and specifically cited in this regard disclosure

statements submitted by AM General and GDLS.

"

GAO relied on the DCAA audit guidance that states—

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need for a joint venture CAS Disclosure Statement depends upon the The characteristics of the venture itself. The determination must be made on a case-by-case basis. Where the joint venture is the entity actually performing the contract, has the responsibility for profit and/or producing a product or service, and has certain characteristics of ownership or control, a Disclosure Statement should be required. Where the venture merely unites separate and distinct portions of the the efforts of two contractors performing contract with little or no technical interface, separate joint venture disclosure may not be required.

Because "GTV's proposal in fact incorporated CAS disclosure statements applicable to the contemplated contract effort" the protest was denied.

To sum up, there are undeniable attractions to forming a joint venture or similar alliance to pursue government business. But doing so presents difficulties—not the least of which is ensuring alignment between the form/structure of the alliance and its cost structure, and navigating the submission of CASB Disclosure Statements. Based on recent GAO decisions, auditors will not be sensitized to the possible forms of the alliance, and may misevaluate what is presented, unless pains are taken to clearly show how proposed costs are consistent with how costs will be accumulated and billed after contract award.

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