



# School Construction Industry Day VI

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## Leveraging Resources and Relationships for Sustainability



- 
- Overview of upcoming OPSB/RSD Contracting Opportunities and Project Updates
    - Insights on Procurement Methods / Back-Office Training and Support
      - Collaborative Contracting / Networking
- 

Saturday, October 28, 2017

# RSD & OPSB- DBE Participation Summary

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# RSD Disadvantaged Enterprise (DBE) Participation Summary

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- **Stabilization & Demolition Contracts:** \$ 21,827,505
- **New Construction & Renovation Contracts:** \$ 81,956,315
- **Design-Build New Construction:** \$ 34,542,723
- **CMAR-Construction Management at Risk:** \$ 31,049,868
- **Total Amount of RSD DBE Contracts:** **\$169,376,412 (26.82%)**
- **Total Number of DBE Contracts Awarded:** **510 Contracts Awarded**



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# RSD-DBE Participation Summary

## December 2012 to September 2017

### DBE Participation December 2012 to September 2017 in Dollars (Percentage of Total Contracts)

Month-Year	Projects Total \$	DBE Participation \$	DBE %	# of Projects
Dec-12	\$ 26,824,370	\$ 4,223,510.47	15.75%	7
Dec-13	\$ 177,985,997	\$ 23,644,538.23	13.28%	24
Dec-14	\$ 359,642,410	\$ 85,168,404.51	23.68%	41
Dec-15	\$ 493,281,364	\$ 118,814,092.06	24.09%	61
Dec-16	\$ 568,788,868	\$ 143,818,804.71	25.29%	75
Jan-17	\$ 568,788,868	\$ 144,549,357.14	25.41%	75
Sep-17	\$ 631,431,964	\$ 169,376,412.00	26.82%	81

	Low Bid Only
	Includes 3 Design Build Projects
	Includes 2 CMAR Project

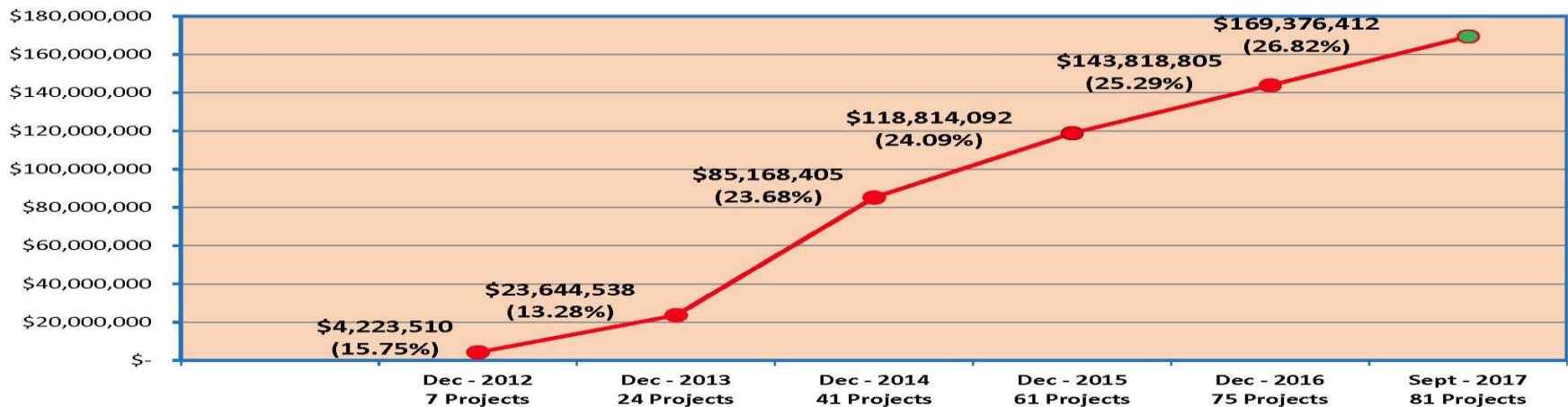


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# RSD-DBE Participation Summary

## December 2012 to September 2017

**DBE Participation December 2012 to September 2017 in Dollars**  
(Percentage of Total Contracts)



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# OPSB Disadvantaged Enterprise (DBE) Participation Summary

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- **Stabilization & Demolition Contracts:**                      \$    296,520
- **New Construction & Renovation Contracts:** \$ 54,086,557
- **Total Amount of OPSB DBE Contracts :**                      **\$ 54,383,077**



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# Recovery School District Projects

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- **State of Louisiana Procurement and Contract Network:**
  - All RSD projects can be found on the State of Louisiana Procurement and Contract Network (LaPAC) website: <http://wwwcfprd.doa.louisiana.gov/OSP/LaPAC/pubMain.cfm>
  - State of Louisiana Procurement and Contract Network → Bids by Department → State → Education  
OR
  - Type the following direct link in the address bar:  
<http://wwwcfprd.doa.louisiana.gov/osp/lapac/dspBid.cfm?search=department&term=14>
  - Note: LaPAC does not post the advertisement until the specified 1st advertisement date
- **All Projects will advertise in the Times-Picayune and The Advocate.** *(New Orleans/Baton Rouge Edition)*
- **Keep Track of the RSD's Construction Program through the Monthly Superintendents' Reports**
  - [www.rsdl.net/](http://www.rsdl.net/)
  - Click on For Community, Plan for Building New Schools, Monthly Superintendents' Reports



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# Orleans Parish School Board Projects

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- **All OPSB projects can be found on the Orleans Parish School Board (OPSB) website:** <http://www.opsb.us/>
  - Click on “Solicitations”. Projects will be listed under “Facilities Department”  
**OR**
  - Click on use the following direct link: <http://www.opsb.us/solicitations/>
- **All Projects will advertise in the Times-Picayune.**(New Orleans/Baton Rouge Edition)
- **Keep Track of the OPSB’s Construction Program through the Monthly Capital Construction Reports**



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# Requirements to Bid on RSD and OPSB Capital Projects

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- **Classification 1 - Louisiana General Contractor's License**

- Exception – Demolition Specialty Allowed for Demolition Projects Only

- **Bid Security for five percent (5%) of total bid**

- Certified check drawn on a bank insured by the FDIC **OR**
- Cashier's check drawn on a bank insured by the FDIC **OR**

- **Bid Bond**

- Written by a surety company licensed to do business in Louisiana and signed by the surety's agent or attorney-in-fact

**AND**

- Surety must be listed on the current U.S. Department of the Treasury Financial Management Service list of approved bonding companies as approved for an amount equal to or greater than the amount for which it obligates itself in the Bond

**OR**

- Must be a Louisiana domiciled insurance company with at least an A - rating in the latest printing of the A.M. Best's Key Rating Guide



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# UPCOMING RSD NEW CONSTRUCTION & MAJOR RENOVATION PROJECTS

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**Abridged Scopes of Work for Refurbishments Available on RSD Website:**  
[www.rsdlc.net](http://www.rsdlc.net) → *RSD Procurement* → *Capital Projects Procurement* →  
*2017 Projected Quarterly Bid Schedule*



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# UPCOMING RSD REFURBISHMENT PROJECTS

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**Abridged Scopes of Work for Refurbishments Available on RSD Website:**  
[www.rsdlc.net](http://www.rsdlc.net) → *RSD Procurement* → *Capital Projects Procurement* →  
*2017 Projected Quarterly Bid Schedule*



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# McDonogh 32-School (RSD)

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- **Architect**

HMS

- **Scope of Work**

Code Compliance Work

Misc. Repairs

- **1<sup>st</sup> Advertisement**

Temporary-Hold

- **Construction Bid Opening**

TBD

- **Estimated Construction**

\$ 3.5 Million - \$ 4.5 Million

- **Funding Source**

FEMA



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# McDonogh 28 School-Phase II (RSD)

- **Architect**

SCNZ

- **Scope of Work**

New Flooring

- **1<sup>st</sup> Advertisement**

TBD

- **Construction Bid Opening**

TBD

- **Estimated Construction**

\$ 350,000 - \$ 450,000

- **Funding Source – FEMA**



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# Harney Elementary-School (RSD)

- **Architect**

Scairono-Martinez

- **Scope of Work**

Replacement of Downspouts  
and Gutters  
New Interior Lighting

- **3<sup>rd</sup> Advertisement**

October 25<sup>th</sup>

- **Bid Opening**

November 15<sup>th</sup>

- **Estimated Construction**

\$ 140,000 - \$ 150,000

- **Funding Source- FEMA**



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# Lafayette School-Phase II (RSD)

- **Architect**  
N-Y Associates
- **Scope of Work**  
New Ceiling, Lighting  
and Flooring
- **1<sup>st</sup> Advertisement**  
TBD
- **Bid Opening**  
TBD
- **Estimated Construction Value**  
\$ 1.0 Million - \$ 1.3 Million
- **Funding Source**  
FEMA



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# Sophie B Wright-School (RSD)

- **Architect**

HMS

- **Scope of Work**

Flooring Repairs, Misc.  
Painting

- **1<sup>st</sup> Advertisement**

TBD

- **Construction Bid Opening**

TBD

- **Estimated Construction**

- \$ TBD

- **Funding Source – FEMA**



Photo by Alice O'Brien



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# UPCOMING OPSB NEW CONSTRUCTION & RENOVATION PROJECTS

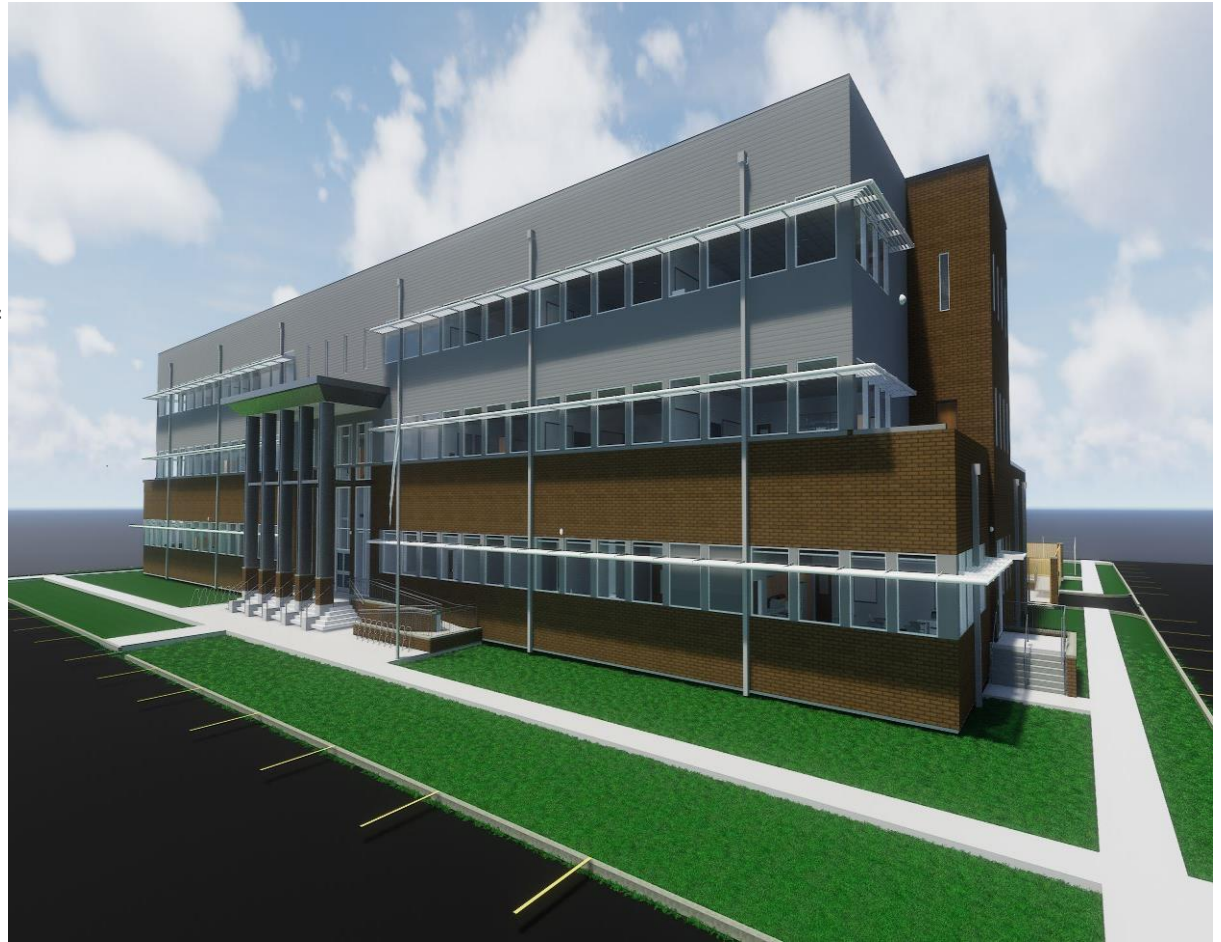
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# NOCSM HS-New Orleans Charter Science & Mathematics High School (OPSB-Low Bid)

- **Architect**  
Verges Rome
- **Scope of Work**  
Demolition of Existing 65,000 sf Building  
Construction of a new 106,000 sf High School
- **1<sup>st</sup> Advertisement**  
February 2018
- **Construction Bid Opening**  
March 2018
- **Estimated Construction**  
\$ 29.5 Million - \$ 31.7 Million
- **Funding Source**  
FEMA / Capital Projects



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# Benjamin Franklin Elementary School Phase II (OPSB-Renovation)

- **Architect**  
N-Y Associates
- **Scope of Work**  
Interior Renovation
- **1<sup>st</sup> Advertisement**  
TBD
- **Construction Bid Opening**  
TBD
- **Estimated Construction**  
\$ 1.7 Million - \$2.1 Million
- **Funding Source**  
FEMA/Capital Projects



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# McMain High School (OPSB-Renovation)

- **Architect**  
Concordia
- **Scope of Work**  
Exterior Envelope  
Repairs
- **1st Advertisement**  
TBD
- **Construction Bid Opening**  
TBD
- **Estimated Construction**  
\$ 2.9 - \$ 3.3 Million
- **Funding Source**  
FEMA



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# McMain High School (OPSB-Renovation)

## Abridged Scope of Work

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### **Scope of work includes, but is not limited to the following:**

- Repair of damaged cast concrete/stucco window and door sills.
- Repair damaged exterior plaster walls and paint building exterior.
- Repair and or refurbish historical entry openings and doors.
- Repair and or refurbish historic windows.



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# OPSB/RSD Procurement Methods

- **Competitive Low Bid**

- In accordance with Louisiana Public Bid Law
  - All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible and responsive bidder who had bid according to the bidding documents as advertised, and no such public work shall be done except as provided in this Part.
  - A responsive bidder is the apparent low bidder who submits the proper documentation within ten days of the opening of the bids.



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# Additional RSD Procurement Methods

- **CMAR – Construction Manager At-Risk**
  - In accordance with Louisiana Revised Statute Title 38 Section 2225.2.4
  - Currently only for projects \$25M +
  - Provides for early collaboration, cost control, risk mitigation and reduction in changes



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# Change Orders

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- **Change in Work**

- **Preconstruction**

- The contractor shall submit the following at preconstruction meeting and subcontractor shall submit no later than 14 days prior to the submission of a change order. A201 (7.1.4)
      1. Fixed job site overhead cost A201 (7.1.7)
      2. Bond premiums
      3. Insurance premiums (Construction related)
      4. Labor Burden

- **Change Orders**

- Before a Change Order is prepared, the contractor shall provide the “Cost of Work’ A201 (7.2.5)
    1. A detailed itemized list of labor, materials, and equipment... including quantities and unit costs for each labor, material, and equipment (Contractor and Sub)
    2. Cost of Work includes: A201 (7.2.2)
    3. Overhead and Profit A201 (7.2.3)



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# Pay Applications

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- **Pay Applications**

- **Preconstruction**

- General contractor to submit a schedule of Value at the Preconstruction Meeting A201 (9.2)

- **Construction**

- Pay Application AIA G702 A201 (9.3)
    - 10<sup>th</sup> day of the month (Suggest provide pencil copy prior)
    - Retainage 5% for over \$500,000.00
    - 45 days after the Owner has approved the Certificate of Payment
    - Required documents

- **Records**

- The Contractor shall keep full and accurate records of all cost incurred and items invoiced in connection with the work a201 (2.5) .... Such Records shall be open to audit....



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# Project Safety Requirements

- **Development of Safety Plan** (reference 29 CFR 1926 OSHA Construction Industry Regulation)

- **Prevention is the only way to reduce the risk of worker injuries and death. No person should ever have to be injured, become ill, or die for a paycheck.**



- **General Duty Clause, Section 5(a)(1) OSHA Act of 1970,**

- Each Employer, "place of employment which are free from recognizable hazards that are causing or are likely to cause death or serious physical harm to his employees."
- Each Employee, "comply with occupational safety and health standards and all rules, regulations, and orders"

- **Written Safety Plan:**

- Small business w/10 or fewer employees are exempt, however a safety plan demonstrates a commitment to your employees health
- Compliant with OSHA standards and information is relevant
- 4-Prong Approach: Management Commitment/Accountability, Worker Involvement/Communication, Workplace Analysis, Training/Prevention
- Address Hazard Communication, Fall Protection Program, LOTO Procedures, Excavation, Confine Space, etc.
- Education / Training (OSHA 10hr and 30hr) and Tool Box Meeting (see handout)



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# Project Safety Requirements

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- **LARSD Program Site Specific Safety Action Plan** (see handout)
  - **GC responsible to provide:**
    - Site Specific Safety Action Plan (avoid cut/paste safety plans)
    - Effective, Functional Safety Plan; Pro-active Involvement; Address Employee Exposure
  - **Areas to cover include:**
    - Incident/Accident Reporting Procedures
    - Emergency Response Plan / Perimeter and Access Control
    - Personal Protective Equipment Requirements
    - Pre-Phase Meeting / Job Hazard Analysis
    - Orientation / Training / Tool Box Meetings
  - **DON'T FORGET:**
    - First-Aid Kit onsite and First Aid/AED/CPR Trained Employees
    - Federal/State Employment Poster (bi-lingual)
    - Local Medical Facility Direction / Telephone Numbers (bi-lingual)



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# QUESTIONS?

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## The goal of the Contractor's Resource Center is to:

- Increase the success rate for DBE contractors in winning bid awards
- Support contractors with training, counseling and other resources to increase accuracy and efficiency in project bidding
- Provide capacity-building and business sustainability training to support long-term growth planning for small business contractors



**The CRC offers its members a computer lab outfitted with widely used construction scheduling, estimating, and accounting software used for training and direct usage.**

- A state-of-the-art plotter is available for large, full-color hard copies of project plans and specifications.
- Other contractor-specific training workshops, including:
  - Intermediate and advanced project management
  - Back-office applications
  - Financials preparation
  - Software instruction



# Upcoming CRC Trainings

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Date	Class	Time
<b>Tuesday, November 7</b>	Annual Veterans Small Business Breakfast and Resources Summit	9:00a-11:30a
<b>Wednesday, November 8</b>	Intermediate QuickBooks and Costing for Contractors	9:00a-12:00p
<b>Thursday, November 16</b>	Project Management Fundamentals Workshop with CORE Construction	9:00a-12:00p
<b>Friday, December 1</b>	Opportunities Outlook 2018	9:00a-12:00p

For more information, email us at [wbrc@urbanleaguella.org](mailto:wbrc@urbanleaguella.org).



# Client Success: Malone Electrical Services

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- Since 2016: increased revenue by 25% and has 27 employees
- Successful Mentor/Protégé Relationship with All Star Electric
- Projects include Various New Orleans Schools and the New Orleans Airport
- \$4M in Bonding Capacity Awarded



# Collaborative Contracting

## Protecting Your Interests and Managing Risks

Presented By: Brian D. Grubb, Managing Partner  
Sullivan Stoller Schultz & Grubb, LLC



## Types of Joint Ventures

- 1**
1. Traditional or Integrated Joint Ventures
  2. Line Item or Non-Integrated Joint Ventures
  3. Combined Approach

## Threshold (Pre-Joint Venture) Considerations

## Agenda

**2**

1. When do you enter into the JV Agreement?
2. Entity Selection
3. Jurisdiction Selection
4. Project Management vs. Profit Participation
5. Qualifying the Joint Venture
6. Parent Guarantees
7. Bonding

## Key Provisions in the JV Agreement

**3**

1. Capital Requirements
2. Profit Participation
3. Minority Member Protections
4. Reimbursement of Costs
5. Management
6. Exit Strategies
7. Insurance

# Types of Joint Ventures

## Traditional or Integrated Joint Ventures

- “integrated” agreement
- shared resources
- shared profits and losses
- centralized approach



## Line Item or Non-Integrated Joint Ventures

- “non-integrated” approach
- contractual allocation of rights and obligations
- not a true partnership
- no shared resources or shared total profits and losses
- Teaming and Alliance Agreements

## Combined Approach

Centralized approach to some aspects of the project and carve out specialized areas where one or more parties is solely responsible for the work and resulting profit or loss relating to that work.

# Threshold (Pre-Joint Venture) Considerations

## When do you enter into the JV Agreement?

Timing issues include:

- negotiating specific deal terms and joint venture agreement language before the 11<sup>th</sup> hour
- confirming the parties are able to agree on specific joint venture deal terms prior to being awarded the contract
- setting the terms for sharing pre-award costs
- investing significant time and energy in negotiating an agreement when the joint venture may not be awarded the contract

***Compromise: parties agree to form joint venture in accordance with a detailed term sheet (MOU) with the form of joint venture agreement attached.***

**Entity Selection:** General Partnership, Limited Liability Company

# Threshold (Pre-Joint Venture) Considerations

## **Jurisdiction Selection**

- Each state (and, potentially, foreign country) has its own peculiar statutes governing partnerships and LLCs, which may vary in terms of default management provisions, fiduciary duties, rights to capital, etc.
- Based on project site or location of JV members.

## **Who is in Control: Project Management vs. Profit Participation**

- Contracts allow parties to vary their profit participation, right to capital, capital contributions, and management percentages.
- Profit participation can increase or decrease while the liability for losses can remain constant.
- Run through hypothetical scenarios and craft the relationship you want from an economic and governance perspective, both in good times and bad.

# Threshold (Pre-Joint Venture) Considerations

## **Qualifying the Joint Venture**

A joint venture that is a party to a construction contract must be the qualified entity to perform the work under the contract. Failure to do so can be catastrophic.

## **Parent Guarantees**

Common practice to get a guarantee from the party's parent with a more formidable balance sheet to stand behind the obligations of the joint venture party.

## **Bonding**

If performance and payment bonds will be required for project, whose bonding capacity is used? How are bond premiums paid?



# Key Provisions in the JV Agreement

## Capital Requirements

- Set out clearly the expectations for capital requirements of the joint venture, both initially and throughout the life of the project.
- Clearly state the parties' initial capital contribution amounts.
- Determine how additional capital contributions will be required or requested, as applicable, e.g., minimum contributions based on a set schedule or a projected budget or capital calls as needed.
- Capital calls must be carefully drafted (and reviewed) to take into account who has the ability to make the calls, when calls can be made, and if there are any limits to the calls.
- Clearly contemplate remedies for failure of a party to make any required capital contribution.

# Key Provisions in the JV Agreement

## Profit Participation

- Set out very clearly each party's share of profits and losses generated from the project.
- May, but need not be, the same as each party's "ownership" percentage or "voting" percentage.
- Do the profit-sharing percentages change over time or are they different based on certain elements of the project or self-performed work?

**"Profit" means different things to different people. Any terms relating to distributions of cash or property from the joint venture, in particular, should be very clearly defined in the agreement itself:**

- How and when is "profit" determined and distributed?
- Is it all available cash?
- Does it permit for reserves?
- Is "profit" also used in the agreement to refer to tax allocations, and, if so, are they computed in the same way (probably not)?

# Key Provisions in the JV Agreement

## Minority Member Protections

Unanimous Votes on:

- Membership
- Capital Calls
- Contract with Owner (including changes and amendments)
- Adjustments to profit/loss/expense percentages
- Settle claims and disputes
- Purchase and sale of assets

## Reimbursement of Costs

- Set forth general guidelines for reimbursement of expenses incurred by each party, prior to and during the bid process, if appropriate, and after the contract is awarded to the joint venture.
- Reimbursement by the joint venture only in the event the owner reimburses the joint venture.

# Key Provisions in the JV Agreement

## Management

- Often the most confused provisions of a joint venture agreement.
- Establish a clear and unambiguous management plan that allows for timely and final decisions in the field.
- Clearly delineate change order authority.



## Common problems include:

- Too many levels of management
- Not delineating between party decisions and management committee decisions
- Not making it clear when the project manager can act without the management committee
- Not making it clear when the lead venture/managing venture/sponsor can act without the management committee
- Not providing for resolution of deadlocks



# Key Provisions in the JV Agreement

## Exit Strategies

- Contemplate worst case scenarios
- Build in exit strategies to help avoid disputes and, potentially, litigation

## Areas to address include:

- right to withdraw and pursue project on own accord
- remedies for a party's breach, default, or insolvency
- deadlock among the parties and/or management committee
- permissible/prohibited transfers to third parties and affiliates
- causes and effects of liquidation of the joint venture

# Key Provisions in the JV Agreement

## Insurance

Cover insurance briefly or in depth, as the parties determine.

### Key considerations include:

- Does the joint venture purchase project specific insurance or use the JV members' corporate policies?
- When there is a claim who pays the deductible and in what proportion?
- Who chooses legal counsel?
- Who determines whether the joint venture itself makes a claim, settles a claim, etc.?



# Collaborative Contracting: Protecting Your Interests and Managing Risks

**Presented By: Brian D. Grubb, Managing Partner  
Sullivan Stoler Schultz & Grubb, LLC**

## Q&A

