

## With more firms teaming up to pursue larger projects, what are the main considerations when forming a jointly bonded venture?

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Entering into a joint venture may give your firm more bidding capacity than it would have standing alone. However, there are a number of important factors to consider when obtaining bonds for your firm's joint venture.

Typically, sureties provide bonds in the name of the joint venture. Sureties will examine the financial strength of each joint venture partner and prequalify the joint venture in its entirety.

Joint venture partners should be prepared to have their respective sureties exchange underwriting information, such as financial statements, work-in-process information, contract documents and a copy of the joint venture agreement.

Conduct thorough due diligence on your firm's joint venture partners. Your firm will be fully liable (jointly and severally) to the sureties providing bonds for the joint venture regardless of how liability may be apportioned in the joint venture agreement.

If the surety for each joint venture partner signs the bond, the sureties have a "co-surety" relationship. Co-sureties typically are jointly and severally liable to the owner. Each surety is likely to require a separate indemnity agreement from each joint venture partner. However, even without entering into an indemnity agreement directly with your firm, your joint venture partner's surety may be able to assert a claim directly under the co-surety provision in the indemnity agreement between your firm and its surety.

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One area where we see contractors join forces is the bidding of government set-aside work, with a smaller firm holding some preferred status partnering with a larger contractor. Whether the team is contemplating a formal joint venture, SBA-approved mentor-protégé arrangement, or less structured teaming agreement, we look for two primary conditions to be met: clear disclosure to the government of the existence of the team and any indemnity support, and meaningful project work and financial risk undertaken by the preferred contractor.

Disclosure to the government is paramount. Contractor teams must ensure the government understands the nature of their relationship during the bidding process. In terms of the actual work performed, we will not get involved with teams if the smaller contractor has little or no construction trade experience. They must have construction skill that will be employed on the project and be a risk-bearer in the venture. The new amendments to the SBA's affiliation rules and recent enforcement activity show that the rules of the game have changed. With the government appropriately taking a much closer look at these relationships, it is critical that the smaller contractor truly participates in the construction of the project, not just perform ministerial or administrative tasks.

One important point to remember is that while the surety and the bond producer can ask the tough questions, we fully expect our clients to vet their proposed ventures with their own legal counsel. They must do the appropriate due diligence to protect themselves. It is not our job as sureties or bond producers to offer legal advice to our contractors, but it is our job to raise the issues to help make sure any joint venture complies with the various rules impacting contractor teams.