JOINT VENTURE MATCH MAKING PROGRAMME

JOINT VENTURES : A USEFUL TOOL

A joint venture is a legal entity formed by two or more parties who agree to undertake an economic activity, pool their resources and share in the risk and rewards. Joint ventures may be for one specific contract or project only or they may be for a more ongoing basis. From a legal point of view there are two types of joint venture vehicles which can be used.

Company
A company (denoted by "Pty Ltd") has a separate legal personality and contracts in its own name. A company can also sue and be sued. Companies are relatively formal and need to be registered and comply with various financial and regulatory requirements. All of this contributes towards the inherent costs in establishing and running a company and therefore this vehicle is not necessarily suitable for smaller or short duration projects. Companies are however less risky for shareholders as a company can potentially go insolvent without the shareholders private funds being affected.

Partnerships
Partnerships are generally the more common way in which joint ventures are established. A joint venture partnership comes into being with a partnership agreement which binds the partners to each other, regulates the affairs of the partnership and spells out very clearly who does what. Partnership agreements should also include dispute resolution clauses and regulate who contributes what and what remuneration accrues to each party. Partnerships have joint and several liability which means that each partner can be sued for all aspects of the project regardless of the areas of responsibility agreed between the partners. To get around this, the partners will give each other reciprocal indemnities to keep the liability ultimately within their sphere of responsibility.

Partnerships are less formal than companies and are not registered with any regulator. They are cheaper and quicker to set up but it is essential that partnership agreements are extremely thorough in terms of spelling out the various parties' rights and obligations.

The Nature of Joint Ventures
Certain joint ventures (also sometimes called "genuine" joint ventures) are where two

or more parties get together and jointly employ personnel, obtain the necessary equipment and there is no differentiation between different aspects of the project. This is in contrast to a situation where the work on a particular project is divided up between the parties and different parties perform different aspects on one project. In cases like this parties would collaborate on payment claims and this type of joint venture is often used to harness different skills from different parties.

Joint ventures can also be longer term where parties tender together although there would need to be a very clear agreement that they will not compete with each other for the same work. Often a joint venture has one dominant party who may put up securities and guarantees and handle administration and payment claims.

Reasons for Joint Ventures
Joint ventures are mostly brought into being for parties to access expertise from each other where they do not have such expertise in-house. The other predominant reason is for capacity purposes where a particular party has more work than it can handle and requires additional resources that could be lying dormant within another party. In more recent times, the advent of the BBBEE legislation has seen parties forming joint ventures in order obtain work in a preferential procurement environment.

Implications on CIDB Grading
Each party must be registered with the CIDB and the lead contractor needs to have the necessary grading designation in the appropriate class of work. For example if a tender requires a GB rating then the lead contractor in the joint venture needs to have a GB rating. Thereafter it is a case on inputting the various parties' registration numbers (CRS numbers) into the CIDB joint venture calculator (on the CIDB website) which will come up with a combined grading. As an example two grade 6 contractors will be seen as a grade 7 joint venture, or one grade 6 and two grade 5 contractors will also be seen as a grade 7.

Joint Ventures and BBBEE
Incorporated joint ventures (such as a company) will be scored as a complete enterprise. Unincorporated joint ventures will need to come up with a consolidated score card where the respective elements within each partner are scored. These scores will then be weighted according to the shareholding or profit share of the joint venture.

The Relationship is What Counts
The following guidelines are suggested to ensure that the joint venture you embark on is successful:

- Identify the risks and rewards for both you and your potential partner. It doesn't help if it appears that you are getting a great deal and your partner is losing out. An unhappy partner will ultimately cause a joint venture to fail.

- Be extremely discerning when identifying your partner. You will want a partner who shares in your passion and ideas of quality and fairness.
- Be extremely transparent and forthcoming and rather talk issues to death than leave important matters unspoken about.
- Run through the various “what if” scenarios so that if trouble does arise it has been anticipated and planned.

The Joint Venture Match Maker

The Association is offering, a joint venture match making service whereby members who are in the market for potential joint venture partners can register with the Association, provide a profile of themselves and provide information on what they are looking for in terms of joint venture. The Association will analyse the information and put potential partners in touch with each other to take their negotiations further.

To apply for this programme, please (**download application form here**), complete and e-mail to: **thabisile.xaba@nafbi.org** or fax to 08661 36768.