

KNOWLEDGE CENTRE

Joint Venture

JV:1

Relevant Facts or Questions Asked

A Procuring Entity (PE) sought guidance as follows:

- I. A private entity sought clarification on the term “Joint Venture” and whether it includes subcontractors; and
- II. Under the scenario where the owner of a networking company with a scope of services that requires a subcontractor is responsible for completing cabling works should be considered a Joint Venture.

Advice

1. A Joint Venture is a legal business relationship entered into by two or more independent business entities to create a new partner relationship for a specific purpose. Each party to the venture invests capital, provides management/expertise support for the venture, sharing of risks and participates in the profit or loss of the venture. This concept is embraced under Jamaica’s procurement regime.
2. Subcontracting is the accepted practice of assigning, or outsourcing, part of the obligations and tasks under a contract to another party known as a subcontractor. It is especially prevalent in works/construction and complex information and technology projects. Subcontractors are hired by the primary contractor, who continues to have overall responsibility for works/project completion and execution within its stipulated parameters and deadlines.
3. Having made that distinction, Joint Venture arrangements usually require the engagement of a subcontractor by either or all of the parties to a Joint venture to execute aspects of the tasks for the achievement of the overall Joint Venture objective.

Therefore, in the instant matter, a subcontractor/subcontracting agreement is rightly to be understood as separate from that of a Joint Venture agreement.

4. The scenario presented reflects a strict separation of the concepts since the cable works is a subset of the tasks the networking company must perform to achieve a contractual objective.
5. Another factor to consider in making the distinction between both concepts is that of the doctrine of Privity of Contract. Privity of Contract implies that only parties to a contract are allowed to sue each other to enforce their rights and liabilities and no stranger is allowed to confer obligations upon any person who is not a party to the contract, even though the contract has been entered into for his/her benefit.
6. In light of the above, the subcontractor is rightly to be regarded as the 'stranger' and distinct from the parties to a Joint Venture who have standing to seek remedy against each other. The sub-contractor on the other hand will only be able to initiate legal action against the main contractor.

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