



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

December 31, 2014

Wendy M. Payne, Executive Director
Federal Accounting Standards Advisory Board
Mailstop 6H19
441 G Street, NW, Suite 6814
Washington, DC 20548

Dear Ms. Payne:

The Small Business Administration's Outreach Task Force is pleased to have been given this opportunity to comment on the Federal Accounting Standards Advisory Board draft, "Public Private Partnerships Disclosure Requirements".

The Outreach Task Force is a cross-disciplinary entity within SBA charged with enhancing SBA's ability to provide services to small businesses by leveraging assistance given by private-sector collaborators. That ability would be significantly diminished, in ways that appear to be unintended by the Advisory Board, if the draft requirements come into effect. We urge you to consider applying these requirements to a narrower band of enterprises than the present language would provide.

First, some background: SBA's principal collaboration with the private sector is through cosponsorships. Congress bestowed the right to enter these cosponsorships upon SBA in 15 U.S.C. §§ 633(h) and 637(b)(1)(A), while imposing certain restrictions as well. Among these, SBA is required to enter into a cosponsorship agreement, including a budget, with the private-sector party or parties involved.

An SBA cosponsorship typically involves the parties collaborating on an event – a training for small business, for example, or an awards night. The private-sector party may or may not provide a venue or make purchases for the event; on rare occasions, SBA may provide supplies for the event. In such cases, the Agency is bound by the same acquisition laws and regulations as it is in its ordinary workday purchasing. SBA and the private sector entity are jointly involved in planning the event, and SBA and the private sector entity may provide speakers, panelists, ticket-takers, setup and cleanup. Two-thirds of SBA cosponsorships cost ten thousand dollars or less.

For example, in calendar year 2014 SBA planned and executed one hundred seventy-nine cosponsorships, providing training or other benefits to 2,366,654 small business executives, at a total cost of \$2,678,763 – almost all of which was borne by the private-sector partner.

We do not believe that these sorts of collaborations were the ones you intended to expose to the challenging new disclosure requirements in your draft. We understand you to intend these requirements to apply when there is appreciable financial risk to the government. We note in Appendix A, at A11.a. (page 29), the report states “[t]he Board desires to limit disclosure to those P3s possessing significant fiscal exposure.” For SBA, cosponsorships represent the opposite. SBA is almost never has financial exposure in a cosponsorship, significant or otherwise.

Yet cosponsorships appear to fit under at least two of the four legs of your definition of a Public-Private Partnership set forth on page 30. Definition one is “agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years.” Typically, a cosponsorship might be three months in the planning, and executed over the course of a week. The agreement would cover the entire period. The “economic life” of the project is the event; it has no economic life once it is over. Thus cosponsorships, no matter how economically insignificant, would be included in your definition and, therefore, exposed to your disclosure requirements.

The second definition is “financing provided in whole or shared in part by the private partner.” But if that provision applied – as it frequently does in SBA’s cosponsorships – the Agency’s fiscal exposure would actually be substantially *reduced*. It is the private partner, not SBA, that is exposed to loss when it provides the financing.

You propose exempting those public-private partnerships from the disclosure requirement if they are not “material” (page 30) but it is hard to apply your definition of materiality to cosponsorships. You note at A19.b. (page 34) that materiality “depends on the degree to which omitting or misstating information about this item makes it probable that the judgment of a reasonable person relying on the information would have been changed or influenced by the omission or misstatement.” But it would seem that everyone who *relies* on information would, by the nature of things, be influenced by false information. In the case of cosponsorships, for example, officials at SBA look at the number of cosponsorships each office performs as a measure of the effectiveness of that office’s outreach efficiency. A misstatement of even the tiniest, no-cost cosponsorship would influence that assessment.

But does that make that cosponsorship “material” for purposes of the disclosure requirements?

Your review of conclusive and suggestive characteristics of public-private partnerships that should be exposed to your disclosure requirements also runs the danger of forcing these requirements on cosponsorships. One of your conclusive characteristics is “[t]he principal arrangement or transaction is exempt from the Federal Acquisition Regulation (FAR).” While it is not clear what the “principal” transaction would be in most cosponsorships, any item purchased by the private-sector partner would be exempt from the FAR, as it should be; it is not a purchase being made with taxpayer money. It seems incongruous to expose cosponsorships to enhanced disclosure requirements because of financial burdens willingly undertaken by the private sector.

On page 18, you find it suggestive if “significant work force duties, activities, or knowledge are cross-shared between public and private sector P3 parties.” But that is the *raison d’être* for cosponsorships. The parties work and plan collaboratively, which would be impossible without cross-sharing knowledge.

On the same page, you describe it to be another suggestive characteristic if “[t]he focus is more on collaboration and informal, real-time, resolution processes than on formal, contractual, administrative processes.” There is a contract between SBA and its cosponsorship partners, but it is unclear whether that suffices to identify “the focus” as being on contractual processes. Of course, as with any collaborative enterprise, problem-solving is preferred to litigation. We hope that this does not mean that cooperation results in enhanced disclosure requirements.

The enhanced disclosure requirements are onerous – particularly the one which would require the Agency to identify “the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows, including (1) the risk, and (2) the potential effect on cash flows if the risks were realized” (p. 20), a requirement which would oblige each cosponsorship to be reviewed by an accountant. As SBA does not have the staffing to undertake such a review, it is likely that SBA would do significantly fewer cosponsorships, contrary to the expressed will of Congress.

We agree with Mr. Darcey (page 38) that the definition of P3s and P3 transactions are drawn too broadly to be applied consistently and effectively and we respectfully request that you define the arrangements to be bound by the additional disclosure requirements more narrowly, so

that low-risk events like SBA's cosponsorships are not included.

Sincerely,

T. C. Treanor

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