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To: FASAB; Savini, Domenic N

Cc: Perriello, Tami; Kushman, John S.; Ramey, Steve D.

Subject: SBA Response to P3 Exposure Draft

Please find attached the Small Business Administration's response to the exposure draft entitled

Public-Private Partnerships: Disclosure Requirements.

We appreciate the opportunity that FSAB provided us to respond to this proposal.

Please let me know if you have any questions regarding our comments.

Regards,
Tim

Tim Gribben
Deputy CFO

U.S. Small Business Administration

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

SBA's responses are displayed in red font and can be found after each question.

Q1. The Board proposes defining the term “public-private partnerships” as shown below:

Federal public-private partnerships (P3s) are contractual arrangements or transactions between public and private sector entities to provide a service or an asset for either government or general public use where in addition to the sharing of resources, each party shares in the risks and rewards of said arrangements or transactions. Sharing of risks and rewards is evidenced by conditions such as (1) agreements covering a significant portion of the economic life of a project or asset, and/or lasting more than five years, (2) financing provided in whole or shared in part by the private partner, (3) conveyance or transfer of real property, personal property, or multi-sector skills and expertise, or (4) formation of special purpose vehicles (SPVs).

Do you agree or disagree that the P3 definition proposed at paragraph 17 captures the most widely identified features of federal P3s (refer to paragraphs A7 – A9 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Agree. We cannot add anything to rationale cited in A7-A9. However, it is possible that one party to the transaction is absorbing the risks while the other party is receiving the rewards – there is no guarantee that risk sharing is required.

Q2. The Board’s proposed definition at paragraph 17 is intended to help identify risk-sharing arrangements or transactions that possess significant risk (that is, fiscal exposure) to the entity. Such arrangements or transactions are commonly referred to as *Public-Private Partnerships* (P3s) but may also be referred to as *Alternative Financing Arrangements* or *Privatization Initiatives*. For example, informal arrangements or transactions that do not share risks or rewards and are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc., would generally be exempt from applying this Statement. One member has an alternative view that expresses concern that the definition of P3s is not confined solely to P3 arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard (refer to paragraphs A31-A41 for the Alternative View).

- a. **Do you agree or disagree that the P3 definition helps identify risk-sharing arrangements or transactions that could possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, and A10 - A12 for related comments)? Please provide the rationale for your answer.**

We agree that the definition helps identify some risk- sharing arrangements or transactions that possess significant risk but it is not clear that these additional requirements add value beyond existing requirements for disclosure. The definition does not provide clarity on what risks are being identified and disclosed that would not be required under existing standards and guidance.

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- b. Do you agree or disagree that the P3 definition, while capturing P3s based on their most widely identified features, excludes contracts or other arrangements or transactions that are routine in nature and not generally identified as P3s for other purposes (refer to paragraphs 17, 18, A7- A9, and A10 – A12 for related comments)? Please provide the rationale for your answer.

We agree that the P3 definition captures P3s based upon features that seem reasonable and consistent with the proposed standard. However, there is no source for the definition criteria. We have no basis for forming an opinion as to whether these are the most widely identified features and whether they would be supported by documentation that clarifies the arrangement sufficiently to support disclosure. Exclusions are defined in A12 but there are no criteria that support that these are routine transactions.

- c. Are there any features other than those identified in the proposed P3 definition that would assist entities in identifying risk-sharing arrangements or transactions that could possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, and A10 - A12 for related comments)? Please provide the rationale for your answer.

None identified. Checklists and implementation guidance in addition to the standard would be helpful in implementing the proposed standard.

- d. The scope of the ED excludes those informal arrangements or transactions that do not share risks or rewards and for example, are solely designed to foster goodwill, encourage economic development, promote research and innovation, coordinate and integrate strategic initiatives, etc. Do you agree with the exclusion? Is it clear what would be excluded by this provision? If not, what features, if any, differentiate them from those arrangements or transactions that do possess significant risk (that is, fiscal exposure) to the federal reporting entity (refer to paragraphs 17, 18, A7- A9, A10 – A12, and A13 – A14 for related comments)? Please provide the rationale for your answer.

This exclusion does not expand upon the definition or provide additional clarity to the definition provided in 17 and 18 or the scope 12-16.

- e. Do you agree or disagree with the one member's concern that the definition of P3s is not confined solely to P3 arrangements or transactions and is not sufficiently clear to facilitate consistent application of the standard (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.

Agree. It is not clear what should be excluded from the definition in order to represent only P3 agreements that present financial risk to the reporting entity. As written the definitions will not achieve consistent application.

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Q3. The Board has developed P3 risk-based characteristics (that is, conclusive and suggestive characteristics) to ascertain what P3s, if any, should be considered¹ for disclosure (refer to paragraphs A1 – A6 for related comments). The characteristics apply to all types of P3's; construction, housing, utilities, military depots, etc. These characteristics may eliminate the need to disclose P3 arrangements/transactions that do not possess significant fiscal exposure(s).

- a. Do you agree or disagree that only those P3s (identified pursuant to the above definition) possessing risk-based characteristics (that is, conclusive or suggestive characteristics) should be subject to the disclosure requirements proposed at paragraphs 21 – 24 (refer to paragraphs A13 – A14 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Yes. The definition provides the disclosure requirements under the proposed standard. A lack of requirement in this standard does not preclude disclosures under other standards.

- b. Do you believe that there are other arrangements or transactions besides P3s for which the risk-based characteristics are present and therefore disclosure should be required? Please provide the rationale for your answer.

None identified.

- c. Do you believe that when the final Statement becomes effective, the entities with which you are associated have P3s that are subject to disclosure pursuant to the proposed requirements (refer to paragraphs A1, A4, A6(a), A10 – A12 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Since we execute our primary programs through relationships with outside parties, we anticipate these requirements would affect our financial disclosures and reduce the value of important information already disclosed under other standards. We do not perceive any value from the duplicative requirement.

Q4. The Board proposes that the P3 risk-based characteristics be categorized as either: conclusive characteristics - where answering "Yes" to any one characteristic means the P3 arrangement or transaction should be considered for disclosure; or suggestive characteristics - where answering "Yes" to any one suggestive characteristic suggests that the P3 arrangement or transaction may be subject to disclosure but that preparers consider suggestive characteristics in the aggregate before reaching a final decision. Each conclusive characteristic is meant to be definitive whereas each suggestive characteristic will require entity judgment as each one is analyzed in connection with the other suggestive characteristics. The conclusive and suggestive characteristics are presented at paragraphs 19 to 20 and more fully discussed at paragraphs A15 – A16.

¹ Considering for disclosure would include further evaluation as stated in the referenced paragraphs and be made in light of the entity's materiality considerations; including qualitative and quantitative thresholds.

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Do you agree or disagree with the risk-based characteristics, their related classification as either conclusive or suggestive, and their proposed application at paragraphs 19 and 20 (refer to paragraphs A15 – A16 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Yes. Nothing to add.

Q5. The Board proposes the following component reporting entity disclosures:

- a. The purpose, objective, and rationale for the P3 arrangement or transaction and the relative benefits/revenues being received in exchange for the government's consideration, monetary and non-monetary, and the entity's statutory authority for entering into the P3.
- b. The mix and amount of funding, federal and non-federal, used to meet mission requirements and service delivery needs to support the P3.
- c. The operational and financial structure of the P3 including the entity's rights and responsibilities, including:
 - i. A description of the contractual terms governing payments to and from the government over the life of the P3 arrangement or transaction to include:
 1. in-kind contributions/services and donations,
 2. the time periods payments are expected to occur, and
 3. whether payments are made directly to each partner or indirectly through a third-party, such as, military housing allowances.
 - ii. The amounts received and paid by the government during the reporting period(s) and the amounts estimated to be received and paid during each of the succeeding five years and in aggregate over the life of the P3.
- d. Identification of the significant contractual risks the P3 partners are undertaking that could materially change the estimated cash flows, including a description of (1) the risk and (2) the potential effect on cash flows if the risks were realized (for example, early termination requirements including related exit amounts and other responsibilities such as asset condition (hand-back) requirements, minimum payment guarantees, escalation clauses, contingent payments, renewal options, etc.).
- e. As applicable:
 - i. Associated amounts recognized in the financial statements such as gains or losses and capitalized items.
 - ii. Significant instances of non-compliances with legal and contractual provisions governing the P3 arrangement or transaction.

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- iii. Whether the private partner(s), including any Special Purpose Vehicle (SPV), have borrowed or invested capital contingent upon the entity's promise to pay whether implied or explicit.
- iv. Description of events of termination or default.

Do you agree or disagree with the component entity report disclosures proposed at paragraph 23 (refer to paragraphs A25 – A27 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Agree, but need to include the qualifier of “to the extent that it is applicable”.

Q6. The Board believes that significant P3 risks, including those that may be deemed remote should be disclosed. One member has an alternative view that expresses concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of “significant exposure” is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View). The Board’s position is as follows:

Consideration should be given to those risks that management does not expect to be likely, but represent a significant exposure to the government if they were to occur. With this being said, the Board also notes that such remote risks may have a reasonably high materiality threshold. As such, remote risks should not be dismissed from disclosure without further consideration of user needs and the qualitative and quantitative characteristics when applying materiality.

- a. **Do you agree or disagree with the Board’s position as stated above and included at paragraph A24 (refer to paragraphs A22 – A24 for a detailed discussion and related explanations)? Please provide the rationale for your answer.**

Disagree with the Board’s position. Contingent liabilities should be disclosed consistent with current standards.

- b. **Do you agree or disagree with the one member’s concern that (1) disclosure of remote contingencies is not limited to the terms of contractual arrangements, (2) the concept of “significant exposure” is not sufficiently clear to result in consistent disclosures, and (3) risks related to entity operations or performance (referred to in the Alternative View as business risks) would be included in the risk disclosures (refer to paragraphs A31-A41 for the Alternative View)? Please provide the rationale for your answer.**

Agree with the member’s concern. We do not believe that disclosure of contingent liabilities should be expanded.

Q7. The Board proposes that due to the relative complexity and potentially large number of P3s that an entity might be party to, the proposed disclosures would permit entities to provide broad summarized information instead of individual arrangement or transaction detail. For example, disclosures of P3 arrangements or transactions could be grouped by an entity’s strategic objectives, departmental or bureau categorizations, program budget classifications,

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etc. In this way, users are presented with information that is comprehensive and material to an entity's financial statements without placing an undue burden on preparers to provide P3 specific or granular level information.

Do you agree or disagree that entities should be permitted to aggregate or group disclosures as proposed at paragraph 21 (refer to paragraphs A28 – A29 for a detailed discussion and related explanations)? Please provide the rationale for your answer.

Strongly agree. Entities should be required to aggregate disclosure in order to limit disclosure of proprietary information of non-government partners and provide summary impacts consistent with financial statements. If additional detail is deemed important it should be reported as a part of a searchable database, not as a part of the AFR.

Q8. The Board encourages respondents to not only provide input concerning any and all aspects of the proposed changes, including whether concepts are sufficiently clear and the proposed effective date, but also other matters which may not have been specifically addressed in this exposure draft. In addition, the basis for conclusions explains the Board's goals for this project (see comments beginning at paragraph A1) and also discusses other issues raised by task force members as well as experts and practitioners both within and external to government (as an example, see paragraphs A4 through A6). Respondents are asked to particularly note the Alternative View beginning at Paragraph A31.

Please provide any comments or suggestions you have regarding the goals for this project, other issues identified in the basis for conclusions, or areas which have not been addressed.

This new standard is ill-advised. The answers we provided assumed that the standard would be implemented and addressed the question asked. The requirements under this standard are addressed in other standards for valuing assets and liabilities and need not be duplicated in a new standard. If there is a concern that the existing standards are not clear, they could be updated or implementation guidance could be provided without addressing P3s in a separate standard. Although the standard does indicate that each P3 should be addressed separately, it is implied by asking the question as to whether they could be aggregated. If the government decides that more detail should be published it should be included as a part of the searchable database on one of the government websites.

In addition, it is unclear how an agency would apply the expanded definition of materiality to include qualitative factors as proposed in the Exposure Draft. It is conceivable that a reasonable person, currently undefined in the ED, relying on information might find any omission to be misleading. Therefore everything could potentially be "material" and disclosable. More guidance is necessary.

Should the proposed standard for P3s be promulgated, it should allow for exclusion from the requirements under the standard for those P3 relationships that have existing accounting guidance adequately defining risk, such as credit reform programs. Additional guidance is needed to define those P3 relationships that have existing

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accounting guidance adequate to define the P3 risk, and those that will be subject to the additional requirements under the standard.