

From: Joyce Dillard

Sent: Friday, January 02, 2015 4:38 PM

To: FASAB

Subject: Comments FASAB-2014-0006-0001 Public-Private Partnerships: Disclosure Requirements

Questions for Respondents due 1.2.2015

Attached.

Joyce Dillard

Public-Private Partnerships: Disclosure Requirements

Questions for Respondents – MsWord Version

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.

COMMENTS:

Disagree. There are Constitutional issues at risk.

Government assets need to be protected as they are citizen assets. With PPP arrangements, that government due process ends. Representation ends. There leaves no recourse for the judicial branch of the government to weigh in.

Who sues-the citizen against the private party of a PPP?

Are public private partnerships formal, signed contractual arrangements or verbal contractual arrangements? If there is just a transaction, is there an approval required by an elected body who represents the citizens?

Resources is not defined. Personnel can be used as resources.

Risks need to be identified. Are they strictly financial, as in a debt, or an insurance-risk type of exposure? Would the IRS consider the private party at-risk if they do not have the indebtedness?

How does a government benefit by rewards? Are rewards net profit, budget reduction or pension liability reduction?

How is economic life defined? It appears to have a five year life. Some projects could last 100 years as an economic life.

You state that financing be provided, in whole or in part, by the private partner, yet debt is not discussed. Who has the responsibility for the debt service and debt retirement? If it is the taxpayer, where is the risk to the private partner?

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How can a government asset be transferred to a private partner? Who signs the transfer of the asset? Does Congress need to approve these transactions? If there is debt involved, it retired so there is no government liability?

There is no distinction if the private partner is a non-profit corporation or foundation.

How are multi-sector skills and expertise determined?

Who is liable and who pays for overhead aka operations and maintenance?

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.**

COMMENTS:

Disagree. Economic life of the asset is not covered for proper risk management. Significant risk is not reality. Any risk falls back onto the taxpayer.

- 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.**

COMMENTS:

Agree. It excludes to the detriment of the taxpayer. There is a responsibility that is being ignored. P3 arrangements are being used to bypass representation.

- 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.**

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COMMENTS:

Economic analysis should be required by a non-partisan agency. You state:

In reviewing the P3 definitions of other standard-setters, the Board notes that their guidance is largely focused on service concession arrangements (that is, a sub-set of P3s) that directly benefit the general public.

That is a pure assumption. How is that benefit determined and measured? In government, reporting is required. Where is that reporting requirement?

- 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.**

COMMENTS:

No. Intellectual property is an investment by the public with no return of investment when given away to a private party. Why should the taxpayer pay for that research and innovation?

What is the purpose of “fostering goodwill” in this arrangement?

“Encourage economic development” has no measurable results. One could encourage less debt spending and qualify under this example.

Strategic Initiatives are part of an agency and its formation of execution of its responsibilities not an excuse for a P3 exclusion.

There must be accountability to the citizen whether it is financial with risk, or part of the execution of government.

Citizens vote, not corporations or partnerships.

- 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.**

COMMENTS:

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Agree. The standard is difficult to define to encompass the invention of P3s. It is not clear if the P3 would be regulated as a government agency or if financial disclosures for purposes of Conflict of Interests would be disclosed.

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.**

COMMENTS:

Disagree. It appears that you are limited these arrangements to some type of construction project. We find the hunger of the private partner is for the low-cost asset, not necessarily the infrastructure building that is assumed.

- 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.**

COMMENTS:

Design-build is used for construction projects, yet it is not addressed and the liability issues surrounding that type of control and deliver should be encompassed.

- 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.**

COMMENTS:

Consider the public in this question. All P3s should be subject to disclosure.

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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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.

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.

COMMENTS:

Please note the typo DISCLSOURE. Value for Money is not an American concept. *Qualitative* is not defined nor is *emphasis*. Who determines these concepts and with what qualifications. This approach is not protective of data in relationship to the public interest.

Stock markets and corporate profits should not determine P3 usage.

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.

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- 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.
 - 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.

COMMENTS:

Information is missing. Are there guarantees by the government which places the risk on the back of the taxpayer and not the private entity?

Are cash flow shortages guaranteed?

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

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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.**

COMMENTS:

Your position is weak. As a citizen, how would we request a FOIA from a private partner? The private partner could disclose or choose not to disclose without any consequences.

Confidential business information is usually privileged information.

- 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.**

COMMENTS:

Agree. We have attended meetings with P3 industry groups who, when questioned, do not want feel they have the legal responsibility to disclose any information and have also been turned away from entering meetings because they are a private P3 group.

One consultant stated disclosure was the posting of the government notice.

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, 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.

COMMENTS:

Disagree. Projects or tasks are individual undertakings. Disclosure should be based on each individual project or task.

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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.

COMMENTS:

Our first P3 meeting was back in March 2008 *Lessons Learned from Public Private Partnerships for Infrastructure* hosted by University of Southern California Keston Institute for Public Finance and Infrastructure Policy. In attendance were representatives from:

- U.S. Federal Highway Administration
- U.S. Department of Transportation
- Infrastructure Management Group
- Louisiana Department of Transportation and Development
- Cambridge Systematics, Inc.
- Simon Fraser University
- University of British Columbia
- Georgia Institute of Technology
- Virginia Tech
- University of Texas at Dallas
- Old Dominion University
- Mayor-City of Los Angeles
- Los Angeles Unified School District

At that point in time, the public was upset over toll roads. In further P3 meetings, the attitude was that the citizen be damned.

Today, P3s are more than infrastructure. They are replacing the function of government without representation and accountability.

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Correction to Question 6B-Public Private Partnerships

As per our telephone conversation, we misread the position of the Alternative View and would like to clarify our comments.

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.

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.

COMMENTS:

We disagree. Significant exposure is clear and we find that non-disclosure is an expectation of the private parties in the P3 relationship.

We have attended meetings with P3 industry groups who, when questioned, do not feel they have the legal responsibility to disclose any information and have also been turned away from entering meetings because they are a private P3 group.

One consultant stated disclosure was the posting of the government notice.

The Public entities in the P3 relationship must be held accountable to the public through a vehicle to address the financial issues with ease, not buried or hidden, and

understandable as to the spending and application of taxpayer dollars and any other revenue generated.

We, on the West Coast, are facing the influx of foreign investment from the Asia Pacific region. The P3 vehicle masks that foreign investment. At the same time, our citizens are being gentrified for investment purposes, a significant problem in the Mexican-American or Latino community. The government is mistrusted, not a positive indicator for future voter turnout, home ownership and gross domestic product.

As these P3 vehicles are designed, oversight and disclosure must allow the Public Assets to remain Public Assets and not vehicles for private financial gain.

For instance, the LA River Revitalization Master Plan (City of Los Angeles) is taking precedence over the US Army Corps LA River Ecosystem Restoration Feasibility Study. A small area of the approved ARBOR Plan of that study, known as Frogtown, or the soft bottom section of the LA River, now has 26 planned developments with an expected 3,387 increase in residents. Hotel development and tourism are focus of the City of Los Angeles elected officials for foreign investment, using poverty as a key to federal agency involvement.

Urban Waters Federal Partnership, including 14 federal agencies and the Federal Reserve Bank, are providing resources for the Los Angeles River Watershed without regard to the P3 environment, dislocation of citizens and their responsibilities to the Public as Federal Agencies.

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