

**AUDIT OF SBA'S ADMINISTRATION
OF THE MBELDEF COSPONSORSHIP**

AUDIT REPORT NUMBER 0-30

SEPTEMBER 30, 2000

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**U.S. Small Business Administration
Office of Inspector General
Washington, DC 20416**

AUDIT REPORT
Issue Date: September 30, 2000
Number: 0-30

TO: Kerry L. Kirkland, Associate Deputy Administrator for
Government Contracting & Minority Enterprise Development

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Robert G. Seabrooks

FROM: Robert G. Seabrooks, Assistant Inspector General
for Auditing

SUBJECT: Audit of SBA's Administration of the MBELDEF Cosponsorship

Attached is a copy of the subject audit report. The report contains five findings with seven recommendations. The findings in this report are the conclusions of the Office of Inspector General's Auditing Division. The findings and recommendations are subject to review and implementation of corrective action in accordance with existing Agency procedures for audit follow-up and resolution.

Please provide your management decision for each recommendation made to you within 30 days from the date of this report using the attached SBA Forms 1824, Recommendation Action Sheet.

Any questions or discussion of the issues contained in the report should be directed to Robert Hultberg, Director, Business Development Programs Group, at (202) 205-7204.

Attachments

SUMMARY

The purpose of this audit was to determine whether SBA properly managed its cosponsorship agreement with MBELDEF for its Small Disadvantaged Business (SDB) program introduction and outreach tour. The SDB program provides procurement benefits to small disadvantaged businesses bidding on Federal contracts by giving them up to a 10 percent price preference on their bids. While the SDB program started out as a self-certification program, SBA began certifying SDBs in 1998. In September 1998, SBA entered into a cosponsorship agreement with the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF) to conduct a nationwide tour to explain details of various programs, including the SBA certification process.

We found that SBA did not take appropriate actions both before and after signing the cosponsorship agreement (the cosponsorship), which committed SBA to disburse up to \$900,000 in government funds to MBELDEF. Deficiencies included:

- Entering into the cosponsorship without determining SBA's authority to disburse government funds through cosponsorship agreements;
- Entering into the cosponsorship without ensuring adequate safeguards over the Government's interests;
- Lacking controls to assure appropriated funds were properly spent;
- Failing to raise known significant problems with MBELDEF's handling of the cosponsorship to the appropriate levels; and
- Failing to enforce the terms of the cosponsorship in reviewing MBELDEF claimed expenses.

SBA management officials provided comments to a draft of this report during meetings. They also stated that they had insufficient time to provide a full response. They agreed with five recommendations and generally agreed with two recommendations. A summary of their comments and our analysis are contained at the end of each finding.

INTRODUCTION

A. BACKGROUND

The Small Disadvantaged Business (SDB) program provides Federal procurement benefits to small disadvantaged businesses bidding on Federal contracts by giving them up to 10 percent price preference on their bids. Until 1998, companies self-certified that they were small and disadvantaged prior to bidding on federal contracts. However, after the Supreme Court's decision in *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995), the Department of Justice (DOJ) evaluated all Federal procurement programs that used race-based criteria. Based on this review, DOJ recommended that small disadvantaged businesses be pre-certified by the government prior to receiving Federal contracts in order to withstand court challenges to the program.

SBA established the Small Disadvantaged Business Certification and Eligibility Office within Government Contracting & Minority Enterprise Development (GC/MED) in 1998 to certify SDBs. Details of the new SBA certification process were explained in a nationwide tour of 2-day training sessions in 13 cities. On September 25, 1998, SBA entered into a cosponsorship agreement (Authorization No. 98-6360-71) with the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF) to conduct the nationwide tour. According to Standard Operating Procedure (SOP) 90 75 2 (cosponsorship SOP), a cosponsorship is an activity, event, or initiative that is planned or conducted jointly by SBA and one or more cosponsors, or promoted, publicized, or identified with SBA through use of the SBA Logo or Seal. The Office of Business Initiatives (BI) is responsible for overseeing cosponsorship agreements. A section of the Small Business Act (15 U.S.C. § 637(b)(1)(A)) gives SBA statutory authority to enter into cosponsorships, in conjunction with other entities, for a wide variety of training and counseling programs to assist small business.

MBELDEF was founded in 1980 as a non-profit organization dedicated to addressing issues affecting the class interests of minority business enterprises. It acted as a national, public interest law firm and membership organization.

Under the terms of the cosponsorship agreement, MBELDEF was responsible for general administration as well as executing and overseeing various contracts for the program introduction and outreach tour. Activities included curriculum development, marketing, printing of workshop material, workshop logistics, and on-site services. Under the terms of this agreement, SBA was to pay MBELDEF up to \$900,000 (\$600,000 was to come from a pool of funds SBA received from other Federal agencies for certifying SDBs and the remaining \$300,000 was transferred from the Department of Defense specifically for this cosponsorship). SBA provided MBELDEF an initial advance of \$368,630. According to SBA officials, MBELDEF did not participate in the last 4 conferences, while MBELDEF acknowledged it had no significant role in the last 3 conferences.

B. AUDIT OBJECTIVE AND SCOPE

The audit objective was to determine whether SBA properly managed the cosponsorship agreement with MBELDEF for the SDB program introduction and outreach tour. Our audit covered activities relating to the cosponsorship agreement from August, 1998 through May, 1999. SBA disbursed its last payment to MBELDEF on this cosponsorship on May 25, 1999.

We audited all available invoices for which MBELDEF received payment under the cosponsorship agreement. We reviewed SBA and MBELDEF's records supporting payments made to MBELDEF by SBA, the information SBA used to reimburse MBELDEF, relevant documentation concerning this cosponsorship agreement and other procurement methods, e.g., SBA's Standard Operating Procedures on cosponsorship agreements, the Federal Acquisition Regulation, the Federal Grant and Cooperative Agreement Act, OMB Circulars, and legal opinions concerning cosponsorship agreements. Additionally, we interviewed MBELDEF's President, MBELDEF's accountant and SBA officials in the following offices: Business Initiatives (BI), Government Contracting & Minority Enterprise Development (GC/MED), General Counsel (OGC), and Administration.

MBELDEF did not provide all the requested documents, and SBA did not maintain the necessary documentation for us to determine the total costs expended by SBA for the cosponsorship. Therefore, we were unable to satisfy ourselves with respect to the total amount for these items. We were, however, able to address the audit objectives by identifying problems with the management of the cosponsorship.

The fieldwork was conducted from May 22, 2000 to September 15, 2000. The audit was conducted in accordance with Government Auditing Standards.

RESULTS OF AUDIT

Finding 1: SBA Did Not Determine Its Authority to Disburse Funds to a Cosponsor

SBA disbursed funds through this cosponsorship without determining whether it had the required authority and without incorporating the requirements of Circular A-110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.” Under generally accepted rules of statutory construction, when a law is not clear, deference is given to the implementing agency’s interpretation of the law. The statutory language giving SBA the authority to enter into cosponsorships does not include specific language permitting SBA to disburse Federal funds through a cosponsorship. OGC has not issued an opinion on whether SBA has the authority to disburse funds to a non-government cosponsor through a cosponsorship.

The statute, 15 U.S.C. § 637(b)(1)(A) provides that the Administration is empowered to provide technical and managerial aids to small-business concerns. These aids include cooperating with and advising institutions and other Federal and State agencies and any other activities as are deemed appropriate by the Administration. The statutory language on cosponsorships, however, contains no express authorization for SBA to use cosponsorships as a vehicle for spending appropriated funds. According to Senate Report 98-438, which accompanied the Act, cosponsored training is a highly leveraged program, utilizing minimum budget funds from the Agency. Also, the Agency’s cosponsorship Standard Operating Procedure (SOP 90 75 2, dated August 7, 1995), does not authorize SBA to disburse funds through a cosponsorship.

SBA’s own internal documents contemplate that a contract, grant, or cooperative agreement would be used when disbursing Federal funds in conjunction with a cosponsorship. On June 8, 1988, SBA’s General Counsel issued a memorandum entitled “Procedures for Reviewing and Approving Proposed Cosponsorship Activities.” The memorandum (not a formal General Counsel opinion) contains an enclosure entitled “Legal Issues Outline for Cosponsorship Activities,” and “identifies areas that should be considered in assessing the appropriateness of proposed cosponsored activities, and the manner in which they are proposed to be conducted.” Disbursing funds directly to a cosponsor for services is not one of the enumerated methods in the memorandum for providing financial support to a cosponsored activity. Instead, the memorandum asks, “What mechanism is being used to disburse the funds, e.g., contract, grant or cooperative agreement?” While we do not believe this administrative checklist establishes or limits legal authority, it demonstrates that the cosponsorship statute was not interpreted as containing a separate, new grant of authority to SBA to disburse funds.

OMB Circular A-110 applies to all agreements between Federal agencies and non-profit organizations, such as MBELDEF. Paragraph 5 states in part, that: “Federal agencies responsible for awarding and administering grants to and other agreements with organizations . . . shall adopt the language in the Circular unless different provisions are required by Federal statute or are approved by OMB.”

The Small Business Act does not contain different provisions and we are unaware of OMB approval to exempt SBA from these requirements. SBA did not adopt the language in the Circular for the MBELDEF cosponsorship agreement.

SBA ultimately paid its cosponsor MBELDEF \$646,610 of the budgeted \$900,000 in Federal funds under the authority of this cosponsorship agreement.

RECOMMENDATIONS

We recommend that the:

- 1A. Deputy General Counsel issue an opinion regarding the legality of SBA disbursing funds under a cosponsorship to a cosponsor absent of using authorized contract, grant or cooperative agreement procedures; and
- 1B. Associate Administrator for Business Initiatives insert a clause in cosponsorship agreements where SBA is disbursing funds to the cosponsor prohibiting disbursement unless and until he receives a signed legal opinion stating that SBA has the authority to disburse funds to the cosponsor.

SBA Management's Comments

Management officials agreed with the two recommendations contained in this finding. They disagreed that OMB Circular A-110 is applicable to this kind of agreement, but stated they “may elect” to incorporate appropriate OMB Circular provisions into future cosponsorships. They stated that SBA had used cosponsorships for many years to commit resources either through cash outlays for postage expenses or dedication of agency staff and non-cash resources. Finally, they commented that the checklist contained in SBA’s General Counsel memorandum merely listed examples of funding mechanisms.

OIG Evaluation of Management's Comments

Management gave no reason why they believe that OMB Circular A-110 is not applicable to this cosponsorship, and as such we have no reason to change our conclusion on this matter. SBA signed a cosponsorship **agreement** with MBELDEF, a **non-profit organization**, and as such, OMB Circular A-110 “Uniform Administrative Requirements for Grants and **Agreements** with Institutions of Higher Education, Hospitals and Other **Non-Profit Organizations**” applies. (bold added). We do not dispute that SBA had disbursed funds to cosponsors in the past. These past actions, however, do not justify disbursing funds through a cosponsorship agreement without determining whether it had the required authority, especially since the statutory language giving SBA the authority to enter into cosponsorships does not include specific language permitting SBA to disburse Federal funds through a cosponsorship. Lastly, the 1988 Checklist is not necessarily

binding, but in our view, it is evidence that SBA management did not historically interpret the cosponsorship statute as constituting separate spending authority.

Finding 2: SBA Did Not Adequately Safeguard the Government's Interests In This Cosponsorship

SBA entered into a cosponsorship agreement to disburse up to \$900,000 to MBELDEF, without ensuring that the government's interests were safeguarded. While the Federal Managers' Financial Integrity Act of 1982 (FMFIA) and OMB Circular A-123, "Management Accountability and Control" both require SBA to take appropriate measures to ensure that funds are safeguarded against waste, fraud, mismanagement or misappropriation, the cosponsorship agreement did not include these safeguards and the cosponsorship SOP did not require them either. MBELDEF ultimately did not complete its responsibilities under the cosponsorship, and the cosponsorship has ambiguities concerning SBA's legal recourse.

SBA agreed to pay MBELDEF up to \$900,000 in appropriated funds without evaluating whether MBELDEF could do the tasks it agreed to, or making provisions in the agreement to ensure that expenditures were reasonable and performance by MBELDEF was adequate. When entering into the cosponsorship, SBA did not first determine that:

- MBELDEF was capable of completing its responsibilities under the cosponsorship;
- MBELDEF had the financial resources within the organization to complete the cosponsorship; and
- The government was paying a fair and reasonable price for what it was obtaining.

The cosponsorship did not include:

- A requirement that SBA would pay MBELDEF only for allocable, allowable and reasonable expenses;
- Penalties against MBELDEF should it not complete its responsibilities; and
- Internal controls to account for the fees MBELDEF collected under the cosponsorship, which were to be used before SBA funds.

Additionally, the SBA program official responsible for the cosponsorship was not trained to ensure that the expenditures and performance were reasonable.

By excluding these safeguards, SBA did not adhere to FMFIA, OMB Circular A-123, "Management Accountability and Control," or OMB Circular A-110. FMFIA and OMB Circular A-123 require executive agencies to take the appropriate measure to ensure that funds are safeguarded against waste, fraud, mismanagement or misappropriation. OMB Circular A-110 contains procedures to assure reasonable costs and proper accountability.

SBA entered into a cosponsorship because the ADA for GC/MED specifically wanted MBELDEF to do the work. SBA determined that MBELDEF could not qualify for a contract or grant but could qualify for a cosponsorship. The cosponsorship SOP did

not require the safeguards necessary to protect spending government funds. While most of these safeguards would have been incorporated into a contract or a 7(j) technical assistance grant to MBELDEF, SBA officials stated MBELDEF could not have received either of these for this project. According to an SBA official, SBA could not award this to MBELDEF through a contract because MBELDEF did not have expertise in logistical planning. SBA officials stated that SBA could not award MBELDEF a 7(j) grant because of reprogramming limitations that could not be overcome.

The following are examples of problems with the MBELDEF cosponsorship:

- SBA had to complete MBELDEF's cosponsorship responsibilities because MBELDEF did not complete them. According to MBELDEF's President, SBA completed the last 3 presentations because MBELDEF did not have the funds needed to pay the vendors and speakers for the events. Had SBA checked MBELDEF's financial condition and past performance before awarding the cosponsorship, it would have been apparent that MBELDEF had financial limitations and poor performance. [FOIA Exemption 4] Furthermore, MBELDEF's 1997 track record was poor. MBELDEF only completed 3 of the 5 studies it contracted to do as a subcontractor for a Federal Government award. Further, an SBA official stated that MBELDEF did not have expertise in logistical planning to receive this project as a contract.
- MBELDEF did not appear to use some of the Government's money in a prudent and reasonable manner, but the cosponsorship did not contain provisions for spending funds in a reasonable and prudent manner. Because the cosponsorship did not require the expenses to be reasonable, MBELDEF had no restrictions on the use of funds, and little incentive to be prudent or reasonable in incurring expenses. Potentially unreasonable charges¹ included:
 - \$74,114 in printing charges to one company for an average of \$9,624 per site. For one of the sites, another printing company only charged \$5,000 for a similar project, about one-half the average of the other company. The first company may have been charging higher prices for "rush" jobs. This would have occurred if MBELDEF did not provide the company the materials with enough lead-time. MBELDEF's accountant stated that MBELDEF used the first printing company because they did not require immediate payment.
 - \$46,344 to pay for a project manager. The cosponsorship required MBELDEF to provide, at its own expense, a project officer and project director. The duties of all 3 individuals were not clear and may have overlapped. SBA paid for the project manager and MBELDEF failed to provide all the staff time promised for the project officer and project director.

¹ Lack of clear documentation on the purpose and basis for invoices made a full assessment difficult. Because SBA does not have a clear basis to obtain refunds, we did not assess the reasonableness of every expense paid. Had we done so, we believe other expenses would have been unreasonable.

- \$2,004 in long distance phone charges made from hotel rooms. Over a five-day period, an MBELDEF contractor charged \$322 or an average of over \$64 a day in long distance charges. Another contractor charged \$305 over a four-day period or an average of \$76 a day. Over a six-day period, a contractor charged \$417 in long distance charges, an average of more than \$69 a day. According to one of the hotels where these calls were made from, it charged a \$4.51 connection fee for each call and approximately \$4 a minute for long distance calls. Another hotel stated that it marked up long distance calls by 25 to 30 percent. A calling card could be used for a \$.80 per call connection fee and \$.28 a minute for long distance calls. The President of MBELDEF stated that its employees had calling cards and agreed that it would have been reasonable to issue calling cards to their contractors as well.
- \$2,149 in computer rental fees. One of MBELDEF's consultants charged a \$40 daily rental fee for use of his laptop computer (the total charge for these one day rentals was \$1,640). An additional computer rental of \$509 was incurred at the Orlando workshop. SBA had laptop computers, one of which should have been made available for MBELDEF's use. Even if SBA could not provide use of a computer, SBA could have purchased one for less than the rental fees and still had the computer after completion of the cosponsorship. An SBA office purchased laptop computers in September 1999 at a base price of \$1,300 and \$1,750 with items such as the LAN card, a modem, port replicator, and carrying case. According to this office, laptops purchased in 1998 would have been essentially the same price.
- \$240 in Internet connection fees. A \$20 daily Internet connection fee was charged for each day of training. On average, 2 two-day workshops were held each month, for an estimated monthly Internet connection fee of \$80. An MBELDEF contractor informed the auditors that the Internet connection fee was charged to cover his monthly Internet connection fee. According to this contractor, his monthly Internet fee was \$20 for unlimited usage.
- \$383 in duplicate meal payments. MBELDEF consultants charged full per diem of \$40 a day for breakfast, lunch and dinner during the days when breakfast and lunch were served at the workshops.
- \$342 for upgraded hotel rooms. One individual stayed in a hotel room costing \$267.90 per day while other individuals at the same site paid \$153.90 per day.
- \$333 in travel expenses. An MBELDEF contractor made a site visit to Orlando on New Years Eve, arriving on December 31 and leaving January 1. According to an MBELDEF contractor, this trip was taken to determine if construction at the hotel would be completed in time for the February Orlando workshop. MBELDEF did not make prior site visits to any of the other hotels used for the presentations.

- MBELDEF's President acknowledged that it did not provide the amount of in-kind contribution it agreed to provide. Because the cosponsorship did not contain any penalties should MBELDEF not carry out the terms of the cosponsorship, SBA has questionable recourse against MBELDEF.
- SBA could not determine the dollar value of the registration fees MBELDEF collected, even though MBELDEF was required to use these fees prior to receiving funds from SBA. An SBA official stated that SBA did not monitor or keep any records of the fees collected by MBELDEF, but relied on the information MBELDEF reported. This information may not be accurate. For example, an internal SBA e-mail correspondence stated that SBA collected \$4,230 in registration fees at the Cleveland conference and forwarded the amount to MBELDEF. However, MBELDEF reported that only \$760 in cash and checks were collected from the Cleveland conference. Also, there should have been credit card payments, but MBELDEF did not detail how much it collected in fees from credit cards from each site. Rather, it reported one lump sum total for credit card registration fees received from all the sites. SBA paid MBELDEF based on MBELDEF collecting only \$760 in Cleveland.

RECOMMENDATIONS

- 2A. We recommend that the Associate Administrator for Business Initiatives incorporate safeguards, such as all provisions of applicable OMB Circulars, into cosponsorships where SBA disburses funds to a cosponsor. If OMB Circulars do not apply, we recommend that the following provisions be included in these cosponsorships:
- a determination that the cosponsor is capable of completing its portion of the agreement;
 - a determination that the cosponsor has the financial resources within the organization to complete the agreement;
 - a determination that the government is paying a fair and reasonable price for what is being provided;
 - the cosponsorship agreement includes appropriate accountability requirements and related cost principles, particularly, a requirement that SBA will only pay expenses that are allocable, allowable and reasonable;
 - the cosponsorship agreement includes terms to deal with non-compliance by the cosponsor; and
 - the cosponsorship includes a provision for internal controls to ensure that fees collected can be properly accounted for.
- 2B. We recommend that the Associate Administrator for Business Initiatives (AA/BI) incorporate the requirement that the program official responsible for managing the cosponsorship obtain appropriate training.

SBA Management's Comments

Management officials generally agreed with recommendation 2A; but they believed that the level of “due diligence” should depend upon the circumstances. They agreed with recommendation 2B. They stated that: the safeguards placed in this cosponsorship were reasonable based on what they knew; they believed that MBELDEF could perform its responsibilities; they have not concluded that they lack recourse should MBELDEF be found in breach; and they reviewed invoices for reasonableness and disallowed some costs. Furthermore, they stated that there was no problem with a senior manager recommending a specific entity for a cosponsorship and it was circumstances other than MBELDEF’s own qualifications, which discouraged issuing a grant or contract.

OIG Evaluation of Management's Comments

Regardless of what SBA knew or thought about MBELDEF, prior to disbursing up to \$900,000 of Federal funds, SBA should have implemented adequate safeguards, such as those normally found in a contract, grant, or cooperative agreement, to ensure these funds were safeguarded against waste and mismanagement. While SBA management has asserted that reasonable safeguards were included in the cosponsorship, they did not elaborate on what they were and how they protected SBA’s interests. The numerous problems associated with this cosponsorship demonstrate that whatever safeguards existed were inadequate.

Finding 3: SBA Lacked Controls Over Assuring Proper Expenditure of Appropriated Funds

During some of the conferences, as part of the agenda, luncheons and other food were served to all attendees. In total, SBA and MBELDEF paid at least \$213,815 for food and refreshments. The relevant statute, 31 U.S.C. Section 1345, states:

Except as specifically provided by law, an appropriation may not be used for travel, transportation, and subsistence expenses for a meeting. This section does not prohibit – (1) an agency from paying the expenses of an officer or employee of the United States Government carrying out an official duty; . . .

The Comptroller General has applied this prohibition in cases where Government agencies have used appropriated funds for non-government personnel to attend seminars and conferences. SBA did not have controls to ensure that appropriated funds were precluded from paying for food of non-government attendees. The cosponsorship agreement provided for the collection of fees and the amount reported as collected was \$81,545. To ensure that appropriated funds were not spent improperly, SBA and MBELDEF needed to ensure that fees collected exceeded the related food costs for non-government participants. This did not occur.

Further, when vendors were not getting paid by MBELDEF and invoices were forwarded to the Office of Procurement and Grants Management (OPGM), OPGM officials requested a legal opinion on whether appropriated funds could be used to pay for food served to attendees of the SDB 12-City Program. [FOIA Exemption 5

] OPGM, with a previous understanding that SBA could not pay for food, refused to pay for food expenses. GC&MED paid for the food by either paying the cosponsor who, in turn, paid the vendors, or by paying the vendors directly through a government purchase card.

RECOMMENDATION

- 3A. We recommend that the Associate Deputy Administrator of Government Contracting & Minority Enterprise Development determine the pro rata share of food costs for non-government attendees versus amount collected. If the amount collected does not cover the cost of food served to non-governmental employees, determine the remedies that SBA must take.

SBA Management's Comments

Management officials stated that they needed more time to assess this finding and make comments. They agreed with the recommendation.

OIG Evaluation of Management's Comments

This appears to be responsive.

Finding 4: SBA Did Not Take Appropriate Action When Significant Problems Arose With the Cosponsorship Agreement

SBA did not follow its own policies and procedures for dealing with performance problems on cosponsorships. As a result, SBA did not take appropriate action when it became clear that there were significant problems with completing the cosponsorship.

Though it was apparent that there were problems with MBELDEF's performance on the cosponsorship, GC/MED did not elevate the problems to the AA/BI for consideration. The cosponsorship SOP requires the responsible program official to advise the AA/BI of any issues or concerns regarding a specific cosponsorship. Upon being so notified, the AA/BI may request the Oversight Committee to consider the issues or concerns. Problems documented during the cosponsorship were:

- MBELDEF did not have adequate resources to provide the amount of personal services required as the in-kind contribution in the cosponsorship agreement without a severe impact on MBELDEF, according to MBELDEF's President. MBELDEF's President informed SBA of this situation five days after the signing of the cosponsorship agreement in a September 30, 1998, memorandum to the Acting Associate Administrator for Small Disadvantaged Business Certification & Eligibility (Acting AA/SDB) and the AA/BI. Though the President of MBELDEF requested a modification to the cosponsorship, SBA did not modify it. According to MBELDEF and SBA officials, the ADA for GC/MED told MBELDEF that they would work this out later, though no action was ever formally taken.
- Before the completion of the program introduction and outreach tour, the Deputy Associate Deputy Administrator for Government Contracting & Minority Enterprise Development (DADA for GC/MED) concluded that it appeared that MBELDEF did not have the capabilities to fulfill its responsibilities and recommended canceling the cosponsorship agreement. A March 12, 1999, memorandum from the DADA for GC/MED to the ADA for GC/MED, with a copy to the Acting AA/SDB, detailed the problems with MBELDEF's handling of the cosponsorship that caused him to come to those conclusions. These problems included average attendance for primary audience being 158 rather than the 400 that had been estimated, MBELDEF not developing a national database, MBELDEF not paying vendors, and MBELDEF not executing and providing oversight for a contract with a vendor for workshop logistics and related on-site services. At the time of this memo, the last 6 program introduction and outreach tour conferences still had not yet been conducted.
- A March 26, 1999 memorandum from the President of MBELDEF to the Acting AA/SDB detailed significant problems MBELDEF was having completing its cosponsorship responsibilities. With 4 conferences left to complete, MBELDEF complained that they had no funds to go forward, stating that various vendors would not do the work without advance payment. MBELDEF complained that SBA was withholding an advance and not processing past invoices.

In practice, BI and the Oversight Committee have never used the cosponsorship SOP provisions for elevating performance problems with cosponsorships. According to the former AA/BI, the mechanism included in the cosponsorship SOP for the Oversight Committee to consider the problems with the cosponsorship is an unused procedure. If the Oversight Committee had reviewed this situation, they could have ensured that SBA took more appropriate action. The Oversight Committee could have overruled the ADA for GC/MED's decision to keep working with MBELDEF despite the significant problems, since the ADA for GC/MED reported to the Deputy Administrator, and the Deputy Administrator was an Oversight Committee member.

RECOMMENDATION

- 4A. We recommend that the Associate Administrator for Business Initiatives take the necessary steps to ensure compliance with the requirement in SOP 90 75 2 that the responsible program officials report cosponsorship performance problems to the Associate Administrator for Business Initiatives.

SBA Management's Comments

Management officials disagreed with the finding although they generally agreed with the recommendation. Although the cosponsorship oversight committee was not notified when problems arose, management officials responded that other senior SBA staff was involved. They stated that they would clarify where the responsibility to oversee cosponsorship performance problems should rest. Management officials also disagreed that the only appropriate action was to terminate the cosponsorship relationship.

OIG Evaluation of Management's Comments

Regarding their disagreement with the finding, the informal method that was used by SBA management was not effective. In this instance, if the SOP had been followed, the problems could have been resolved early in the process.

Also, we did not state that the only appropriate action was to terminate the cosponsorship relationship. We stated that neither the problems were elevated nor the cosponsorship was canceled. To avoid confusion, we clarified the sentence and deleted that portion of the statement from the final report.

Finding 5: SBA Did Not Ensure MBELDEF Provided All Invoices

While the terms of the cosponsorship required MBELDEF to provide SBA with invoices to justify expenditures, SBA paid MBELDEF for some claimed expenses for which MBELDEF did not provide invoices. Of the approved expenses totaling \$728,156 (\$646,610 paid by SBA and \$81,546 paid by MBELDEF from attendee fees), SBA did not receive invoices for \$132,949, or 18 percent of the total. SBA officials informally exempted MBELDEF from submitting all invoices that were individually under \$1,000. These invoices under \$1,000 totaled over \$31,000. We were advised that the rationale used to exclude invoices under \$1,000 was that there were too many individual items under \$1,000 to review. An SBA official also approved payment and SBA paid MBELDEF for individual expenses exceeding \$1,000 without obtaining invoices. One such expense was for over \$77,000 (over 10 percent of the total expenses MBELDEF claimed). As a result, SBA had no assurance that costs claimed were incurred or that they related to the cosponsorship. A separate audit report is being issued that recommends recovery of unjustified payments.

RECOMMENDATION

- 5A. We recommend that the Associate Deputy Administrator for Government Contracting & Minority Enterprise Development (GC/MED) take steps to ensure that GC/MED employees enforce the terms of cosponsorship agreements for which they are the responsible program official.

SBA Management's Comments

Management officials stated that the decision to exempt invoices below \$1,000 was a well-intentioned consensus decision made for practical purposes. They believed that any larger missing invoices were due to inadvertence, but they will look into the fact that some of these larger invoices were not received. They understood that some of the paid expenses were for MBELDEF salaries, so a typical third party invoice would not be available. In the future, they stated that they will use employees that are more experienced in reviewing and tracking expenditures to better control and account for funds, and they will not exempt small value invoices without a written procedure cleared by the OIG.

OIG Evaluation of Management's Comments

Management's comments are responsive. The largest missing invoice, which was for over \$77,000 was not due to inadvertence. An SBA official noted that it was missing and recommended payment with the stipulation that MBELDEF would submit the invoice later. To date, MBELDEF has not submitted that invoice, though based on MBELDEF's accountant's oral description of what the funds were for, we do not believe that it is a justified expense. If the expenses were for MBELDEF salaries in excess of the

in-kind contribution, internal MBELDEF documentation would be considered adequate for payment.

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Agency Comments to Audit

Received After Final Audit Report Issued



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416

DATE: October 2, 2000

TO: Phyllis K. Fong
Inspector General

FROM: Kerry L. Kirkland *Kerry L. Kirkland*
Associate Deputy Administrator for Government
Contracting and Minority Enterprise Development

David R. Kohler *David R. Kohler*
Deputy General Counsel

Monika Edwards Harrison *John M. Bdnr, AAA/BI for*
Deputy to the Associate Deputy Administrator
for Entrepreneurial Development

SUBJECT: Draft Audit Report, Audit of MBELDEF Cosponsorship

We are responding to the draft audit report referenced above.

This draft report was provided to SBA officials a few days ago. You asked for the Agency's response by September 27, 2000. This period of time was not adequate to respond in detail to the findings made in this draft. We gave you a quick response on that date and we have had some further discussion.

The Agency is normally given at least 30 days by your office to comment on a draft audit report before its issuance in final form, and OMB audit procedures specify at least this period of time when GAO performs an audit and provides a draft. (OMB Circular A-50, par. 8b.) The attached comments reflect our latest views but they are not as complete as they otherwise could be, and therefore we request that your draft document, and any final version you may issue before receiving further comment from us, be treated confidentially. There are a number of important issues touched upon in this document in ways which could reflect adversely upon the Agency, and the Agency believes it may be able to provide additional information.

Attachment:

Comments on Draft Audit Report, MBELDEF Cosponsorship

Comments on Draft Audit of MBELDEF Cosponsorship

Summary: We do not agree with the highlighted items forming the basis for your conclusion that SBA did not take appropriate actions regarding this cosponsorship.

While it is true that a legal opinion examining SBA's authority was not obtained, it is true that OGC concurred in the execution of the cosponsorship agreement, and SBA's practice for many years has been to commit resources, both cash and non-cash, based upon such a document.

Second, we think safeguards were put in place which were appropriate considering the nature of the cosponsorship and the identity and reputation of our cosponsor.

Third, we think we had reasonable controls in place, and when problems emerged later, that additional controls were imposed.

Fourth, the problems that emerged were raised to the level of senior officials within the Agency, who dealt with the problems responsibly, if not immediately, even though the cosponsorship oversight committee was not convened for the purpose.

Fifth, claimed expenses may yet be justified as part of a final accounting from MBELDEF, and the Agency has not concluded that it lacks enforcement powers to the extent claimed expenses are not justified.

Finding 1. We do not agree that OMB Circular A-110 is applicable to this kind of agreement. Nonetheless, should SBA again enter into a cosponsorship involving federal funds, we may elect to incorporate by reference appropriate provisions of that circular or others. While no legal opinion has addressed squarely the authority to commit resources through the vehicle of a cosponsorship agreement, the agency has done so for many years, either through cash outlays for postage expenses or dedication of agency staff and non-cash resources. We will address this question squarely, however. The 1988 checklist mentioned in the finding does not constitute an opinion that such authority was found not to exist – in fact the funding mechanisms listed were shown as examples only.

Recommendation 1A. We agree.

Recommendation 1B. We agree.

Finding 2. The safeguards placed in this cosponsorship were reasonable based upon what we then knew. Moreover, we have not concluded that we lack recourse should MBELDEF be found in breach. We reasonably believed

MBELDEF could perform its responsibilities, and had no reason to doubt its capabilities, or that we would not pay a fair and reasonable price. In fact, we received invoices, reviewed them for reasonableness, and disallowed some costs. A description of penalties for breach is not necessary to enforce common law remedies, and depending upon a final accounting and further review, we may seek enforcement.

There is no problem with a senior manager recommending a particular entity for a cosponsorship, and it was circumstances other than MBELDEF's own qualifications which discouraged issuing a grant or contract to accomplish our desired purposes.

Recommendation 2A. We agree generally, although the level of "due diligence" we will require should depend upon the circumstances. We will issue clarifying procedures, however, on which your office will be able to comment. We will also clarify where responsibility for this due diligence should be placed, and it possibly will not be with the Associate Administrator for Business Initiatives.

Recommendation 2B. We agree.

Finding 3. We need additional time to assess this finding and make our comments.

Recommendation 3A. We agree, except that other management officials may be involved in these determinations.

Finding 4. We do not agree with this finding. SBA did take appropriate action when problems arose. It is true that a referral to the cosponsorship oversight committee was not made, and it is true that that Committee could have overruled the decision to keep working with MBELDEF to try to resolve the difficulties. However, other senior staff did get involved, and a great amount of effort was given to resolve the problems with MBELDEF while preserving SBA's credibility with the various hotels and vendors involved and the small business and government contracting communities. We do not agree that the only appropriate action was to simply terminate the cosponsorship relationship, although that was certainly considered. In practice, a decision to terminate the relationship could have been requested and possibly obtained by others involved, notwithstanding the failure to invoke the oversight committee specifically.

Recommendation 4A. We agree generally, although we will clarify where responsibility should rest to ensure compliance with the SOP procedures.

Finding 5. This finding relates to three categories of unjustified expenses claimed by MBELDEF. With respect to the bulk of these expenses, \$77,584 for "contract administration", our understanding is this sum represents salary expenses for employees hired by MBELDEF to perform its obligations under

the cosponsorship. As indicated above, there would not normally be a third-party invoice, although the expense of course should be documented. We will pursue obtaining documentation to support our understanding. On this expense and on the remaining expenses not adequately justified by MBELDEF, we intend to seek reimbursement.

Recommendation 5A. We agree, with the conditions that we first endeavor to obtain a final accounting from MBELDEF, and that the demand may be made by a different senior official.