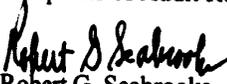




**U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20416**

Date: October 3, 2000

To: Recipients of Audit Report # 0-29

From: 
Robert G. Seabrooks
Assistant Inspector General for Auditing

Subject: Management Response to Audit Report # 0-29 (Minority Business Enterprise Legal Defense and Education Fund, Inc. Cosponsorship Expenses and Income)

Attached is the written SBA management response to the findings and recommendations of the subject audit report. This response was received on October 2, 2000, after the final audit report was issued.

The response is consistent with the comments we received during meetings with SBA management prior to issuing the final report and with our summary of management comments included in the report itself.

Should you have any questions about the attached information please contact me at (202) 205-7204.

Attachment



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

SUBJECT: Draft Audit Report, Cosponsorship Agreement,
Authorization No. 98-6360-71

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, Cosponsorship Agreement, Authorization No. 98-6360-71

Comments on Draft Audit Report, Cosponsorship Agreement, Authorization No. 98-6360-71

Finding 1. 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 not 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 1A. 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.

Finding 2. The findings regarding MBELDEF’s position on in-kind contributions contains a complicated but incomplete factual picture. Once management has completed its review, we will consider our legal rights under the cosponsorship agreement, which is a form of contract, although not a procurement contract. It need not specify consequences for non-compliance for SBA to be able to assert breach and pursue legal remedies.

We share your concern regarding accountability for fees collected from attendees. With your coordination, we intend to pursue this matter with MBELDEF.

Recommendation 2A. We agree.

Recommendation 2B. We agree, although the official implementing the legal recommendation may be this individual or some other senior official.

Recommendation 2C. We agree, although another official may be appropriate.

Recommendation 2D. We agree, although another official may be appropriate.

**AUDIT OF MINORITY BUSINESS ENTERPRISE
LEGAL DEFENSE AND EDUCATION FUND, INC.
COSPONSORSHIP EXPENSES AND INCOME**

AUDIT REPORT NUMBER 0-29

SEPTEMBER 29, 2000

**This report may contain proprietary information subject to the provisions of
18 USC 1905 and must not be released to the public or another agency without permission
of the Office of Inspector General.**



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

AUDIT REPORT

Issue Date: September 29, 2000

Number: 0-29

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

David R. Kohler, Deputy General Counsel

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

SUBJECT: Audit of Minority Business Enterprise Legal Defense and Education Fund, Inc.
(MBELDEF) Cosponsorship Expenses and Income

We completed an audit of the MBELDEF cosponsorship expenses and income under Cosponsorship Agreement Authorization No. 98-6360-71. The agreement provided that SBA and MBELDEF, which is located in Washington, DC, would cosponsor training regarding new 8(a), HUBZone, and Small Disadvantaged Business (SDB) rules and contracting procedures. The agreement further provided for training to take place at 12 major cities from October 1998 through April 1999. As SBA's cosponsor, MBELDEF was responsible for general administration as well as executing and overseeing various contracts for the training events, e.g., curriculum development, marketing, printing of workshop material, workshop logistics, and on-site services.

The estimated cost of the cosponsorship was \$1,337,800. The approved budget called for Federal funding of \$900,000, income from attendee fees of \$308,335, and an in-kind contribution from MBELDEF of \$129,465. MBELDEF had received \$646,611 in Federal funding when the cosponsored activity was completed. MBELDEF also reported that it received \$81,545 from attendee fees, but did not provide the records necessary to determine whether it properly accounted for these fees. MBELDEF did not provide any support for in-kind contributions.

AUDIT OBJECTIVES AND SCOPE

The audit objectives were to determine whether the payments made to MBELDEF for services related to the cosponsorship were justified, to determine MBELDEF's compliance with the terms of the cosponsorship agreement, and determine whether MBELDEF properly accounted for the fee income it collected. The agreement required MBELDEF to submit

invoices to justify expenditures. We considered an expense to be unjustified if it had no accompanying invoice, it had already been paid, it was unrelated to the cosponsorship activity, or it was never actually incurred. MBELDEF did not provide the records necessary to determine the extent of their non-compliance with the in-kind contribution and whether MBELDEF properly accounted for the fee income it collected. We reviewed the Cosponsorship Agreement, documents supporting MBELDEF's requests for payment and SBA's approval of MBELDEF's invoices, and other documents related to the cosponsorship. We interviewed MBELDEF's President, MBELDEF's accountant, and SBA officials.

We reviewed MBELDEF's activities for the period August 1998 through May 1999. Fieldwork was conducted from May 22, 2000 to September 15, 2000. The audit was conducted in accordance with Government Auditing Standards.

RESULTS OF AUDIT

MBELDEF was paid \$121,394 for unjustified expenses under the cosponsorship. Also, MBELDEF did not provide the amount of in-kind contribution agreed upon in the agreement, and did not provide the auditors with documentation supporting the accuracy of the \$81,545 that it reported as fees collected. At a meeting, SBA management officials agreed to seek reimbursement from MBELDEF for the unjustified expenses with the condition that SBA first is allowed to obtain a final accounting from MBELDEF. They also stated that they had insufficient time to provide a full response.

In response to the audit, MBELDEF stated that it had appropriate documentation for all expenses incurred and fees collected. They also requested an additional seven days to provide the supporting documentation and reconsideration of the recommendation related to its in-kind contribution. Any additional documentation provided by MBELDEF will be evaluated as part of the audit resolution process. MBELDEF's response in its entirety is included as Attachment 1.

Finding 1: Unjustified Cosponsorship Expenses

MBELDEF submitted claims and was paid \$121,394 for expenses under the cosponsorship that were not justified. SBA paid MBELDEF \$112,316 for expenses without supporting invoices, \$3,807 for duplicate expenses, \$3,640 for expenses unrelated to the cosponsorship activity, and \$1,631 for expenses claimed that were not incurred. Under the terms of the cosponsorship agreement, MBELDEF was required to submit invoices to justify expenditures.

Unsupported Expenses

MBELDEF did not submit invoices for \$112,316 of the \$728,156 it received under the cosponsorship. One claimed expense, \$77,584 for contract administration, accounted for 69 percent of the amount claimed without invoices. Cancelled checks totaling \$22,566 were submitted in lieu of invoices. Submitting cancelled checks without accompanying invoices neither met the terms of the agreement nor did it permit SBA to determine whether the expenses were related to the cosponsorship agreement.

Duplicate Expenses

MBELDEF submitted duplicate invoices and was overpaid \$3,807. The duplications included payments to contractors, MBELDEF's accountant, a travel agency and a printing company. In addition, MBELDEF included \$491 in payments for meals delivered to the hotel room to individuals who also received per diem payments for the meals.

Expenses Unrelated to Cosponsorship

SBA paid MBELDEF \$3,640 for expenses unrelated to the agreement. The unrelated expenses included an MBELDEF employee's personal expenses, work done for MBELDEF prior to the cosponsorship agreement being signed, and charges for 2 of 3 hotel rooms assigned to the same individual for the same time.

Expenses That Were Not Incurred

SBA paid MBELDEF \$1,631 for expenses that MBELDEF did not incur. While MBELDEF did not incur expenses for cancelled airline flights, it submitted invoices for them to SBA.

RECOMMENDATION

- 1A. We recommend that the Associate Deputy Administrator for Government Contracting & Minority Enterprise Development require MBELDEF to reimburse SBA \$112,316 for unsupported expenses, \$3,807 for duplicate payments, \$3,640 for unrelated expenses, and \$1,631 for claimed expenses that were not incurred.

SBA Management's Response

SBA management agreed with the recommendation, with the condition that SBA first endeavor to obtain a final accounting from MBELDEF, and that the recommendation may be implemented by a senior official other than the Associate Deputy Administrator for Government Contracting & Minority Enterprise Development.

OIG Evaluation of Management's Response

The comments provided by SBA management are responsive to our recommendation.

Finding 2: Other Matters

MBELDEF Did Not Provide the Amount of In-kind Contribution Agreed Upon

MBELDEF's President acknowledged that MBELDEF did not provide all of the in-kind contribution that it agreed to in the cosponsorship. The in-kind contribution consisted of non-Federally funded time spent by MBELDEF employees on the agreement. MBELDEF's President informed SBA that MBELDEF could not meet the in-kind requirement five days after signing the cosponsorship agreement in a September 30, 1998 letter to the Acting Associate Administrator for Small Disadvantaged Business Certification & Eligibility (AA/SDB) and the Associate Administrator for Business Initiatives. Though the President of MBELDEF requested a modification to the cosponsorship agreement, SBA did not modify the agreement. Also, the Acting AA/SDB stated that the Associate Deputy Administrator for Government Contracting & Minority Enterprise Development told her not to worry about MBELDEF's letter and as a result, SBA did not formally respond to MBELDEF. According to the cosponsorship agreement, an amendment to the agreement must be in writing and agreed to by both MBELDEF and SBA. While the cosponsorship agreement provided that MBELDEF would make an in-kind contribution, the agreement neither required MBELDEF to account for the time nor included any consequences for MBELDEF's non-compliance.

MBELDEF Did Not Provide Auditors with Documentation Supporting the Accuracy of Amounts Reported as Fees Collected

As of the end of fieldwork on this audit, MBELDEF had not provided the auditors with the documentation necessary to determine the accuracy of the \$81,545 that it reported as attendee fees. The agreement required MBELDEF to spend these fees ahead of other funding sources. Until these fees can be properly accounted for, SBA cannot determine whether it spent the proper amount under the agreement.

RECOMMENDATIONS

We recommend that the:

- 2A. Deputy General Counsel determine what action can be taken against MBELDEF for non-compliance with the cosponsorship agreement terms regarding the shortfall of MBELDEF's in-kind contribution.
- 2B. Associate Deputy Administrator for Government Contracting & Minority Enterprise Development implement the action the General Counsel determines is appropriate in recommendation 2A.
- 2C. Associate Deputy Administrator for Government Contracting & Minority Enterprise Development require MBELDEF to provide a full accounting of the attendee fees collected.

2D. Associate Deputy Administrator for Government Contracting & Minority Enterprise Development require MBELDEF to pay SBA any fees obtained in excess of the \$81,545 reported, if the full accounting required in recommendation 2C shows that not all fees were reported.

SBA Management's Response

SBA management agreed with the four recommendations, with the condition that a senior official other than the Associate Deputy Administrator for Government Contracting & Minority Enterprise Development may implement recommendations 2B, 2C, and 2D. SBA management stated that once it has completed its review, SBA will consider its legal rights under the cosponsorship agreement and that it would coordinate with the OIG in an effort to pursue the matter regarding MBELDEF's accountability for fees collected.

OIG Evaluation of Management's Response

The comments provided by SBA management are responsive to our recommendations.

* * * * *

The findings and recommendations in this audit report are based on the conclusions of the OIG's Auditing Division. The recommendations are subject to review, management decision and corrective action by your office in accordance with existing Agency procedures for audit follow-up and resolution.

Please provide your management decision for each recommendation within 80 days. Your management decisions should be recorded on the attached SBA Forms 1824, Recommendation Action Sheet, and show either your proposed corrective action and target date for completion, or explanation of your disagreement with our recommendations.

Should you or your staff have any questions, please contact Robert Hultberg, Director, Business Development Programs Group at (202) 205-7204.

Attachments

MBELDEF

Minority Business Enterprise Legal Defense and Education Fund, Inc.
Visit our Website "www.mbeldef.org"

Parren J. Mitchell
Founder and Chairman

Anthony W. Robinson
President

September 28, 2000

Mr. Robert G. Seabrooks
Assistant Inspector General for Auditing
U.S. Small Business Administration
Office of Inspector General
Washington, D.C. 20416

Re: Draft Audit Report on Co-Sponsorship Agreement
Authorization No: 98-6360071

Dear Mr. Seabrooks:

This letter is written in response to your draft letter dated September 18, 2000 regarding the co-sponsorship agreement between the Small Business Administration (SBA) and the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF).

Please accept our apologies for not having responded by September 27, 2000. As of this date, our bookkeeper for this project has been in the midst of an office move and, therefore, has been unavailable to us. Notwithstanding our belated response, MBELDEF stands prepared to remain cooperative with SBA in resolving these issues.

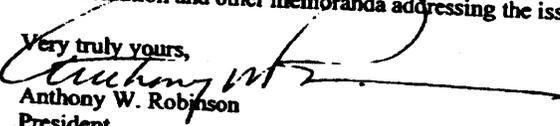
The audit concluded that MBELDEF was paid \$121,394 for unjustified expenses. However, we wish to emphasize that we have appropriate documentation for every expense including invoices and registration forms that support the accuracy of the fees collected and expenses incurred.

In addition, we request, as a matter of equity, that your office reconsider your recommendation relative to the "in kind" contribution. It would be impossible for my small non-profit organization to give that level of a contribution.

Such an "in kind" contribution would bankrupt MBELDEF; surely, this was not the intention of SBA when it executed the co-sponsorship agreement with us.

Accordingly, we request an additional seven (7) days to provide you with the supporting documentation and other memoranda addressing the issue of "in kind" contributions.

Very truly yours,


Anthony W. Robinson
President

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