



Partnering Opportunities

To explore opportunities for a federal agency to leverage its resources, partnering with a private entity to achieve greater results than the agency could achieve were it to rely solely on its own resources, but without augmenting their appropriations.*

***Note: This chart and accompanying endnotes were designed to address appropriations law considerations only. They do not address contracting and procurement law, ethics and conflicts-of-interest, or other considerations important to fully explore partnering opportunities.**

Partnering Opportunities^{1,2}

Acceptance of Gratuitous Services³

B-222248, March 13, 1987
B-204326, July 26, 1982
B-133378, November 20, 1940

Joint Funding

Cooperative agreement
providing assistance for
another organization hosting
a conference⁴

B-290900 (March 18, 2003)
B-303927, June 7, 2005.
B-262110, March 19, 1997
Thomas v. Network Solutions, Inc.,
176 F.3d 500 (D.C. Cir. 1999)

Co-sponsoring a conference
with another organization⁵

B-300248, Jan. 15, 2004
B-265727, July 19, 1996
Motor Coach Industries, Inc. v. Dole,
725 F.2d 958 (4th Cir. 1984)
B-306860, Feb. 28, 2006

Co-Locating⁶

B-306860, Feb. 28, 2006
B-300248, Jan 15, 2004
B-265727, July 19, 1996
Motor Coach Industries v. Dole,
725 F.2d 958 (4th Cir. 1984)

Granting a revocable license to a private entity for use of agency property⁷

B-277521, July 31, 1997
B-191943, Oct. 16, 1978
44 Comp. Gen. 824 (1965)
36 Comp. Gen. 561 (1957)
22 Comp. Gen. 563 (1942)

No-Cost Contract⁸

B-302811, July 12, 2004
B-210620, June 28, 1984

Note: The footnote signals refer to more detailed discussion in the endnotes to this chart.

Endnotes

1. What is a public-private partnership?

We are unaware of any universally accepted definition of “public-private partnership.” The term is commonly used to describe an arrangement where a public entity, such as a federal agency, and a private entity, such as a professional organization, a non-profit corporation, or even a for-profit corporation, marshal their resources or “partner” to achieve a mutual, or consistent goal. In common usage, the term is not limited to a joint business venture where partners share profits, losses and liabilities.

The Department of Transportation uses public-private partnerships to refer to contractual agreements formed between a public agency and private sector entity that allow for greater private sector participation in the delivery of transportation projects. The Department of Interior uses “partnership” to describe situations where an agency or its bureaus work together with non-federal groups or entities in a cooperative manner to foster the objectives of both parties. The United States Trade and Development Agency defines public private partnerships as shared ownership or management of an infrastructure project by public and private entities, including joint ventures, build-operate-transfer projects, and similar arrangements.

2. What methods might an agency consider using to partner with a private entity?

Using the example of a conference, here are some possibilities:

Accepting gratuitous services: May an agency use volunteers to assemble material for a conference, staff conference work stations, help generally with set-up, or coordinate the conference schedule?

Co-sponsorships: May an agency jointly sponsor a conference with a private entity, splitting the costs and support responsibilities, without augmenting its appropriations?

Cooperative Agreements: May an agency enter into a cooperative agreement with a private entity and thereby provide funds and other assistance to help the private entity hold a conference?

Granting a Revocable License: May an agency give a private entity a revocable license for the use of government space or personal property so that the private entity can hold a conference in the agency’s space and with the agency’s logistical support?

No-Cost Contract: May an agency fashion an agreement with a private entity whereby the private entity hosts a conference on behalf of the agency, recoups its costs from conference attendees, at no cost to the agency, all without the agency augmenting its appropriation?

We discuss each of these in the questions that follow. In this discussion, we address appropriations law considerations only - - primarily augmentation. The discussion does not address other considerations (such as procurement law and ethics) that are important to fully explore whether an agency may engage in any particular partnering arrangement. Also, the discussion presumes that the agency has authority for the conference, event or project that is the subject of the partnering arrangement.

3. What should an agency consider when using gratuitous services?

Unless the agency has specific statutory authority to accept voluntary services, it is of critical importance that an agency document with a signed statement from each individual providing the gratuitous services that the individual acknowledges the gratuitous nature of their services, and that they have no expectation of payment from the government for the services rendered. This signed statement ensures that the agency is not augmenting its appropriation by accepting voluntary services. *See* B-204326, July 26, 1982 (the Army may accept the services, at no cost, of private citizens who disseminate crime prevention information on behalf of the Army). Of course, any gratuitous services that an agency accepts must be in furtherance of the agency's mission and related to agency projects. Ethical and conflict-of-interest considerations could become important facts in deciding whether to accept gratuitous services.

4. What should an agency consider when using a cooperative agreement?

Under the Federal Grant and Cooperative Agreement Act, a cooperative agreement is an assistance vehicle. When an agency wants to use its resources to support another entity that is planning to host a conference, both the Federal Grant and Cooperative Agreement Act and our case law suggest that a cooperative agreement may be the appropriate vehicle. The language of that act describes a cooperative agreement as effectuating the transfer of a "thing of value" from the agency to another entity to carry out a public purpose of "support or stimulation," where the agency expects to have "substantial involvement" in carrying out the activity contemplated. Substantial involvement in the context of a conference could include identifying agendas, topics for discussion, panel members, etc. Because the cooperative agreement is an assistance vehicle, one that envisions relatively active involvement by the agency in the endeavor supported by the agreement, the agency would need authority to enter into the assistance relationship. *See* B-290900, March 18, 2003 (Department of Interior's appropriations act provided cooperative agreement authority for cost-sharing programs such as the Michigan Lighthouse Project which included the publication of a brochure for which federal funds were used); 64 Comp. Gen. 582, 584 (1985) (United States Information Agency received specific statutory authority to make educational grants). For a more in-depth discussion of this particular wrinkle, one can turn to our Redbook, Vol. 2, Chapter 10, part 2, subpart b.

The agency should also ensure that the recipient properly uses the funds provided. *Cf.* B-303927, June 7, 2005 (Department of Labor's grant, which is similar in nature to funds

transferred via a cooperative agreement, to NY Workers Compensation Board was only for processing claims and not to make payments to other state entities).

The agency may not use a cooperative agreement to acquire assistance to organize or host a conference. *See* 31 U.S.C. § 6305; B-262110, March 19, 1997 (EPA should have used a contract instead of a cooperative agreement to acquire support services from university for conference).

See generally GAO, Principles of Appropriation Law, chapter 10, vol. 2, 3rd ed., GAO-06-38SP (Washington, D.C., February 2006) (<http://www.gao.gov/legal.htm>).

5. What should an agency consider when using a cosponsorship?

Where an agency seeks assistance from another entity to help organize an agency-hosted conference, rather than an agency providing assistance in support of someone else's conference, the agency may want to consider some sort of cosponsorship. Cosponsorship arrangements, of course, should be fashioned to fit the particular needs, resources and authorities of the agency. Unless the agency has gift acceptance authority for this purpose, the agency must ensure that the assistance offered by its cosponsor does not constitute an augmentation.

So, for example, if the agency elects to split conference costs with the cosponsor, the arrangement should clearly delineate the liabilities of each partner. The question arises, "at what point has an agency crossed that line from permissible cooperation to improperly allowing another entity to assume costs more properly borne by the agency's appropriations?" Delineation of liability helps pin down that point. To that end, an agency using this arrangement should consider memorializing it through a letter or some other document. An agency should make clear that any vendors or contractors hired by its partner must look exclusively to the partner for payment; it should be clear that the partner and any of the partner's vendors or contractors have no expectation of payment from the agency under any circumstances. And, it should be clear that the agency's vendors or contractors have no expectation of payment from the partner.

An agency considering cosponsorship also might want to ensure that the agency, itself, could proceed with a conference, even if of lesser scale, if its cosponsor dropped out or defaulted on its contracts with its vendors. Would it help the agency defend against charges of augmentation if the agency, alone, could host the conference?

So long as the agency documents expectations it does not matter what form the documentation takes; a letter, a memorandum of understanding, etc. The agreement we are considering here is only that: an agreement between the parties that sets out the cosponsorship arrangement but does not create liability between the partners. The case law we have listed in the box on the chart should help define these boundaries.

The question of one or both partners charging a fee may arise in the context of cosponsorship. GAO case law holds that an agency may not permit its agent to charge

and retain registration fees where the agency itself lacks statutory authority to charge and retain such fees. *Cf.* B-306663, Jan. 4, 2006; B-300826, March 3, 2005. May the agency that is cosponsoring the conference charge a fee? Is the cosponsoring partner an agent of the agency? If not, can the partner charge a fee to cover all conference costs, including those of the agency, or just those costs that the partner itself incurs? No one has put these questions before GAO for decision, consequently case law to date does not directly answer them. The issue here, of course, is augmentation and that line of cases may prove relevant in resolving these questions.

6. What should an agency consider when co-locating a conference or other event?

Some agencies, to minimize augmentation concerns, but also to avail themselves of the capabilities of other organizations, have co-located an agency-organized and agency-hosted conference with a conference organized and hosted by the other organization. For example, where the agency and other organization plan their own, separate conferences on the same or complementary topics, they might consider co-locating their conferences and coordinating agendas and schedules, in order to take advantage of efficiencies, economies of scale, and a shared audience. Nevertheless, as an agency explores co-location, the agency needs to be aware of augmentation concerns, and needs to make sure that the other organization is neither directly nor indirectly covering the agency's costs.

7. Can an agency permit a private partner to use government property (either real or personal) in connection with activities of joint interest?

Yes, so long as the use of government property is consistent with the agency's mission and does not otherwise violate law or policy. As chapter 16, part H, section 3 of the Redbook explains in detail, a series of Comptroller General decisions dating from the 1920s have concluded:

“[T]he head of a Government department or agency has authority to grant to a private individual or business a revocable license to use Government property, subject to termination at any time at the will of the Government, provided that such use does not injure the property in question and serves some purpose useful or beneficial to the Government itself.”

B-164769 (July 16, 1968)

The rule applies to both real and personal property. The following examples illustrate the rule:

- The use of government research space and facilities by university faculty and graduate students. 36 Comp. Gen. 561 (1957).
- The use of government-owned computers by local universities and their students. 47 Comp. Gen. 387 (1968).

- The placement and operation of broadcast equipment in the United State Capitol to broadcast congressional events and the making of modifications needed to support the necessary equipment. B-277521, July 31, 1997.
- A seminar at the United States Merchant Marine Academy to train writers for maritime industry publications. B-168627, May 26, 1970.

An agency might consider granting a license to a private entity to organize and run a meeting or conference with the agency providing support in the form of space and utilities. Of course, potential ethical and conflict-of-interest concerns are important considerations as an agency explores this possibility.

The National Archives and Records Administration (NARA) used this authority to permit the Foundation for the National Archives, a section 501(c)(3) charitable corporation organized to support NARA's activities, to operate a museum shop in the National Archives Building. The language of the license in the museum shop agreement is similar to that used by NARA in other licensing agreements: "[T]he Archivist grants the Foundation a no-cost, nonexclusive, nontransferable, revocable license to use approximately 2,500 square feet of space on the Ground Floor Constitution Avenue public entrance side of the Building for the purpose of operating a retail sales operation to be known as the Archives Shop."

In another example, the Department of Defense (DOD) granted the National Endowment for the Arts (NEA) and the Southern Arts Federation, a private entity, access to and the use of space on DOD installations as part of NEA's Operation Homecoming. NEA and the Southern Arts Federation used this space to conduct workshops designed to encourage and assist veterans returning from overseas to write about their experiences. These writings were then collected and published in an anthology.

8. What should agencies consider when using a no-cost contract?

As many of you are aware, our January decision contained a footnote that made clear we had not addressed "whether an agency could structure a no cost contract to achieve its objective [of hosting a conference] consistent with the miscellaneous receipts statute." This generated a number of questions, including: is it possible for an agency to fashion an agreement with a private entity whereby the entity hosts a conference on behalf of the agency, recoups its costs from conference attendees, at no cost to the agency, all without the agency augmenting its appropriation? Although such an arrangement has never been brought to our attention, we didn't want to preclude the possibility that creative fiscal minds could fashion a legitimate arrangement. The two decisions we have identified on the chart, while they do not provide the answer to this question, do discuss some of the concerns and possibilities in the realm of the no-cost contract. These decisions emphasize that one necessary feature of a legitimate no-cost contract is that it must be

structured so that the contractor has no expectation of payment from the agency for its services. This sounds somewhat similar to the acceptance of gratuitous services.