



Letter of Comment No: 30
File Reference: 1100-LEU
Date Received: 10/01/03

October 1, 2003

Mr. Robert Herz
Chairman, Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Dear Chairman Herz:

On behalf of Associated Builders and Contractors (ABC) and its 23,000 construction-related member firms, I am writing to express our serious concerns regarding a recent decision of the Financial Accounting Standards Board. Our members, comprised mainly of small, closely held businesses, believe that the Statement of Financial Accounting Standards No. 150 (FAS 150) will have a severe impact upon the business operations of a vast number of non-public, non-SEC registered construction firms. We urge the Financial Accounting Standards Board to reconsider its decision to make FAS 150 applicable to non-public construction firms. FAS 150, as it now stands, will have a substantive negative effect on the equity of businesses, especially contractors, with a corresponding and potentially devastating negative effect on the economy as a whole.

FAS 150 requires that issuers classify as liabilities any financial instrument issued in the form of shares that is "mandatorily redeemable." A financial instrument is "mandatorily redeemable" if it requires the issuer to redeem it by transferring its assets at a specified or determinable date upon an event that is certain to occur. Among such events are the death or termination of employment of an individual shareholder of the entity.

The Effect on Non-Public, Non-SEC Construction Companies

Construction and construction related companies are predominantly non-public, non-SEC-registered businesses. However, particularly in commercial construction, non-public contractors are currently able and should continue to be allowed to compete against publicly held contractors.

The requirement of FAS 150 to recognize a liability for a company's obligation to acquire shares under a buy/sell agreement poses an extreme problem for non-public construction and construction related companies

Surety Requirements

A prerequisite for commercial contractors to obtain new business rests on their ability to obtain surety bonds on their contracts. Sureties require business continuity plans as part of their underwriting of credit on contractors. Thus, the nature of the business demands that shareholders and their corporations have binding agreements to provide for an orderly continuation of the business so that, in the case of a triggering event, their long-term contracts will be completed without additional financial risk to the surety.

The surety industry demands buy/sell agreements. Owners of non-public construction companies want buy/sell agreements that provide a meaningful market for their securities under events such as death, disability, retirement, etc. While public entities may have only a limited number of shares subject to a buy/sell agreement between the shareholder and the company, most non-public entities with buy/sell agreements subject all shares to the agreement.

Due to the adverse effect of FAS 150 on financial presentation and a company's ability to obtain future work, most contractors will be forced to eliminate or decrease these agreements, so that no corporate obligation exists. Financial reporting standards are therefore driving businesses to conduct business in a manner that is not prudent.

The valuation of all shares of a non-public entity will almost always produce a liability under FAS 150 that is equal to or greater than 100 percent of the equity of the business. This is in part due to the fact that many contractors hold real estate and equipment that has fair values that are greater than historical cost basis.

The detrimental effect that FAS 150 will have on the balance sheet and income statement of non-public contractors and construction related firms will create an unfair competitive advantage for public entities. Sureties, contracting agencies and owners of projects will naturally look more favorably upon companies that report equity than those with no equity and no income on a year-to-year basis.

FAS 150 should not be considered for non-public, non-SEC companies due to the negative financial impact it will have on the ability to obtain and secure new work.

Interest Classification

FAS 150 proposes to record future changes in the valuation of a liability as a charge or credit to earnings classified as "interest." This can produce large charges and credits from year to year in non-public companies where 100 percent of the shares are subject to the agreement. The basic reader of a non-public company's financial statement will be confused by the term "interest", and the classification needs additional consideration.

Valuation Costs

Many non-public companies have buy/sell agreements that use formulas and appraisals to determine the value of redeemable shares rather than setting a specific value on a routine basis. The enterprise only incurs the cost of appraisals and other valuations in the rare event of a redemption.

FAS 150 requires the liability to be determined annually. This produces an undue hardship on non-public entities that will require them to incur valuation expenses annually to determine the liability required to be revalued on an annual basis under FAS 150. Non-public companies should be exempt from this requirement, due to an unnecessary increase in costs.

Pre-qualification & Licensing

Contractors must pre-qualify with project owners, Federal, state, and local governmental agencies in order to be allowed to bid on specific new projects. A significant element for pre-qualification is the equity and earnings of the company. Most of these jurisdictions also have financial requirements to obtain a contractor license. The class of the license is often statutorily based upon the financial condition of the contractor.

FAS 150 will cause many contractors to lose their pre-qualification and possibly their licensing status. Retracting FAS 150 from non-public companies will allow business to be conducted fairly and will eliminate undue hardship on the contractor.

Going Concern

Most non-public construction and construction related companies have buy/sell agreements. In order to apply correctly FAS 150, companies would be required to classify this equity as a liability. Without any equity, CPAs who correctly apply the FAS will be forced to give a "going concern" opinion. This valuation will make it extremely difficult for construction and construction related companies to obtain surety or bonding. In essence, by following by the letter, FAS 150 could force non-public companies to go out of business.

Employee Stock Ownership Plan (ESOP)

Many contractors and construction related companies create ESOP ownership structures primarily for continuity planning purposes. The redemption feature that is common with these plans, after the effect of FAS 150, will create an uneven playing field between companies with and without mandatory redemption provisions.

Especially with 100 percent ESOP companies, which defines many contracting and some construction related companies, all outstanding shares are subject to a "put" option, or mandatory redemption by the company. Since the independent stock valuation includes a premium over the book value of the shares, to report the entire ESOP repurchase liability as debt would result in either negative net worth or zero net worth with the premium amount classified as "goodwill."

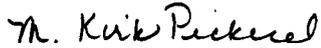
Conclusion

I respectfully request that the FASB rule that non-public, non-SEC companies be exempt from FAS 150. The proposed accounting issues provided under FAS 150 will have detrimental effects on these businesses that are unfair and unrealistic. This ruling would

cause negative bonding restrictions, financing issues, and an unfair business practice affecting the construction industry.

Thank you for this opportunity to submit comments on behalf of non-public, non-SEC construction companies.

Sincerely,

A handwritten signature in black ink that reads "M. Kirk Pickrel". The signature is written in a cursive style with a large, prominent initial "M".

M. Kirk Pickrel, CAE
President and CEO