



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: The Asia Foundation

File: B-270654

Date: May 6, 1996

DIGEST

The Asia Foundation may not use its general support grant funds from the Department of State to match other federal grants from the Agency for International Development (AID) and the United States Information Agency (USIA). Generally, funds derived from other federal grants do not qualify as matching funds unless statutorily authorized. The Asia Foundation does not have specific statutory authority to use grant funds to match other federal grants.

DECISION

This is in response to your request for an opinion concerning whether the Asia Foundation (Foundation) may use general support grant funds from the Department of State to satisfy cost-sharing requirements, that is, to match grants from other federal agencies. As explained below, the Asia Foundation may not use its general support grant funds to match other federal grants from the Agency for International Development (AID) and the United States Information Agency (USIA).

The Asia Foundation is a private nonprofit corporation which promotes democracy and human rights throughout the East Asian and Pacific region. The Asia Foundation receives financial support from the United States government through various means, including an annual grant from the Secretary of State as specifically authorized by 22 U.S.C. § 4402(a)(1992).

"The Secretary of State shall make an annual grant to The Asia Foundation with the funds made available under section 4403 of this title. Such grants shall be in general support of the Foundation's programs and operations. The terms and conditions of grants pursuant to this section shall be set forth in a grant agreement between the Secretary of State and The Asia Foundation."

The Asia Foundation seeks grants from AID and USIA and proposes to use grant funds provided under section 4402 to satisfy AID and USIA cost-sharing

requirements. 22 C.F.R. Parts 226.23 and 518.23.¹ These regulations provide that AID and USIA shall accept contributions as part of the recipient's cost sharing or matching if they meet certain criteria, one of which is that contributions "[a]re not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching." AID and USIA have interpreted this provision as preventing the Asia Foundation from using funds derived from the State Department grant to meet cost-sharing requirements because the Asia Foundation does not have specific statutory authority to use grant funds from the Department of State to match federal grants.

The Foundation does not challenge the validity of the AID and USIA regulations; rather the Foundation claims that it has the requisite statutory authority to use grant funds from the Department of State to match AID and USIA grants. The Foundation claims that the phrase "general support" as used in 22 U.S.C. § 4402 indicates that Congress did not intend to attach any strings to the grant. Accordingly, the Foundation maintains that AID and USIA must permit use of those funds for cost sharing requirements. The Foundation points to the legislative history of the Asia Foundation Act which noted that it received funding from other agency grants, such as AID and USIA and that the State Department grant was for the purpose of general support of the Foundation's programs and operations. See H.R. No. 130, reprinted in 1983 U.S.C.C.A.N. 1484, 1565. The Foundation also claims that the State Department core grant does not restrict, nor could it restrict, the Foundation from using those funds to meet cost-sharing requirements.

In determining whether an agency may use federal funds to match other federal grants, we have looked at the cost-sharing objectives of matching grants as well as statutory and regulatory provisions imposing restrictions on matching grants. Generally, cost-sharing objectives of matching grants are intended to stimulate new grantee expenditures and/or to limit federal expenditures on the program activities involved. Consistent with these objectives, the general rule is that a grantee may not use funds received under one federal grant as the matching share under a separate grant. 56 Comp. Gen. 645, 648 (1977); 32 Comp. Gen. 561 (1953); 32 Comp. Gen. 141 (1952); and B-214278, Jan. 25, 1985 (Where a statutory provision specifies that the federal contribution to a local project will not exceed a particular percentage of project costs, the remaining project costs should be funded with nonfederal moneys in the absence of a clear indication of contrary congressional intent). See also OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations", para. 23(a)(5). We apply this rule even where there is no express prohibition against such use in

¹Both USIA and AID grant regulations implement the provisions of OMB Circular No. A-110 issued on November 19, 1993. See 59 Fed. Reg. 39440 (1994) and 60 Fed. Reg. 3743 (1995).

the relevant program statute because we have held that a matching requirement contemplates that both federal and nonfederal funds will be used to support authorized grant activities. See B-214278, Jan. 25, 1985.

Normally, exceptions to this rule are in the form of express statutory authority. See 59 Comp. Gen. 668 (1980). Where Congress has authorized the use of federal grant funds to satisfy local share or matching requirements, it has very clearly conveyed its intent. See 59 Comp. Gen. 668 (1980) (Housing and Community Development Act of 1974 expressly permits Community Development Block Grantees to use those funds to provide a local matching share required by another federal grant program); B-239907, July 10, 1991; and B-214278, Jan. 25, 1985.

We recognize that the statute authorizing the State Department grant and its legislative history indicate some flexibility in the Foundation's use of those funds. However this statute also permits the imposition of restrictions on the grant: "The terms and conditions of grants pursuant to this section shall be set forth in a grant agreement between the Secretary of State and The Asia Foundation." 22 U.S.C. § 4402. In any event, neither the statute nor its legislative history can be read to authorize the use of those funds to match funds for other federal grants.

The Asia Foundation claims that its State Department grant is similar to the grant analyzed in 57 Comp. Gen. 710 (1978). In that case a state proposed to use federal funds distributed under Title II of the Public Works Employment Act of 1976 as the state's required nonfederal share under the Medicaid program, but was opposed by the predecessor of the Department of Health and Human Services (HHS). HHS's regulations stated the general rule that federal funds may not be utilized as the nonfederal share for HHS programs unless authorized by law. 45 C.F.R. § 74.52(b)(5) (1976). We determined that Congress considered the federal funds distributed under Title II as more in the nature of revenue sharing than traditional grants-in-aid of specific purposes. We found that under Title II, an agency had no discretion in deciding whether to make an award and could not impose conditions on the use of the federal funds distributed under Title II. Furthermore, the method of distributing funds under Title II is accomplished by formula distribution defined by statute and not by an application or approval by a federal grantor agency. Thus, we held that such funds were not subject to the restrictions applicable to grants, including the prohibition on the use of grant funds to match other grants nor were such funds subject to the HHS regulations regarding contracts or grants.

In this case, section 4402 specifically identifies the funds received by the Asia Foundation as a grant and states that the grant is governed by the grant agreement between the Foundation and the State Department. The grant agreement applies general grant management principles such as cost allowance, accounting and reporting requirements. There is no doubt that the Asia Foundation is a federal grant recipient and nothing in the statute or legislative history supports the

proposition that Congress intended that the grant not be subject to the general rules regarding grants.² We have no basis to conclude that the Foundation's grant funds are nonfederal and that AID and USIA regulations should not be applied in this case. Accordingly, the Asia Foundation may not use funds from its State Department grant to match grants from AID and USIA.

/s/Robert P. Murphy
for Comptroller General
of the United States

²We also considered whether the Asia Foundation's grant was similar to the grants analyzed in 59 Comp. Gen. 668 (1980). We there concluded that Community Development Block Grants (CDBG) were "local resources" for purposes of local matching requirements for community development programs such as the Coastal Zone Management Act and thus were available to match a grant under that Act. The controlling distinction between that decision and here is that the Community Development Act of 1974 specifically authorized the use of CDBG funds as "non-federal share" for grants in community development programs, 42 U.S.C. § 5305 (1974), whereas here the Asia Foundation has no analogous statutory authority.