

B-248647.2

April 24, 1995

The Honorable Kweisi Mfume
House of Representatives

Dear Mr. Mfume:

This responds to your letter of July 22, 1994, in which you ask several questions relating to our opinion in B-248647, December 28, 1992. In that opinion, we reviewed financing arrangements for the Federal Triangle International Cultural and Trade Center-Federal Office Building project and concluded that the Federal Financing Bank (FFB) has authority to use public funds to finance construction of the project.

As discussed with your staff, your principal question is whether the Federal Triangle Development Act precludes FFB financing of the project and instead requires the use of private financing. You also ask for information relating to a General Services Administration (GSA) request to reprogram funds for the project and for information about certain budgetary decisions that were made by the Office of Management and Budget (OMB).

BACKGROUND

The development of the Federal Triangle project was authorized by the Federal Triangle Development Act, Pub. L. No. 100-113, 101 Stat. 735-747 (1987), 40 U.S.C. §§ 1101-1109. The Pennsylvania Avenue Development Corporation (PADC) is responsible for the planning, development, and construction oversight of the project, located at the government-owned Federal Triangle site in the District of Columbia.

The PADC submitted a development proposal to the Senate Committee on Environment and Public Works and the House Committee on Public Works and Transportation as required by 40 U.S.C. § 1103(f). Under this development proposal GSA was to lease the building from the developer for 30 years. Lease payments were to be funded out of annual appropriations made to the Federal Buildings Fund. 40 U.S.C. § 1105(b). Resolutions approving PADC's development proposal were adopted by both committees in September 1988.

While PADC's original plan was to select a developer who would raise private capital for the project, OMB later determined that obtaining federal financing through the FFB was permissible and, in fact, would save the government interest costs. Accordingly, the decision was made to finance the project through the FFB rather than to use private financing. The project's trustee obtained this financing through a promissory note that was issued to the FFB, and secured by the trustee's assignment to the FFB of the trustee's rights to receive rental payments from GSA.

In our December 1992 opinion, we found that the Federal Triangle building was fundamentally a project being constructed by the federal government and that the promissory note issued for financing purposes was in effect an obligation of GSA. Consequently, since FFB is authorized by section 6 of the Federal Financing Bank Act of 1973, 12 U.S.C. § 2285, to purchase any obligation "which is issued, sold, or guaranteed by a Federal agency," we concluded that the FFB was authorized to purchase the obligation in question and thereby provide financing for the project.

DISCUSSION

With regard to your question about the permissibility of FFB financing under the Federal Triangle Development Act, there is nothing in the act that mandates a particular source of financing for the project or precludes the use of financing through the FFB. The act is generally silent about how the project's costs are to be financed, specifying only that GSA is to make lease payments that fully amortize the project's development cost over the term of the lease. See 40 U.S.C. § 1105(b).

During hearings on the legislation enacted as the Federal Triangle Development Act, various officials made comments that appeared to presume the project would be financed privately. For example, in a hearing before a subcommittee of the Senate Committee on Environment and Public Works, the Chairman, Federal City Council, International Center Task Force, testified that "on the strength of the GSA lease, the project will be privately financed at very advantageous rates."¹ Also, the Congressional Budget Office's cost estimate for the proposed legislation noted that it "authorizes the PADC to select a developer to raise funds

¹Proposed International Cultural and Trade Center on the Federal Triangle: Hearing Before the Subcomm. on Water Resources, Transportation, and Infrastructure of the Senate Comm. on Environment and Public Works, 100th Cong., 1st Sess. 7 (1987).

privately," and concluded that such a financing mechanism "may be a more costly form of financing than ordinary Treasury borrowing."²

However, the Senate report on the legislation recognized the need for the government to examine different methods of financing, including financing through the FFB. In this regard, the Senate report stated:

"Alternative financing.

"During deliberations on this legislation, Members were made aware that the Federal Government needs to examine thoroughly different methods for financing Federal buildings, including issuance of marketable securities by an agency of the Federal Government, third party financing, loans from the Federal financing bank and other sources. It is the Committee's intention to hold further hearings on alternative financing methods, and it recommends to GSA, OMB, the Corporation and other appropriate agencies that they investigate them also." S. Rep. No. 139 at 13. (Emphasis added.)

Since the act does not mandate any particular financing source and the legislative history indicates that Congress intended to leave the choice of financing options open, FFB financing of the project is not inconsistent with or prohibited by the act. There was no need for Congress to specifically authorize a federal financing arrangement in the act, given the FFB's authority to provide financing for this³ type of undertaking under the Federal Financing Bank Act.

²S. Rep. No. 139, 100th Cong., 1st Sess. 17 (1987).

³You also ask whether the transaction violated the Anti-Deficiency Act, 31 U.S.C. § 1341. That act prohibits the expenditure or obligation of funds in excess of available appropriations unless the expenditure or obligation is otherwise "authorized by law." 31 U.S.C. § 1341(a). While the GSA lease agreement underlying the transaction was a multi-year lease, it was specifically authorized by the Federal Triangle Development Act, which directed GSA to enter into a long-term lease and required the lease agreement to recognize that GSA could obligate funds for lease payments only on an annual basis. 40 U.S.C. § 1105. Therefore, the GSA lease agreement was "authorized by law" and did not violate the Anti-Deficiency Act. See generally, B-239435, Aug. 24, 1990.

Your letter refers to two bills introduced in the 101st Congress which would have amended the Federal Triangle Development Act to address financing for the project, but which were not enacted.⁴ These bills would have given PADC explicit authority to borrow directly from the private capital markets or from federal entities. As noted in our 1992 opinion, however, the legal basis for the FFB to finance the project stems from its statutory authority to purchase obligations of GSA, the federal agency acquiring the project. In any event, the fact that the proposed amendments would have specifically referred to the option of federal financing does not support an inference that the original legislation precluded the use of such financing. See Central Bank v. First Interstate Bank, 114 S. Ct. 1439 (1994) (congressional inaction on proposed legislation can mean simply that the original legislation was viewed as sufficient to accomplish the purposes of the proposal).

With regard to the other issues you raise, we note that although our 1992 opinion stated that GSA, in early 1990, sought OMB's approval to reprogram funds needed for certain interim project costs, GSA never did reprogram the funds. Apparently GSA had anticipated a potential need to pay \$22,602,600 in project costs if there were problems in arranging financing for the project. In a March 20, 1990 memorandum to OMB, copy enclosed, GSA requested OMB's informal commitment to expedite GSA's request to reprogram funds within GSA's Federal Buildings Fund if the funds were needed to pay interim project costs incurred by the PADC. Since financing for the project was obtained, the potential need for reprogramming that GSA foresaw did not arise and GSA did not pursue the reprogramming request. We have reviewed PADC's budget records for the relevant period and have confirmed that PADC did not receive GSA funds for the interim project costs described above.

You also ask about the statement in our 1992 opinion that, "OMB approved a revision to PADC's budget to include authority to commit federal funds for the project's construction costs plus interest accruing during the construction period, estimated to be \$873,180,000." As explained in the enclosed OMB documents, OMB decided to adjust PADC's budget estimate for fiscal year 1990 at a mid-year review in order to account for the previously

⁴See H.R. 5071, 101st Cong., 2d Sess. § 3 (1990); S. 3077 101st Cong., 2d Sess. § 3 (1990).

⁵With respect to your request for the name of the GSA Regional Administrator responsible for the project, the project is located in GSA's National Capital Region and the Regional Administrator is

unrecognized budget authority provided in the Federal Triangle Development Act.⁶ The adjustment was made pursuant to OMB's policy to score budget authority up front for the full construction and financing costs associated with a long-term capital building lease or lease-purchase, in an amount reflecting the government's total estimated legal obligations for the project. By letter dated April 30, 1990, copy enclosed, OMB informed the Chairman of the Subcommittee on Water Resources, Transportation and Infrastructure, Senate Committee on Environment and Public Works, of the above scoring rule as it relates to a number of federal building projects including the Federal Triangle project.

We hope that this explanation of our earlier opinion and the enclosed documents are useful to you.

Sincerely yours,

Comptroller General
of the United States

⁶OMB views legislation authorizing the purchase, lease, or lease-purchase of a building as including budget authority unless the legislation clearly requires a separate grant of budget authority before any obligations are issued. See OMB Bulletin No. 91-02, Attachment B-2, Oct. 18, 1990 (copy enclosed).

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DIGEST

The Federal Triangle Development Act, 40 U.S.C. §§ 1101-1109, does not preclude the use of public funds to finance construction of the Federal Triangle International Cultural and Trade Center-Federal Office Building project. Nothing in the act mandates a specific source of financing for the project and the legislative history of the act indicates that Congress intended to leave the choice of financing options open. There was no need for Congress to specifically authorize a federal financing arrangement in the act since the Federal Financing Bank has separate statutory authority to provide financing for this type of project.

Enclosures