



Comptroller General  
of the United States

Washington, D.C. 20548

B-248647

December 28, 1992

The Honorable Henry B. Gonzalez  
Chairman, Committee on Banking, Finance  
and Urban Affairs  
House of Representatives

Dear Mr. Chairman:

This is in response to your letter of April 27, 1992, requesting that we review the financing arrangements for the Federal Triangle International Cultural and Trade Center-Federal Office Building project. You specifically questioned the authority of the Federal Financing Bank to provide financing for this project.

In preparing a response to your questions, we sought and received comments from the Federal Financing Bank (FFB), the General Services Administration (GSA), and the Pennsylvania Avenue Development Corporation (PADC). We have studied the issues presented and have reached the conclusion, for reasons discussed below, that financing the development of this project through the Federal Financing Bank is legally permissible.

#### BACKGROUND

The development of the project was authorized by the Federal Triangle Development Act of 1987, Pub. L. 100-113, 101 Stat. 735-747, codified at 40 U.S.C. §§ 1101-1109 (1988). The Pennsylvania Avenue Development Corporation is responsible for the planning, development, and construction oversight of the project, to be built at the government-owned Federal Triangle site in the District of Columbia. A private developer selected by PADC is constructing the project. See 40 U.S.C. § 1101(b)(4).

Before selecting a developer, PADC prepared a development proposal detailing the planning, design, construction, and leasing of the building. See 40 U.S.C. § 1103. As required by subsection 1103(f), PADC submitted the development proposal to the Senate Committee on Environment and Public Works and the House Committee on Public Works. Resolutions

approving PADC's development proposal were adopted by both committees in September 1988.

Under the development proposal, the General Services Administration (GSA) was to lease the building from the developer for 30 years. As required by 40 U.S.C. §1105(b), GSA would make lease payments that fully amortize the project's development cost over the term of the lease. At the end of the 30-year term, the federal government would own the building. Lease payments were to be funded out of annual appropriations made to the Federal Building Fund. 40 U.S.C. §1105(b).

In November, 1988, PADC issued a Development Prospectus soliciting proposals to develop the project. On October 18, 1989, PADC selected the Delta Partnership as the developer for the project. A Development Agreement was signed by The Federal Triangle Corp. (successor in interest formed by the Delta Partnership) on February 12, 1990. Under 40 U.S.C. §1105(a), PADC could not execute the Development Agreement until the GSA Administrator signed a lease for office space. That lease was signed on September 21, 1990. PADC, GSA and the U.S. Treasury's Federal Financing Bank (FFB) agreed upon the terms and conditions of the financing and executed the relevant documents on November 15, 1990.

#### FINANCING ARRANGEMENTS

Efforts to finance the project's construction costs began to depart from the plan set forth in the Development Proposal approved by the Senate even before PADC selected Delta Partnership as the developer in October 1989. Views on the financing continued to evolve, reflecting the practical realities of obtaining funds at the lowest cost.

The Development Proposal had contemplated selecting a developer who would raise private capital to cover the construction costs. The capacity to raise capital was built into the criteria for selecting the developer. However, on the recommendation of its financial advisor, PADC decided in mid-1989 to separate the selection of an underwriter from that of the developer, in the belief that an underwriter could arrange the sale of securities "at a more competitive price." The PADC Board proceeded in October 1989 to delete the financing criterion from the selection of the developer. The Development Agreement, as signed by PADC and the developer in February 1990, left the responsibility for financing the project with PADC rather than with the developer.

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<sup>1</sup>See Pennsylvania Avenue Development Corporation, 69 Comp. Gen. 289 (1990).

PADC proceeded to conduct a competition for the selection of an underwriter, which was completed by April 1990. However, recommendations forwarded to the PADC Chairman were held in abeyance, pending an opinion from the Office of Management and Budget on the issue of federal versus private financing. This issue had been raised at a meeting on March 20, 1990, attended by OMB, PADC, and the General Services Administration. GSA was at the time seeking OMB approval of its request to reprogram funds needed for covering certain interim project costs.

Though not documented in our files, OMB apparently determined that nothing in the relevant statutes precluded federal financing, and in a letter dated April 24, 1990, went on record stating that financing the project through the Federal Financing Bank would save the taxpayer interest costs. 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 in May 1990 to be \$873,180,000.

OMB also determined that, whether publicly or privately financed, the construction costs would need to be counted ("scored") for federal budget purposes as "authority" when the project agreements were made final, and as "outlays" over the period of construction. This decision meant that any advantage from using private financing to keep the construction costs off budget was lost. The April 24, 1990, OMB letter also refers to the Federal Financing Bank as a possible source of funds. Discussions proceeded and on November 15, 1990, PADC, GSA, and FFB signed documents establishing the terms and conditions of FFB financing.

According to the FFB, the financing arrangements under which the FFB is financing the construction are structured much like arrangements would have been structured had the original financing plan been consummated and the financing obtained from the capital markets. The lease, together with the developer's right to receive rent from GSA under the lease, have been assigned by the developer to the trustee. The trustee has entered into a loan agreement with FFB and, as called for in the loan agreement, the trustee has executed and delivered to FFB a promissory note payable to FFB to evidence the borrowing of construction funds from FFB. To secure the borrowing from FFB, the trustee has executed and delivered to FFB an instrument (the "Lease Proceeds Assignment") assigning to FFB all of the trustee's rights to receive rent from GSA under the lease.

GSA has executed and delivered to FFB an instrument (the "Confirmation of Assignment") consenting to the assignment to FFB of the right to receive rent from GSA and confirming

that GSA will pay directly to FFB that portion of the rent which is dedicated to amortizing the development financing.

Our review confirms that FFB financing of the construction is less costly than private financing. According to GSA, financing the project through the FFB rather than the private capital markets is less costly because the interest rates offered by FFB are significantly less than the interest rates offered by capital market investors. In addition, the transactional fees and expenses associated with private financing, such as underwriters' fees, are eliminated or reduced. GSA reports that FFB financing is offered at 1/8 of 1 percent above Treasury's interest rates on comparable securities, which equates to 12.5 basis points, or roughly 50 to 200 points below the commercially available rate. To the extent the project's financing costs have been reduced, the rental payments needed from GSA to amortize the project's costs over 30 years will also be lower.

#### DISCUSSION

##### FFB'S Authority to Provide Financing.

Regarding your principal question, whether the FFB has authority to use public funds to finance the construction of the project, we have concluded that financing the development of this project through the Federal Financing Bank is legally permissible.

FFB's legal authority to provide financing for the project exists in the Federal Financing Bank Act of 1973, as amended, Pub. L. 93-225, 67 Stat. 878, codified at 12 U.S.C. §§ 2281 et seq. Under 12 U.S.C. § 2285(a),

"The Bank is authorized to make commitments to purchase and sell, and to purchase and sell on terms and conditions determined by the Bank, any obligation which is issued, sold, or guaranteed by a Federal agency. Any Federal agency which is authorized to issue, sell, or guarantee any obligation is authorized to issue or sell such obligations directly to the Bank."

In our view the Federal Triangle International Cultural and Trade Center-Federal Office Building is fundamentally a project being constructed by the federal government. We base this conclusion on several factors.

The federal government, by statute, bears the full risks of developing and owning the project. The land on which the project is being built belongs and will continue to belong to the United States. By statute the project itself belongs



to the United States. While the developer may "own" it for a period of up to 35 years, the developer must lease the building in its entirety to GSA during this period. GSA is unconditionally committed over the term of the lease to pay an amount necessary to amortize the cost of the development, and thus even during the period of developer ownership, the government carries the principal rights and obligations associated with ownership.

Further, the project's design was selected by the federal government and the project's design and construction have and will follow specifications set forth by the federal government for the construction of federal buildings.

In sum, the relevant indicia of ownership point consistently to the government as the principal in this undertaking, while the project's developer serves a function closer to that of a building contractor. Under this circumstance, we believe the promissory note purchased by the FFB is appropriately viewed as an obligation of GSA issued for the purpose of financing the project. It may therefore be purchased by the FFB under section 2285(a).

#### Signatories

In response to your question as to who signed the pertinent documents on behalf of the FFB, the FFB informs us that, on November 15, 1990, Michael E. Basham, the Treasury Deputy Assistant Secretary for Federal Finance and, as such, a Vice President of FFB, executed the lease-financing documents pertaining to the project on behalf of FFB pursuant to the authority vested in him by the FFB by-laws and a standing delegation of authority dated December 12, 1977.

#### How Funds Advanced by the FFB Have Been Spent

As of December 16, 1992, FFB has provided approximately \$87.2 million in funds for the project, out of the \$656 million it committed to construction of the project. Payments are made to the contractor through the project's trustee, the United States Trust Company of New York, which is currently borrowing construction funds from FFB, following directions from PADC and GSA, and applying the loan proceeds to pay the developer's costs.

#### Cost to the Government of Canceling this Construction

In closing, you ask for an estimate of the cost to the government of "possibly canceling" the project. Total construction costs including interest over the period construction were projected at \$873,000,000, according to a 1990 OMB estimate. This figure would probably have exceeded \$1 billion by a significant amount if full interest costs

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had been included. FFB's current agreement is to advance up to \$656 million for construction and related costs. This amount is subject to upward revision if the agreement is revisited.

However, estimating the savings of cancellation at this stage is not a simple task. A considerable amount, approaching \$100 million, is already expended or committed to cover work in progress. Litigation that would likely result could take years to resolve. Estimates of site restoration and/or salvage costs will vary widely depending on assumptions made regarding future uses of the site. It is possible that a detailed analysis would show minimal savings from canceling the project at this stage.

We trust that you find this response useful. We have sent an identical letter to the Honorable Kweisi Mfume.

Sincerely yours,

*Milton J. Posten*  
for Comptroller General  
of the United States