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**The Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** Pennsylvania Avenue Development Corporation-  
Cost of Construction Consultants

**File:** B-237146

**Date:** February 23, 1990

**DIGEST**

In overseeing construction of the Federal Triangle Development Project, The Pennsylvania Avenue Development Corporation may have its construction consultants' fees amortized as a cost of construction rather than as an expense of the Corporation because the funds transferred to the Corporation under the Federal Triangle Development Act were intended to cover start-up costs. The Corporation formally notified the required congressional committees of its plan to amortize these costs as a cost of construction and the committees did not object to this arrangement.

**DECISION**

The Pennsylvania Avenue Development Corporation asks whether it may arrange to pay construction consultants hired to oversee construction of the Federal Triangle Development Project directly from funds raised through private financing, rather than from the Corporation's appropriated funds. For the reasons discussed below, we conclude that such an arrangement is permissible.

**BACKGROUND**

Congress created the Pennsylvania Avenue Development Corporation (Corporation), a wholly owned government corporation, to develop a plan to revitalize Pennsylvania Avenue in the District of Columbia. 40 U.S.C. § 871-885 (1982); 31 U.S.C. § 9101(3)(1982). In the Federal Triangle Development Act (Act), Pub. L. No. 100-113, 101 Stat. 735-747 (codified at 40 U.S.C. § 1101-1109 (Supp. V 1987)), Congress gave the Corporation primary responsibility for the planning, development, and construction oversight of a new federal office building to be built at the Federal Triangle site in the District. Plans for the building call for it to be large enough (second in size only to the Pentagon) to consolidate the locations of several government

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agencies, to house the International Cultural and Trade Center, and to provide parking, retail space, and other facilities to building occupants and the public.

A private developer selected by the Corporation will construct the new federal office building. See 40 U.S.C. § 1101(b)(4). Before selecting a developer, the act directs the Corporation to prepare a development proposal detailing the planning, design, construction, and leasing of the building. 40 U.S.C. § 1103. Subsection 1103(f) requires the Corporation to submit the development proposal to the Senate Committee on Environment and Public Works and the House Committee on Public Works. Upon approval of the development proposal by resolutions adopted by these committees, the Corporation "may enter into an agreement for the development of the Federal Triangle property in accordance with the [approved] development proposal." 40 U.S.C. § 1104(b)(1). Among other things, the development agreement must provide for inspection of the building by the Corporation and the General Services Administration (GSA). 40 U.S.C. § 1104(b)(2)(D). Resolutions approving the Corporation's development proposal were adopted by both committees in September 1988.

The Corporation will obtain the financing needed for construction of the building from the private sector. Officials of the Corporation informed us that the Corporation plans to finance the project by arranging for the sale of securities to private investors. The Corporation will appoint a trustee to issue the securities and to administer and disburse the proceeds thereof to cover the costs of construction, including the cost of the construction consultants' inspection and monitoring of the construction's progress.

Under the development plan, GSA will lease the building for 30 years. During the 30 year period, GSA will make lease payments that fully amortize the project cost. At the end of this period, the federal government will own the building. The developer, after receiving its development fee, will assign the remainder of the lease payments to the trustee.

Subsection 1104(i) of title 40, United States Code, authorizes the appropriation of \$3.7 million for fiscal year 1988 to be transferred from GSA to the Corporation to carry out the Corporation's duties during construction of the

building.<sup>1/</sup> These funds are to remain available until expended.

#### OPINION

Among the duties imposed on the Corporation by the Act is the oversight and inspection of the building's construction. 40 U.S.C. § 1104(d). The Senate Committee on Environment and Public Works stated that "it is vitally important that . . . the Corporation develop an adequate program of inspection while the building is being built . . . ." S. Rep. No. 139, 100th Cong., 1st Sess. 13 (1987). Given the size and complexity of this project, the Corporation intends to contract with construction consultants to obtain the assistance needed to fulfill its oversight duty. The question has arisen whether the amounts authorized to be transferred from GSA to the Corporation were meant to cover all of the Corporation's costs related to construction of the building, including the consultants' fees at issue, thus precluding the Corporation from treating the fees as a project cost.

The Corporation contends that the funds authorized to be transferred by GSA in 40 U.S.C. § 1104 merely serve as preliminary start-up monies for initial design, planning, and development expenses. Indeed, in appropriating the \$3.7 million from GSA's federal building fund for transfer to the Corporation, Congress stated that the money be used for "Design." Pub. L. No. 100-202, 101 Stat. 1329-402 (1987). In an accompanying report the Senate Committee on Appropriations recommended that the \$3.7 million "for the development of plans and management of construction" be transferred "so that this important project can go forward expeditiously in fiscal year 1988." S. Rep. No. 160, 100th Cong., 1st Sess. 91 (1987). Although these funds are to remain available until expended, the words "for fiscal year 1988" in section 1104 and in the report language accompanying the transfer suggest that the funds were intended primarily for expenses incurred during the early

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<sup>1/</sup> The Act also authorized GSA to transfer \$800,000 to the Corporation for the costs of the development proposal. 40 U.S.C. § 1103(g). The \$3.7 million made available to the Corporation under 40 U.S.C. § 1104(i) was available for the development proposal if necessary. Thus, a total of \$4.5 million was authorized, and in fact transferred to the Corporation from GSA. See also Pub. L. No. 100-202, 101 Stat. 1329-402 (1987).

stages of the project's development, rather than for expenses incurred during construction of the building.<sup>2/</sup>

Further, it is clear that these funds are inadequate for what Congress considered the Corporation's "vitally important" construction oversight responsibilities. The Corporation estimates that construction consultants' fees will be at least \$8 million, far in excess of the \$3.7 million authorized to be transferred to the Corporation in 40 U.S.C. § 1104(i). Even were we to view the entire \$4.5 million transfer from GSA as available solely to finance the Corporation's expenses of monitoring construction through a construction consultant, that amount, roughly one percent of the total estimated project costs of \$461 million, is not adequate to accomplish that purpose. Development proposal at 29. (The Corporation has subsequently informed us that it estimates that construction costs will in fact be higher).

We also find it significant that Congress in the Act did not authorize additional appropriations to the Corporation for this project. See 40 U.S.C. §§ 1103(g) and 1104(i). The absence of any indication of additional direct funding in the language of the act is consistent with its legislative history. In this regard, except for the funds authorized to be transferred to the Corporation from GSA for fiscal year 1988, Congress did not expect the expenses of construction to be paid by the federal government through direct appropriations. See 133 Cong. Rec. S11325 (daily ed.) (statement of Sen. Moynihan); Appropriations for 1989, Hearings Before Subcommittee on Department of the Interior and Related Agencies, House Committee on Appropriations, 100th Cong., 2d Sess. 86 (statement of Henry A. Berliner, Jr., Chairman, Pennsylvania Avenue Development Corporation).

Thus, we do not think section 1104(i) should be read as providing the sole source of funding for the cost of construction inspection and monitoring. Any doubt on this score is, we think, removed by congressional approval of the Corporation's development proposal. The mandated development proposal, prepared and submitted by the Corporation and approved by the two congressional

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<sup>2/</sup> Selection of the developer was not even scheduled until May 1989 and actually took place later. Construction is planned to begin in February or March 1990. Completion of the building is not expected until 1993-1994. Development proposal at 37.

committees,<sup>3/</sup> indicates that the construction consultants' fees will be part of the project costs rather than being funded out of the Corporation's appropriated funds. Specifically, the proposal states.

The "soft" costs of development of \$62 million include construction period financing, legal and accounting fees, contingencies and a developer fee. Allowance has been made for a construction manager who will represent the government in reviewing architectural designs, monitoring construction progress and generally ensuring that the required construction quality and schedule are achieved at the lowest possible cost. (p.29)  
(emphasis added)

Although the resolutions of the congressional committees approving the Corporation's development plan did not specifically acknowledge the construction consultants' fees becoming part of the construction costs, the committees did not object to this arrangement.

#### CONCLUSION

In our view, construction consultants' fees may properly be considered part of the cost of construction rather than as amounts to be paid from the Corporation's appropriated funds. We are aware of nothing that would prohibit the Corporation from having the project's trustee pay the construction consultants directly from the amount to be financed.



~~Acting~~ Comptroller General  
of the United States

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<sup>3/</sup> In signing the Federal Triangle Development Act, President Reagan stated that the provision requiring congressional approval of a development plan was a severable unconstitutional legislative veto provision, citing INS v. Chadha, 462 U.S. 919 (1983). 23 Weekly Compilation of Presidential Documents 961, August 31, 1987. We take no position as to the correctness of the President's view. See B-196854, July 26, 1983.