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Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: African Development Foundation: Retention of Funds from Strategic Partnership Agreements with Certain African Governments

File: B-300218

Date: March 17, 2003

DIGEST

1. Under its gift acceptance authority, the African Development Foundation (ADF) may retain funds it receives from the governments of Botswana, Namibia and the State of Jigawa, Nigeria that supplement amounts that ADF grants to its recipients.

2. ADF does not have statutory authority to contract with the government of Guinea to provide services on behalf of Guinea to certain development sites selected by Guinea but who are not ADF grantees.

DECISION

The President of the African Development Foundation (ADF) has requested an advance decision under 31 U.S.C. § 3529 regarding the authority of the Foundation to retain funds it receives from partnerships with four African governments: Botswana, Namibia, Guinea, and the State of Jigawa, Nigeria. We conclude that ADF's gift acceptance authority permits it to accept funds from Botswana, Namibia and Jigawa State because those governments donate funds to supplement amounts that ADF grants to recipients within their respective states. Unlike the other three partnerships, ADF's partnership with Guinea involves a contract where Guinea pays ADF for services. Since ADF does not have statutory authority to enter into contracts to provide services, it should terminate its contract with Guinea and deposit any proceeds from that contract into the general fund of the Treasury as miscellaneous receipts. As we discuss below, ADF might consider restructuring its arrangement with Guinea along the same lines as its arrangements with Botswana, Namibia and Jigawa.

BACKGROUND

The African Development Foundation (ADF) is a U.S. government corporation that supports community-based, self-help initiatives to alleviate poverty and promote broad-based, sustainable development in Africa. Specifically, ADF supports new export trade and investment activities, improved natural resource management, and AIDS prevention and mitigation through direct grants to small and micro-enterprises and community-based organizations that generate income and employment for low-income people. In recent years ADF has helped beneficiaries leverage grants, loans and loan guarantees from other sources through what ADF terms "strategic partnerships" with national and state governments in Africa, national and regional development banks, other international development assistance agencies, and the private sector. See, e.g. *Foreign Operations, Export Financing, and Related Programs Appropriations, Hearings Before the Subcomm. On Appropriations,* Part 1A Justification of Budget Estimates 107th Cong. 1219 et seq. (March 2002) (African Development Foundation, Congressional Budget Justification, Fiscal Year 2003); see generally www.adf.gov.

ADF has undertaken four such strategic partnerships with Botswana, Namibia, Guinea, and the State of Jigawa, Nigeria. ADF has signed multi-year Memoranda of Understanding (MOU) with these governments, whereby they agree to share the costs of ADF development programs in their respective states. Under the terms of the MOU with Botswana, Namibia and Jigawa State, these governments make quarterly contributions to ADF for 50% of the amount of grants that ADF has awarded in their respective countries that meet certain agreed-upon criteria set out in the MOU. According to ADF, these partnerships enable ADF to "leverage resources for grassroots development, promote the use of participatory development methodology in development strategies, and facilitate coordination with others involved in development assistance." Mem. to Nathaniel Fields, Pres., ADF, from Doris Martin, Gen. Counsel, ADF, Sept. 9, 2002 at 2.

The partnership with the government of Guinea operates differently. Here the National Directorate of Decentralization, an arm of the government of Guinea, has contracted with ADF, and pays ADF, to furnish technical assistance as a "field operator" to rural communities that participate in Guinea's "Village Community Support Program," which is not an ADF program. Though ADF ordinarily provides technical assistance to ADF grantees, here the government of Guinea is contracting with ADF and paying it to provide services to communities which are not participating in an ADF program.

DISCUSSION

The question before us is whether ADF may retain funds received from these four partnerships. The Miscellaneous Receipts Statute, 31 U.S.C. § 3302(b), requires federal agencies[1] to deposit moneys received for the use of the United States into the general fund of the Treasury as miscellaneous receipts, unless the agency has express statutory authority to retain moneys it collects. B-281064, Feb. 14, 2000. Even where those moneys might relate in some way to the agency's programs, the agency must have express authority to retain moneys collected. See, e.g. 40 Comp. Gen. 356, 359 (1960). We consider the question, then, whether ADF has express statutory authority to retain such funds.

Partnerships with Botswana, Namibia and Jigawa State, Nigeria

Among its corporate powers, ADF "may accept gifts or donations of services or of property (real, personal or mixed), tangible or intangible, in furtherance of its purposes." 22 U.S.C. § 290h-4(a)(9). Those purposes are to support self-help activities at the local level designed to enlarge opportunities for community development, to stimulate and assist effective and expanding participation of Africans in their development process, and to encourage the establishment and growth of development institutions which are indigenous. 22 U.S.C. § 290h-2(a). We conclude that the funds ADF receives from Botswana, Namibia and Jigawa State constitute gifts or donations of personal property. The strategic partnerships between ADF and these governments are analogous to a situation we considered in 1980.

In B-195492, March 18, 1980, we concluded that moneys collected by the National Park Service from cooperating associations were gifts and therefore properly retained in its trust fund under its gift acceptance authority. The Secretary of the Interior had authority under 16 U.S.C. § 6 (1976) to accept lands, rights-of-way, buildings or other property and money which may be donated for the purposes of the National Park and Monument System. Fifty-nine non-profit organizations had agreements with the Park Service to sell various interpretive publications and souvenirs throughout the national parks, and regularly contributed a small percentage of their sales to the Secretary's Park Service trust fund. We stated that a gift is a gratuitous conveyance or transfer of ownership in property without any consideration. Because the cooperating associations had the option of not contributing to the Park Service trust fund, we concluded that their contributions were voluntary and did not constitute consideration for the privilege of conducting

[1] As a wholly owned government corporation, ADF is subject to the Miscellaneous Receipts Statute. See 52 Comp. Gen. 54 (1972); 5 Comp. Gen. 1004 (1926).

business in the national parks, and therefore were properly credited to the Park Service's trust fund as gifts.

Like the associations cooperating with the Park Service, Botswana, Namibia and Jigawa State contribute voluntarily to ADF. In fact, ADF and the cooperating government are free to withdraw from the MOU at anytime.[2] ADF does not offer the cooperating government any consideration for its contribution. ADF has a statutory mandate and receives yearly appropriations to award development grants throughout Africa, and it would continue to do so without the financial participation of these African governments. Consistent with 22 U.S.C. § 290h-4(a)(9), the cooperating governments' funds plainly further ADF's purposes "to enlarge opportunities for community development; to stimulate and assist effective and expanding participation of Africans in their development process; and to encourage the establishment and growth of development institutions which are indigenous." Therefore, under its gift acceptance authority, ADF may retain the funds it receives from its partnerships with the governments of Botswana, Namibia and Jigawa State.[3]

Partnership with Guinea

Unlike its agreements with the other three governments, ADF has entered into a contract with Guinea to provide services that Guinea pays for. Though ADF ordinarily provides technical assistance to ADF grantees, here the government of Guinea is contracting with ADF and paying it to provide technical assistance services to communities which are not participating in an ADF program. We have found no authority permitting ADF to engage in such transactions;[4] ADF, therefore, may not retain amounts paid by Guinea.

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[2] ADF does not view the MOUs as legally binding documents. Mem. to Nathaniel Fields, *supra* at 3. Indeed, the terms of the MOU specify that either party may simply withdraw from the MOU by giving ADF thirty days written notice. Art. 3, § 3-10B, Mem. Of Understanding between the Gov't of Bots. and the ADF, Aug. 1997. See also Sec. 3.2 (MOU is not intended to effect an obligation of funds by ADF).

[3] We note that in its submission, ADF states that when it awards a matched grant to recipients, "ADF records 50 percent of the grant award in its general ledger." Mem. to Nathaniel Fields, *supra* at 2. This would suggest that, in anticipation of matching funds from the cooperating government, ADF records only 50% of its total grant obligation. An ADF official advised us that when ADF awards a grant, even though a cooperating government indicates that it will supply 50% of the amount, ADF incurs an obligation for the full grant amount, not just 50% of that amount. If ADF's statement does indeed mean that it records only 50% of its grant obligation, we advise ADF that this would constitute underrecording of its full obligation to the grantee in violation of 31 U.S.C. § 1501.

[4] ADF, itself, identifies no such authority.

It is fundamental that federal agencies cannot make use of appropriated funds to manufacture products or materials for, or otherwise supply services to, other parties, in absence of specific authority therefore. 62 Comp. Gen. 323 (1983); 31 Comp. Gen. 624 (1952). While ADF has authority under 22 U.S.C. § 290h-4(1)(5) to enter into contracts[5] as necessary for carrying out its functions, those functions are to "make grants, loans and loan guarantees to any African private or public group," 22 U.S.C. § 290h-3(a)(1). We understand this section to authorize ADF to enter into procurement and similar contracts necessary to carry on its day-to-day operations, not to provide services to a foreign government on a reimbursable basis.[6] Without authority for the contract, ADF should terminate the contract. To the extent that ADF has received funds from the government of Guinea, it should deposit those in the Treasury as miscellaneous receipts.

ADF might consider restructuring its arrangement with Guinea along the same lines as its arrangements with Botswana, Namibia and Jigawa. As we explained earlier, ADF has authority to accept gifts, and could accept a gift of funds from Guinea. If ADF were to determine that the development sites in Guinea satisfy the eligibility and other criteria that ADF imposes on applicants for ADF grants, it could award grants to them under its statutory authority. Guinea, rather than contracting with ADF for the delivery of services to these development sites, could make a gift of funds to ADF which ADF could use to defray the costs of the grants. It is for ADF to determine, however, that awarding grants to these sites is the best use of the funds and that such grants would further ADF's statutory mission.

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[5] 22 U.S.C. § 290h-4(1)(5) (2003) reads, "The Foundation, as a corporation -- may make and perform contracts and other agreements with any individual, corporation, or other private or public entity however designated and wherever situated, as may be necessary for carrying out the functions of the Foundation."

[6] Even if ADF were to have such specific statutory authority to provide services, any proceeds generated from services contracts would have to be deposited as miscellaneous receipts. See, e.g. 15 Comp. Dec. 178 (1908).

CONCLUSION

We conclude that ADF's gift acceptance authority permits it to accept funds from Botswana, Namibia and the State of Jigawa, Nigeria because those governments donate funds to supplement amounts that ADF grants to recipients within their respective states. Although ADF could accept a gift of funds from the government of Guinea, ADF does not have statutory authority to enter into a contract to provide services to the government of Guinea. ADF should terminate this contract and deposit any proceeds therefrom into the general fund of the Treasury as miscellaneous receipts.

/signed/

Anthony Gamboa
General Counsel