

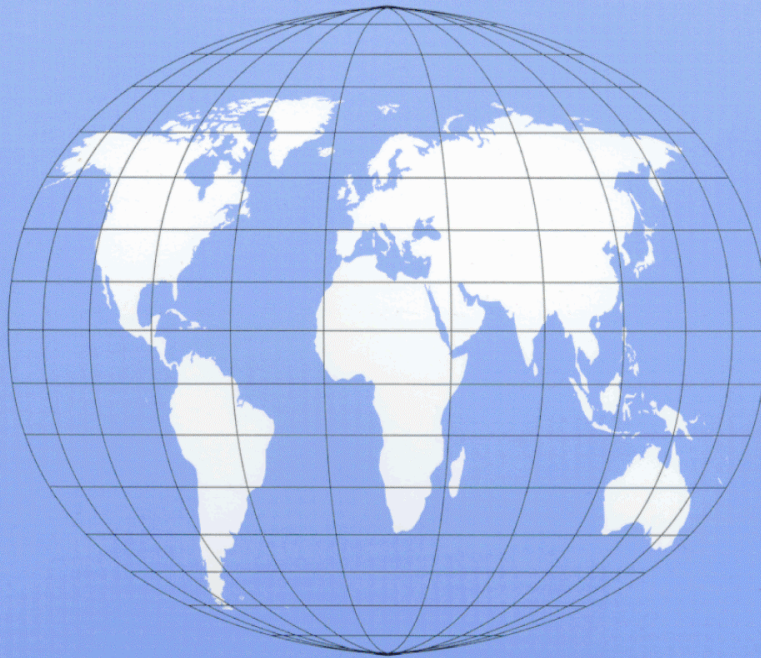
# **Report of Audit**

---

## **Audit of Selected Processes at the African Development Foundation**

---

**Report No. 9-ADF-01-002-P  
February 26, 2001**



**Washington, D.C.**

**OFFICE OF INSPECTOR GENERAL  
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT**



February 26, 2001

MEMORANDUM FOR ADF President, Nathaniel Fields

FROM: IG/A/PA, Dianne L. Rawl *Dianne Rawl*

SUBJECT: Audit of Selected Processes at the African Development Foundation (Report Number 9-ADF-01-002-P)

This memorandum is our report on the subject audit. In finalizing this report, we considered management's comments on our draft report. We have included those comments, in their entirety, as Appendix II.

We conducted this audit in response to a request by the Chairman of the Senate Foreign Relations Committee. This report includes one procedural recommendation. Management's comments included a plan for corrective actions. However, we found that the details of that plan were not sufficient to enable us to decide whether or not it met the intent of our recommendation. Consequently, we would appreciate receiving additional details within 30 days.

I want to express my sincere appreciation for the cooperation and courtesies extended to my staff during the audit.

---

## Background

The African Development Foundation (ADF) is a U. S. Government corporation that was established by Congress in 1980<sup>1</sup> and began field operations in 1984. The purposes of the Foundation were to: (1) strengthen the bonds of friendship and understanding between the people of Africa and the United States; (2) support self-help activities at the local level designed to enlarge opportunities for community development; (3) stimulate and assist effective and expanding participation of Africans in their development process; and (4) encourage the establishment and growth of development institutions which are indigenous to particular countries in Africa and which can respond to the requirements of the poor in those countries. In order to carry out these purposes, the Foundation was authorized to make grants, loans, and loan guarantees to any African private or public

---

<sup>1</sup> Established under the African Development Foundation Act (22 USC §§ 290h et seq).

group (including public international organizations), association, or other entity engaged in peaceful activities.

The Foundation is governed by a seven-member Board of Directors appointed by the President of the United States. By law, five members of the Board are from the private sector and two are from the Federal government. The ADF President, who reports to the Board of Directors, manages daily operations.

Foundation headquarters are located in Washington, D.C., and staffed with about 30 employees. ADF has no direct-hire employees posted overseas. Its overseas offices, staffed entirely with local African development professionals, are funded through cooperative agreements with a Country Liaison Officer (CLO) who serves as the head of the office.

ADF does not develop projects itself, but provides grants directly to private African groups. Since inception, ADF has funded more than 1,300 projects in at least 34 African countries. It currently funds active projects in 14 sub-Saharan countries.

ADF is funded through annual appropriations transferred from USAID's Development Assistance appropriation. ADF's annual appropriation for fiscal years 1995 through 2000 averaged about \$13 million. In addition to appropriated funds, ADF seeks other funding from American companies and host country governments.

In November 1999, Public Law 106-113 amended the responsibilities of the USAID/IG, under Section 8A(a) of the Inspector General Act of 1978, to include audit responsibility for ADF. Pursuant to this new authority, the Senate Committee on Foreign Relations requested that we answer the questions shown below.

---

## **Audit Objectives**

We designed the audit to answer the following questions:

**Did the African Development Foundation select appropriate mechanisms for obtaining in-country services and representation?**

**Did the African Development Foundation comply with federal laws and regulations pertaining to the rate of obligation of appropriated funds in the last month of the fiscal year?**

**Did the African Development Foundation properly categorize program and operating costs?**

Appendix I contains a complete discussion of the scope and methodology for this audit.

---

## **Audit Findings**

### **Did the African Development Foundation select appropriate mechanisms for obtaining in-country services and representation?**

ADF selected cooperative agreements as the mechanism for obtaining in-country services. Because the principal purpose of these agreements was the acquisition of technical and personal services, rather than the provision of assistance, the use of cooperative agreements was inappropriate.

### **ADF Did Not Select an Appropriate Mechanism to Obtain Overseas Services and Representation**

For the last thirteen years ADF has been using cooperative agreements with Country Liaison Officers (CLOs) to obtain overseas services and representation. The Federal Grant and Cooperative Agreement Act of 1977 defines the circumstances under which grants, cooperative agreements, and contracts should be used by Federal agencies. It states that cooperative agreements should be used when the principal purpose of the instrument is to **transfer a thing of value** to a recipient to carry out a public purpose of support or stimulation. Contracts should be used when the principal purpose is to **acquire property or services** for the direct benefit or use of the United States government. Because the principal purpose of ADF's agreements was the acquisition of services, the use of cooperative agreements was not appropriate. In addition, ADF did not ensure that its agreements were properly managed. It exercised such intensive control of the CLOs, that its relationship with them was not that of donor-recipient but was arguably that of employer-employee. Furthermore, it repeatedly awarded agreements to the same CLOs without competition. As a result, it might not have received the best services or the lowest prices available. For these reasons, we make the following recommendation.

**Recommendation No. 1: We recommend that the African Development Foundation terminate its cooperative agreements with Country Liaison Officers and obtain in-country services and representation in a manner that complies with federal laws and regulations.**

For more than thirteen years ADF has been using cooperative agreements with Country Liaison Officers (CLOs) to fund its overseas offices. At the time of the audit, ADF had active cooperative agreements in 14 African countries.<sup>2</sup> These cooperative agreements were usually awarded to a local development professional referred to as a CLO. The CLOs' primary duties, as outlined in the cooperative agreements, were to manage ADF's overseas office by hiring and supervising up to three other local development professionals. An overseas office staff typically consisted of the CLO, a Project Officer,

---

<sup>2</sup> ADF no longer has a program in Cameroon. They have started a program in Nigeria.

an Evaluation/Training Officer, and a Financial Officer. Office staff members were responsible for screening grant applications, monitoring and evaluating grant projects, providing training and technical assistance to grant recipients, and reporting on project progress to ADF headquarters.

ADF officials first decided to use cooperative agreements to obtain in-country services after conducting a legal analysis of the issue. In a January 26, 1988 memo to ADF staff, ADF's General Counsel stated:

When the Foundation decided to retain the services of [CLOs], a determination was made that, for budgetary purposes, it was advisable to use cooperative agreements instead of contracts as the vehicle for doing so.

However, in the same memo the General Counsel warned:

To the extent Foundation staff begins to use [CLOs] as field representatives for the Foundation, rather than to provide assistance to the grantees and applicants, the relationship will move toward a procurement relationship for which a contract would be more appropriate.

And,

In the long run, it will not be in our interest to try to manipulate the cooperative agreements in an attempt to meet needs to which the agreements cannot legally respond.

Determining the appropriate funding mechanism has not been a simple matter for Federal agencies. Long-standing confusion between grant relationships and procurement relationships resulted in the Federal Grant and Cooperative Agreement Act of 1977.<sup>3</sup> This legislation established standards for agencies to use to choose the most appropriate funding vehicle—a procurement contract, a grant, or a cooperative agreement. According to the Act, agencies were to use a procurement contract when “the principal purpose of the instrument is to acquire...property or services for the direct benefit or use of the United States Government.”<sup>4</sup> On the other hand, a cooperative agreement was to be used when “the principal purpose of the relationship is to transfer a thing of value to the...recipient to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring...property or services for the direct benefit or use of the United States Government.”<sup>5</sup>

The Senate Committee on Governmental Affairs stated in a 1982 report:

---

<sup>3</sup> 31 USC §§ 6301-6308.

<sup>4</sup> 31 USC § 6303.

<sup>5</sup> 31 USC § 6305.

The choice of instrument for an intermediary relationship depends solely on the principal federal purpose in the relationship with the intermediary. The fact that the product or service produced by the intermediary may benefit another party is irrelevant. What is important is whether the federal government's principal purpose is to acquire the intermediary's services, which may happen to take the form of producing a product or carrying out a service that is then delivered to an assistance recipient, or if the government's principal purpose is to assist the intermediary to do the same thing. Where the recipient of an award is not receiving assistance from the federal agency but is merely used to provide a service to another entity which is eligible for assistance, the proper instrument is a procurement contract.<sup>6</sup>

In ADF's case, cooperative agreements were used to acquire the services of CLOs to provide assistance to grant recipients and administrative support to ADF. The determining factor as to which instrument was appropriate should have been the "principal purpose" of the instrument. We believe that the **principal** purpose of ADF's cooperative agreements with CLOs was to acquire their services rather than to provide them (the CLOs) with assistance. Therefore, based on the criteria reviewed above, we believe that a procurement contract, rather than a cooperative agreement, would have been the appropriate mechanism for obtaining in-country services.

ADF's decision to use cooperative agreements meant that it did not follow the statutory and regulatory requirements applicable to contracts, particularly those dealing with competition. In contrast to the requirements for cooperative agreements,<sup>7</sup> the FAR and the Competition in Contracting Act<sup>8</sup> (CICA) require federal agencies to obtain services, except in certain situations, based on the principles of full and open competition. Lack of full and open competition increases the risk that awards could be made unfairly and that they could result in a higher cost and/or lower quality of service. Although not required to do so, it has been ADF's practice to competitively award initial cooperative agreements with CLOs. According to ADF, since 1997 all new cooperative agreements with CLOs have been competitively awarded. However, these agreements usually covered only a one-year period, and ADF routinely renewed them in each succeeding year without additional competition. For example, at the time of our audit the majority of ADF's cooperative agreements with CLOs had been renewed, without competition, for the last 5 years. A cooperative agreement with one individual had been renewed annually for a period of 13 years.

Even if ADF's use of cooperative agreements had been appropriate, which we believe was not the case, ADF actually managed them as if there was an employer-employee rather than donor-recipient relationship between ADF and the CLO. For example, ADF conducted annual performance evaluations, provided salary increases based upon the

---

<sup>6</sup> *Principles of Federal Appropriations Law*, Volume II, p. 10-15 (GAO/OGC-92-13).

<sup>7</sup> The Federal Grant and Cooperative Agreement Act of 1977 encourages, but does not require, competition in making grants and cooperative agreements (31 USC § 6301).

<sup>8</sup> 41 USC § 253.

foreign service national (FSN) pay scale at the U.S. embassy in the host country, approved vacation schedules, and provided training. In addition, the Foundation required CLOs to maintain local bank accounts in the name of the African Development Foundation. ADF also provided counsel and assistance to the CLO in resolving specific project-related issues, consulted in the selection of professional office staff members, approved an annual office work plan and scopes of work for each CLO staff member, provided ADF-owned office equipment (including vehicles), and negotiated and entered into lease agreements for CLO office space.

When ADF first decided to use cooperative agreements to finance its overseas offices, its General Counsel identified some specific activities which could **not** be required of the African professionals staffing those offices. For example overseas staff members could not:

- provide logistical support to ADF staff in the field;
- represent the Foundation in an official capacity to foreign governments; or
- represent the Foundation in an official capacity to non-governmental organizations (NGOs).

Contrary to these instructions, ADF's standard CLO cooperative agreements required CLOs to:

- schedule and coordinate in-country visits by ADF headquarters staff;
- establish and maintain contact with high-level officials and representatives of the host country; and
- maintain contact with other NGOs.

These work requirements indicate that ADF's relationship with its CLOs became that of employer-employee, further supporting the conclusion that ADF's use of cooperative agreements to obtain the services in question was inappropriate. We provide the following criteria to support this position.

The FAR provides uniform policies and procedures for acquisitions by executive agencies of the federal government. The FAR<sup>9</sup> states that "the Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws." It also provides the following guidance concerning employer-employee relationships:

An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration

---

<sup>9</sup> FAR Subpart 37.104.

during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee.<sup>10</sup>

The FAR describes the elements to be used as a guide in assessing whether or not a contract is personal in nature. These elements also provide a means for testing whether ADF has established an employer-employee relationship with its CLOs.<sup>11</sup>

<b>Elements of Employer-Employee Relationship pursuant to FAR 37.104</b>	<b>Related Conditions Pertaining to ADF/CLO Relationship</b>
Performance on site.	CLOs work in offices leased by ADF and conduct periodic site visits to projects.
Principal tools and equipment furnished by the Government.	ADF provides CLOs with office equipment—including vehicles.
Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.	A primary purpose of ADF is to provide direct financial support to non-governmental African entities to carry out development projects. CLOs are to provide needed technical assistance in the design and implementation of these projects.
Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.	As of September 30, 2000, USAID employed 4,203 foreign national personal service contractors in its overseas offices.
The need for the type of service provided can reasonably be expected to last beyond 1 year.	8 out of 13 CLOs have been CLOs for at least five years. ADF’s longest serving CLO has been in place for 13 years.
<p>The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—</p> <ul style="list-style-type: none"> <li>• Adequately protect the Government’s interest;</li> <li>• Retain control of the function involved; or</li> <li>• Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.</li> </ul>	<ul style="list-style-type: none"> <li>• CLO staff must be hired in consultation with and subject to the general guidance of ADF headquarters.</li> <li>• CLO must provide ADF with written financial and progress reports on a monthly basis.</li> <li>• CLO must maintain ADF funds in a separate non-interest bearing bank account established in the name of the African Development Foundation with two ADF headquarters personnel as signatories.</li> </ul>

<sup>10</sup> FAR Subpart 37.104(c)(1)

<sup>11</sup> According to FAR, Section 37.101, “Personal services contract’ means a contract that, by its express terms or as administered, makes the contractor personnel appear, in effect, Government employees.”



ADF's relationship with its CLOs could also be examined under Internal Revenue Service (IRS) publications that describe the elements of an employer-employee relationship. According to the IRS, an employer-employee relationship is characterized by whether one party exercises control over another party. This control does not even have to be exercised in order to be a determinant of such a relationship. One IRS publication states:

Under the common law rules, every individual who performs services subject to the will and control of an employer, both as to what shall be done and how it shall be done, is an employee. It does not matter that the employer allows the employee considerable discretion and freedom of action, as long as the employer has the legal right to control both the method and result of services.<sup>12</sup>

Another IRS publication<sup>13</sup> provides a detailed breakdown of different types of employer control:

Evidence of the degree of control and independence falls into three categories: behavioral control, financial control, and the type of relationship of the parties as shown below:

Behavioral control: Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of instruction the business gives the worker.

An employee is generally subject to the business' instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work:

- When and where to do the work
- What tools or equipment to use
- What workers to hire or to assist with the work
- Where to purchase supplies and services
- What work must be performed by a specified individual
- What order or sequence to follow
- Training the business gives the worker

Financial control: Facts that show whether the business has a right to control the business aspects of the worker's job include:

The extent to which the worker has unreimbursed business expenses...  
The extent of the worker's investment...

---

<sup>12</sup> IRS Publication 515.

<sup>13</sup> IRS Publication 15a.

The extent to which the worker makes services available to the relevant market...

How the business pays the worker...

The extent to which the worker can realize a profit or loss...

Type of relationship: Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intend to create.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick leave.
- The permanency of the relationship...
- The extent to which services performed by the worker are a key aspect of the regular business of the company...

Based on the above criteria, it is clear that ADF's relationship with the African professionals managing its overseas offices was not that of donor-recipient, but was arguably that of employer-employee. ADF has the option of maintaining its current relationship with its CLOs, by either hiring the CLOs as employees or as personal service contractors. In order to award personal service contracts an agency must have specific statutory authority. ADF's enabling legislation<sup>14</sup> gave it the authority to establish branch offices in Africa "as may be necessary to carry out its functions." However, that legislation did not provide guidance or describe a preferred method for staffing those offices. The legislation further gave ADF the authority "to make and perform such 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." It is not clear at this time whether this language constitutes specific statutory authority to enter into personal service contracts. Should ADF choose to use personal service contracts to staff its overseas offices, it would first have to determine whether it has the specific authority to do so.

In its comments on our draft report, Foundation management indicated that it had decided to revise the process by which it obtains in-country services to one that would meet the requirements of applicable laws and regulations. It stated that it would replace all existing cooperative agreements with new grants and cooperative agreements and that the new awards will be to eligible groups rather than individuals. Although we agree that ADF must replace its current cooperative agreements, the plan presented by management was not sufficiently detailed to enable us to decide whether it would or would not fully address the intent of our recommendation. Consequently, we asked management to provide additional details within the next 30 days.

---

<sup>14</sup> African Development Foundation Act (22 USC §§ 290h et seq).

**Did the African Development Foundation comply with federal laws and regulations pertaining to the rate of obligation of appropriated funds in the last month of the fiscal year?**

We found that ADF complied with the provision in the foreign operations appropriations legislation for fiscal year 1999 requiring that not more than 15 percent of the appropriations for that year be obligated during the last month of availability.

According to the Foreign Operations Appropriations Act of 1999, USAID was to make available to ADF an amount not to exceed \$11 million from its Development Assistance appropriation. The funds appropriated to USAID, and subsequently transferred to ADF, were two-year funds that were available for obligation through September 30, 2000. However, Section 501 of the Public Law 105-227 (Appropriation Act) stated: "... not more than 15 percent of any appropriation item made available by this Act shall be obligated during the last month of availability."

We reviewed ADF's obligations associated with its \$11 million in fiscal year 1999 appropriations to determine the percentage obligated during September 2000, the final month of availability. According to ADF records, as of September 30, 2000, ADF had obligated \$10,605,672 of its fiscal year 1999 appropriation. Of that amount, \$405,064, or 3.7 percent, was obligated during September 2000, well below the 15 percent limitation in Section 501. According to financial data provided by ADF management, ADF had obligated almost the entire fiscal year 1999 appropriation during the first year of availability.

Although ADF easily met the 15 percent limit on obligations of fiscal year 1999 appropriations during the last month of availability, it may have experienced other problems with those funds including temporarily obligating more than was appropriated and allowing over \$360,000 of the appropriated funds to expire. This occurred largely due to ADF's practice of making foreign exchange adjustments at the end of the fiscal year. To avoid such problems in the future, we believe that ADF should consider making adjustments periodically throughout the fiscal year rather than waiting until year-end. Because these problems did not specifically impact our stated audit objective we have not included a formal recommendation for corrective action in this report. However, these and other funds control issues could well become the subjects of future OIG audit efforts.

**Did the African Development Foundation properly categorize program and operating costs?**

The African Development Foundation properly categorizes program and operating costs. ADF's appropriation passes through the USAID budget as a total amount. Congress has not directed or provided guidance to ADF regarding the amount that should be spent for program funding and operating expenses. An official at the Office of Management and Budget (OMB) stated that OMB monitors the amount spent for operating expenses and 20 to 25 percent was considered as appropriate.

In June 1994 the Office of Management and Budget proposed a standard budget format that would be used by both the African Development Foundation and the Inter-American Foundation. The format separated expenditures into four categories: 1) Development Assistance Grants; 2) Development, Research, and Dissemination; 3) Technical Assistance; and 4) Program Management and Operation. The first three categories relate to Program Funding and the fourth category is related to Operating Expenses. ADF complied with the proposed format, however ADF management added a category, Strategic & Regional Initiatives/Trade & Strategic Initiatives under Program Funding. ADF management said that this was necessary in order for the budget to follow ADF's strategic objectives. We randomly selected transactions for Program Funding and Operating Expenses and traced the transaction to the general ledger. ADF posted the expenditures to the correct budget category in all cases that we tested. We did not perform extensive testing, however based upon our limited testing we feel comfortable that ADF is following OMB guidance.

---

## **Management Comments and Our Evaluation**

In its response to our draft report, Foundation management indicated its agreement with our findings concerning the second and third audit objectives. These objectives dealt, respectively, with a legislative provision that the Foundation obligate no more than 15 percent of appropriated funds within the final month of availability and with the Foundation's categorization of program and operating costs. Management, however, did not agree with our finding concerning the first objective, which dealt with the Foundation's selection of a mechanism to obtain in-country services and representation. The bulk of management's comments dealt with that finding.

Management believed that the draft report did not present a clear and convincing argument that the Foundation had violated the Federal Grant and Cooperative Agreements Act—the principal law governing a federal agency's selection of instruments for its relationships with non-federal entities. Management also believed that we had inaccurately stated the Foundation's purpose and improperly applied various criteria.

Based on management's comments, we have made several changes to our report. For example, we amended our discussion of the Foundation's purpose. We also deleted references to a GAO statement and Comptroller General decision because we believed they could be misunderstood and were not essential to our conclusions. We did not delete our discussions of and reliance on the Federal Acquisition Regulation and certain IRS publications because we believe this material is essential to understanding our conclusion that the Foundation's relationship with its CLOs was not that of donor-recipient but was more that of employer-employee.

Regarding the Federal Grant and Cooperative Agreements Act, management contends that its agreements with the CLOs were properly designated as assistance instruments because 1) Congress directed the Foundation to assist or support a public purpose; 2) the Foundation considered CLOs to be eligible recipients of assistance agreements; and 3) the Foundation was authorized to fund activities to support project grantees. We agree with the above three points, but do not agree that the cooperative agreements complied with the Federal Grant and Cooperative Agreements Act because they were not written or managed as assistance instruments. In our opinion, the principal purpose of the Foundation's cooperative agreements with the CLOs was the acquisition of specific technical and administrative services, which the Foundation used for its own benefit and that of its grantees. Furthermore, the CLOs were so closely supervised by Foundation managers that there is reason to argue that they were actually Foundation employees. Therefore, because the Foundation did not properly design or manage its cooperative agreements with the CLOs as assistance instruments, we believe that the Foundation's use of cooperative agreements to acquire in-country services and representation was inappropriate.

Notwithstanding its disagreement with our conclusions, management indicated that there was room for improvement in its use of intermediaries to provide assistance to its grantees. In its comments, management advised us that it plans to replace all current CLO cooperative agreements, by November 15, 2001, with new grants or cooperative agreements. These new grants or cooperative agreements will be awarded to groups that have been recognized as legal entities by their governments or been selected by communities to represent them. Management plans to award the initial grants or agreements on a competitive basis and limit the number of times they could be renewed without competition. Management also agreed that the Foundation would not involve itself in the management of the groups—it would not, for example, conduct performance evaluations, determine salary increases, and approve vacation schedules. Management also indicated that it would not require the groups to provide administrative support to Foundation staff. Instead, the Foundation would enter into contracts, as appropriate, to procure any services it needs. Finally, management said that the Foundation would develop and issue grant and contract policies.

Although we agree with management's plan to replace the Foundation's current cooperative agreements by November 2001, the plan was insufficiently detailed for us to determine whether it will resolve all of our concerns dealing with such issues as the status of current CLO agreements, continuing competition in the selection process, and the management capabilities of selected organizations. For example, management did not describe the actions it will take to obtain in-country services from this point in time until it is able to award new agreements later this year. Does the Foundation intend to amend the existing, but inappropriate, cooperative agreements, issue new agreements with current CLOs, or issue short-term contracts? Will the Foundation limit the recipients of its new awards to groups that are "in the business" of providing assistance to indigenous grassroots organizations and that might have other objectives, donors, or clients? Will the Foundation consider each of the new awards, together with their amendments, to be "projects" that must comply with the \$250,000 funding limitation included in Section

290h-3(a)(2) of the Foundation's authorization legislation? What is the proposed duration of the new awards and how often may they be renewed without competition? How will the Foundation insure that award recipients have the administrative and management capability to implement the awards? Will the Foundation complete pre-award assessments?

We are requesting that management provide such additional details on its plan within 30 days.

[This page intentionally left blank]

---

## **Scope and Methodology**

### **Scope**

The Office of Inspector General (OIG) conducted an audit of selected processes at the African Development Foundation (ADF). The audit was requested by the U.S. Senate Committee on Foreign Relations. Fieldwork was conducted at ADF Headquarters in Washington, D.C. from November to December 2000. All work was conducted in accordance with generally accepted government auditing standards.

We reviewed management controls, all cooperative agreements in effect at the time of our audit, appropriate financial documents (when possible), and budget requests. The scope was expanded to include other documents contained in the cooperative agreement files and personnel documents. We conducted limited testing of how program and operating costs were categorized. We rated the risk of misclassifying costs as low, therefore we did not establish materiality thresholds. Results indicated that expanded testing was not needed. Risk assessment and materiality thresholds were not appropriate for the objectives regarding mechanisms for obtaining in-country services and representation and for rate of obligation of appropriated funds.

### **Methodology**

To accomplish these audit objectives we interviewed officials from ADF, U. S. Agency for International Development (USAID), Office of Management and Budget (OMB), OIG, and Birnbaum and Co. (CPA firm that conducted ADF's fiscal year 1999 financial audit). We also examined documentation and performed the following tasks:

- reviewed USAID's Automated Directives System (ADS), Federal Appropriations Law, Federal Acquisitions Regulations (FAR), Competition in Contracting Act (CICA);
- reviewed the cooperative agreement files that included all cooperative agreements for each of the 14 countries where ADF is active, e-mails, internal memos, and personnel requests;
- reviewed monthly obligations for ADF's FY 1999 appropriation;
- reviewed ADF's FY 2001 budget request and applicable OMB guidance; and
- tested a sample of accounting entries made to the major budget categories.



[This page intentionally left blank]



AFRICAN DEVELOPMENT FOUNDATION

February 9, 2001

Ms. Dianne L. Rawl  
Office of the Inspector General  
United States Agency for International Development  
1300 Pennsylvania Avenue, Northwest  
Washington, D.C. 20523

REF: Your Memorandum dated January 24, 2001 regarding Audit of Selected Processes at the African Development Foundation (ADF)

Dear Ms. Rawl:

As you requested, I am responding to the draft report for the referenced audit. Senator Jesse Helms, Chairman of the Senate Foreign Relations Committee, asked the USAID Inspector General (IG) to determine whether ADF has: (1) selected appropriate mechanisms for obtaining in-country services and representation; (2) complied with federal laws and regulations pertaining to the rate of obligation of appropriated funds in the last month of the fiscal year; and (3) properly categorized program and operating expenses.

We are pleased that the IG found ADF in full compliance with federal laws and regulations that pertain to the rate of obligation of appropriated funds and categorization of expenses. However, we do not agree with the IG's finding on the first question and have confined this response to that question.

Notwithstanding our concerns with the report's treatment of federal law pertaining to funding mechanisms and its ensuing recommendation, the IG audit identifies areas where ADF may improve on the use of African intermediaries, and provides impetus for the Foundation to restructure its relationship with them. In this regard, based on a comprehensive assessment of alternatives, ADF will replace all current "CLO cooperative agreements" by November 15, 2001. We believe this timeframe is reasonable, given that our staff is small and must conduct assessments and formulate agreements in 14 countries.

Under the new arrangement(s), eligible recipients of intermediary grants and cooperative agreements will be groups that local governments recognize as legal entities or that grassroots communities have chosen to represent. As with the current agreements,

the primary purpose of the new arrangements will be to assist project grantees in the design, implementation, and evaluation of projects. Intermediary recipients' activities will be confined to their own capacity building and support to project grantees. ADF will use contracts to procure goods and services for its benefit.

Under the current CLO mechanism, the individual recipient brings together a team to implement the agreement. Where appropriate, ADF will encourage these CLO teams to organize as legal entities and compete for awards.

The emphasis in ADF's authorizing legislation on expanding participation of Africans in the development process will drive the structure and operation of the new arrangements. ADF's participatory development business model puts Africans in the driver's seat and holds them accountable. The Foundation funds projects that grassroots communities identify. Through ADF grants, these groups become proficient in participatory methodologies for the design, implementation, administration, monitoring and evaluation of development projects. Since most poor rural and urban Africans have no exposure to these concepts and lack the technical and management skills to carry out activities they require, the role of African intermediaries, who work hand-in-hand with grantees to build their capacity in these areas, is critical. Under the ADF model, African intermediaries foster a participatory culture that empowers and promotes good governance, efficiency, and sustainability.

The new arrangements for intermediaries will honor both the letter and spirit of the ADF Act. These arrangements will help maximize African involvement in ADF funded activities, foster African ownership, and provide support to project grantees from professionals who possess intimate knowledge of social, economic, and other dynamics that are critical to project success.

ADF will also publish agency-specific policies on the use of contracts, grants, and cooperative agreements. These policies will comply with the Federal Acquisition Regulations, Federal Grants and Cooperative Agreements Act, and other general laws, as appropriate.

The addendum to this letter details ADF's comments on the report and outlines a plan of action for adopting alternatives to the current cooperative agreements with country liaison officers (CLOs). Our response points to several analytical problems that stem from the report's statement, application, and use of laws, regulations, and criteria. For example, we disagree with the draft report's interpretation of a leading Comptroller General decision, since that interpretation is inconsistent with the holding in the case. By quoting only part of a statement the General Accounting Office articulated, the report presents an inaccurate reading of the rule. We believe the report's relatively heavy reliance on general laws and inapplicable criteria compared to its reliance on laws and standards the Congress has prescribed to select funding mechanisms is inappropriate.

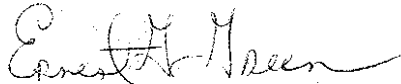
Also, the draft report does not present a clear and convincing finding that ADF has violated the principal law that governs a federal agencies' choice of instruments for its

relationships with non-federal entities, i.e., the Federal Grants and Cooperative Agreement Act of 1977, or any other law. Failure to do this seriously undermines the report's recommendation.

We appreciate the effort the IG has made to help ADF take a hard look at its funding practices. We sincerely believe that our combined efforts will result in greater efficiencies and promote the mission of the Foundation.

Please do not hesitate to contact me or Nathaniel Fields, the Foundation's President, regarding this response.

Yours truly,

A handwritten signature in cursive script, appearing to read "Ernest G. Green".

Ernest G. Green  
Chairman of the Board

Enclosure: a/s

## ADDENDUM

### I. Application of the Law

#### A. *The Inspector General's (IG) draft report misstates ADF's purpose.*

The report states the "purpose of ADF is to make grants, loans, or loan guarantees to any African private or public group, association, or other entity engaged in peaceful activities". This summarizes how ADF is to carry out its purposes. The purposes of ADF are set out in section 504 [22 U.S.C. 290h-2] as follows: (a) strengthen the bonds of friendship and understanding between the people of Africa and the United States; (b) support self-help activities at the local level designed to enlarge opportunities for community development; (c) stimulate and assist effective and expanding participation process; and (d) encourage the establishment and growth of development institutions which are indigenous to particular countries in Africa and which can respond to the requirements of the poor in those countries.

#### B. *The report's finding on whether ADF's Country Liaison Officer (CLO) agreements violate applicable law is not clear. It states that the CLO cooperative agreements are inappropriate. However, Federal agencies have discretion in determining the appropriateness of assistance and procurement instruments, provided they do not disregard applicable law:*

In meetings with ADF, the IG has said that the CLO cooperative agreements are not "illegal". However, the report does not state this. The legality of the CLO cooperative agreement depends primarily on whether it complies with the Federal Grants and Cooperative Agreement Act (31 U.S.C. 6301-08), which prescribes criteria for federal agencies to follow in choosing between contracts, grants, and cooperative agreements. The Office of Management and Budget (OMB) has interpreted Section 6301(2) of the Act as giving federal agencies the authority to apply the criteria and discretion in selecting an instrument. OMB Circular A-110, which sets forth guidance for implementing the Federal Grants and Cooperative Agreement Act (FGCAA), states in Subpart B.11:

Use of Grants and Cooperative Agreements, and Contracts.  
*In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of the transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter "substantial involvement is expected between*

the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement". Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. (Italics added).

The General Accounting Office (GAO) has adopted a similar interpretation. The GAO has stated:

[The] Federal Grant and Cooperative Agreement Act gives agencies considerable discretion in determining whether to use a contract, grant, or cooperative agreement, and GAO will not question determinations unless it appears that an agency has disregarded statutory and regulatory guidance or lacked program authority to enter into a particular relationship. Matter of: Civic Action Institute, Decision of the Comptroller General, September 24, 1982.

Therefore, the issue of legality turns on whether ADF's decision to use the CLO cooperative agreement is based on a proper application of the FGCAA's selection criteria. The IG's report fails to address this issue adequately.

In its seminal work, "Agencies Need Better Guidance for Choosing Among Contracts, Grants, and Cooperative Agreements", September 4, 1981 (at 11), the GAO sets out the following questions to guide federal agencies in applying the FGCAA selection criteria.

1. *Does the agency's enabling act direct it to conduct a basic program activity itself or is it to help (i.e., support or stimulate) someone else to perform the activity?*

ADF's legislation clearly directs it to help someone else perform. Specifically, the African Development Foundation Act (22 USC 290h) provides that the Foundation shall:

- "support self-help activities at the local level designed to enlarge opportunities for community development [§504(a)(2)];
- "stimulate and assist effective and expanding participation of Africans in their development process" [(§504(a)(3)); and
- "encourage the establishment of development institutions which are indigenous to particular countries in Africa and which can respond to the requirements of the poor in those countries" [(§ 504 (a)(3)].

2. *Who are eligible recipients?* Under §505 of the ADF Act, "the Foundation may make grants, loans, and loan guarantees to any African private or public group (including public international organizations), association or other entity..." The CLO team constitutes such an entity. In addition, §505(b) states in part: "Where appropriate and in keeping with the purposes of this title [22 USCS §§ 290h et

seq.], the Foundation may make such grants, loans and loan guarantees to African entities which are representative and knowledgeable of, and sensitive to, the needs and aspirations of the poor and which would disburse funds acquired under such grants, loans, and loan guarantees to other African entities to carry out the purposes of this title.” (This addresses NGOs as intermediaries, including CLOs).

3. *What can funds be used for?* Section 505(a)(1) of the ADF Act states that funds can be used for the following “peaceful activities”--
  - a) the fostering of local development institutions and the *support of development efforts initiated by communities themselves*;
  - b) the development of self-evaluation techniques by participants in projects supported under this section, for the purpose of transferring experience gained in such projects to similar development activities;
  - c) development research by Africans and the transfer of development resources, expertise, and knowledge within Africa;
  - d) the procurement of such technical assistance or other assistance as is deemed appropriate by the recipient of such grant, loan, or guarantee, to carry out the purposes of this title [22USCS 44 290h et seq.]; and
  - e) other projects that would carry out the purposes set forth in section 504 [22 USCS §290h-2].

The main purpose of the CLO teams is to support grantees to develop and implement projects, which responds to Section 505(a)(1) a) [22 U.S.C. §290h-3].

Based on the application of these criteria, the CLO agreements comply with the FGCAA. Congress directed ADF to assist or support a public purpose, which indicates it authorized the use of assistance instruments. CLOs are eligible recipients. ADF can fund activities that assist CLOs to support project grantees.

The draft report’s references to GAO guidance are problematic. First, by excerpting only part of a GAO statement, the report conveys an inaccurate meaning to the statement. On page 4 of the draft report states: “For example, according to GAO, in ‘third party’ or ‘intermediary’ situations – where Federal agencies provide services to recipients by using an intermediary – the agency’s relationship with the intermediary should normally be through a procurement contract.”

- The actual GAO quote is: “The agency’s relationship with the intermediary should normally be a procurement contract *if the intermediary is not itself a member of a class eligible to receive assistance from the government*” (Italics added). Principles of Federal Appropriations Law, GAO, Second Edition, Volume II at 10-14. The italicized clause, which the IG omitted from its paraphrase, is material to the operation of the rule. As stated above, the CLOs belong to a class that is eligible to receive ADF assistance.

- Even if the report's account of the GAO's statement were correct, it would not apply to ADF. The ADF Act clearly authorizes the Foundation to award grants to intermediaries for the purpose of assisting project grantees. For example, the Act states: "...Where appropriate and in keeping with the purposes of this title [22 U.S.C. §§ 290h et seq.], the Foundation may make such grants, loans, and loan guarantees to African entities which are representative of, and sensitive to, the needs and aspirations of the poor and which would disburse funds acquired under such grants, loans, and loan guarantees to other African entities to carry out the purposes of this title". Sec. 505(b) [22 U.S.C. § 290h-3].

Second, on page 2, the IG draft report incorrectly reads the holding in a GAO decision that it cites as authority to demonstrate ADF's use of the cooperative agreement is inappropriate. The IG compared the CLO cooperative agreement to the situation in *Matter of: Civic Action Institute*, 61 Comp. Gen. (Decisions of the Comptroller General, 1982) 637, where the Department of Housing and Urban Development awarded a cooperative agreement to a non-profit organization to provide technical assistance to certain block grant recipients. The IG states: "It [GAO] concluded that a procurement contract should have been used because, the essence of the intermediary transaction was the acquisition of services for the ultimate delivery to authorized recipients". This is a misreading of the GAO's holding. The GAO held that HUD did not have authority under its program legislation to make grants to third parties (other than designees) in order to deliver technical assistance grants to program recipients. Since the non-profit was not a designated recipient, the principal purpose was to acquire the services of the non-profit (an ineligible recipient) to help deliver technical assistance. The GAO stated: "By letter of today we are advising the Secretary of HUD that in the future a contract should be used unless the agency has statutory authority -- other than the Federal Grant and Cooperative Agreement Act -- to award grants and cooperative agreements to intermediaries." 61 Comp. Gen. at 641. In other words, the Comptroller General found that HUD, in this case, did not have statutory authority to support or stimulate someone else to perform the activity, and therefore had to perform all actions itself or through procurement contracts. ADF's cooperative agreements may be distinguished from the HUD situation, since ADF has legislative authority to award grants to development experts as intermediaries.

*C. The draft report's conclusion that the CLO cooperative agreements are inappropriate is based in part on a misapplication of the FGCAA.* The FGCAA directs Federal agencies to look to the *primary purpose* of a transaction, not *its activities* or *who benefits* (as the draft report does), in selecting between assistance and procurement instruments.

The primary purpose of the CLO cooperative agreement, as stated in the preamble to each agreement, is to provide support to grantees in the design and implementation of ADF funded projects. The IG cited a few activities in the CLO agreement (referring to them as "primary duties"), including "hiring and supervising three other local development professionals... screening grant applications, monitoring and evaluating grant projects, providing training and technical assistance to grant recipients, and



reporting on progress to ADF headquarters” to make its point. These activities have a strong casual linkage to the attainment of the agreement’s primary purpose. The exception is screening of grant applications, but its inclusion does not alter the primary purpose of the agreement. For example, a GAO audit stated: “...ADF uses cooperative agreements with individuals and classifies them as grants even though the recipients perform required services, since it considers them beneficiaries of ADF program assistance the same as grantees.” GAO, “Foreign Assistance: African Development Foundation’s Overhead Costs Can be Reduced”, June 1995 at 14.

The draft report also implies that the cooperative agreements are inappropriate because CLOs provide a service to ADF by :

- supporting ADF logistically since the agreements state CLOs will schedule and coordinate in-country visits by ADF headquarters staff -- while this is a direct convenience for ADF staff, it is an extremely minor part of what CLOs do and certainly is not the primary purpose of the CLO agreement; and
- representing ADF in an official capacity since they agree to establish and maintain contact with high-level officials and representatives of the host country -- CLOs must establish and maintain these contacts to effectively promote grantees’ activities and increase their access to information. More importantly, CLOs do not represent ADF in an official capacity; rather, they function in a liaison role, which is appropriate under an assistance instrument. For example, the Agency for International Development’s (USAID) fellowship programs are assistance arrangements. USAID’s policy allows Fellows to “...act as liaisons with other federal agencies and/or NGOs or PVOs...” See USAID Series 400, “Implementation of Policy Guidance Concerning Fellows”, September 18, 1995, Supplement B.

*D. The IG draft report relies on inapplicable law and criteria to conclude that the CLO cooperative agreements are inappropriate.*

The draft report concludes that the CLO cooperative agreement strongly suggests that ADF has entered into an employer-employee relationship with CLOs, since ADF directs the CLOs by, for example:

- conducting annual performance evaluations;
- providing salary increases based upon the Foreign Service National (FSN) pay scale at the U.S. embassy in the host country. (This is misleading. ADF does not follow the FSN scale. It uses the FSN scale as a gauge since the embassies conduct highly reliable wage surveys as a basis for determining salary changes);
- approving vacation schedules;
- providing training;
- instructing CLOs to maintain bank accounts in the name of ADF. (ADF believes this is necessary to adequately safeguard federal funds).

- providing counsel and assistance to the CLO in resolving specific project related issues;
- consulting in the selection of professional office staff members;
- approving an annual office work plan and scopes of work for each CLO staff member;
- providing ADF-owned office equipment (including vehicles); and
- negotiating and entering into lease agreements for CLO office space.

The performance evaluations, salaries, training, counsel and assistance, consulting on office staff, work plans and scopes of work, office equipment, vehicles, and office space are merely examples of the support and assistance ADF provides CLOs as grant recipients. In addition, these inputs and activities conform to the general guidance on “substantial involvement” set out in “Implementation of Federal Grant and Cooperative Agreement Act of 1977” (Pub. L. 95-224): Final OMB Guidance, 43 Fed. Reg. (1978). OMB provides the following as examples of important factors that indicate an assistance instrument anticipates the type of “substantial involvement” by a federal agency appropriate under a cooperative agreement:

- provisions allowing the federal agency to stop work which fails to meet detailed performance specifications;
- agency power to approve the project’s development stages during its course;
- federal power to disapprove sub-contracts and sub-grants beyond normal federal supervision of sub-contracting activity;
- involvement in the selection of recipient personnel;
- agency and recipient collaboration or joint participation;
- monitoring, beyond the normal review of reports and standard site visits, in order to permit redirection of the work because of its relationship with other projects;
- substantial, direct agency operational involvement, anticipated prior to award, in order to assure compliance with one or more federal mandates; and
- highly prescriptive terms in the agreement coupled with abnormal agency monitoring or involvement during performance.

OMB states that the statutory standard of substantial involvement is “relative rather than an absolute concept.” OMB Guidance at ¶ C1 (a). Each line agency can best actualize these abstract concepts in the context of its particular mission, programs, and practices.

For example, USAID’s policy on cooperative agreements includes the following as elements of substantial involvement:

- approval of the recipient’s implementation plans;
- approval of specified key personnel;
- agency and recipient collaboration or joint participation; and

- agency authority to immediately halt a construction activity. USAID, “Functional Series 300: Acquisition and Assistance, ADS Chapter 303 – Grants and Cooperative Agreements to Non-Governmental Organizations” at 33-34.

As with other agencies, ADF’s involvement in CLO cooperative agreements has evolved and reflects the Foundation’s experience in carrying out its Congressional mandate within the context of participatory grassroots develop in Africa.

The IG draft report does not incorporate the legislative standard of “substantial involvement” in its analysis. Instead, it relies on concepts in the Federal Acquisition Regulations (FAR) and publications of the Internal Revenue Service (IRS) to support its assertion that ADF has established an employer-employee relationship with the CLOs.

The FAR descriptive elements cited on pages 7-8 of the draft report were established for the purpose of determining whether a contract is personal or non-personal in nature. FAR 37.104. Even if ADF should have awarded personal services contracts rather than cooperative agreements to the CLOs, the report does not demonstrate that the Foundation violated the FAR’s provisions on competition. As discussed below, subpart 5706.3 of the FAR authorizes ADF to use other than full and open competition for personal service contractors serving abroad.

The guidance cited in the IRS publications is intended to *help employers determine when they must withhold taxes from the pay of nonresident aliens and foreign corporations who render services to the employers.* Again, even if these requirements applied to ADF, the Foundation would not be in violation. The publications clearly state: “Compensation paid to a nonresident alien (other than a resident of Puerto Rico) for services performed outside the United States is not considered wages and is not subject to graduated withholding or 30% withholding.” Withholding of Tax on Nonresident Aliens and Foreign Corporations: For Withholding in 2000, IRS Publication 515 (Revised December 1999) at 16.

The FAR and IRS descriptive elements are not intended to, and do not, provide competent guidance for choosing between assistance and procurement instruments or between grants and cooperative agreements. While several of the elements included in both the FAR and IRS references are similar in actuality to factors that suggests substantial involvement in a cooperative agreement, this does not provide conclusive evidence that ADF’s relationship with the CLOs is in fact that of a personal services contractor or an employer-employee.

*E. The draft report incorrectly states that it is not clear that the Foundation has authority to award personal services contracts.*

ADF has the authority to award personal services contracts for professional services. Section 507(d)(2)[22 U.S.C. §290h-5(d)(2)] states: “Experts and consultants may be employed by the [ADF] Board as authorized by section 3109 of title 5, United States

Code”. Section 3109 provides: “When authorized by an appropriation or other statute, the head of an agency may procure by contract the temporary (not in excess of 1 year) or intermittent services of experts or consultants or an organization thereof, including stenographic reporting services”. Subpart 37.104 of Part 37 of the FAR sets forth the general rule that “Agencies shall not award personal services contracts unless specifically authorized by statute”. The subpart then cites Section 3109 as an example of a specific statutory authority to enter into personal services contracts.

Also, section 506(a)(5) of the ADF Act provides: “The Foundation... may make and perform such 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.” This provision indicates that Congress intended to give ADF broad authority to enter into contracts in the United States and abroad. In addition, subpart 5706.3 of Part 5706 of the FAR gives the Foundation authority to conduct less than full and open competition when making an award under section 506(a)(5) of the African Development Foundation Act involving a personal service contractor serving abroad, provided full and open competition would impair or otherwise have an adverse effect on programs conducted for the purposes of foreign aid, relief and rehabilitation.

## **II. Specific Actions Planned**

ADF will replace and modify the current Country Liaison Officer (CLO) cooperative agreement mechanism. The Foundation will assess alternatives within the context of the operating environment (laws, local skills availability, economic and social factors, and so on) in each program country to determine the best in-country arrangement(s) for carrying out the Foundation’s mandate. The timetable for completing the changeover is as follows.

March 15, 2001	ADF adopts plan for conducting country-by-country assessments of alternative arrangements
May 1, 2001	Assessments and recommendations completed
May 15, 2001	ADF Board of Directors approves action plan and changeover implementation schedule
August 15, 2001	Changeover completed in six countries
November 15, 2001	Changeover completed in all countries

ADF will award grants and cooperative agreements to African professionals that are organized into groups, as opposed to individuals leading a team of development professionals, and recognized as legal entities by their governments or have an official status as an assistance group within the community (e.g., civic group). This change will

foster greater institutionalization and sustainability of ADF's support to community development once its funding ends.

Like the current CLO agreement, the primary purpose of the new intermediary agreement will be to assist grantees in the design, implementation, administration, and evaluation of their projects. However, ADF will not involve itself in the management activities of the intermediary, such as conducting performance evaluations, determining salary increases, and approving vacation schedules. In addition, the agreement will make clear that the intermediary has no obligation to provide administrative support to ADF staff. ADF will enter into contracts, as appropriate, to procure services it needs.

Based on a comprehensive assessment of their potential, ADF will offer to assist selected CLO teams to organize as legal entities that can take on the intermediary role. This is warranted given ADF's investment in building capacity of these individuals and their credentials as development experts. In addition, doing this promotes one of ADF's purposes, i.e., "to encourage the establishment and growth of development institutions which are indigenous to particular countries in Africa and which can respond to the requirements of the poor in those countries". Section 504(a)(4) [22 U.S.C. 290h-2].

The choice between a grant and cooperative agreement with the intermediary will depend on the extent ADF determines the need to be "substantially involved" in the implementation of activities. In some cases, recipients may be highly qualified non-governmental organizations (NGOs) who have demonstrated their ability to successfully carry out a grant. In other cases, for example where a new entity is the recipient, a cooperative agreement may be appropriate given the extent of ADF support needed in areas such as consultation, administration, facilities, equipment, and so on.

ADF will compete the initial award of the grants and cooperative agreements. In addition, the agreements will specify the number of times they can be renewed without competition.

Maintaining the integrity of the African Development Foundation Act (22 U.S.C § 290h) is of paramount interest in making the transition. The essence of the Act is assisting and supporting Africans to participate in the development of their countries. One of the four stated purposes of the Act is "to stimulate and assist effective and expanding participation of Africans in their development process". Sec. 504(a)(4)[§290h-2]. In specifying "*participation of Africans*" (as compared with other purposes which stipulate, "support...at the *local level*...for *community development*" Sec.504 (a)(2)[§290h-2] and "encourage institutions... which can respond to the requirements of the *poor*..." Sec. 504(b)[§ 290h-2]); section 504(a)(4) expresses the Congress' intent that ADF support the expansion of African participation in general, provided that such support furthers the purposes of the Act.

The Act's relatively sparse legislative history is replete with references to the need to ensure broad participation of Africans in the development process and African ownership of development activities. For example, in introducing the "African Development

Foundation Act” in 1977, Senator Edward Kennedy stated: “Nowhere in the world is widespread participation in development planning more imperative than in Africa...” *Congressional Record*, April 24, 1977 at S6143. Representative Don Bonkers in the House stated: “...[the African Development Foundation] must... support efforts by the peoples themselves to satisfy their own needs and foster their own skills, laying a foundation for truly African development.” *Congressional Record*, July 1, 1977 at E4301. The report which served as the basis for ADF’s legislation stated: “...[t]he establishment of trusting relationships in large part depends on one’s honest recognition that Africans are, and indeed, should be, running the show.” *Congressional Record*, July 26, 1978 at S 8757.

Congress intended that Africans have the opportunity to “run the show”. It also knew that African grassroots people are among the poorest in the world materially and in terms of human resources development. They, therefore, need technical support if they are to “run the show”. For example, the report referenced above stated:

[The Foundation must determine] the specific support needs of projects and the means by which appropriate assistance can be extended to them in a ‘hands-off’ manner... [T]here is little doubt as to the necessity of technical support in Africa. This support is of particular need in just those functional areas – management and administration, agriculture, small-scale infrastructure development, etc. – within which ADF is likely to provide financial assistance. *Congressional Record*, July 26, 1978 at S. 9762.

Thus from the beginning, the framers of ADF’s enabling legislation recognized the need for intermediaries to support community level activities. Section 505(a)(1) of the ADF Act states in part that “...the Foundation may make grants, loans, and loan guarantees to any African private or public group (including public international organizations), association, or other entity engaged in peaceful activities for... the fostering of local development institutions and the *support of development efforts initiated by communities themselves...*” With this provision, Congress authorized ADF to assist intermediaries for the purpose of supporting community projects.

In sum, the new arrangements for intermediaries will honor both the letter and spirit of the ADF Act. These arrangements will help maximize African involvement in ADF funded activities, foster African ownership, and provide support to project grantees from professionals who possess intimate knowledge of social, economic, and other dynamics that are critical to project success.