

PDBBI 444

EMBASSY OF THE
UNITED STATES OF AMERICA

Office of Development Affairs
September 25, 1987

Ms. Glaudin Kruger
Coordinator
Lawyers for Human Rights
Pretoria

674-0305

Subject: Lawyers for Human Rights, Pretoria:
Coordination of Legal Training Research.
Agreement No. ~~674-0206~~ G-00-7088-00

Dear Ms Kruger,

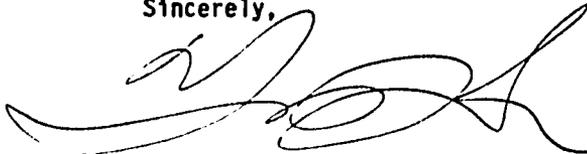
Pursuant to the authority contained in the Foreign Assistance Act of 1961, as amended, the Agency for International Development (hereinafter "USAID") hereby enters into this Agreement with Lawyers for Human Rights, Pretoria (hereinafter "the Recipient"), and obligates the sum of \$40,000 to provide support for a program described in Attachment No. 1, entitled "Schedule", and Attachment No. 2, entitled "Program Description and Financial Plan", of this Agreement.

This Agreement is effective and obligation is made as of September 25, 1987. The Agreement and obligation shall apply to commitments made by the Recipient in furtherance of program objectives during the period beginning September 25, 1987 and ending September 30, 1988.

This Agreement is entered into with the Recipient on condition that the funds will be administered in accordance with the terms and conditions set forth in Attachment 1, entitled "Schedule", Attachment 2, entitled "Program Description", and Attachment 3, entitled "Standard Provisions". This letter and the three attachments described above, which have been agreed to by your organization, constitute the Agreement.

Please sign the original and six (6) copies of this letter.
Please then return the original and five (5) copies of this
letter to USAID/Pretoria.

Sincerely,



Timothy J. Bork
Counselor for Development Affairs

ACKNOWLEDGED AND ACCEPTED

Lawyers for Human Rights, Pretoria Branch



By: G. Kruger
Title: Coordinator

Attachments:

1. Schedule
2. Program Description
3. Standard Provisions

FISCAL DATA:

Agreement No: 674-0206-G-00-7088-00

Appropriation: 72-117/81037

BPC: GES7-87-21674-KG14

Reservation Control No: B870229

Amount: \$40,000

Drafted: E. Spriggs, A. Marshall

Clearances: Mark Johnson, SPDO (draft)

Carlos Pascual, Program Officer (draft)

Rick Solloway, Controller (draft)

Donald Keene, RLA (draft)

ATTACHMENT NO. 1

SCHEDULE

I. OVERVIEW OF AGREEMENT

This Agreement provides funds to Lawyers for Human Rights, Pretoria for contracts with other organizations to provide USAID with information which could lead to a legal education program for legally disadvantaged South Africans.

The planning of such a program is important if the numbers of legally disadvantaged South Africans practising law is to be increased, and the skills of law graduates improved. These are among the aims of USAID's legal assistance program, and the information produced under the terms of this Agreement will better allow planning of this aspect of a legal assistance strategy.

The parties expect substantial involvement by USAID in the Recipient's performance of the program, including: (1) review of work at various stages of the program; and (2) monitoring of the Recipient's activities to permit specific adjustments to or redirection of its work. (plus any additional language specific to the agreement).

II. PERIOD OF AGREEMENT

The effective date of this Agreement is September 25, 1987. The expiration date is September 30, 1988, meaning that no USAID funds under this Agreement shall be applicable to goods not furnished or services not performed for the project/program by this date.

III. AGREEMENT FUNDING AND PAYMENT

A. USAID hereby obligates the sum of \$40,000 for purposes of this Agreement. However, all funds obligated under this Agreement will be disbursed by USAID directly to organizations of individuals identified by LHR, Pretoria and contracted by USAID to carry out activities described in Attachment II herein.

IV. FINANCIAL MANAGEMENT

A. Each organization contracted with by USAID under this Agreement shall be responsible for accounting for such AID funds provided to it. Reimbursement for expenses incurred shall be in the form of a monthly submission of invoices, checks, payroll sheets, etc. as further described in Part B of this Section. Included in this Agreement, as Table 1 below in Section V, is a one-year budget based upon expected expenditures covered by this Agreement. Execution of this Agreement, for AID's internal purposes, earmarks and commits all funds obligated under the Agreement. Any interest earnings from funds provided under this Agreement will be returned to USAID.

B. Disbursement Procedures

1. Except as otherwise agreed to in writing between USAID and individual contractors, local currency disbursements from USAID to each organization will be made through monthly reimbursements for expenses incurred during the previous month. Each reimbursement request will include (a) a summary sheet listing in a format compatible with the budget the purpose and amount of all (individual) expenses incurred with a sub-total for each budget line item and a grand total; and (b) copies of paid invoices (not proforma invoices), checks, or other documentary evidence showing that funds were expended and the payee received such funds; e.g. an invoice stamped "paid", a cancelled check, a payroll sheet signed by the employee, etc.

V. FINANCIAL PLAN

A. The illustrative Financial Plan for this Agreement is set forth in Table 1 below. Revisions of this Plan shall be made in accordance with Standard Provision 4 of this Agreement, located in Attachment 3 and entitled "Revision of Agreement Budget". All line-item adjustments must receive prior USAID approval.

B. Level of Assistance

The budget line items provided in Table 1 have been calculated by taking the amounts required by LHR in South African Rands and then converting these to U.S. Dollars at an exchange rate of R1.85/US\$1. While the Rand amounts are included in Table 1 for illustrative purposes, the U.S. Dollar totals, and not their Rand equivalents, constitute the binding level of USAID assistance.

Due to exchange rate fluctuations, South African Rands available under any individual item financed under this Agreement may exceed levels budgeted for by LHR, and thus allow other items to be financed as well. In such an event, LHR will consult with USAID on the priority use of these funds, and arrangements will be made to amend the Agreement to provide for their expenditure. However, should changes in the exchange rate result in fewer South African Rands being available than budgeted for, LHR must finance the shortfall since the U.S. dollar amount prevails.

Table 1

Illustrative Financial Plan

US\$/SAR

<u>Item</u>	<u>US\$</u>	<u>SAR</u>
1. Production of 4 draft reports at \$8,000 per report	32,000	59,200
2. Production of 4 final reports at \$2,000 per report	<u>8,000</u>	<u>14,800</u>
Total:	40,000	74,000

VI. REPORTING

Copies of all reports produced will be forwarded to USAID by September 30, 1988 or such earlier time as may be requested by USAID. Additionally, USAID will liaise and consult with LHR and contractors throughout the duration of this Agreement.

VII. OVERHEAD RATE

Not Applicable.

VIII. TITLE OF PROPERTY

Not applicable.

IX. AUTHORIZED GEOGRAPHIC CODE

The authorized geographic code for all procurement with AID funds under the Agreement is the United States and Republic of South Africa, meaning that all goods and services financed by this Agreement shall have, with respect to goods, their source and origin and, with respect to services, their nationality in the United States or the Republic of South Africa.

X. LOCAL COST FINANCING

It is hereby specified that the amount of U.S. dollars authorized to be used for local cost financing is the entire amount obligated under this Agreement.

XI. SPECIAL PROVISIONS

A. Conditions Precedent to Disbursement

Accounting. Prior to the disbursement of funds and to the issuance of any commitment documents under the Agreement, the Recipient shall allow USAID to conduct a financial review to confirm that proper financial management systems for accounting and record keeping exist in connection with funds provided under this Agreement.

B. Covenants

1. Procurement

(a) Scope. This provision is applicable to the extent that local cost financing is otherwise authorized by the Agreement. It does not require procurement in South Africa where off-shore procurement could otherwise occur.

(b) Policy. In the procurement of goods and services in South Africa, the Recipient shall, to the maximum extent practicable, award contracts to individuals or organizations which are disadvantaged by apartheid and which are responsive and appropriate providers of goods and services.

(c) Definitions. Individuals and organizations disadvantaged by apartheid shall mean (1) South African individuals of black, "colored" or Asian descent whose principal place of business is in the Republic of South Africa; and (2) private partnerships or commercial firms which are incorporated in or organized under the laws of the Republic of South Africa, whose principal place of business is in the Republic of South Africa, and which are more than 50 percent beneficially owned by South African persons of black, "colored" or Asian descent. The Republic of South Africa includes the so-called "independent" and "self-governing" homelands and, for the purposes of implementing this provision, Namibia.

2. Except as provided in Section B.1. above, all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, free and open competition.

XII. STANDARD PROVISIONS

The Standard Provisions applicable to this Agreement are contained in Attachment 3, Standard Provisions.

ATTACHMENT NO. 2

PROGRAM DESCRIPTION AND FINANCIAL PLAN

I. SUMMARY

This Agreement provides funds to Lawyers for Human Rights, Pretoria (LHR), in close consultation with USAID and with other organizations, throughout South Africa, to compile information to plan a program (1) to increase the number of legally disadvantaged (hereinafter "black") lawyers qualified to practice in South Africa, and (2) to support the specialized training of black lawyers in 3 key areas of practice. LHR will identify organizations or institutions which might be able to provide information and/or develop strategies. USAID will then contract directly with the organizations to undertake the proposed work. The Legal Resources Trust, Black Lawyers Association, and law facilities of universities are illustrative of the type of organizations and institutions which may be selected. Additionally, specific law firms may be approached to ascertain their potential contribution.

Areas of specialization to be concentrated upon are labor, human rights and commercial law. Aspects of training to be covered are university training, post-graduate training, training for articled clerks, upgrading of skills of law graduates, provision of training in specific areas of law and employment opportunities in major firms and companies.

USAID will agree, with recipient organizations, on costs attributable to the Agreement.

II. BACKGROUND

There are a limited number of black lawyers currently practising in South Africa, and those who have managed to beat the odds and become licensed find themselves excluded from many key areas of practice. For a number of years concerned persons in the legal profession have recognized the need to (a) train more black lawyers, (b) upgrade the skills of black law graduates, and (c) expand the fields of law which black lawyers practice in. This Agreement is a response to increasing concerns expressed by black lawyers, university professors and legal bodies, and is intended to permit USAID and organizations to formulate policies to address the situation.

III. PROBLEM

The basic problem which this Agreement is intended to address is the apparent lack of information, ideas and programs to remedy the dearth of well-trained black lawyers in South Africa, particularly in the key areas of labor, human rights and commercial law. These areas have been identified because: (a) substantial black involvement and leadership in these areas is considered crucial for the process of constructive change toward a democratic, non-racial society and for supporting black-led, non-violent efforts toward that end; (b) black lawyers are grossly under-represented in these areas, and (c) there will be a need for skilled black professionals in these areas in both the public and private sectors of post-apartheid South Africa.

The reasons for the dearth of well trained black lawyers in South Africa are known to a degree, but will need to be further explored and better understood if a comprehensive remedy is to be found. Clearly though, the shortage is the result of constraints at every level of the career structure.

First and foremost, the demand for black lawyers by the major employers of lawyers in South African society has heretofore been suppressed by apartheid itself: specifically the presumption that black are not as capable as whites, or lack the necessary experience or academic preparation.

Second, this presumption has received some support from the fact that most black lawyers were (and still are) required to attend black schools, including law schools, which do not offer to them the same standard of education that is accorded to their white counterparts.

Third, there are many barriers facing blacks seeking to enter and succeed in the better law schools in the RSA. The qualifications for entrance into the better law schools precludes most black students who were educated in black primary and secondary schools. Other factors restricting admission of black students are direct and indirect racial attendance quotas imposed upon state-financed universities. Those black students who manage to be admitted may need more academic support (e.g. remedial programs), due to their educationally disadvantaged backgrounds, to enable them to achieve their full academic potential. Indeed, economic problems, absence of full bursaries and lack of study facilities (i.e. university housing policies which force black students to live in inadequate, distant township housing) are also major possible hinderances to academic achievement by black law students at white institutions.

Fourth, even after successfully completing a law degree program, black graduates encounter difficulties in securing articulated clerkships, required for admittance to practice as attorneys, and pupilages required for admittance as advocates. Clerkship and pupillage opportunities with successful white practitioners, commercial firms, and advocates with broad-based practices linked to the "mainstream" of South Africa's commercial and governmental institutions (e.g. corporate finance and taxation, securities, commercial real estate, labour, international trade and investment, legislative affairs, including legislative drafting) are all but non-existent for black lawyers, as are full-time employment opportunities in these key areas.

As long as black lawyers are not afforded high quality training opportunities in the key areas mentioned above, the black community will have difficulty breaking the social and economic bonds of apartheid; and few blacks will be in a strong position to move competently into leadership roles in the mainstream governmental and commercial spheres when the opportunity or need for such movement arises.

IV. PURPOSE

The purpose of this Agreement is to fund a number of studies into the nature of the problem, and to develop strategies for intervention at various levels. This will allow USAID, in concert with the Recipient and other concerned organizations, to develop an integrated and comprehensive, yet inexpensive and practical approach to facilitating the movement of black lawyers into positions of importance in the near future (e.g. next 3 to 5 years). Although a number of individuals and organizations have expressed concern over the years, there is a need for explicit enquiry and coordination of efforts on a nationwide basis, to adequately formulate strategies. Without such coordination there may be limited improvements at one or two points in the spectrum, but the general problem, its underlying causes and subsequent

manifestations will remain largely unaddressed. Agreement funds are provided to facilitate such research, coordination and formulation of strategies by funding items outlined in VII, Financial Plan. General outputs of this Agreement will be the abovementioned activities, specific outputs will be the production of various reports which will allow USAID to better understand the situation, and respond to specific proposals which attempt to address the problem and/or to undertake to fund selected strategies developed during the course of the program. It is hoped that in this way it will be possible to both address the situation at the present time, and also to prepare for a post-apartheid society.

V. PROGRAM DESCRIPTION

Agreement funds will be used for organizations to undertake research into the situation described above, and to formulate strategies to best deal with it.

LHR, in consultation with USAID, will identify individuals, organizations and institutions to undertake the work. USAID will approve the scope of work and directly contract for each contractor.

The general aim of the project is to provide USAID with information concerning the problem described above, and possible interventions to address it. Such information will be used by USAID to a) plan comprehensive, specialized legal training programs that over the next 3 to 5 years will assist approximately 35 highly qualified, highly motivated black lawyers become established as labor or human rights or commercial lawyers in South Africa; (b) plan a program to significantly increase (i.e. double or triple, if possible) the number of black students in the major (white) law schools over the next 2 to 3 years; and (c) evaluate suggestions and proposals for legal training projects from other entities in a more fully informed fashion.

Specific areas to be considered by persons and/or organizations contracted with under this Agreement are potential interventions at a number of levels, including but not limited to, awareness programs, short-term training, vacation work in legal aid clinics or law firms or corporations, legal skills training, information about areas of legal practice such as labor law, increased access to technical resources, upgrading of legal skills, programs to increase the number of articled clerks, clerkships and pupilages available to blacks, programs to increase job and training opportunities for black lawyers in major commercial law firms as well as human rights, public interest and labor law firms, and commercial enterprises, and mechanisms to permit more black students to study law.