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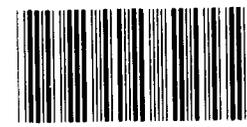
GAO

Report to the Chairman, Legislation and
National Security Subcommittee,
Committee on Government Operations,
House of Representatives

February 1988

EMBASSY CONTRACTING

State Department Efforts to Terminate Employee Association Contracts



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National Security and
International Affairs Division

B-217775

February 16, 1988

The Honorable Jack Brooks
Chairman, Legislation
and National Security Subcommittee
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

In response to your November 6, 1986, request, we have reviewed the Department of State's efforts to convert service contracts between U.S. embassies and their employee associations to commercial or U.S. embassy personal service contracts.

Our review showed that, as of September 30, 1987, 59 of the 67 embassies had converted their employee association contracts to commercial or U.S. embassy personal service contracts, and efforts were underway to convert the remaining eight contracts.

The employee associations have paid severance benefits to those individuals whose jobs were terminated as a result of the associations' contract phaseout. However, for those individuals who converted to U.S. embassy personal service contracts, about \$824,000 in contingent liability for severance benefits has in essence been shifted from the involved associations to the U.S. government. With the conversion to U.S. embassy personal service contracts, the associations no longer have a basis for retaining the appropriated funds that had been provided over the years to maintain a severance reserve for these individuals. Therefore, these funds should be returned to the U.S. Treasury. We also found that some associations had not been maintaining adequate reserves to cover contingent liabilities for employees' severance benefits.

Background

In March 1986 we reported¹ that 67 embassy employee associations had service contracts with the U.S. government. These contracts were valued at about \$38 million and involved over 8,800 contract employees. The use of employee associations as contractors had not been adequately justified and was highly questionable given the special relationship between the posts and the associations. At all but one of the six

¹Embassy Contracting: Contracts with Employee Associations Should be Terminated (GAO/NSIAD-86-57, Mar. 18, 1986).

posts we visited during that review, the contracts appeared to be essentially sham contracts under which the associations performed minimal contract administration functions while profiting from management fees.

We recommended that the Department terminate the association service contracts except when it was necessary to continue such arrangements because of "compelling circumstances." The Department concurred with our recommendation and advised us in June 1986 that it had established a target date of September 30, 1987, to phase out contracts between the embassies and the employee associations.

Association Contract Phaseout Virtually Completed by Target Date

Except for the eight posts shown in table 1, association contracts had been converted to commercial or U.S. embassy personal service contracts as of the September 30, 1987, target date.

Table 1: Posts With Association Contracts

Post	Contract Purpose
Yaounde, Cameroon	Guard
San Jose, Costa Rica	Guard
Geneva, Switzerland	Guard
Ankara, Turkey	Guard
Caracas, Venezuela	Guard
Mogadishu, Somalia	Guard
Managua, Nicaragua	Guard
London, England	Cleaning services

The guard contracts at the seven posts were temporarily extended to allow time to complete the conversion. The remaining post, London, was given a temporary extension to allow time for consideration of its formal request to retain a cleaning services contract with its employee association (see discussion below). The Department has since decided to also terminate this contract.

Determination of Compelling Circumstances

Since our March 1986 report was issued, the Department has focused on phasing out embassy/association service contracts rather than on developing specific criteria for determining whether compelling circumstances exist for continuing them. A cable sent to all overseas posts indicated that the Department intended to phase out nonpersonal service contracts and restrict such contracts to those instances in which no viable alternative exists. The authority for such a contract would be used only under compelling circumstances. The cable did not, however, define compelling circumstances. In another cable, the Assistant Secretary of State for Administration was quoted as saying "that where there is a most compelling reason, such as security requirements or an extraordinary cost differential, the department would consider a continuation of the employee association service contract."

According to State officials, only one post, London, formally requested that it be allowed to continue its association contract rather than convert to a commercial or U.S. embassy personal service contract. London's formal request included a written justification indicating that (1) excellent cleaning services were being obtained under the current contract, (2) a commercial contract would cost more than other types of contracts, and (3) London's employee association was unfairly characterized in GAO's March 1986 report concerning embassy contracting.

According to a State official, London was advised in a December 1987 cable that its request was denied. The decision was based on the fact that the cost difference was not extraordinary (that is, about 1 percent over current costs, exclusive of severance costs) and that other embassies had dealt with problems of getting good service.

Cost Comparisons

The Department advised overseas posts that commercial contracts were preferred over U.S. embassy personal service contracts but posts could pursue U.S. embassy personal service contract authority if commercial contracting would be more expensive.

Although we were told written guidelines for comparing the costs of the two contracting options were not developed, personnel from State's Management Operations visited 15 posts to help them make cost comparisons. According to Department officials, a complete analysis was done at 12 of these posts to compare the costs of commercial contracts and U.S. embassy personal service contracts. Teams from several regional bureaus also visited selected posts to help them (1) evaluate and compare contracting options, (2) assess commercial bids for services

and develop position descriptions, and (3) review appropriate pay scales for U.S. embassy personal service contracts. In addition, Bureau of Diplomatic Security officials sent model bid solicitation forms to all posts and visited at least 23 posts to assist them in determining which type of contract was most appropriate for guard services.

Severance Funds

Association employees whose jobs are terminated as a result of the conversion to commercial contracts are immediately entitled to severance pay if such benefits are required by local law. On the other hand, association employees who are converted to U.S. embassy personal service contracts do not receive severance benefits at the time of conversion. However, if these individuals are terminated in the future, the Department is responsible for providing them with severance pay based on their total service.

According to Department officials, except for the eight unconverted contracts, all severance benefits required by local law have been paid to those individuals whose jobs were terminated as a result of the association contract phaseout.

Funds Provided for Certain Severance Liabilities Should Be Returned to the U.S. Treasury

The Department's legal office issued an opinion on August 26, 1985, which essentially stated that it would be improper for an association to retain severance funds after it was no longer responsible for payment of severance benefits, but Department officials have told associations to retain these funds until they decide how to handle them.

With the conversions to U.S. embassy personal service contracts, the contingent severance liability for those involved individuals in essence was transferred from the associations to the U.S. government. As of October 1, 1987, 24 associations reported that the contingent liability for severance benefits for individuals converted to U.S. embassy personal service contracts totaled about \$824,000. This amount includes about \$52,000 from five associations which had not set aside adequate reserves.

A May 1987 Comptroller General's decision² stated that

"If the employees are transferred directly to individual embassy contracts without a change in employment status, there may be no need to pay those benefits. If

²Comptroller General's Decision, B-226720, May 18, 1987.

associations are not required to make severance payments, there would be no basis for the associations to keep these funds. Therefore, these funds, which were accumulated through use of appropriated monies, should be returned to the Treasury."

Some Associations Had Not Set Aside Adequate Severance Reserves

Since at least 1982, Department regulations have required that employee associations establish contingent liability funds to cover severance and retirement benefits, or subscribe to a host country plan on behalf of their permanent and contract employees. The U.S. government has contributed appropriated monies to these funds as a part of the association contract cost. However, some associations have not maintained adequate reserves. To cover these deficits, the Department wanted to transfer funds from other associations into a central fund from which disbursements would be made to other posts as needed. However, the May 1987 Comptroller General's decision concluded that the funds could not be pooled in a central fund through either voluntary donation or involuntary levy.

As of October 1, 1987, ten associations³ reported estimated severance reserve deficits of about \$729,000⁴ for both individuals who had converted from association contracts to U.S. embassy personal service contracts and those individuals still working for the associations. Moreover, the Department has already paid \$299,000 in severance payments on behalf of four associations that did not have adequate reserves to meet their severance liabilities. The Department's Diplomatic Security Bureau provided the \$299,000, which was used to pay individuals who were terminated when guard association contracts were converted to commercial contracts (see table 2).

Table 2: Amounts Paid by the Diplomatic Security Bureau

Post	Severance Payment
Lima	\$98,000
San Jose	180,000
Muscat	7,000
Yaounde	14,000
Total	\$299,000

³According to State officials, some associations have not replied to the Department's request for information.

⁴Includes the \$52,000 discussed above.

Procedures for Monitoring New Contracts

As part of the conversion from employee association contracts to U.S. embassy personal service contracts, the Department has issued guidelines for monitoring the number and kinds of U.S. embassy personal service contracts. Under these guidelines State's Office of the Procurement Executive must approve the maximum number of U.S. embassy personal service contracts allowed at each post for each function (such as gardening, maintenance work, cleaning). Job descriptions are also required for each position. After conversion from the association contracts, the positions are to be monitored and monthly reports are to be provided on employment, staffing patterns, and grade retention.

Officials at all five of State's regional bureaus said they had written or were in the process of writing job descriptions and were obtaining approval for the maximum number of U.S. embassy personal service contracts. They also told us that they are tracking these positions using the appropriate forms.

However, the bureaus differ in the way they monitor the U.S. embassy personal service contracts. For example, while the bureaus are not exceeding the total number of U.S. embassy personal service contracts authorized by the Office of the Procurement Executive, some bureaus allow overseas posts to interchange positions among functions (for instance, reducing the number of gardeners and increasing the number of chauffeurs). As another example, one bureau insists on approving any change in the number and type of U.S. embassy personal service contract no matter how small, while other bureaus require only that major changes, such as increasing the total number of U.S. embassy personal service contracts, be approved.

Sufficient time has not elapsed to determine how well Department officials are actually monitoring U.S. embassy personal service contracts.

Conclusions and Recommendations

The Department has terminated most of the contracts between employee associations and embassies, and efforts are underway to terminate the remaining few. Since these contracts were terminated, associations have been required to pay severance benefits for contract employees who lost their jobs. However, many employees transferred directly to U.S. embassy personal service contracts without a change in employment status and were not due any severance payment. Since the associations are no longer required to make severance payments to these individuals, there is no basis for the associations to keep the funds appropriated to

cover such severance benefits. Therefore, we believe that the appropriated funds the associations received for this purpose should be returned to the Treasury.

As of October 1987, ten associations did not have sufficient reserves set aside to meet their contingent severance liability as required by Department regulations. In addition, State Department has already provided \$299,000 to cover debts of four associations that had not set aside sufficient reserves to pay severance benefits to individuals whose employment was terminated when association contracts were converted to commercial contracts. However, since these associations had received appropriated funds for this purpose as part of their contracts, we do not believe that they should be relieved from these debts.

We recommend that the Secretary of State direct Department and post officials to

- recover and return to the U.S. Treasury all appropriated funds the associations received to cover the contingent severance liability for those who were subsequently converted to U.S. embassy personal service contracts,
- enforce Department regulations that require employee associations to establish contingent liability reserves to cover severance benefits, and
- obtain from the four involved associations formal commitment to repay the \$299,000 provided by State's Diplomatic Security Bureau.

Objectives, Scope, and Methodology

Our objectives were to review the State Department's progress in converting from embassy employee association contracts to commercial or U.S. embassy personal service contracts. Our review was conducted at the State Department headquarters in Washington, D.C., from January through November 1987. We reviewed records and interviewed post management officers from each of the Department's five regional bureaus and interviewed officials from the Bureau of Diplomatic Security, and the offices of Management Operations, the Comptroller, the Procurement Executive, and the Commissary and Recreation Affairs office.

As requested, we did not obtain the Department's official comments on this report. Our review was conducted in accordance with generally accepted government auditing standards.

As arranged with your Office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from

the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank C. Conahan".

Frank C. Conahan
Assistant Comptroller General

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