



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** U.S. Defense Systems, Inc.

**File:** B-246719

**Date:** March 18, 1992

Thomas D. Boyatt for the protester,  
Kathleen D. Martin, Esq., Department of State, for the  
agency.  
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of  
the General Counsel, GAO, participated in the decision.

### DIGEST

Protest that solicitation for embassy guard services requiring offers to be submitted in local currency violates 22 U.S.C. § 4864(c)(2) (Supp. II 1990) is denied where this section requires the Department of State (DOS) to establish procedures to ensure that appropriate measures are taken to assure that United States persons are not disadvantaged during the solicitation and bid evaluation process due to their distance from the post.

### DECISION

U.S. Defense Systems, Inc. (USDS) protests the terms of request for proposals (RFP) No. S-698-FA-594, issued by the Department of State (DOS) for guard services for the United States Embassy in Brasilia. USDS argues that the RFP requirement that offers be submitted and payment be accepted in Brazilian cruzeiros and the RFP's failure to provide an express preference for United States companies disadvantages American companies and violates 22 U.S.C. § 4864 (Supp. II 1990), which contains provisions intended to increase participation of United States contractors in local guard contracts abroad under the diplomatic security program.

We deny the protest.

The solicitation, issued on October 17, 1991, contemplated award of a firm, fixed-price contract for guard services at Embassy facilities for a 1-year period, with four 1-year options. The solicitation provided for offers to be submitted and the contract price to be payable in Brazilian cruzeiros and also provided that the contract cost may be

adjusted based on increases or decreases in actual costs of direct service labor which result directly from laws enacted and effective during the term of the contract by the Brazilian government.

The statute at issue, 22 U.S.C. § 4864, contains specific findings by Congress with respect to DOS' policy concerning the advertising of security contracts at Foreign Service buildings. Congress found that because some foreign missions chose only to advertise locally, many United States security firms that provide local guard services abroad have been unaware that contracts were available and have been disadvantaged as a result. Congress concluded that United States security firms would be interested in bidding on more local guard contracts abroad if they knew of the opportunities. The stated objective of the statute is to improve the "efficiency of the local guard programs abroad administered by the Bureau of Diplomatic Security" of DOS and to "ensure maximum competition for local guard contracts abroad concerning Foreign Service buildings." In order to meet this objective, 22 U.S.C. § 4864 (c) provides that with respect to local guard contracts for a Foreign Service buildings which exceed \$250,000, the Secretary of State shall:

"(1) establish procedures to ensure that all solicitations for such contracts are adequately advertised in the Commerce Business Daily;

(2) establish procedures to ensure that appropriate measures are taken by diplomatic and consular post management to assure that United States persons and qualified United States joint venture persons are not disadvantaged during the solicitation and bid evaluation process due to the distance from post; and

(3) give preference to United States persons and qualified United States joint venture persons where such persons are price competitive to the non-United States persons bidding on the contract, are properly licensed by the host government, and are otherwise qualified to carry out all the terms of the contract."

In response to the USDS complaint that the solicitation provided no preference as required by section (c)(3), DOS states that it intends to amend the RFP to include a 5-point preference for price competitive American contractors. USDS states that this will satisfy section (c)(3) of the statute and renders moot this aspect of its protest. USDS also argues that RFP requirement for offers to be submitted and payment be made in Brazilian cruzeiros violates section

(c) (2) of the statute because the requirement disadvantages United States contractors.

At issue here is what type of measures 22 U.S.C. § 4864(c) (2) requires DOS to take to ensure that United States persons are not disadvantaged during the "solicitation and bid evaluation process due to their distance from the post." DOS states its belief that giving offerors sufficient time to prepare and submit responses to the solicitation and any amendment thereto is sufficient to meet its statutory obligations.

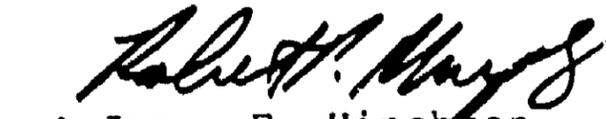
Specifically, USDS maintains that: American companies are not as aware of the intricacies of exchange rate fluctuations as foreign local companies; American companies incur all of their administrative overhead costs in dollars as opposed to foreign local companies which incur their overhead costs in local currency; American companies readily cannot convert local currencies to dollars and expatriate the money to cover overhead and to make profit; and American companies are prohibited by law from holding foreign currencies in their accounts in the United States. Although not expressly stated, USDS apparently is concerned that its costs will be higher as a result of having to convert cruzeiros into dollars to cover its United States costs and will have to increase its price accordingly.

DOS does not argue that in some cases it would not be disadvantageous for American firms to have to bid and be paid in cruzeiros. The agency maintains that a requirement that American contractors for local guard services be paid entirely in dollars would violate the law of many countries in which such contracts are being performed. While DOS recognizes that there may be some instances where a provision for partial payment in dollars would be appropriate because a country does not permit conversion of its currency, it does not believe it is required for this RFP. DOS asserts that to establish general policies for American firms performing guard services contracts entirely within a foreign country and using principally local labor would introduce discrepancies between American and local offerors based entirely on currency speculation that would make meaningful comparison of offered prices virtually impossible.

While the protester maintains that having to submit offers in foreign currencies disadvantages American offerors, this is not the type of disadvantage section (c) (2) seeks to eliminate. The language does not require elimination of all possible disadvantages that American offerors may have compared to local foreign offerors. The provision addresses disadvantages American offerors may have during the solicitation and evaluation process because of their

location away from the Embassy sites. We find no basis in the section (c)(2) language or its legislative history to interpret the section as requiring the elimination of currency exchange disadvantages that American firms may have compared to local foreign firms. H.R. Rep. No. 343, 101st Cong., 2nd Sess. 4, reprinted in 1991 U.S. Code Cong. & Admin. News at 57. In our view, DOS' interpretation that section (c)(2) generally pertains to procedural matters in the solicitation process and that the disadvantage protested is not the type covered by this section is correct.

The protest is denied.

  
James F. Hinchman  
General Counsel

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<sup>1</sup>We reach no conclusion as to whether any other provision of the statute could be construed as requiring DOS to eliminate this type of disadvantage.