



Comptroller General  
of the United States

Washington, D.C. 20548

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Calhoun

322260

## Decision

**Matter of:** United International Investigative Services

**File:** B-253271

**Date:** August 26, 1993

William J. Guidice for the protester.  
Kathleen D. Martin, Esq., Department of State, for the agency.  
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that Department of State should not have applied statutory "United States person" preference under solicitation for United States Embassy guard services where the only offers received were from American firms is denied since the preference does not apply only where offers are received from both foreign and domestic firms; rather, the statute calls for preference to be given to firms meeting specified criteria that define "United States person."

### DECISION

United International Investigative Services protests the award of a contract to Inter-Con Security Services under request for proposals (RFP) No. SOJM370-93-R-0001, issued by the Department of State (DOS) for armed guard services at the United States Embassy in Kingston, Jamaica. United argues that the agency improperly applied an evaluation preference during the conduct of the procurement.

We deny the protest.

The agency issued this solicitation after it decided not to exercise the option under the existing contract, held by Inter-Con. This RFP calls for interim services under a "bridge contract" while DOS is in the process of soliciting for guard services using full and open competition.<sup>1</sup> The

<sup>1</sup>This procurement was conducted using other than full and open competition, in accordance with 41 U.S.C. § 253(c)(2) (1988), because the agency determined that the government would be seriously injured unless it was permitted to limit the number of sources from which it solicited proposals. The term of this contract was 6 months, with an option to extend the contract for up to an additional 6 months.

solicitation was issued on March 9, 1993, and contemplated award of a combination-type contract, wherein the standard services provided would be on a fixed-price basis, and the additional or emergency services provided would be on a time and materials basis. The RFP stated that award would be made to that responsible offeror whose proposal was determined to be the best value to the government, price and other factors considered.

Section L.1.1.1 of the RFP instructed that, pursuant to section 136 of the Foreign Relations Authorization Act for Fiscal Years 1990 and 1991, preference in awarding the contract would be given to offerors qualifying as "United States persons" or "United States joint venture persons." See 22 U.S.C. § 4864 (Supp. III 1991). Only those offerors whose proposals contained a complete, certified "Statement of Qualifications for Purposes of Obtaining Preference as a United States Person" would be eligible to be considered for the preference. Section K.10 of the RFP contained a blank Statement of Qualifications, and section M.4 instructed offerors that determination of eligibility for the preference would be made by the government based upon that certification. DOS would add 5 points to the total score (technical plus price) of each offer determined to be eligible for the preference.

The agency received two proposals by the March 29 closing date, one from Inter-Con and one from United, both of which were determined to be within the competitive range. Written and oral negotiations were conducted and best and final offers (BAFO) were submitted. After examination of the certifications, the agency determined that while Inter-Con was eligible for the United States person preference, United was not. With the 5-point preference added, Inter-Con's BAFO received a higher score than United's. Award was made to Inter-Con, and this protest followed.

United argues that the United States person preference should not be applied where, as here, all offers received are from United States firms.

The provision at issue, 22 U.S.C. § 4864, was enacted as a result of congressional findings that domestic security firms were often at a disadvantage in bidding for local guard contracts abroad because, among other things, some United States foreign missions chose only to advertise locally the availability of a local security guard contract abroad. 22 U.S.C. § 4864(a). To ensure maximum domestic competition for these contracts, 22 U.S.C. § 4864 provides that, for guard service contracts exceeding \$250,000 entered

into after February 16, 1990, DOS is to:

"[g]ive 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." 22 U.S.C. § 4864(c)(3).

The statute specifically defines "United States person" as a person meeting seven criteria, the fourth of which requires the offeror to have "performed within the United States and overseas security services similar in complexity to the contract being bid," 22 U.S.C. § 4864(d)(1)(D). Part four of the Statement of Qualifications asked offerors to provide required information on a sufficient number of contracts or other arrangements performed by the firm to show that similar services have been performed both overseas and in the United States.


DOS determined that United was ineligible for the United States person preference because, in part four of its Statement of Qualifications, it listed no overseas contracts; the only location cited was the United States. Further, in its BAFO, United plainly stated that it had no overseas contracts. As a result, under the terms of both the RFP and of 22 U.S.C. § 4864, United was clearly ineligible for the preference because it was not a United States person.

United does not dispute the agency's determination that it was ineligible to receive the United States person preference, nor does it dispute Inter-Con's eligibility for that preference. Instead, United argues that since both offerors were United States firms, DOS should not have applied the preference at all. We disagree.

United's argument that these definitions are only to be applied in cases where United States firms are competing against foreign firms is not supported by the statutory language. In 22 U.S.C. § 4864, Congress clearly stated that the preference shall be applied to "United States persons"; Congress also specifically defined a "United States person" for purposes of this statutory preference. While United points out that Congress intended to ensure that qualified United States firms received the preference over foreign firms, a "United States person" is not defined merely by

whether it is a United States firm in some general sense;<sup>2</sup> the Congress enacted into law specific criteria that must be met. The statute requires DOS to apply the preference to "United States persons where such persons are price competitive to the non-United States persons bidding on the contract." 22 U.S.C. § 4864(c)(3). While the result in this case is anomalous in that a domestic firm is denied the preference because it has not conducted business overseas, we have no basis to object to the DOS determination that, under the statutory definition, Inter-Con is a "United States person" and United is a "non-United States person". DOS properly declined to apply the preference to the proposal of the "non-United States person," United.

The protest is denied.

  
 for James F. Hinchman  
 General Counsel

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<sup>2</sup>United appears to define "United States firm" as one incorporated in the United States. Incorporation under the laws of the United States is but one of the seven criteria a firm must meet to qualify as a "United States person" under the statute. See 22 U.S.C. § 4864(d)(1)(A).