

§ 4864. Increased participation of United States contractors in local guard contracts abroad under diplomatic security program

(a) Findings

The Congress makes the following findings:

(1) State Department policy concerning the advertising of security contracts at Foreign Service buildings has been inconsistent over the years. In many cases, diplomatic and consular posts abroad have been given the responsibility to determine the manner in which the private sector was notified concerning an invitation for bids or a request for proposals with respect to a local guard contract. Some United States foreign missions have only chosen to advertise locally the availability of a local security guard contract abroad.

(2) As a result, many United States security firms that provide local guard services abroad have been unaware that local guard contracts were available for bidding abroad and such firms have been disadvantaged as a result.

(3) Undoubtedly, United States security firms would be interested in bidding on more local guard contracts abroad if such firms knew of the opportunity to bid on such contracts.

(b) Objective

It is the objective of this section to improve the efficiency of the local guard programs abroad administered by the Bureau of Diplomatic Security of the Department of State and to ensure maximum competition for local guard contracts abroad concerning Foreign Service buildings.

(c) Participation of United States contractors in local guard contracts abroad

With respect to local guard contracts for a Foreign Service building which exceed \$250,000 and are entered into after February 16, 1990, the Secretary of State shall—

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

(2) absent compelling reasons, award such contracts through the competitive process;

(3) in evaluating proposals for such contracts, award contracts to the technically acceptable firm offering the lowest evaluated price, except that proposals of United States persons and qualified United States joint venture persons (as defined in subsection (d)) shall be evaluated by reducing the bid price by 10 percent;

(4) in countries where contract denomination and/or payment in local currencies constitutes a barrier to competition by United States firms—

(A) allow solicitations to be bid in United States dollars; and

(B) allow contracts awarded to United States firms to be paid in United States dollars;

(5) ensure that United States diplomatic and consular posts assist United States firms in obtaining local licenses and permits; and

(6) 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.

(d) Definitions

For the purposes of this section—

(1) the term “United States person” means a person which—

(A) is incorporated or legally organized under the laws of the United States, including the laws of any State, locality, or the District of Columbia;

(B) has its principal place of business in the United States;

(C) has been incorporated or legally organized in the United States for more than 2 years before the issuance date of the invitation for bids or request for proposals with respect to the contract under subsection (c);

(D) has performed within the United States or overseas security services similar in complexity to the contract being bid;

(E) with respect to the contract under subsection (c), has achieved a total business volume equal to or greater than the value of the project being bid in 3 years of the 5-year period before the date specified in subparagraph (C);

(F)(i) employs United States citizens in at least 80 percent of its principal management positions in the United States; and

(ii) employs United States citizens in more than half of its permanent, full-time positions in the United States; and

(G) has the existing technical and financial resources in the United States to perform the contract;

(2) the term “qualified United States joint venture person” means a joint venture in which a United States person or persons owns at least 51 percent of the assets of the joint venture;

(3) the term “Foreign Service building” means any building or grounds of the United States which is in a foreign country and is under the jurisdiction and control of the Secretary of State, including residences of United States personnel assigned overseas under the authority of the Ambassador; and

(4) the term “barrier to local competition” means—

(A) conditions of extreme currency volatility;

(B) restrictions on repatriation of profits;

(C) multiple exchange rates which significantly disadvantage United States firms;

(D) government restrictions inhibiting the free convertibility of foreign exchange; or

(E) conditions of extreme local political instability.

(e) United States minority contractors

Not less than 10 percent of the amount of funds obligated for local guard contracts for Foreign Service buildings subject to subsection (c) shall be allocated to the extent practicable for contracts with United States minority small business contractors.

(f) United States small business contractors

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(g) Limitation of subcontracting

With respect to local guard contracts subject to subsection (c), a prime contractor may not subcontract more than 50 percent of the total value of its contract for that project.

(h) Award of local guard and protective service contracts

In evaluating proposals for local guard contracts under this section, the Secretary of State may award such contracts on the basis of best value as determined by a cost-technical tradeoff analysis (as described in Federal Acquisition Regulation part 15.101) and, with respect to such contracts for posts that are not high risk, high threat posts (as such term is defined in section 4803 of this title), subject to congressional notification 15-days prior to any such award.

(Pub. L. 101-246, title I, § 136, Feb. 16, 1990, 104 Stat. 33; Pub. L. 103-236, title I, § 141, Apr. 30, 1994, 108 Stat. 401; Pub. L. 105-277, div. G, subdiv. B, title XXII, § 2210, Oct. 21, 1998, 112 Stat. 2681-811; Pub. L. 114-323, title I, § 112, Dec. 16, 2016, 130 Stat. 1910.)

Editorial Notes

CODIFICATION

Section was enacted as part of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, and not as part of the Diplomatic Security Act which comprises this chapter.

AMENDMENTS

2016—Subsec. (h). Pub. L. 114-323 added subsec. (h).
1998—Subsec. (c)(3). Pub. L. 105-277, § 2210(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “in evaluating and scoring proposals for such contracts, award not less than 60 percent of the total points on the basis of technical factors and subfactors;”.

Subsec. (c)(5). Pub. L. 105-277, § 2210(2), inserted “and” at end.

Subsec. (c)(6). Pub. L. 105-277, § 2210(3), substituted period for “; and” at end.

Subsec. (c)(7). Pub. L. 105-277, § 2210(4), struck out par. (7) which read as follows: “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.”

1994—Subsec. (c). Pub. L. 103-236, § 141(1), added pars. (2) to (5), redesignated former pars. (2) and (3) as (6) and (7), respectively, and in par. (6) struck out “due to their distance from the post” after “evaluation process”.

Subsec. (d)(1)(D). Pub. L. 103-236, § 141(2)(A), substituted “or” for “and”.

Subsec. (d)(4). Pub. L. 103-236, § 141(2)(B)-(D), added par. (4).

Statutory Notes and Related Subsidiaries

STRENGTHENING OVERSIGHT

Pub. L. 115-31, div. J, title VII, § 7004(i), May 5, 2017, 131 Stat. 618, provided that: “Funds appropriated by this Act [div. J of Pub. L. 115-31, 131 Stat. 589, see Tables for classification] and prior Acts making appropriations for the Department of State, foreign oper-

ations, and related programs under the heading ‘Diplomatic and Consular Programs’ for Worldwide Security Protection shall be made available to strengthen oversight of the local guard force at a critical post abroad through the use of United States Government employees or contractors who are United States citizens: *Provided*, That such funds are in addition to funds otherwise made available by such Acts for such purposes: *Provided further*, That the total annual operating costs associated with providing such oversight in fiscal year 2017 and subsequent fiscal years shall be shared among agencies through the International Cooperative Administrative Support Services program: *Provided further*, That not later than 45 days after enactment of this Act [May 5, 2017], and prior to the obligation of funds for such purposes, the Secretary of State shall consult with the Committees on Appropriations on plans to carry out the requirement of this subsection.”

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of this title and section 161(d) of Pub. L. 103-236, set out as a note under section 2651a of this title.

§ 4865. Security requirements for United States diplomatic facilities

(a) In general

The following security requirements shall apply with respect to United States diplomatic facilities and specified personnel:

(1) Threat assessment

(A) Emergency Action Plan

The Emergency Action Plan (EAP) of each United States mission shall address the threat of large explosive attacks from vehicles and from complex attacks (as such term is defined in section 4866 of this title), and the safety of employees during such an explosive attack or such a complex attack. Such plan shall be reviewed and updated annually.

(B) Security Environment Threat List

The Security Environment Threat List shall contain a section that addresses potential acts of international terrorism against United States diplomatic facilities based on threat identification criteria that emphasize the threat of transnational terrorism and include the local security environment, host government support, and other relevant factors such as cultural realities. Such plan shall be reviewed and updated every six months.

(2) Site selection

(A) In general

In selecting a site for any new United States diplomatic facility abroad, the Secretary shall ensure that all United States Government personnel at the post (except those under the command of an area military commander) will be located on the site.

(B) Waiver authority

(i) In general

Subject to clause (ii), the Secretary of State may waive subparagraph (A) if the