



United States Government Accountability Office
Washington, DC 20548

November 8, 2006

The Honorable Stephen C. Preston
Administrator
Small Business Administration

Subject: *State Department Contract for Security Installation at Embassies Awarded to 8(a) Joint Venture*

Dear Mr. Preston:

In March 2003, the Department of State (State) awarded a sole-source contract to EmbSEC, a Virginia limited liability corporation, for work at U.S. embassies. The contract currently has a ceiling price of \$354 million. The contractor is required to install and maintain technical security equipment, such as alarms, cameras, and controlled-access equipment; establish X-ray capability for special projects; and maintain and repair physical security products. The contractor also procures equipment and materials and operates the warehouse where they are stored.

EmbSEC was created as a joint venture, mentor/protégé partnership under the Small Business Administration's (SBA) 8(a) business development program. A joint venture in the 8(a) program is an agreement between an 8(a) participant and one or more businesses to work together on a specific 8(a) contract. SBA regulations state that the purpose of the mentor/protégé relationship is to enhance the capabilities of the protégé and to improve its ability to successfully compete for contracts. The EmbSEC joint venture is comprised of RDR, Inc., the mentor, and BP International (BPI), the protégé, an 8(a) firm at the time the contract was awarded. State had awarded 8(a) contracts to RDR for the same type of work in 1992 and 1998.

We received a tip on our fraud hotline regarding the EmbSEC contract.¹ The objectives of our review, conducted under the authority of the Comptroller General to conduct evaluations on his own initiative, were to determine (1) State's basis for awarding the contract to EmbSEC without competition and (2) the extent to which SBA has monitored the roles and responsibilities of the companies under the joint venture arrangement. We are sending a separate management letter to State regarding this contract.²

Results in Brief

State relied on a waiver of 8(a) competitive thresholds, granted by SBA in 2001, to award the sole-source contract to EmbSEC. However, the waiver was improper because SBA was not authorized to grant it. SBA can authorize sole-source 8(a) awards above the competitive thresholds (1) for specific

¹ The purpose of GAO's FraudNET is to facilitate reporting of allegations of fraud, waste, abuse, or mismanagement of federal funds. Allegations are received via e-mail at fraudnet@gao.gov.

² GAO, *Department of State Contract for Security Installation at Embassies*, [GAO-07-34R](#) (Washington, D.C.: Nov. 8, 2006).

procurements and (2) if it determines that other 8(a) firms cannot compete for the requirement. In this case, SBA authorized State to make sole-source 8(a) awards in any amount for contracts that “supplement the security of U.S. Government diplomatic posts and protect the lives of Departmental personnel.” The waiver was not tied to a specific procurement, but was a blanket waiver that could be applied to any contract pertaining to security at diplomatic posts. The waiver was signed by another official on behalf of SBA’s Associate Administrator for 8(a) Business Development; SBA headquarters officials were unaware of the waiver until we brought it to their attention. They agreed that it was unauthorized. State incorporated the waiver in its procurement regulation in April 2004, but officials from State’s offices of procurement policy and Small Business Utilization told us it has been used only for the EmbSEC contract. It is not clear why State used the waiver to award the 2003 contract to EmbSEC rather than using competitive procedures. Five years earlier, in 1998, when RDR was awarded the prior contract as the only 8(a) offerer, the contracting officer expressed concern with the lack of competition, noting that “it would be in the best interest of the government to re-compete this requirement at the earliest practical time.” State officials told us that a number of companies could perform this work.

Although SBA officials approved the EmbSEC joint venture and mentor/protégé agreement, they have not monitored the roles and responsibilities of the two contractors, despite the fact that this is an unusually large and complex 8(a) contract. According to contractor representatives, as well as State officials, RDR sought out BPI as an 8(a) joint venture partner for the contract. At the time, BPI was a very small firm specializing in information technology project management and consulting. Under the EmbSEC contract, RDR and DynCorp, a subcontractor, install and maintain security systems at embassies, and BPI provides administrative services, such as operating the warehouse for the equipment. SBA headquarters officials—the Associate Administrator for the 8(a) Business Development program and a representative from the office of General Counsel—said that this arrangement does not appear to be providing BPI, as the protégé, with the experience that would be expected. Officials in SBA’s Washington, D.C., district office had not followed up to ensure that the 8(a) firm was receiving the appropriate benefits from the arrangement.

We are recommending that SBA retract the 2001 waiver and that it review the roles and responsibilities of RDR and BPI under the 8(a) joint venture. In written comments on a draft of this report, SBA agreed with the recommendations. We also received a minor technical comment from EmbSEC, which we incorporated.

Background

SBA’s 8(a) business development program is one of the federal government’s primary means for developing small businesses owned by socially and economically disadvantaged individuals. Firms approved as 8(a) participants can receive business development assistance from SBA but may only participate in the 8(a) program for a maximum of 9 years. BPI was an 8(a) firm at the time of contract award but has since graduated from the program. Contracting officers can award contracts to 8(a) firms without competition below certain dollar thresholds—namely up to \$5 million for manufacturing and up to \$3 million for all other contracts. These competitive thresholds may be waived by SBA’s Associate Administrator for 8(a) Business Development if there is not a reasonable expectation that at least two eligible 8(a) participants will submit offers at a fair price.

In 1998, SBA started negotiating memorandums of understanding that allow federal agencies to contract directly with 8(a) firms. These memorandums delegate contract execution responsibility to the agencies and require them to monitor certain requirements of the contracts. Before contracting with an 8(a) firm,

however, agencies must request approval from the relevant SBA district office (the Washington district office, in this case).

Basis for the Sole-Source Award Was an Improper SBA Waiver

On September 18, 2001, State requested that SBA waive 8(a) competitive thresholds for contracts that “supplement the security of U.S. Government diplomatic posts and protect the lives of Departmental personnel.” An SBA official approved the waiver on behalf of the Associate Administrator for 8(a) Business Development the next day to apply “for the duration of the national state of emergency” as declared by the President; the waiver contains no expiration date. This waiver was improper because SBA was not authorized to issue it. SBA can waive the competitive thresholds for a specific contract opportunity after determining that there is not a reasonable expectation that at least two eligible 8(a) participants will submit offers at a fair price³ but was not authorized to approve a blanket waiver, as was done here. In its letter approving the waiver, SBA agreed that “it is not reasonable that the Department of State would have the time to advertise, evaluate and negotiate with several contractors to obtain reasonable pricing.” State, however, had identified no specific requirement under which this would be the case. State officials said they interpret the waiver as a “security policy” after the September 2001 terrorist attacks and never viewed it as pertaining to a specific requirement. SBA headquarters officials were not aware of the waiver until we brought it to their attention. They agreed that it was unauthorized.

State made the waiver authority effective on September 19, 2001, via a procurement information bulletin. It was subsequently incorporated in State’s acquisition regulation⁴ on April 13, 2004, so that, according to officials, it would be more visible to contracting officers. Officials from State’s Office of Small Business Utilization and from the contracting office told us the EmbSEC contract is the only one that has been awarded under the waiver.

It is unclear why State relied on the SBA waiver rather than using competitive procedures to award this contract. State contracting officers had raised concerns in the past about the lack of competition for the security installation work. In 1998, when RDR was the only 8(a) offerer, the contracting officer expressed concern with the lack of competition and concluded that “it would be in the best interest of the government to re-compete this requirement at the earliest practical time.” Contracting officer’s representatives in State’s Bureau of Overseas Buildings Operations indicated to us that a number of companies could perform the security installation work. Nevertheless, State’s desire to continue contracting with RDR after it had graduated from the 8(a) program led RDR to seek out an 8(a) company with which to form a joint venture for the follow-on, sole-source contract.

SBA Has Not Monitored Roles and Responsibilities of 8(a) Joint Venture Participants

SBA, which is responsible for monitoring the joint venture and ensuring that the mentor/protégé relationship complies with SBA regulations, has not carried out these duties—despite the fact that this \$354 million, sole-source contract is, according to SBA headquarters officials, extremely unusual under the 8(a) program. Under joint ventures, the 8(a) firm is supposed to perform a significant portion of the contract, according to SBA regulations. While the EmbSEC joint venture operating agreement states that BPI shall perform a significant portion of the work, its description of the roles and responsibilities of

³ 13 C.F.R. 124.506(d) (2001). These standards remain in place. See 13 C.F.R. 124.506(d) (2006).

⁴ Department of State Acquisition Regulation, 48 C.F.R. 619.805-2 (2005).

RDR and BPI states that RDR is to perform operations support, database development, and security system design and installation services. On the other hand, BPI is to provide program management, subcontract management, warehousing, administrative, computer resource, and procurement services. According to contractor representatives, the division of work set forth in the joint venture agreement is an accurate depiction of how the two parties' responsibilities have been carried out, with DynCorp, a subcontractor, providing security installation services along with RDR. According to RDR and BPI representatives, as well as State officials, RDR sought out BPI as an 8(a) partner with which to form the joint venture to win the follow-on contract for security installation. BPI had no experience with security installation; it was a very small firm specializing in information technology project management and consulting.

SBA headquarters officials—the Associate Administrator for 8(a) Business Development and a senior attorney in SBA's office of General Counsel—told us that the division of responsibilities does not appear to be providing BPI with experience in performing the basic intent of the contract—security system installation. District officials explained that they may approve a joint venture under the expectation that the 8(a) firm would hire more people to learn the technical aspects of the contract work. They had not followed up to see if this was happening under the EmbSEC joint venture.

RDR and BPI also entered into a mentor/protégé agreement, approved by SBA. The agreement sets forth the support to be provided by the mentor, consisting of, among other things, management assistance, assistance in setting up an accounting system compliant with government standards, and assistance in setting up lines of credit and obtaining loans. The technical assistance RDR is to provide to BPI is broadly stated: "Identify and issue subcontracts for work...to build capabilities and qualifications" and "Provide access to technical training, equipment, and qualified personnel." Contractor representatives told us that RDR has issued no subcontracts to BPI. According to BPI's president, his company has benefited in that he can now cite this large contract as a corporate qualification for winning future government contracts. There was never an intention that BPI receive technical experience installing security systems under the contract.

SBA's 8(a) regulation states that it will not approve a mentor/protégé agreement if it determines that the agreement is merely a vehicle to enable a non-8(a) participant to receive 8(a) contracts. SBA district officials had not followed up to ensure that the 8(a) firm was receiving the appropriate benefits from the arrangement, despite a requirement that they review the relationship annually to determine whether to approve its continuation for another year. At the time of our review, the EmbSEC contract had been in place for over 3 years.

Conclusion

A lack of oversight at SBA contributed to the problems we identify in this letter. Actions are needed at headquarters and at the district office to address the issues we raised. We are making recommendations to State regarding this contract in a separate letter.

Recommendations for Executive Action

We recommend that the Administrator of SBA take the following two actions:

- Retract the September 2001 waiver of 8(a) competitive thresholds granted to the Department of State.

- Direct the Washington district office to review the roles and responsibilities of BPI versus those of RDR under the EmbSEC 8(a) joint venture to determine whether the joint venture is meeting the intent of the SBA program.

Agency Comments

In written comments on a draft of this report, SBA agreed with the recommendations, stating that it has retracted the waiver of 8(a) competitive thresholds and instructed State to terminate, for convenience, any contracts that were awarded under this waiver unless State believes other authority exists for such awards. SBA has also directed the district office to provide evidence of its annual assessments of the mentor/protegé relationship between RDR and BPI. If the assessments were not done, the district office is to conduct them and provide an explanation as to why they were not performed. SBA's comments are reproduced in appendix I. We also received a minor technical comment from EmbSEC, which we incorporated.

Scope and Methodology

We analyzed documents in State's EmbSEC contract files as well as the prior contract with RDR. We reviewed pertinent sections of the Federal Acquisition Regulation and State's supplement, and small business regulations. We held discussions with SBA officials from headquarters and the Washington district office. We interviewed State contracting officials and met with contractor representatives. We conducted our review from May 2006 to August 2006 in accordance with generally accepted government auditing standards. Key contributors to this correspondence were Michele Mackin, Assistant Director; John Krump; Sylvia Schatz; and Tatiana Winger.

Sincerely yours,

A handwritten signature in black ink that reads "Katherine V. Schinasi". The signature is written in a cursive, flowing style.

Katherine V. Schinasi, Managing Director
Acquisition and Sourcing Management

Appendix: Comments from the U.S. Small Business Administration



OFFICE OF THE ADMINISTRATOR

U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

October 30, 2006

Ms. Katherine V. Schinasi
Managing Director
Acquisition and Sourcing Management
U.S. Government Accountability Office
Washington DC 20548

Dear Ms. Schinasi:

Thank you for your GAO Audit Report of September 2006 submitted to the U.S. Small Business Administration (SBA) regarding the U.S. Department of State's contract for Security Installation at Embassies awarded to an 8(a) joint venture.

SBA reviewed your recommendations and has taken the following actions:

- A. Retracted the Waiver Above the 8(a) Competitive Threshold for Sole Source Contracts that was issued to the U.S. Department of State in September 2001 and instructed the Department of State to terminate, for convenience, any contracts that were awarded under the authority of this waiver unless the Department believes other authority exists for such awards; and
- B. Directed the Washington Metropolitan Area District Office (WMADO) to provide evidence of its annual assessments of the RDR, Inc., BP International Mentor/Protégé relationship since the Agreement was approved on July 25, 2002, including the District Director's determination of the Protégé's benefits. It was also requested that WMADO provide evidence that the Protégé met the required performance of work under any contracts awarded under the authority of the September 2001 waiver. If these assessments were not performed, WMADO was instructed to conduct the assessments and provide an explanation on why they were not performed in accordance with the regulations. These actions are to be completed no later than November 8, 2006.

If you have additional questions or comments, please contact me directly.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "S. C. Preston".

Steven C. Preston



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