

U.S. GOVERNMENT ADVOCACY GUIDELINES

PURPOSE

- " To expand U.S. exports and export-related employment as a means to promote U.S. economic health and well-being.

- " To assist USG personnel in determining whether and to what extent USG support is appropriate in connection with a transaction involving U.S. interests.

BACKGROUND

USG officials, particularly in our Embassies abroad, are increasingly approaching foreign governments on behalf of U.S. commercial interests. In this connection, however, they are often faced with requests to intervene in support of parties to proposed transactions in which there is some question as to the degree and nature of U.S. participation.

USG export promotion policy has historically looked to U.S. incorporation and domestic content in determining whether USG support is appropriate in a particular instance. The increasingly complex nature of international commercial transactions now necessitates revisiting the issue of which factors should be considered in determining whether or not to provide USG advocacy support in any given circumstance. The guidelines that follow are provided to Ambassadors and Embassy Commercial personnel for the purpose of assisting in these determinations on a case-by-case basis.

The issues that arise with respect to any individual transaction may include, for example: determining whether to support any bid in which the goods or services to be delivered do not contain the traditional U.S. content level of more than 50 percent; determining whether to support a bid by a foreign-owned, U.S.-incorporated firm that may or may not contain more than 50 percent U.S. content; differentiating between or among bids by more than one U.S. firm, bids by foreign subsidiaries of U.S. firms, and bids by various consortia where differences in the degree of U.S. participation and viability of the bid may or may not be significant. The guidelines below place a premium on U.S. content, including employment, in the determination of whether and to what extent a given bid is considered to be in the U.S. national interest. While any bid meeting the 50 percent U.S. content threshold is presumed to be in the national interest, bids with lesser U.S. content may, under certain circumstances, also be determined to be deserving of comparable, nondiscriminatory treatment by the USG. Conversely, USG support for a bid may not be in the national interest -- even if the bid contains greater than 50 percent U.S. content -- if, for example, the bidding firm's home market is closed to U.S. firms.

Obviously, no guidelines can address dispositively all possible fact situations likely to be faced by posts abroad. Therefore, in particularly complex cases, consultations with interested Washington agencies may be required before a determination can be reached.

GUIDELINES

1. The overall basis for determining the nature and extent of USG support for a viable bid or proposal in connection with an international transaction shall be the U.S. national interest. A U.S. national interest determination will first weigh and assess the foreseeable, material benefits to the U.S. economy that may potentially be derived from a transaction, and then assess the merit of a request for USG support of any bid or proposal made in connection with the transaction.
2. A bid or proposal in which the U.S. content of the goods or service to be provided exceeds 50 percent of their total value (including materials, equipment and labor) shall be presumed to be in the U.S. national interest.
3. In cases where the U.S. content does not exceed 50 percent, the following factors, often associated with U.S. ownership, may be considered in determining whether USG support of a bid or proposal is in the U.S. national interest:
 - " U.S. materials and equipment content.
 - " U.S. labor content.
 - " Contribution to the U.S. technology base including conduct of research and development in the U.S.
 - " Repatriation of profits to the U.S. economy.
 - " Potential for follow-on business that would benefit the U.S. economy.

The USG may determine that a bid or proposal that meets one or more of the above factors in a clear and substantial way is in the U.S. national interest.

4. All bids or proposals that are determined to be in the U.S. national interest under paragraphs 2 or 3 above shall be supported by the USG in an equal, non-discriminatory manner, except that, in the case of foreign or foreign-controlled bidders, the USG may take into account, with respect to the relevant product or service, the absence of competitive opportunities for U.S. firms in the bidder's home market that are substantially equivalent to those available in the U.S. market for like products or

services, as reflected in National Trade Estimate Reports on Foreign Trade Barriers prepared by the Office of the United States Trade Representative.

5. It shall be the responsibility of the firm or entity seeking USG support to advise the post in a timely manner of its interest. Firms should be prepared to substantiate to the satisfaction of the post the applicability of the above criteria, with documentation (when necessary and appropriate). Firms may be informed that their failure to provide such information in a timely manner may preclude USG support.
6. A firm seeking USG support must agree that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with the matter for which advocacy assistance is being sought; and (2) maintain and enforce a policy that prohibits the bribery of foreign officials. The firm must further acknowledge that failure to comply with the terms of the agreement may result in the denial of advocacy assistance.
7. In complex or sensitive transactions (including those specifically referred to in paragraph 4), the post should consult with interested Washington agencies for advice on a case-by-case basis.

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