



United States Government Accountability Office
Washington, DC 20548

November 8, 2006

Henrietta H. Fore
Under Secretary for Management

Charles E. Williams
Director and Chief Operating Officer
Bureau of Overseas Buildings Operations
Department of State

Subject: *Department of State Contract for Security Installation at Embassies*

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. The terms of the EmbSEC joint venture state that RDR will perform operations support, database development, and security system design and installation under the contract, in addition to performing administrative services under the joint venture, such as accounting and contract administration. BPI is to provide program management, warehousing, computer resource, and procurement services. EmbSEC's only source of revenue is its contract with State.

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) the basis for awarding the contract without competition, (2) the effect of treating travel costs, which comprise a large portion of contract costs, as firm, fixed-price, and (3) whether

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.

contract administration is being effectively carried out. We are sending a separate management letter to the Administrator of the Small Business Administration (SBA) regarding this contract.²

Background

RDR has been performing security installation work for State for a number of years, dating back to work it performed as a subcontractor beginning in 1987. When its first contract as the prime contractor—which had been awarded in 1992 and included a base year plus 4 option years—was about to expire, RDR requested that State expedite the solicitation for the follow-on contract so that the company would be eligible to compete for it before graduating from the 8(a) program. RDR was the only 8(a) offeror for that contract, subcontracting with DynCorp, International.³ The contract also had a 5-year period of performance. In preparation for the 2003 contract award, State officials wanted RDR to continue the security installation work, and RDR subsequently partnered with BPI, an 8(a) firm, under an 8(a) joint venture. DynCorp is again the subcontractor.

The 8(a) 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. 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. SBA's Associate Administrator for 8(a) Business Development may accept a requirement for a sole-source award above these thresholds if there is not a reasonable expectation that at least two eligible 8(a) participants will submit offers at a fair price.

State's Security Management Division within the Bureau of Overseas Buildings Operations (OBO) is the program office that requested the security installation services. OBO directs the worldwide overseas buildings program for State. For the EmbSEC contract, contracting officer's representatives (COR) within OBO prepare statements of the work to be performed under each task order and review the contractor's proposals. The contract was initially awarded as a time-and-materials contract.⁴ This contract type may be used only when it is not possible at the time of contract award to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. In November 2003, the contract was modified bilaterally to convert it to an indefinite delivery/indefinite quantity contract with firm, fixed-price task orders, with an effective date of December 1, 2003.⁵ The contract type was changed to help control costs after overruns were experienced in the first year. The contract provides for indefinite quantity, within stated limits, of supplies or services during a fixed period, with the government placing task orders under the contract for individual requirements. Because the orders under this contract are firm, fixed-price, once the price is approved by the government, it is not subject to adjustment on the basis of the contractor's cost

² GAO, *State Department Contract for Security Installation at Embassies Awarded to 8(a) Joint Venture*, [GAO-07-33R](#) (Washington, D.C.: Nov. 8, 2006).

³ DynCorp was acquired by Computer Sciences Corporation in 2003.

⁴ Time-and-materials contracts provide for acquiring supplies or services on the basis of (1) direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit and (2) materials at cost. Federal Acquisition Regulation (FAR) 16.601(a)(1) and (2) (2006).

⁵ The contract also provides for time-and-materials task orders. However, according to the contracting officer, the vast majority of the orders issued to date have been fixed-price.

experience. Thus, firm, fixed-price contracts place upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. The contract's period of performance includes the base year and 4 option years. To date, 3 option years have been exercised and, according to State officials, 258 task orders had been issued as of August 2006.

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. An SBA official approved the waiver on behalf of the Associate Administrator for 8(a) Business Development.⁶ However, the waiver was improper because SBA was not authorized to grant it. SBA can only authorize sole-source 8(a) awards above the competitive thresholds (1) for specific 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. SBA headquarters officials were unaware of the waiver until we brought it to their attention; they agreed that it was improper. State incorporated the waiver in its procurement regulation in April 2004, but officials told us it has been used only for the EmbSEC contract. It is not clear why State relied on the waiver instead of using competitive procedures to award the 2003 contract. Five years earlier, 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 indicated to us that a number of companies could perform this work.

Using a firm, fixed-price, rather than cost-reimbursable, arrangement for travel costs has had unintended consequences under this contract, leading to instances where the government has paid far more than the contractor's actual costs in airfare, per diem, excess baggage, and other travel costs, in addition to the contractor's negotiated profit rate. For example, the contractor priced its proposal to include 23 travelers for work in Baghdad, Iraq. However, only 10 actually made the trip, and the government paid \$380,000 more than the contractor's incurred costs, according to a State analysis. According to contractor representatives and government officials, accurately estimating travel costs is difficult because travel under this contract is highly unpredictable. Often it is not known ahead of time when the travel will occur or how long it will last. Contractor representatives explained that they must cover the risk of this unpredictability in preparing their task order proposals and that they can never be certain all of their costs will be covered. CORs in OBO told us they review the reasonableness of the contractor's proposed technical approach and number of hours for each task order but not the number of travelers. Since we began this review, OBO officials said they are paying increased attention to the contractor's proposed travel costs. The contracting officer recently negotiated a contract clause that allows the government to recover unused travel funds after work is completed, but the clause has not yet been invoked because work under recent task orders has not been completed.

According to contracting officials, they have struggled to administer this contract and exercise appropriate oversight. For example, after the contractor notified State of accidental errors it had made in pricing its proposals, the contracting office took initial steps in November 2005 to request an audit by the Defense Contract Audit Agency due to concerns about the pricing errors and other aspects of the

⁶ The official who approved the waiver is no longer with SBA.

contract, such as travel costs.⁷ However, the office has not followed up to actually get the audit under way because it lacked the staff to do so. Much of the contracting officer's time has been taken up with resolving disagreements with the contractor. In July 2006, EmbSEC complained to State about a large number of outstanding requests for adjustments to task order prices, some of which are more than a year old, and \$2.8 million in work completed or partially completed without a corresponding contractual document under which it could submit invoices. State officials told us they have recently taken actions in response, such as permitting partial funding for work begun before final negotiations on all price components are complete. We also found that the contracting office was not monitoring the percentage of the work being performed by the subcontractor as opposed to the 8(a) joint venture.

We are making several recommendations, pertaining to competition, travel costs, contract type, and contract administration. We also are recommending that State delete reference to the blanket waiver from its acquisition regulation. In written comments on a draft of this report, State concurred with our recommendations and made additional comments, which we address in the agency comments section of this letter. State's comments are reproduced in their entirety in appendix I. We also received technical comments from EmbSEC and RDR, Inc., which we incorporated as appropriate.

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 price⁸ 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's Associate Administrator for 8(a) Business Development and a representative from SBA's Office of General Counsel were not aware of the waiver until we brought it to their attention. They agreed that it was improper.

State made the waiver authority effective on September 19, 2001, via a procurement information bulletin. It was subsequently incorporated in State's acquisition regulation⁹ 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.

⁷ The Defense Contract Audit Agency performs contract audits for the Department of Defense. The agency also provides contract audit services to some other government agencies.

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

⁹ Department of State Acquisition Regulation, 48 C.F.R. 619.805-2 (2005).

It is unclear why State did not use 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 recommending RDR for the 1998 contract award as the only 8(a) offerer under a competitive solicitation, the contracting officer noted that RDR had been either the prime or subcontractor on contracts to provide these services for the past 10 years. 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.” CORs in OBO 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. After the first year of the contract, the contracting officer decided to initiate a competitive 8(a) acquisition rather than extend the contract another year, citing unresolved pricing issues and “mounting evidence” that negotiated rates were significantly higher than rates for similar services on other contracts. However, State eventually reopened negotiations with EmbSEC and was able to reach agreement on a pricing structure that the contracting officer determined to be fair and reasonable.

Fixed-Price for Travel Has Led to Unintended Consequences

Changing the contract type from time-and-materials to one with firm, fixed-price task orders was well intentioned, because time-and-materials contracts provide no positive profit incentive to the contractor for cost control or labor efficiency. However, treating travel as a fixed-price item has led to unintended consequences. According to the contracting officer, travel costs typically account for 30 to 45 percent of the task order price. Because travel is fixed-price and not cost-reimbursable, the government pays airfare and other associated travel costs for the number of travelers proposed for each task order, regardless of the actual costs the contractor incurs. According to our review of the contract file and discussions with State personnel, there have been instances where the contractor has proposed a number of travelers that turned out to be more than actually traveled, and the government has thus paid for trips that did not occur. For example, for work in Baghdad, Iraq, the contractor’s price proposal reflected 23 travelers, but only 10 actually traveled. For work in Tashkent, Uzbekistan, 12 travelers were proposed and only 5 traveled. In the case of Baghdad, a State official calculated that the government paid at least \$380,000 more than incurred costs. Contractor representatives told us that the proposed 23 travelers were for two separate Baghdad projects that they expected to run concurrently. However, due to schedule delays, the same technician staff ended up being used for both projects back-to-back. They pointed out that the opposite situation has also occurred, where the actual number of travelers exceeded the number in the task order proposal. However, a November 2005 analysis by State found that six of seven travel status reports submitted by the contractor showed that fewer travelers actually made the trips than were proposed.

The Federal Acquisition Regulation provides that a firm, fixed-price contract be used in certain circumstances, such as when available cost or pricing information permits realistic estimates of the probable costs of performance.¹⁰ Firm, fixed-price contracts are suitable for acquiring supplies or services on the basis of reasonably definite functional or detailed specifications when the contracting officer can establish fair and reasonable prices at the outset. State officials and contractor representatives agree that travel under this contract is very unpredictable. It is often not known in advance when the travel will occur under each task order or how long it will last. Frequently, schedules are changed with little notice. For example, general contractors at the embassy sites must complete their

¹⁰ FAR16.202-2 (2006).

work before installation of security equipment can begin. If the general contractor is behind schedule, EmbSEC's trip must be postponed. Sometimes schedule slips cause the contractor to send fewer people for a longer period of time to complete the work.

Contractor representatives told us they must consider the unpredictability of travel costs when pricing their proposals and, while they furnish an estimate that they believe to be fair and reasonable, they can never be certain that all of their costs will be covered due to the extreme uncertainty involved. The contractor maintains that the government is paying a fixed price to successfully complete a technical installation that is approved at the post and that schedule and other changes beyond its control frequently occur after the project plan has been submitted. According to the contractor, such changes can force resources to be adjusted to accomplish the work on time and can result in situations where fewer or more travelers than proposed are needed. Most of the CORs we spoke with, who have extensive technical experience installing these systems in the field, told us that they focus on the labor hours required to complete a task and the technical aspects of the proposals, such as what equipment is necessary; they do not typically assess the reasonableness of the proposed number of travelers.

Another issue related to travel costs pertains to excess baggage handling fees. These fees are intended to cover the contractor's expenses associated with transporting equipment overseas. According to contractor representatives and State officials, the tools and equipment needed under this contract can be very large and bulky, requiring additional fees to transport them in and out of the countries of destination. The contractor's proposals for 200 task orders between December 2003 and July 2005 reflected a fixed price per traveler for excess baggage fees that some State officials believed was too high. State paid this price until it requested information on actual costs, which turned out to be much less. An OBO official calculated that State overpaid \$1.2 million during this 1 1/2 year period. Contractor representatives explained that excess baggage fees are extremely variable and unpredictable and that this risk must be considered when they price their proposals. However, the contractor agreed to include the lower estimate in subsequent proposals.

The issue of travel costs has been a contentious one for State and the contractor. In 2004, State's contracting officer attempted to change travel to a cost-reimbursable expense, which would have removed the fee the contractor was including in its travel costs. The contractor would not agree without receiving consideration in return, stating that doing so would undermine the agreed-upon fee structure of the contract, under which air transportation and lodging were fee-bearing. In negotiating the most recent contract option year, which began in March 2006, the contracting officer again intended to convert travel to a cost-reimbursable item, and in fact, the contractor's proposal for that option year did reflect some portions of travel as cost-reimbursable. Ultimately, however, the contracting officer decided that the contractor would have no incentive to keep travel costs down under a cost-reimbursable arrangement and continued to include it as fixed-price. However, a new contract clause was inserted that allows recovery of unused travel funds after order completion. According to the contracting officer, the clause has not been invoked to date, because work under the current task orders is still ongoing. OBO officials told us they are now tracking travel costs more closely.

Difficulties Keeping Pace with Contract Administration Workload

The extensive activity on this contract and the variety of projects involved call for a significant amount of oversight. From our reviews of contract documents and interviews with current and prior contracting officers, it appears that the contracting office has had difficulty keeping pace with the contract administration workload. For example, after the contractor notified the government of accidental errors it had made in pricing its proposals, in which it was charging the government for government-furnished

equipment,¹¹ the contracting office contacted the Defense Contract Audit Agency in November 2005. Due to concerns about the pricing errors, as well as other aspects of the contract such as travel costs, the office requested an audit of the contractor's estimating system, overhead rates, and incurred costs for selected task orders. As of this date, however, the audit has not been initiated because, according to the contracting officer, he lacks the staff to follow up with the audit agency. Recently, State officials told us they plan to turn their attention once again to getting the audit underway.

Three additional aspects of this contract have required substantial time and effort on the part of the contracting staff: the high number of undefinitized task orders (that is, actions for which the contract terms, specifications, or prices are not agreed to before performance begins); contractor requests for payment adjustments based on such things as changes to scope or unforeseen schedule delays; and monitoring the extent of work the subcontractor is performing under the contract.

- Undefinitized contract actions authorize the contractor to begin work immediately, before the contract's terms are definitized. Definitization of the contract's terms is to occur at the earliest practicable date. State officials explained that undefinitized orders have occurred under this contract because projects must be kept on schedule while negotiations are still under way. According to a contracting officer previously involved with the contract, she spent months working to definitize 96 task orders. In a July 2006 letter to State, the contractor complained that it could not invoice for \$2.8 million in work completed or partially completed under notices to proceed, pending definitization. State officials told us that, in response, they have changed their procedures and will now permit partial funding under undefinitized contract actions for such things as long-lead equipment, even if negotiations on other components of the price—such as travel costs—are still ongoing.
- The contractor has requested over \$3 million in adjustments to payments because of what it claims are changes in scope or delays for which it was not responsible. Almost 80 of these items are outstanding, and some of the requests for payment adjustments date back more than a year. The contracting officer told us that it takes a lot of time to sort through the details of these requests and that often only the project manager on site has the specific information needed. State officials said that in the time since the July 2006 letter was written, they have made 22 adjustments for \$3.15 million, with additional requests for payment negotiated and approved and waiting for funding.
- The contracting office is not monitoring the percentage of the work being performed by DynCorp, the subcontractor, as opposed to the work being performed by EmbSEC. Because this is an 8(a) contract for services, the joint venture is required to incur at least 50 percent of the personnel costs with its own employees.¹² The purpose of this requirement, which limits the amount of work that can be performed by the subcontractor, is to ensure that small businesses do not pass along the benefits of their contracts to their subcontractors. According to contractor representatives, an agreement is in place to ensure that DynCorp performs 40 percent of the work. When we brought the limitation on subcontracting requirement to State's attention, the contracting officials said they do have a mechanism to track subcontracting activity and that they will start doing so under this contract. A recent subcontracting activity report, submitted by EmbSEC, shows that subcontracting has not exceeded the contract's limitation on subcontracting percentage.

¹¹ In August 2005, the State Department Inspector General found the potential for double billing for government-furnished equipment on over 90 task orders. In one example, the contractor charged the government for an \$112,000 X-ray machine, which was later identified as government-furnished equipment. Price reductions and cash refunds from the contractor of almost \$1.4 million resulted from the investigation, but no criminal or administrative misconduct was found. Contractor representatives attributed the problem to employee error.

¹² FAR 52.219-14; 13 C.F.R. 124.510 and 13 C.F.R. 125.6.

Conclusion

Given the continued uncertainties surrounding security needs at U.S. embassies, State's desire for flexibilities in contracting for security installation is understandable. However, this desire does not obviate the need to use competitive contracting procedures to the extent possible and to establish firm terms and conditions for contract actions as soon as feasible. The recent inclusion of the contract clause allowing government recovery of unused travel funds is a step in the right direction toward addressing some of the problems we identified, but its implementation needs to be monitored to ensure that it accomplishes the intended goal. In the interim, a re-assessment of the contract type is called for, given the uncertainties associated with travel costs under this contract. In addition, a contract this complex carries with it a certain amount of risk that must be mitigated by careful government oversight and monitoring of contractor performance, including timely definitization of task orders.

We are making recommendations to SBA in a separate letter.

Recommendations for Executive Action

To help manage risk under this contract, we recommend that the Under Secretary for Management direct the Director of the Bureau of OBO and the Assistant Secretary for Administration to take the following five actions:

- compete the requirement at the earliest feasible opportunity;
- closely monitor travel expenses incurred by the contractor, and take necessary steps to promptly recover unused travel funds after task order completion;
- reevaluate the contract type, in light of unpredictable travel costs;
- assess the workload of the contracting office to determine whether changes are needed to keep up with the contract administration workload, including timely definitization of contract actions; and
- delete reference to the improper September 19, 2001 blanket waiver from State's acquisition regulation.

Agency Comments

In written comments on a draft of this report, State agreed with our findings and recommendations, stating that it is developing an acquisition plan to compete the requirement and that it does not plan to exercise the last option year under the contract. During the recompetition, it will carefully consider the contract type. State said that it is also more closely evaluating the contractor's proposed travel costs and that it intends to assess the workload of the contracting office. Finally, State will amend its acquisition regulation to remove reference to the blanket waiver.

State also suggested that we disassociate the footnote on page one, regarding our fraud hotline, from the statement of our reporting objectives or that we clarify that we did not find fraud, waste, abuse, or mismanagement. The intent of the footnote is simply to describe the purpose of FraudNET for the general reader. That being said, we believe our findings do point to some mismanagement issues that could have led to waste of government funds. State also questioned the accuracy of two statements in the report, pertaining to its interest in retaining RDR for the follow-on contract and to the reason the contracting office requested assistance from the Defense Contract Audit Agency. Both of these statements are correct as written. State did seek to retain RDR specifically for the follow-on work. The contracting officer who inquired about the audit did so after the pricing errors reported by the contractor, viewing the pricing errors as one of several concerns with the contract. We added a

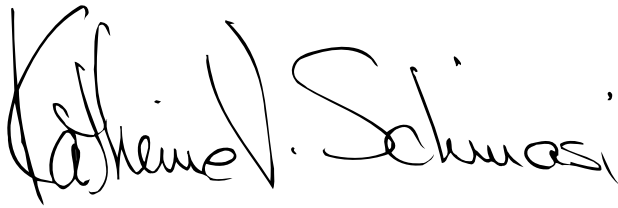
sentence to the report to clarify this point. State's comment letter is reproduced in appendix I of this report.

We also received comments from EmbSEC and RDR, which we incorporated where appropriate.

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. We interviewed State contracting officials in the Facilities Design and Construction Division within the Office of Logistics/Acquisitions Management and program officials in the Security Management Division, Bureau of OBO. We also met with contractor representatives. We held discussions with SBA officials and reviewed pertinent small business regulations. 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,

A handwritten signature in black ink that reads "Katherine V. Schinasi". The signature is written in a cursive style with a large initial "K" and "S".

Katherine V. Schinasi, Managing Director
Acquisition and Sourcing Management

Appendix: Comments from the Department of State



United States Department of State

*Assistant Secretary for Resource Management
and Chief Financial Officer*

Washington, D.C. 20520

OCT 26 2008

Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "Department of State Contract for Security Installation at Embassies," GAO Job Code 120569.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Christina Maier, Management Program Analyst, Bureau of Overseas Building Operations at (703) 875-5752 or Walter Cate, Division Chief, Bureau of Administration at 703-875-56286.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradford R. Higgins".

Bradford R. Higgins

cc: GAO – Michele Mackin
OBO – Charles Williams
State/OIG – Mark Duda

**Department of State Comments on the GAO Draft Letter Report
Department of State Contract for Security Installation at Embassies
(GAO-07-34R, GAO Code 120569)**

Comments:

Thank you for the opportunity to review this draft letter report. Overall, we concur with GAO's findings and observations. State has a few specific comments on some of the facts as reported; our comments are set out below.

1. Page 1, 3rd paragraph, on the following language and footnote:

We received a tip on our fraud hotline regarding the EmbSEC contract.¹

¹The 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.

DOS comment: As this paragraph is currently structured, the reader might be left with an unduly negative impression. While a "fraud hotline" tip led to GAO's review of the EmbSec contract, it is State's understanding that some or all of the specific allegations that triggered the inquiry were subsequently proved to be erroneous, or at least overstated. If that was the case, we would suggest that the first sentence and the accompanying footnote be disjoined from the balance of the paragraph, perhaps with some additional clarifying remarks that GAO, in its study, did not find fraud, waste, abuse, or mismanagement.

We acknowledge, as GAO has documented in its report, that there have been problems and some complicated issues addressed in both the formation and administration of the contract. That said, we would also point out that this critical worldwide security program has been carried out—with overall success—by the Department and its contractor under difficult and even dangerous circumstances. One particularly stark example was the situation encountered in Baghdad. In addition to gunfire in the vicinity, a mortar shell hit the palace as EmbSec's employees were working at that location. In sum, we do not believe that the events and actions described in the draft report can properly be categorized as "fraud, waste, abuse, or mismanagement."

2. Page 2, 1st paragraph, the following language:

In preparation for the 2003 contract award, State officials wanted RDR to continue the security installation work, and RDR subsequently partnered with BPI, an 8(a) firm, under an 8(a) joint venture.

DOS Comment: We suggest that this sentence be re-worded to reflect that the Department did not have an interest in specifically retaining RDR; rather we had an interest, in the 2003 time frame, to maintain our capabilities without risking a period of time when we would not be able to support our programs or more importantly react to an emergency. Unless GAO has actual evidence that the primary motivation of one or more Department officials was specifically for "RDR to continue the security installation work," we would ask that the sentence be modified to reflect more accurately the then-existing situation, e.g., "In preparation for the 2003 contract award, State officials realized a need to maintain their program capabilities and be able to react to emergencies. RDR subsequently partnered with BPI,"

3. Page 6, 3rd paragraph

DOS Comment: We do not believe that Paragraph 3 on page 6 is accurate. The reason State requested a DCAA audit was not due to the double billing for equipment as the draft states. The double billing episode was addressed and resolved as stated in footnote no. 10. The third sentence from the end of the paragraph should state:

"For Example, the contracting office contacted the Defense Contract Audit Agency in November 2005 to request an audit of the contractor's estimating system, overhead rates, and incurred costs for a selected task order in order to determine if overcharges existed in relation to travel/excess baggage and to determine if any of the overcharges were recoverable. The audit was requested through the Department of State Office of Inspector General on September 15, 2006. According to the contracting officer, the delay in requesting the audit was due to a shortage of staff and the need to address priorities."

4. Page 8, Recommendations for Executive Action, 1st sentence

DOS Comment: Please change the first sentence to read, ... “we recommend that the Under Secretary for Management, the Director of the Bureau of OBO, and the Assistant Secretary for Administration take the following five actions.”

5. Page 8, Recommendations for Executive Action

Recommendation 1 - compete the requirement at the earliest feasible opportunity;

DOS Comment: We concur. OBO’s Security Management Division prepared a Decision Memorandum for the OBO Director and, citing GAO’s draft report, recommended, “That the Department not exercise the last option year on the EmbSEC contract and that OBO move forward with discussions with A/LM to develop and finalize a comprehensive Acquisition Plan for Security Installation Services.” OBO Director General Williams approved the recommendation on October 2, 2006. The following day (October 3), representatives from the DOS Bureau of Administration’s Office of Acquisitions Management (A/LM/AQM)—the cognizant contracting office—and the OBO Security Management Division held the initial acquisition planning session and preliminarily agreed on an overall strategy to compete the requirement, while concurrently ensuring that critical security program objectives continue to be addressed. We ask that GAO include this updated information in its report.

Recommendation 2 - closely monitor travel expenses incurred by the contractor, and take necessary steps to promptly recover unused travel funds after task order completion;

DOS Comment: As stated elsewhere in the report, OBO officials are now more closely evaluating travel costs proposed by EmbSEC. Furthermore, a contract clause was incorporated into the contract that allows the government to recover unexpended travel funds after work is completed. DOS will continue to carefully monitor travel expenses and recover unused obligations as appropriate.

Recommendation 3 - reevaluate the contract type, in light of unpredictable travel costs;

DOS Comment: The contract type will be carefully considered during the recompetition of this requirement.

Recommendation 4 - assess the workload of the contracting office to determine whether changes are needed to keep up with the contract administration workload, including timely definitization of contract actions; and

DOS Comment: Concur

Recommendation 5 - delete reference to the improper September 19, 2001 blanket waiver from State's acquisition regulation.

DOS Comment: The waiver provided by the Small Business Administration was assumed to be proper and was honored by the Department in good faith. The Department of State Acquisition Regulation will be amended to remove any reference to this exception to Section 8(a) competition requirements.

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