

U.S. Department of State

Determination and Findings

Authority to waive the pre-solicitation Federal Business Opportunities (FedBizOpps) notices for certain foreign acquisitions of the Department of State.

Upon the basis of the following determination and findings, which I make pursuant to the Office of the Federal Procurement Policy Act, 41 U.S.C. 416, and the Small Business Act, 15 U.S.C. 637, as implemented by Federal Acquisition Regulation (FAR) section 5.202(b) and DOSAR 605.202(b), the requirement for advance FedBizOpps notices for the Department of State's foreign acquisitions valued at \$5 million or less awarded by overseas Missions, other than local guard service contracts for which such notice is required by 22 U.S.C. 4864, is waived, because the requirement is neither appropriate nor reasonable.

Findings

1. FAR 5.201 requires Federal agencies to publish an advance notice of proposed acquisition actions in FedBizOpps prior to or upon the release of the solicitation. The intent of this regulation is to improve the participation of American small business concerns in Government acquisitions and to enhance competition by identifying contracting and subcontracting opportunities. FAR 5.202(b) permits this requirement to be waived if the agency head (as defined in DOSAR 605.202(b)) determines that the advance notice is neither appropriate nor reasonable.
2. The Department has offices located in many foreign countries. The supplies and services acquired by the Department's overseas posts are in most cases obtained to support the operation of the buildings and grounds. Other than local guard contracts, for which a FedBizOpps notice will be issued, the Department's most common contracts are for janitorial, packing/shipping, gardening, and minor repairs for which only local firms are normally interested. The expense that would be incurred by U.S. firms, along with the nature, timing, and small dollar amount of these contracts and simplified acquisitions, means that most U.S. small businesses are unable to respond to the requirements, since they are not set up to

operate in these countries. In addition, the publication cost and delay for FedBizOpps notices are unreasonable burdens for overseas posts.

3. This FedBizOpps waiver will be limited in scope. We will synopsise in FedBizOpps all overseas local guard solicitations that exceed \$250,000. For any non-local guard acquisitions overseas that exceed \$5 million, the Contracting Officer will issue a synopsis in FedBizOpps. (Most of the acquisitions at \$5 million or less awarded overseas are for commercial items acquired using the procedures in FAR 13.5.) In addition, acquisitions between \$25,000 and \$5 million will be subject to public notification of some form, appropriate to local conditions at the overseas post (such as notice on an Embassy/Consulate web site, local advertisement, notice to trade associations, etc.).

4. It is Department of State policy that all acquisitions of supplies and services be processed in accordance with the FAR. The Department of State Acquisition Regulation (DOSAR), which supplements the FAR, provides additional guidance. These documents also reflect the Government policies that competition be obtained where feasible; all offers are given equal consideration; fair and reasonable prices are obtained; and provide adequate safeguards to ensure that these policies are followed. The Department's excellent record of competition in contracting attests to the efforts being made to promote competition at overseas posts.

5. The FAR, at section 5.002, sets the following policy goals for the requirement to publish advance notices in FedBizOpps:

(a) Increasing competition;

(b) Broadening industry participation in meeting Government requirements;
and

(c) Assisting small businesses, veteran-owned small businesses, service disabled veteran-owned businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses in obtaining contracts and subcontracts.

In most cases, the FAR goals are not being achieved by publishing notices of the Department's acquisitions by overseas posts in FedBizOpps. Therefore, an advance notice for these acquisitions is neither appropriate nor reasonable.

Determination

