

No.: 98-2

Date: August 5, 1998

FCPA Opinion Procedure Release 98-2

The Department has received a request from a U.S. company [hereafter "Requestor"], whose wholly owned subsidiary is submitting a bid to a foreign government-owned entity to sell and service a certain military training program. In connection with its bid, the Requestor intends to enter into several agreements with a privately-held company [hereafter "Representative"] in the same foreign country. These agreements include a Settlement Agreement and Release, an International Consultant Agreement and a Teaming Agreement [hereafter "The Agreements"] . The Requestor's obligations under The Agreements are conditioned upon a favorable response from the Department of Justice under the FCPA Opinion Procedure.

With respect to its proposed bid and the Agreements, the Requestor has made the following representations:

1. Representative is a privately held entity. None of the owners, officers, employees or agents of Representative is a government official.
2. Requestor acquired an entity which had an International Representation Agreement with Representative. Pursuant to this agreement, Representative performed certain marketing and consulting services. Prior to executing the agreement, Requestor's predecessor had performed a due diligence review of Representative's qualifications and obtained certifications that neither Representative nor its principals were government officials nor did any government official have an ownership interest in Representative. The Representation Agreement also stated that no payments were made or would be made to government officials or members of a political party.
3. Requestor subsequently determined that the Representation Agreement was invalid under local law and policy. Requestor consequently decided to terminate the Representation Agreement and to offer a lump-sum payment for the services that had been rendered by Representative pursuant to that agreement. The provisions of the settlement are included in a proposed Settlement Agreement and Release which provides for the rescission of the Representation Agreement and settlement of all claims arising from Representative's performance of services under that agreement. The amount to be paid to Representative in settlement for the services already rendered has been reviewed by an independent accounting firm and determined to be commercially reasonable under the circumstances. The Settlement Agreement and Release also provides that Representative is familiar with applicable United States laws and regulations, including the FCPA, and has fully complied therewith. The Settlement Agreement and Release also states that Representative has not made any payments or promises to pay any foreign officials or members of political parties for the purpose of influencing or attempting to influence any act or decision of such official or any other official.
4. Requestor intends to enter into an International Consultant Agreement in which Representative will provide assistance and advice to Requestor in connection with sales of products and services. Representative will be paid a monthly retainer and be reimbursed for extraordinary expenses. Representative states that it is familiar with the provisions of United States laws and regulations relevant to its association with Requestor, including the FCPA. Representative has warranted that no government official or member of a political party has an interest in Representative or any of the payments to be made to Representative under the terms of the Consultant Agreement and that none of Representative's officers, employees, principals or agents are government officials or officials of a political party.

5. Requestor intends to enter into a Teaming Agreement in which Representative and Requestor will team to compete for government contracts and to provide goods and services if any contracts are obtained. The Teaming Agreement contains representations and warranties by Representative and Requestor relating to compliance with applicable United States laws and regulations, including the FCPA as described in paragraph 4.

6. Requestor has conducted a new due diligence investigation of the Representative, including interviews with principals of Representative and consultation with the United States Embassy and government officials regarding the background of Representative and its principals. This due diligence investigation revealed no improper conduct on the part of the Representative.

7. Requestor has obtained an opinion from a law firm in the foreign country that The Agreements and the obligations thereunder comply with local law.

8. Representative has warranted its familiarity and compliance in all respects with the FCPA, as amended.

9. Representative has executed a certification stating the following:

A. Neither the owner nor any director, officer, employee or agent of Representative is a government official, political party official, or candidate for political office.

B. No government official (as defined in the FCPA) political party or official thereof, or candidate for political office has any legal or beneficial interest, direct or indirect, in Representative or in any payment to be made pursuant to The Agreements, nor will any portion of the fees to be paid to Representative be paid, directly or indirectly, to any government official.

C. If subsequent developments cause the certifications herein to be no longer accurate or complete, Representative will immediately so advise Requestor in writing.

D. Representative makes this Certification in duplicate originals, in consideration of Requestor entering into The Agreements, and consents to the filing of one duplicate original of this Certification with the United States Department of Justice, Washington, D.C.

Based on all the facts and circumstances, as represented by Requestor, the Department does not presently intend to take any enforcement action with respect to The Agreements between Requestor's wholly owned subsidiary and Representative.

The FCPA Opinion Request herein, and this release, have no binding application to any party which did not join in the request and can be relied upon by the requesting party only to the extent that the disclosure of facts and circumstances in the request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.