

No. 97-01

Date: February 27, 1997

Foreign Corrupt Practices Act Review
Opinion Procedure Release

The Department has received a request from a U.S. company whose wholly owned subsidiary is submitting a bid to a foreign government-owned entity to sell and service certain high technology equipment. In connection with its bid, the requestor has entered into a Representative Agreement with a privately held company (hereafter Representative) in the same foreign country. The requestor's obligations under the Representative Agreement are conditioned upon a favorable response from the Department of Justice under the FCPA Opinion Procedure.

With respect to its proposed bid and the Representative Agreement, the requestor has made the following representations.

1. The foreign Representative is privately held. None of the owners, officers, or employees of the Representative is a government official.
2. The requestor selected the Representative after interviewing several other prospective representatives in the foreign country. Of the several prospective representatives, the requestor determined that the Representative selected had the most experience and expertise with projects involving the same or similar technology.
3. The requestor originally conducted a due diligence investigation of the Representative, which uncovered no improper conduct on the part of the Representative.
4. Subsequently, the requestor learned of an allegation that more than fifteen years ago the Representative, or a person associated with the Representative, was involved in an improper payment transaction with an official of the foreign government. The requestor undertook further due diligence, which included, among other things, the hiring of an international investigative firm to conduct an extensive investigation of the allegations, and interviews with principals of the Representative, the Commercial Counselor at the U.S. Embassy in the foreign country, a former U.S. ambassador to the foreign country, and other persons with extensive commercial and other experience in the foreign country. Although these additional inquiries failed to substantiate the alleged misconduct, they did reveal that a number of persons might have been motivated, for political reasons, to disparage the Representative or its associated person.
5. The requestor has obtained an opinion from a law firm in the foreign country that the Representative Agreement and the obligations thereunder comply with local law.
6. The commission rate payable to the Representative under the Agreement is commensurate with commission rates paid by the requestor for similar services in connection with comparable sales.
7. The Representative has warranted its familiarity and compliance in all respects with the FCPA, as amended.
8. The Representative will execute a certification stating the following:

[The Representative] hereby certifies that it has not paid, nor offered or agreed to pay, nor has caused to be paid, or offered or agreed to be paid, directly or indirectly, in respect of this

agreement, any political contributions, fees, or commissions as defined in the Foreign Corrupt Practices Act (FCPA), as amended.

[The Representative] further certifies that it will not, directly or indirectly, in connection with its agreement with [the requestor's wholly owned subsidiary] and the business resulting therefrom, offer, pay, promise to pay, or authorize the giving of money or anything of value to any government official (as defined in the FCPA, as amended), to any political party or official thereof or to any candidate for political office, or to any person, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any government official, to any political party or official thereof, or to any candidate to political office, for the purpose of

- (a) influencing any act or decision of such official, political party, party official, or candidate in his or its official capacity, including a decision to fail to perform his or its official functions; or
- (b) inducing such official, political party, party official, or candidate to use his or its influence with the government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist [the requestor's wholly owned subsidiary] in obtaining or retaining business for or with, or directing business to [the requestor's wholly owned subsidiary].

[The Representative] further agrees that if subsequent developments cause the certifications and information reported herein to be no longer accurate or complete, [Representative] will immediately so advise [the requestor's wholly owned subsidiary].

[The Representative] makes this certification in duplicate originals in consideration of [the requestor's wholly owned subsidiary] entering into the Agreement of this date, a copy of which is annexed hereto, 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 the requestor, the Department does not presently intend to take any enforcement action with respect to the Representative Agreement between the requestor's wholly owned subsidiary and the Representative; however, the requestor has been advised that, in light of the unsubstantiated allegations, it should closely monitor the performance of the Representative under the Agreement.

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.