

No. 10-01

Date: April 19, 2010

Foreign Corrupt Practices Act Review

Opinion Procedure Release

The Department has reviewed the FCPA Opinion request of a United States company (the “Requestor”) that was submitted on February 24, 2010, along with supplemental information submitted on March 19, 2010. The company is a “domestic concern” within the meaning of the FCPA. The facts and circumstances are as follows:

The Requestor entered into a contract with an agency of the United States government (the “U.S. Government Agency”) to perform work in a foreign country (the “Foreign Country”). Pursuant to that contract, the Requestor is obligated to hire and compensate individuals in connection with that work. At least one individual to be hired, and perhaps more, is a “foreign official” within the meaning of the FCPA.

The Requestor has represented, among other things, that:

- The United States and the Foreign Country executed an agreement whereby the U.S. Government Agency is furnishing assistance to the Foreign Country.
- To provide the desired assistance to the Foreign Country, the U.S. Government Agency entered into a contract with the Requestor to design, develop and construct a particular facility (the “Facility”) in the Foreign Country. Under that contract, the Requestor is also required to hire and compensate individuals to work at the Facility as directed by the U.S. Government Agency.
- The Foreign Country notified the U.S. Government Agency that it appointed an individual (the “Individual”) as the director of the Facility (“Facility Director”) and is in the process of selecting others to fill additional positions. The Foreign Country selected the Individual based upon the Individual’s qualifications for the position. The U.S. Government Agency directed the Requestor to hire the Individual for the position of Facility Director.
- The Requestor entered into a subcontract with a company to, among other things, hire and compensate the individuals appointed and selected to work at the Facility. The company, through its local subsidiary in the Foreign Country, entered into a proposed service contract with the Individual for the position of Facility Director.
- The proposed service contract provides for a term of employment of one year and a rate of compensation of \$5,000 per month, and requires the Individual to provide services as directed by the Foreign Country. The U.S. Government Agency and the Foreign Country anticipate that at the conclusion of the contract, the obligation to compensate the Individual will pass to the Foreign Country.

- The Individual currently serves as a paid officer for an agency of the Foreign Country (a “Foreign Officer”). The Individual’s position as a Foreign Officer does not relate to the Facility, and the services that the Individual will provide as Facility Director are separate and apart from those performed as a Foreign Officer.
- In the position of Facility Director or as a Foreign Officer, the Individual will not perform any services on behalf of, or make any decisions affecting, the Requestor, including any procurement or contracting decisions. The Requestor will not provide any direction to the Individual with respect to the position of Facility Director.

Based upon all of the facts and circumstances, as represented by the Requestor, the Department does not presently intend to take any enforcement action with respect to the proposed service contract described in this request. While the Individual is a “foreign official” within the meaning of the FCPA, and will receive compensation as Facility Director, through a subcontractor, from the Requestor, the Individual is being hired pursuant to an agreement between the U.S. Government Agency and the Foreign Country, and will not be in a position to influence any act or decision affecting the Requestor.

Based upon the Requestor’s representations, the Requestor is contractually bound to hire and compensate the Individual as directed by the U.S. Government Agency. The Requestor did not play any role in selecting the Individual, who was appointed by the Foreign Country based upon the Individual’s qualifications. Moreover, the Individual’s position is separate and apart from the Individual’s position as a Foreign Officer. In neither position will the Individual perform any services on behalf of, or receive any direction from, the Requestor. Accordingly, the Individual will have no decision-making authority over matters affecting the Requestor, including procurement and contracting decisions.

This FCPA Opinion Procedure Release has no binding application to any party that did not join in the request and can be relied upon by the Requestor only to the extent that the disclosure of facts and circumstances in its request is accurate and complete and continues to accurately and completely reflect such facts and circumstances.