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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: U.S. Defense Systems, Inc.

File: B-259549

Date: March 24, 1995

Thomas D. Boyatt, U.S. Defense Systems, Inc., for the protester.
Dennis J. Gallagher, Esq., United States Department of State, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The United States (U.S.) Embassy in Thailand properly determined that the requirement that offers and payment be made in Thai baht in a solicitation for local guard services is not a barrier to competition by U.S. firms as precluded and defined under section 141 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995, Pub. L. 103-236, 108 Stat. 382 (to be codified at 22 U.S.C. § 4864).

DECISION

U.S. Defense Systems, Inc. (USDS) protests the terms of request for proposals (RFP) No. SOTH200-94-R-0008, issued by the Department of State, United States (U.S.) Embassy, Bangkok, Thailand, for local guard services. USDS, a U.S. firm, objects to the RFP provision requiring offers and payments under the contract to be made in Thailand's Thai baht.[1]

We deny the protest.

The Embassy issued this RFP on November 23, 1994, to procure local guard services at the Embassy and various other locations in Thailand under a combination fixed-price\time-and-materials contract for a base period with four 1-year options. The RFP's price schedule called for offers to be

[1] Baht is the official monetary currency for the country of Thailand.

made in Thai baht and section G.2.5. required all payments under the contract to be made in baht.

USDS protests that the requirement that offers and payments be made in Thai baht constitutes a barrier to competition by U.S. firms and therefore violated section 136 of the Foreign Relations Authorization Act, Fiscal Years 1990 and 1991, 22 U.S.C. § 4864 (Supp. V 1993), as amended by section 141 of the Foreign Relation Act, Fiscal Years 1994 and 1995, Pub. L. No. 103-236, 108 Stat. 382 (to be codified at 22 U.S.C. § 4864), which provides in pertinent part:

> "(c)(4) in countries where contract denomination and/or payment in local currencies constitutes a barrier to competition by United States firms--
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> > (A) allow solicitations to be bid in United States dollars; and
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> > (B) allow contracts awarded to United States firms to be paid in United States dollars;
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> . . . . .
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> "(d)(4) the term barrier to local competition means--
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> > (A) conditions of extreme currency volatility;
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> > (B) restrictions on repatriation of profits;
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> > (C) multiple exchange rates which significantly disadvantage United States firms;
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> > (D) government restrictions inhibiting the free convertibility of foreign exchange; or
> >
> > (E) conditions of extreme local political instability."

The Embassy reports that prior to issuing the RFP it determined that none of the conditions that would require offers/payments in U.S dollars was present in Thailand. Specifically, the Embassy determined that the baht has been very stable since 1987 with a baht/dollar exchange rate within 2 or 3 percent of 25 baht to the dollar, that foreign investors can repatriate profits freely, that Thailand does not have multiple exchange rates, that Thailand is obligated by an agreement with the International Monetary Fund to provide for free convertibility of foreign exchange, and that the extraconstitutional changes of government in Thailand have had a minimal effect upon its economy.

USDS protests that the baht is actually extremely volatile, as demonstrated recently by the economic crisis in Mexico. Relying upon an article in the Financial Times, USDS points to a January 12, 1995, incident linked to this crisis that assertedly resulted in a sharp drop in the value of the baht against the U.S. dollar. USDS further asserts that there may be practical restrictions on the repatriation of profits, such as a change in Thailand monetary policy that would disadvantage a U.S. firm. USDS explains that even a three percent downward fluctuation in the baht can allegedly result in a 20 percent profit loss for a U.S. firm.

USDS's assertion that the baht is a foreign currency subject to conditions of extreme currency volatility is without merit. Despite the Mexican economic crisis, the record of the foreign exchange reflects that the baht has remained relatively stable; indeed, we agree with the agency that the events involving the worldwide concern over the stability of the Mexican peso and the brief fluctuation of the baht/dollar exchange rate in mid-January actually demonstrates the relative stability of the baht.[2] The Embassy reports that the relative stability result from the official policy and capability of the Thailand Bank to defend the baht.[3] While USDS argues that payment in U.S. dollars is required because payment in baht "clearly disadvantages U.S. firms because of the existence and potential for currency instability and the existence and potential for the blockage of profit repatriation," there is no requirement in section 141 that all disadvantages and risk of foreign currency be nonexistent before payment can be made in foreign currency. Thus we find that the Embassy properly determined that the baht was not a barrier to local competition as defined by section 141, so as to require the conduct of the procurement in U.S. dollars.

The protest is denied.

Robert P. Murphy
General Counsel

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[2]Throughout the period from January to February the maximum fluctuation on the baht/dollar exchange rate was approximately 1 percent.

[3]As of March 6, Thailand's official foreign reserves were reported at 28.7 billion dollars and the agency reports that there has been a balance of payments surplus every year since 1984, and the government has run a cash surplus every year since 1988.