



**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: Integrity Supply

File: B-406860

Date: September 10, 2012

Patrick Conner, Integrity Supply, for the protester.
Joseph R. Weidenburner, Esq., Defense Logistics Agency, for the agency.
Eric M. Ransom, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly applied a domestic item restriction established by 10 U.S.C. § 2533a is denied where the agency reasonably determined that items being procured (electrical gloves) are items of “clothing” and therefore covered by the restrictions set forth in section 2533a.

DECISION

Integrity Supply, of Elkton, Maryland, protests the rejection of its proposal submitted in response to request for proposals (RFP) No. SPM1C1-10-R-0024, issued by the Defense Logistics Agency for electrical gloves. Integrity maintains that the agency improperly applied a domestic item restriction to reject its offer of gloves manufactured in Malaysia. In this regard, Integrity argues that the domestic item restriction does not apply because the gloves are not an item of “clothing.”

We deny the protest.

The solicitation contemplated the award of an indefinite-delivery/indefinite-quantity contract to supply electrical insulation gloves for a base year, and up to four 1-year option periods.¹

¹ Specifically, the solicitation sought proposals for Electrical Gloves, 1,000 Volt National Stock Number (NSN) 8415-01-158-9454(s), 7,500 Volt (NSN) 8415-01-158-9449, and 17,000 Volt (NSN) 8415-01-158-94446(s). RFP at 7-8.

As it relates to the protest, the RFP included Department of Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.225-7012, "Preference for Certain Domestic Commodities." RFP at 54. This clause provides that articles of clothing, defined to include gloves (referred to as "handwear"), offered in response to the solicitation, must be produced in the United States. DFARS 252.225-7012. This provision implements the requirements of 10 U.S.C. § 2533(a) (2006), commonly referred to as the "Berry Amendment." The Berry Amendment generally restricts the Department of Defense's expenditure of funds for certain articles (including "clothing") to domestically produced products. See 10 U.S.C. § 2533a(b).

Integrity's offer was one of six submitted in response to the RFP. During the course of proposal evaluations, the agency determined that Integrity's proposal was unacceptable because the items proposed by Integrity were to be manufactured in Malaysia, and therefore did not qualify as domestically produced.² Agency Report (AR), at 6-7. In a letter dated May 30, 2012, the agency advised Integrity that its proposal had been found unacceptable because "the end items proposed [] will not be produced in the United States." AR, Encl. 10, Letter to Integrity, May 30, 2012. Integrity filed this protest on June 6.

Integrity argues that the electrical gloves at issue should not be considered "clothing" within the meaning of the Berry Amendment and DFARS Clause 252.225-7012, and, as a consequence, the domestic source restrictions do not apply. In this regard, Integrity maintains that the electrical gloves are worn solely to protect against electrical shock and therefore should be regarded as a "tool" (characterizing the gloves as "'insulating liners'") rather than an article of "clothing." See Protest at 1; Comments at 1. The protester's emphasis on the protective nature of the gloves is misplaced, however. The term "clothing," as used in the Berry Amendment, is understood to include "a wide variety of items," including items worn for the purpose of protection. Gumsar, Ltd., B-231630, Oct. 6, 1988, 88-2 CPD ¶ 329 at 4 (holding that term "clothing" in Berry Amendment encompassed protective coverings worn by civilian personnel to access toxic areas to dismantle chemical munitions). Accordingly, we have no basis to conclude that the agency acted unreasonably when it rejected Integrity's gloves pursuant to the domestic production restrictions established by the Berry Amendment.

The protest is denied.

Lynn H. Gibson
General Counsel

² Integrity's proposal indicated that the place of manufacture of its gloves was outside the United States, and that the country of origin of all items to be supplied was Malaysia. Integrity's Proposal at 92, 95.