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**Comptroller General
of the United States**

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

Decision

Matter of: Inspire International

File: B-413798

Date: December 8, 2016

Kristin Rae Nowers for the protester.
Capt. Jessica E. Hom, Department of the Army, for the agency.
Gabriel D. Soll, Esq., and Christina Sklarew, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that an awardee's price is so low that it evidences an intent to violate the Berry Amendment is denied where the awardee's quotation included the required certification of compliance; the agency received additional information confirming the awardee's intent; and nothing in the awardee's quotation called into question the protester's ability or willingness to comply.

DECISION

Inspire International, LLC of Normal, Illinois, protests the award of a contract to Lag Sports and Leather Wear LLC, of Alexandria, Virginia, under request for quotations (RFQ) No. W9124D-16-T-0064, issued by the Department of the Army for the provision of embroidered baseball caps. Inspire alleges that the awarded price is so low as to indicate that the awardee will not comply with the Berry Amendment.

We deny the protest.

BACKGROUND

The solicitation, issued as a small-business set-aside, anticipated the award of an indefinite-quantity/indefinite-delivery contract with a 1-year base period and two 1-year options. The RFQ sought quotations for the supply of approximately 225,000 baseball caps, specifying that they were to be black, 100 percent cotton twill, low profile, and have a Velcro closure. RFQ at 49. The Army's star logo was to be embroidered on the front of the cap, and the text "goarmy.com" was to be

written above the back closure.¹ Id. Award of a fixed-price requirements contract was to be made to the responsive, responsible vendor offering the lowest price. Id. at 4, 36.

The solicitation emphasized that the selected contractor must comply with the requirements of the Berry Amendment in providing the caps. Id. at 3. The Berry Amendment, codified at 10 U.S.C. § 2533a, generally restricts the Department of Defense's expenditures for certain items, including articles of clothing, to domestically-produced products. See 10 U.S.C. § 2533a(b)(1)(B). The solicitation expressly stated, in this regard, that compliance with the Berry Amendment for the resulting contract meant all processing and manufacturing for the product must be done in the United States and the materials used also had to be domestically produced. RFQ at 3. The RFQ contained an explicit warning regarding the agency's policy of "aggressively pursuing enforcement," advising vendors to expect closer scrutiny prior to award and describing potential consequences for contractors who fail to deliver domestically-produced items despite a self-certification of compliance. Id.

The agency received timely quotations from both Lag Sports and the protester. Agency Report (AR), at 3. Both companies submitted compliant quotations that included the required representations and certifications regarding the domestic manufacture of the components and end product being offered. AR, Tab 5, Lag Sports Quotation, at 21-23, 44; AR, Tab 6, Inspire International Quotation, at 21-23. After completing its evaluation, the Army found that Lag Sports had submitted the lowest-priced, compliant quotation.

In furtherance of the enforcement of the Berry Amendment requirements, the contracting officer requested additional information and confirmation from Lag Sports. AR, Tab 2, Contracting Officer's Statement of Facts, ¶¶ 7, 9. Lag Sports confirmed that all materials, assembly, and embroidery would be performed in the United States. Further, the awardee reaffirmed the requirements and delivery schedule and identified the mills that would be supplying the fabric it would use, one of which is located in New Jersey and the other in North Carolina. AR, Tab 7, Correspondence, at 1.

On September 22, 2016, a notice of award to Lag Sports was posted to the Federal Business Opportunities website, reflecting a contract maximum of \$1,417,500. AR at 3. This protest followed.

¹ The RFQ included a brand-name or equal specification, identifying the requirement as "Competition Headwear" at marnergroup.com item #750. RFQ at 49.

DISCUSSION

Inspire International protests the award to Lag Sports, arguing that the awarded contract price was so low that it could only be based on an intent to furnish non-domestic products, in violation of the Berry Amendment. Protest at 1. In support of this allegation, the protester asserts that the Marner Group, named in the RFQ as a brand name manufacturer of the style of cap sought, agrees that the required quantity of that company's products could not be manufactured and resold for the price of the awarded contract. Id.

In reviewing an agency's technical evaluation of vendor submissions under an RFQ, we will not reevaluate the quotations; we will only consider whether the agency's evaluation was reasonable and in accordance with the evaluation criteria listed in the solicitation and applicable procurement statutes and regulations. American Recycling Sys., Inc., B-292500, Aug. 18, 2003, 2003 CPD ¶ 143 at 4. In determining the technical acceptability of a quotation, an agency may not accept at face value a promise to meet a material requirement where there is significant countervailing evidence, reasonably known to the agency, that should create doubt whether the vendor will or can comply with that requirement. MMI-Federal Marketing Service Corp., B-297537, Feb. 8, 2006, 2006 CPD ¶ 38 at 5. With regard to domestic manufacturing requirements, we have concluded that an agency should go beyond an offeror's self-certification where the agency has reason to believe, prior to award, that a vendor will not provide compliant products. See Leisure-Lift, Inc., B-291878.3, B-292448.2, Sept. 25, 2003, 2003 CPD ¶ 189 at 3-4.

On this record, we find that the agency reasonably relied on the representations made in Lag Sports's quotation, and also sought additional reassurances regarding the domestic manufacture of the caps. Lag Sports's quotation provided the representations and certifications required by the RFQ with regard to its intent to comply with the domestic production requirements of the Berry Amendment and Buy America Act. AR, Tab 5, Lag Sports Quotation, at 21-23, 44.

The protester, however, insists that the low price offered by Lag Sports's quotation was sufficient to alert the agency that the awardee did not intend to comply with the Berry Amendment, and to require additional scrutiny. We disagree with the assertion that the awardee's price, by itself or in comparison with an incumbent's price, is dispositive of the vendor's intent. For example, a firm, in its business judgment, properly may decide to submit a price that is extremely low, or even below the cost of performance. Government Contracts Consultants, B-294335, Sept. 22, 2004, 2004 CPD ¶ 202 at 2. Moreover, notwithstanding the self-certification regarding the awardee's intended compliance here, the Army sought additional information from Lag Sports and received assurances regarding the awardee's intent to comply with the requirements of the Berry Amendment. AR, Tab 7, Correspondence. In its response, Lag Sports identified the domestic mills

that would be supplying the fabric it would use to make the caps, and confirmed that Lag Sports itself would be manufacturing the caps in the United States.

In short, Inspire International has not shown that the Army failed to follow the required procedures for ascertaining the awardee's intent with regard to the Berry Amendment, nor has it shown any reasonable basis to conclude that the awardee will furnish noncompliant products.²

The protest is denied.

Susan A. Poling
General Counsel

² In the event the awardee fails to perform in accordance with the representations and certifications in its quotation, this would be a matter of contract administration, and not for our review.