Audit Report

PROCUREMENT OF MILITARY CLOTHING AND
RELATED ITEMS BY MILITARY ORGANIZATIONS

Report No. 99-023 October 29, 1998

Office of the Inspector General
Department of Defense

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Acronyms

AAFES	Army and Air Force Exchange Service
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
NEXCOM	Navy Exchange Service Command

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

October 29, 1998

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF DEFENSE (ACQUISITION REFORM)
DIRECTOR, DEFENSE PROCUREMENT
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on the Procurement of Military Clothing and Related Items by Military Organizations (Report No. 99-023)

We are providing this audit report for review and comment. We considered management comments on a draft of this report when preparing the final report. We conducted the audit in response to section 807 of Public Law 105-85, "National Defense Authorization Act for FY 1998."

DoD Directive 7650.3 requires that all recommendations be resolved promptly. Management comments from the Deputy Under Secretary of Defense (Acquisition Reform); the Director, Defense Procurement; the Army; and the Air Force conformed to the requirements of DoD Directive 7650.3. The Navy comments were not responsive to Recommendation 3., which is unresolved. We request that the Navy reconsider its position and provide comments on Recommendation 3., by December 28, 1998.

We appreciate the courtesies extended to the audit staff. Questions on the audit should be directed to Mr. Garold E. Stephenson at (703) 604-9332 (DSN 664-9332) or Mr. Eugene E. Kissner at (703) 604-9323 (DSN 664-9323). See Appendix E for the report distribution. The audit team members are listed inside the back cover.

Robert J. Lieberman

Robert J. Lieberman
Assistant Inspector General
for Auditing

Office of the Inspector General, DoD

Report No. 99-023 **October 29, 1998**
(Project No. 8CH-5001)

Procurement of Military Clothing and Related Items by Military Organizations

Executive Summary

Introduction. The Defense Supply Center Philadelphia, a Defense Logistics Agency field unit, procures about $1 billion of military clothing and related items annually. During FYs 1996 and 1997, 94 other military organizations made at least 351 local procurements of military clothing and related items valued at about $65.0 million. This report discusses 256 of the procurements valued at about $42.6 million by 70 of those other organizations. The audit was performed in response to Public Law 105-85, "National Defense Authorization Act for FY 1998." Section 807 of Public Law 105-85 requires that the Inspector General, DoD, conduct an audit of FY 1996 and 1997 procurements of military clothing by one installation of the Army, the Navy, the Air Force, and the Marine Corps.

Audit Objectives. The audit objective was to determine whether contracting officers complied with the Buy American Act and the Berry Amendment when they procured military clothing and related items. We also reviewed clothing items procured for civilian employees and the adequacy of the management control program as applicable to the procurement of military clothing and related items.

Audit Results. Contracting officers at 12 organizations procured military clothing and clothing items for civilian employees that were manufactured abroad without determining, as appropriate, whether items manufactured in the United States or a qualifying country were available, as required by the Buy American Act, or items manufactured in the United States were available, as required by the Berry Amendment. As a result, the contracting officers awarded 16 contracts valued at $1.4 million to contractors supplying items manufactured abroad that may have been available from contractors supplying items manufactured in the United States. The Air Force, in a separate review, identified an additional 27 contracts for items valued at about $0.2 million manufactured in a nonqualifying country. A total of 151 of 256 contracts (59 percent) did not include the appropriate contract clause to implement the Buy American Act or the Berry Amendment. The noncompliance with the Buy American Act and the Berry Amendment resulted in 43 potential violations of the Antideficiency Act. See Part I for a discussion of the audit results and Appendix A for details of the review of the management control program.

Summary of Recommendations. We recommend that the Director, Defense Procurement, issue guidance to emphasize the requirement to incorporate and enforce the Buy American Act and Berry Amendment provisions and clauses in solicitations and contracts for clothing and related items. The guidance should also remind contracting officers that, when they procure incidental, non-Federal Supply Schedule items using a Federal Supply Schedule, they should verify that the procurement complies with the Buy American Act. We recommend that the Deputy Under Secretary of Defense (Acquisition Reform) ensure that the Defense Acquisition University

stresses the ramifications of not complying with the Buy American Act and the Berry Amendment in their existing contracting courses. This additional instruction should emphasize the important responsibility that contracting officers have to incorporate and enforce the Buy American Act and Berry Amendment provisions and clauses in applicable solicitations and contracts to avoid potential Antideficiency Act violations. We recommend that the Assistant Secretaries (Financial Management and Comptroller) of the Army, the Navy, and the Air Force investigate, for the contracts under their cognizance, the 43 potential Antideficiency Act violations.

Management Comments. The Director, Defense Procurement agreed to issue policy guidance to procuring contracting officers emphasizing the importance of incorporating, and complying with, provisions and clauses pertinent to the Buy American Act and the Berry Amendment. The Defense Acquisition University, on behalf of the Deputy Under Secretary of Defense (Acquisition Reform), stated that the Defense Acquisition University will emphasize the Buy American Act and Berry Amendment and the ramifications of noncompliance in applicable courses. Additionally, Defense Acquisition University instructors will be provided copies of the audit report so that they can use instances of noncompliance with the Buy American Act and the Berry Amendment mentioned in the audit report as teaching tools, and good examples during classroom instruction. The Army stated that the Office of General Counsel is reviewing the draft audit report and the Army will provide a copy of the preliminary review required by DoD Regulation 7000.14R, volume 14. Further, if there are any potential violations of the Antideficiency Act, the Army will comply with the applicable reporting requirements. The Navy stated that the Defense Federal Acquisition Regulation Supplement 212.503, exempts DoD from application of the Buy American Act for procurement of commercial items, and recommended the General Counsel of the DoD determine whether the supplement effectively waives the Buy American Act for purchases of commercial items. The Air Force stated that the Air Force General Counsel, in conjunction with the Offices of General Counsel from the other Services and the Department of Defense, is reviewing the applicability of the Buy American Act and Berry Amendment to the facts and circumstances presented in the report. If it is concluded that Antideficiency Act violations occurred, the Assistant Secretary will task the appropriate Air Force organization to perform an investigation. See Part I for the discussion of management comments and Part III for the complete text of the comments.

Audit Response. Management comments from the Director, Defense Procurement; the Deputy Under Secretary of Defense (Acquisition Reform); the Army; and the Air Force were responsive. Management comments from the Navy were not responsive. The Defense Acquisition Regulation Supplement 212.503 does not exempt DoD from applying the Buy American Act to procurements of commercial items. The Navy should have initiated, within 10 business days of the date of receipt of the draft audit report, a preliminary review of the potential Antideficiency Act violation as required by DoD 7000.14-R, Financial Management Regulation, volume 14, chapter 3, section C.2., and requested its desired interpretation from the General Counsel of the DoD as an early step in the preliminary review. We request that the Navy provide additional comments on Recommendation 3. by December 28, 1998.

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Part I - Audit Results

Audit Background

National Defense Authorization Act for FY 1998. We conducted the audit in response to a tasking in Public Law 105-85, "National Defense Authorization Act for FY 1998" (the Authorization Act). Section 807 of the Authorization Act requires the Inspector General, DoD, to conduct an audit of FYs 1996 and 1997 procurements of military clothing and clothing-related items in excess of the $2,500 micropurchase ceiling by one installation of the Army, the Navy, the Air Force, and the Marine Corps. The audit is to determine the extent to which the installations procured military clothing and clothing related items in violation of the Buy American Act (41 U.S.C. 10a et seq.). We included the Berry Amendment because it requires that food, clothing, and certain other items that DoD purchases in excess of the $100,000 simplified acquisition threshold be produced in the United States or its possessions. An Air Force Sergeant's complaint to Congressman James A. Traficant, Jr. that members of an Air Force Reserve unit were issued boots made in China prompted the tasking. A subsequent Air Force review made in response to an inquiry from Congressman Traficant found that 12 Air Force organizations procured 4,157 pairs of boots, valued at $182,511, that were made in China. See Appendix B for a list of the Air Force procurements.

Applying the Buy American Act and the Berry Amendment. Table 1 indicates the threshold values of the Buy American Act and the Berry Amendment applicable to DoD procurements. Table 1 also includes the Defense Acquisition Regulation Supplement (DFARS) clause and provision that contracting officers should use in solicitations and contracts to inform contractors that the Buy American Act or the Berry Amendment applies.

Table 1. DoD Procurement Applications

Procurement Value	Applicable Statute	Clause and Provision
$2,500 to $100,000	41 U.S.C. 10a Buy American Act	DFARS 252.225-7001 DFARS 252.225-7000
Over $100,000	10 U.S.C. 2441 note Berry Amendment	DFARS 252.225-7012

The Buy American Act. The Buy American Act, enacted March 3, 1933, restricts foreign access to U.S. Government procurements by giving preference to domestically produced or manufactured products. The Buy American Act states in part:

> Notwithstanding any other provision of law, and unless the head of the Federal Agency concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or

> produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use. . . . (10 U.S.C. 10a)

The Federal Acquisition Regulation (FAR), part 25, "Foreign Acquisition," and DFARS part 225, "Foreign Acquisition," contain policies and procedures for implementing the Buy American Act and other laws and regulations that pertain to the acquisition of foreign supplies, services, construction materials, and construction. In general, the FAR requires that only domestic end-products be acquired for public use in the United States on procurements that exceed the $2,500 micropurchase ceiling. The DoD has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and Balance of Payments Program to acquisitions for public use of certain supplies that are mined, produced, or manufactured in the 17 foreign countries (qualifying countries) where memoranda of understanding or other international agreements exist. Individual acquisitions for products of four other qualifying countries may, on a purchase-by-purchase basis, be exempted from application of the Buy American Act and Balance of Payments Program as inconsistent with the public interest. The 21 countries are identified as "qualifying countries" in DFARS 225.872, "Contracting with Qualifying Country Sources." To comply with the Buy American Act, contracting officers must add 50 percent to the price of nonqualifying country end-products when evaluating offers with nonqualifying end-products against offers with domestic end-products. A nonqualifying country is defined as a country other than the United States, or one of the 21 qualifying countries listed in DFARS 225.872 (see Appendix C).

The Berry Amendment. From FYs 1942 through 1993, every DoD appropriations act contained a provision that placed domestic source restrictions on DoD procurements of such items as food, clothing, fabrics, specialty metals, and hand or measuring tools. The provision is commonly known as the "Berry Amendment." In FY 1993, the Berry Amendment (10 U.S.C. 2241 note) was effectively made permanent when that year's provision included the language "during the current fiscal year and hereafter . . ." (Public Law 102-396, "Department of Defense Appropriation Act, 1993," section 9005). In FY 1994, the Berry Amendment was expanded to prohibit the use of appropriated funds or "any other funds available to the Department of Defense" by Public Law 103-139, "Department of Defense Appropriations Act, 1994," section 8005. Section 4401(e) of Public Law 103-355, "Federal Acquisition Streamlining Act of 1994," modified the Berry Amendment to have a simplified acquisition threshold (currently $100,000). Prior versions of the Berry Amendment referred to a small purchases threshold. The Berry Amendment states in part:

> . . . no part of any appropriation or any other funds available to the Department of Defense, except for purchases for amounts not greater than the simplified acquisition threshold . . . shall be available for the procurement of any item of food, clothing . . . not produced in the United States or its possessions.

DFARS 225.7002-1, "Restrictions," implements the Berry Amendment. This segment of DFARS requires the items specified in the Berry Amendment, be grown or produced in the United States or its possessions. To comply with the law, DoD contracting officers generally must determine that the offered item is produced in the United States or its possessions before awarding the contract.

Military Clothing and Related Items. A December 1997 report from the Military Uniform Task Force, which was established by the Assistant Secretary of Defense (Force Management Policy), and the Federal Procurement Data System Product Service Codes classify military clothing and related items into the following categories.

o Mandatory: Uniform and clothing items that members are required by Military Department regulations to possess at all times.

o Issue: Mandatory uniform and clothing items issued to recruits at basic training.

o Optional: Uniform and clothing items purchased by military members and worn at their option in accordance with their Military Department regulations.

o Organizational: Protective or specialized uniforms and clothing items that are purchased by an organization and provided to members for a specific purpose or operational need.

o Clothing Related: Individual equipment items such as duffel bags, ammunition belts, pistol belts, packboards, sleeping bags, sunglasses, snowshoes, swords and scabbards.

Primary Procurement Sources for Military Clothing and Related Items. There are two primary procurement sources for military clothing and related items: the Defense Supply Center Philadelphia, and clothing sales stores operated by Military Exchanges, including the Army and Air Force Exchange Service (AAFES), the Navy Exchange Service Command (NEXCOM), and the Marine Corps Exchange System. The Defense Supply Center Philadelphia spends about $1 billion annually to procure military clothing and related items. It generally procures the mandatory and issue items that military members are required to maintain throughout their careers, as well as organizational clothing, and clothing related items. The Defense Supply Center Philadelphia adds a surcharge (20.9 percent estimate in FY 1998) to items it procures to cover its operating expenses. The Military Exchanges procure optional items that military members may, but are not required to, possess. In addition to optional items, NEXCOM procures mandatory uniform items for Navy officers and master, senior, and chief petty officers. The Military Exchanges manage the Military Clothing Sales Stores that provide Defense Supply Center Philadelphia procured items as replacements, as well as optional uniform and related items approved by the Military Departments. The Military Departments provide appropriated fund support to the Military Exchanges for operating the Military Clothing Sales Stores.

Procurements of Military Clothing and Related Items by Military Organizations. The Defense Contract Action Data System indicates that during FYs 1996 and 1997, military organizations executed 243 contract actions valued

at more than $25,000 each for special purpose clothing, footwear, and individual equipment items. Additionally, 15 military organizations identified 108 contract actions valued at less than $25,000. The total value of the 351 contract actions was about $65 million. The number and value of all purchases of military clothing items between $2,500 and $25,000 could not be determined because DoD organizations are not required to report details on procurements under $25,000 in a central data base. The 351 contract actions did not include mandatory uniform items (shirts, trousers, coats, headwear, etc.). These items are traditionally procured by the Defense Supply Center Philadelphia and requisitioned by military organizations for issue to military personnel.

Audit Objectives

The audit objective was to determine whether contracting officers complied with the Buy American Act and the Berry Amendment when they procured military clothing and related items. See Appendix A for a discussion of the audit scope and methodology and a review of the management control program.

Procurement of Items Manufactured in Nonqualifying Countries

DoD contracting officers procured military clothing and clothing items for civilian employees that were manufactured in nonqualifying countries without first determining whether items manufactured in the United States were available, as required by the Buy American Act and the Berry Amendment. These procurements occurred primarily because the contracting officers were not familiar with, or did not understand, the Buy American Act, the Berry Amendment, and the FAR and DFARS implementing guidance. Additionally, contracting officers often focused on satisfying customer requests without considering the Buy American Act or the Berry Amendment. As a result, contracting officers at 12 military organizations awarded 16 contracts for clothing items valued at about $1.4 million to contractors supplying items manufactured in nonqualifying countries, that might have been procured from contractors supplying items manufactured in the United States. The noncompliance with the Buy American Act and the Berry Amendment resulted in potential violations of the Antideficiency Act because appropriated funds may not be used to purchase items that do not comply with the Buy American Act and the Berry Amendment.

Buy American Act and Berry Amendment Guidance

The FAR and DFARS guidance that implements the Buy American Act and the Berry Amendment is complex and confusing. For example, DFARS 213.507, "Provisions and Clauses," lists FAR 52.225-3, "Buy American Act-Supplies," as a usable applicable clause in purchase orders and blanket purchase agreements. However, DFARS 225.109, "Solicitation Provisions and Contract Clauses," requires use of DFARS 252.225-7001, "Buy American Act and Balance of Payments Program," instead of FAR 52.225-3. Also, contracting officers often were not aware of the requirement to include DFARS 252.225-7012, "Preference for Certain Domestic Commodities," in all solicitations and contracts that exceed the simplified acquisition threshold.

The complexity of the guidance, as well as exemptions, exceptions, and waiver authorities, make it difficult for contracting officers to understand what is needed to meet the requirements of the Buy American Act and the Berry Amendment. The audit sample consisted of 256 procurements, 201 subject to the Buy American Act and 55 subject to the Berry Amendment.

o On 131 of the 201 procurements that were subject to the Buy American Act, the contracting officers failed to include the correct provision and clause in the solicitations and contracts, respectively.

o On 20 of the 55 procurements that were subject to the Berry Amendment, contracting officers failed to include DFARS 252.225-7012 in the contracts.

We did not make any recommendations concerning the guidance because as of June 23, 1998, the Defense Acquisition Regulation Council was revising FAR, part 25, "Foreign Acquisition," to clarify the content and simplify the information for users (FAR Case 97-024). The Defense Acquisition Regulation Council also plans to update DFARS, part 225, "Foreign Acquisition," as needed to supplement the revised FAR, part 25.

Procurements by Military Organizations

The audit sample consisted of 256 procurements from 70 military organizations. Table 2 summarizes the procurements and contract values.

Table 2. Procurements in the Audit Sample

	Number of Locations	$2,500 to $25,000	$25,000 to $100,000	Over $100,000
Army	15	3	37	23
Navy	14	14	22	9
Air Force	37	55	68	19
Marine Corps	4	0	2	4
Total	**70**	**72**	**129**	**55**

Buy American Act Procurements

DFARS Requirements. The DFARS 225.109(a) and (d), 225.105, "Evaluating Offers," and 225.102(b)(i), "Policy," respectively, require that contracting officers making procurements using the Buy American Act must include the following elements.

o Include DFARS 252.225-7000, "Buy American Act - Balance of Payments Program Certificate," in solicitations for contracts where supplies are required, unless the solicitation includes either the DFARS Trade Agreements Act clause or the DFARS North American Free Trade Agreement clause. The Trade Agreements Act and the North American Free Trade Agreement do not apply to military clothing and related items (DFARS 225.403-70). DFARS 252.225-7000 requires offerors to certify each end product, as domestic, qualifying country, or nonqualifying country.

o Include DFARS 252.225-7001, "Buy American Act and Balance of Payments Program," in solicitations and contracts where supplies are required. This clause implements the Buy American Act in a manner that provides a preference to domestic end products over other end products, except for end products which are qualifying country end products. A domestic end product is defined as an unmanufactured end product mined or produced in the United States, or an end product manufactured in the United States if the cost of its

qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components.

o Evaluate offers by adding a 50 percent factor to the price of each nonqualifying country offer, if domestic offers are received.

o Obtain a determination that the item is not reasonably available when no domestic offer is received or the domestic offers are insufficient to meet the requirement and the award is made based on a nonqualifying country end product.

Procurements Subject to the Buy American Act. Contracting officers for 131 of the 201 contracts subject to the Buy American Act that we reviewed were not sufficiently familiar with the Buy American Act and guidance in the FAR and DFARS to ensure compliance. The contracting officers for the other 70 contracts were sufficiently familiar with the guidance to include the correct Buy American Act clause in the contracts. Of the 131 contracts, 12 did not comply with the Act. This resulted in procurements of items valued at $334,546 from nonqualifying countries that may have been available from contractors supplying items manufactured in the United States or a qualifying country. Contractors on the other 119 contracts supplied items manufactured in the United States or a qualifying country even though the contracting officers did not include the correct provisions and clauses in the solicitations and contracts and did not obtain the required Buy American Act-Balance of Payments Program certificates. See Table 3 for information on contracts that did not contain the correct Buy American Act clause.

Table 3. Contracts that Did Not Contain the Correct Buy American Act Clause

	Number	Value	Percent of Total
Contracts Reviewed	201	$6,392,877	100
Contracts that Did Not Contain the Buy American Act Clause	131	$3,653,089	65
Contracts for Items Manufactured in Nonqualifying Countries	12	$ 334,546	6

On 11 of the 12 contracts that resulted in procurements of items made in nonqualifying countries, the contracting officers did not include the correct DFARS provisions and clauses in the solicitations and contracts. The other contact contained the correct clause, but the contracting officer did not enforce it. The contracting officers for the 12 contracts did not require the offerors to execute the required Buy American Act-Balance of Payments Program Certificate. The contracting officers did not give preference to domestic end products when they evaluated offers, and did not obtain a determination that the procured items were not reasonably available from domestic sources before awarding the

contracts to contractors who supplied items that were manufactured in nonqualifying countries. The contracting officers for the 12 contracts focused on satisfying customer requests (usually supply officials) for specific items without determining if the items complied with the Buy American Act. The 12 contracts that did not comply with the Buy American Act are shown in Table 4 and each procurement is discussed in detail in Appendix D.

Table 4. Contracts That Did Not Comply With the Buy American Act

Organization	Contract Number	Value	Item Description	Country of Origin
Army				
Army Garrison, Fort George G. Meade	DADW36-97-F-0066	$ 5,657	Safety Shoes	China
Military Academy	DAAG60-96-P-0010	49,951	Athletic Shoes	China
Military Academy	DAMA01-97-P-0129	43,983	Athletic Shoes	China
Navy				
FISC, Bremerton	N00406-96-M-BQ20	28,634	Gloves	Philippines
Air Force				
Alabama ANG	DAHA01-96-P-7158	33,325	Magnum Boots	China
Elmendorf AFB	F65501-96-P-1092	32,279	Gloves	Pakistan
Homestead ARB	FA6648-97-P-0437	3,891	Magnum Boots	China
Homestead ARB	FA6648-97-P-0297	46,529	Magnum Boots	China
Keesler AFB	F22600-96-M-8175	6,327	Magnum Boots	China
Mississippi ANG	DAHA22-97-P-7085	64,078	Magnum Boots	China
Mississippi ANG	DAHA22-97-P-7084	17,192	Magnum Boots	China
Pittsburgh ARS	F36629-96-P-0100	2,700	Magnum Boots	China
Total		**$334,546**		

FISC - Fleet and Industrial Supply Center
AFB - Air Force Base
ARB - Air Reserve Base
ANG - Air National Guard
ARS - Air Reserve Station

To prevent future noncompliance with the Buy American Act, the Director, Defense Procurement, should issue policy guidance that emphasizes to contracting officers who purchase clothing items the requirement to include and enforce appropriate Buy American Act provisions and clauses in solicitations and contracts. Additionally, the Deputy Under Secretary of Defense (Acquisition Reform) should ensure that the Defense Acquisition University stresses the ramifications of noncompliance with the Buy American Act in existing contracting courses. The additional instruction should emphasize the responsibility of contracting officers to incorporate and enforce the Buy American Act provision

and clause in solicitations and contracts to avoid potential Antideficiency Act violations that result when the guidance is not followed.

Procurements Using Federal Supply Schedules. Contract DADW36-97-F-0066, 1 of the 12 contracts that did not comply with the Buy American Act, was awarded for safety shoes valued at $37,500 by the Army Garrison at Fort George G. Meade using General Services Administration Federal Supply Schedule GS-07F-8203B. The Federal Supply Schedule does not include any shoes that are manufactured in foreign countries. However, General Services Administration guidance permits contracting officers to order incidental, non-Federal Supply Schedule items as long as the cost is small when compared to the total procurement cost. The guidance does not authorize contracting officers to order items that do not comply with applicable statutes such as the Buy American Act. Army employees selected 76 pairs of shoes valued at $6,170 that were made in China and the contracting officer's representative, who authorized the procurement, did not determine the place of manufacture. Appropriated funds were used to pay $5,657 of the $6,170. The remaining $513 was paid by the employees who selected shoes costing more than $75 a pair. However, the contractor's catalog that was incorporated in the Federal Supply Schedule contained a list of shoes excluded from the schedule. The 76 pairs of shoes selected by the employees were on the exclusion list. The contractor's customer service representative stated that the shoes were made in China. To improve compliance with the Buy American Act when placing orders using Federal Supply Schedules, the Director, Defense Procurement, should issue guidance that requires contracting officers procuring incidental, non-Federal Supply Schedule items to verify that the procurement meets the requirements of governing directives.

Berry Amendment Procurements

Berry Amendment and DFARS Requirements. The Berry Amendment specifies that funds available to DoD not be used in amounts greater than the $100,000 simplified acquisition threshold to procure certain items, including military clothing and related items, that are not produced in the United States or its possessions. The DoD included several exceptions to the Berry Amendment restrictions in DFARS 225.7002-2, "Exceptions." Two of the exceptions apply to military clothing and related items.

- Swords and scabbards may be purchased from foreign sources because they are not manufactured in the United States or its possessions in sufficient and reasonably available commercial quantities of a satisfactory quality.

- Chemical warfare protective clothing may be purchased from a qualifying country when the purchase furthers an existing agreement.

The Marine Corps applied the exceptions and procured swords and scabbards manufactured in Taiwan, valued at about $0.3 million, and chemical protective clothing manufactured in Germany and valued at about $3.0 million.

Procurements of other military clothing and related items must comply with the Berry Amendment restrictions unless the Secretary of the Military Department

concerned, or designee, determines that items produced in the United States or its possessions cannot be acquired in satisfactory quality and sufficient quantity at United States market prices. Unless an exception applies, contracting officers must include DFARS 252.225-7012 in all solicitations and contracts that exceed the simplified acquisition threshold (DFARS 225.7002-3(a)). The clause specifies that the contractor agrees to deliver items that have been grown, reprocessed, reused, or produced in the United States, its possessions, or Puerto Rico.

Procurements Subject to the Berry Amendment. The contracting officers for 20 of the 55 contracts subject to the Berry Amendment were not sufficiently familiar with the Berry Amendment DFARS guidance to ensure compliance. The contracting officers for the other 35 contracts were sufficiently familiar with the guidance to include DFARS 252.225-7012 in the contracts. On 2 of the 20 contracts, the contracting officers did not implement the Berry Amendment because the contracts were orders using a Federal Supply Schedule awarded by the General Services Administration. The General Services Administration does not use DFARS 252.225-7012 in Federal Supply Schedules because the Berry Amendment applies only to DoD. Of the 20 contracts, 4 did not comply with the Berry Amendment. This resulted in procurements valued at $1,099,176 from foreign countries that may have been available from contractors supplying items manufactured in the United States or its possessions. The other 16 contracts did not result in procurements of items manufactured in foreign countries even though the contracting officers did not include DFARS 252.225-7012 in the contracts. Contractors for the 16 contracts supplied items that were manufactured in the United States. See Table 5 for information on contracts that did not contain the correct Berry Amendment clause.

Table 5. Contracts that Did Not Contain the Correct Berry Amendment Clause

	Number	Value	Percent of Total
Contracts Reviewed	55	$36,166,166	100
Contracts that Did Not Contain the Berry Amendment Clause	20	$21,297,035	36
Contracts for Items Manufactured in Foreign Countries	4	$ 1,099,176	7

On three of the four contracts that resulted in procurements of items manufactured in foreign countries, the contracting officers did not include DFARS 252.225-7012 in the solicitations and contracts. The contracting officer included the clause in the fourth contract but did not enforce it. The contracting officers responded to customer requests for specific brand name items without determining whether those items complied with the Berry Amendment, without ascertaining whether qualifying products could be obtained, and without checking to see whether any Secretary of the Military Department determinations of domestic product

nonavailability had been published. The four contracts that did not comply with the Berry Amendment are shown in Table 6 and each procurement is discussed in detail in Appendix D.

Table 6. Contracts That Did Not Comply With the Berry Amendment

Organization	Contract Number	Value	Item Description	Country of Origin
Army				
Letterkenny Army Depot	DAAC67-92-D-0004	$ 399,123	Safety Shoes	China
Army Garrison, Aberdeen Proving Ground	DAAD05-96-D-7029	446,113	Safety Boots and Shoes	China
Air Force				
Air Force Academy	F05611-96-D-0402	134,352	Athletic Shoes	China
Air Force Academy	F05611-97-D-0602	119,588	Athletic Shoes	China
Total		**$1,099,176**		

To ensure future compliance with the Berry Amendment, the Director, Defense Procurement, should issue policy guidance to contracting officers who procure clothing items that emphasizes the requirement to include and enforce DFARS 252.225-7012 in applicable solicitations and contracts. Additionally, the Deputy Under Secretary of Defense (Acquisition Reform) should ensure that the Defense Acquisition University stresses the ramifications of noncompliance with the Berry Amendment in existing contracting courses. The additional instruction should emphasize the responsibility of contracting officers to incorporate and enforce the Berry Amendment clause in applicable solicitations and contracts to avoid potential Antideficiency Act violations that result when items are procured that do not comply with the Berry Amendment.

Potential Antideficiency Act Violations

The noncompliance with the Buy American Act on 12 contracts and the noncompliance with the Berry Amendment on 4 contracts may have resulted in 16 violations of the Antideficiency Act (31 U.S.C. 1341[a][1][A]). These violations occurred because the contracts were either funded directly with appropriated funds, or working capital funds that were reimbursed with appropriated funds that are not available for procurement of the foreign-made items. The 16 contracts are valued at about $1.4 million. Additionally, the 27 procurements shown in Appendix B valued at $182,511 that were identified by the Air Force may also result in violations of the Antideficiency Act. The Berry Amendment (10 U.S.C. 2241 note) states:

> During the current fiscal year and hereafter, no part of any appropriation or any other funds available to the Department of

> Defense, except for purchases for amounts not greater than the simplified acquisition threshold . . . shall be available for the procurement of any item of food, clothing . . . not produced in the United States or its possessions.

Public Law 104-208, Section 8062 and Public Law 104-61, Section 8077, the Department of Defense Appropriation Acts for FY 1997 and FY 1996, respectively, are applicable to the contracts that did not comply with the Buy American Act. The laws state in part:

> None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. . . .

The Antideficiency Act (31 U.S.C. 1341) states in part:

> (a)(1) An officer or employee of the United States Government . . . may not--
>
> (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation; . . .

The Department of Defense Financial Management Regulation (DoD 7000.14R), volume 14, "Administrative Control of Funds and Antideficiency Act Violations," states in part:

> . . . violation of 31 U.S.C. 1341 (a)(1)(A) may occur when statutory limitations on the purpose for which an appropriation or fund may be used are violated.

In a 1992 decision, the Comptroller General held that a procurement of fuel cells in violation of Berry Amendment restrictions would result in a violation of the Antideficiency Act prohibition against obligating agency funds in direct contravention of a specific limitation contained in an appropriations act (Comptroller General Decision, B-246304.2, "Matter of: Department of Defense Purchase of Fuel Cells," July 31, 1992.) As noted above, the Appropriations Act language considered by the Comptroller General in 1992, has since expanded and become a permanent prohibition. Because the Defense Appropriations Acts now contain similar language with respect to purchases in violation of the Buy American Act, we believe that the same rationale and result should apply in those cases (see, for example, Section 8059 of Public Law 105-56, "Department of Defense Appropriations Act for FY 1998.")

DoD Directive 7200.1, "Administrative Control of Appropriations," May 4, 1995, regulates fund control for all DoD Components. The directive requires DoD components to establish positive control and maintain adequate systems of accounting for appropriations and other available funds. The directive further requires the Heads of the DoD Components to investigate and report on apparent and potential Antideficiency Act violations.

The Assistant Secretaries (Financial Management and Comptroller) of the Army, the Navy, and the Air Force should investigate the contracts under their

cognizance listed in Tables 4 and 6 of this report, for potential Antideficiency Act violations arising from using appropriated funds to purchase items that are not in compliance with the Buy American Act or the Berry Amendment and fix responsibility. The Air Force review should include the procurements identified by the 12 Air Force organizations listed in Appendix B. If any violations of the Antideficiency Act occurred, the Assistant Secretaries should comply with reporting requirements in DoD Directive 7200.1, "Administrative Control of Appropriations," May 4, 1995, and the DoD Financial Management Regulation (DoD 7000.14R), volume 14, "Administrative Control of Funds and Antideficiency Act Violations," August 1995. Table 7 shows the number and value of the contracts with potential Antideficiency Act violations by Military Service.

Table 7. Contracts With Potential Antideficiency Act Violations

	Number of Contracts	Value of Contracts
Army	5	$ 944,827
Navy	1	28,634
Air Force	10	460,261
Identified by Air Force*	27	182,511
Total	**43**	**$1,616,233**

*(See Appendix B)

Recommendations, Management Comments, and Audit Response

1. We recommend that the Director, Defense Procurement issue policy guidance that:

a. Emphasizes to contracting officers procuring clothing items the requirement to incorporate and enforce the Buy American Act and Berry Amendment provisions and clauses in applicable solicitations and contracts.

b. Reminds contracting officers to verify that the procurement complies with the Buy American Act and the FAR and DFARS implementing guidance when they procure incidental, non-Federal Supply Schedule items using a Federal Supply Schedule.

Management Comments. The Director, Defense Procurement concurred and stated that she will issue policy guidance to procuring contracting officers emphasizing the importance of incorporating, and complying with, provisions and clauses pertinent to the Buy American Act and the Berry Amendment in affected solicitations and contracts.

2. We recommend that the Deputy Under Secretary of Defense (Acquisition Reform) ensure that the Defense Acquisition University stresses the ramifications of noncompliance with the Buy American Act and the Berry

Amendment in their existing Contracting Fundamentals, Fundamentals of Contract Pricing, and Government Contract Law courses. This additional instruction should emphasize the important responsibility that contracting officers have to incorporate and enforce the Buy American Act and Berry Amendment provisions and clauses in applicable solicitations and contracts to avoid potential Antideficiency Act violations that result when items are procured that do not comply with the laws.

Management Comments. The Defense Acquisition University, on behalf of Deputy Under Secretary, concurred and stated that the Defense Acquisition University will emphasize the Buy American Act and Berry Amendment and the ramifications of noncompliance in applicable courses and use the audit report as a classroom teaching tool.

3. We recommend that the Assistant Secretaries (Financial Management and Comptroller) of the Army, the Navy, and the Air Force investigate for the contracts under their cognizance listed in Tables 4, 6, and Appendix B of this report, the potential Antideficiency Act violations arising from the use of appropriated funds to purchase items that do not comply with the Buy American Act and the Berry Amendment, fix responsibility, and if any violations of the Antideficiency Act occurred, comply with reporting requirements in DoD Directive 7200.1, "Administrative Control of Appropriations," and the DoD Financial Management Regulation (DoD 7000.14R), volume 14, "Administrative Control of Funds and Antideficiency Act Violations." The Assistant Secretaries should also provide a copy of the preliminary review reports, the monthly status reports on the formal investigations, and the final formal investigation reports to the IG, DoD.

Army Comments. The Army stated that the Office of General Counsel is reviewing the draft audit report and that the Army will provide a copy of the preliminary review required by DoD Financial Regulation 7000.14R, volume 14. If there are any potential violations of the Antideficiency Act, the Army will comply with the reporting requirements in DoD Directive 7200.1, DoD Regulation 7000.14R, volume 14, and the recommendation.

Audit Response. Although the Army did not state whether it concurred with the recommendation, the action that the Army stated it is taking meets the intent of the recommendation.

Navy Comments. The Navy nonconcurred. The Navy stated that the Defense Federal Acquisition Regulation Supplement 212.503 exempts DoD from application of the Buy American Act for procurement of commercial items and recommended that the General Counsel of the DoD determine whether the supplement effectively waives the Buy American Act for DoD purchases of commercial items.

Audit Response. The Navy comments are not responsive. The Defense Federal Acquisition Regulation Supplement 212.503 does not exempt DoD from applying the Buy American Act to procurements of commercial items. The Navy should have initiated, within 10 business days of the date of receipt of the draft audit report, a preliminary review of the potential Antideficiency Act violation as required by DoD 7000.14-R, Financial Management Regulation, volume 14,

chapter 3, section C.2., and requested its desired interpretation from the General Counsel of the DoD as an early step in the preliminary review. We request that the Navy reconsider its position on the recommendation in response to the final report.

Air Force Comments. The Air Force agreed that a potential Antideficiency Act violation may have occurred and stated that the General Counsel, in conjunction with the office of General Counsels' from the other Services and the Department of Defense, is reviewing the applicability of the Buy American Act and Berry Amendment to the facts and circumstances presented in the report. If it is concluded that Antideficiency Act violations occurred, the Air Force will perform an investigation.

Audit Response. Although the Air Force did not state whether it concurred with the recommendation, the action that the Air Force stated it is taking meets the intent of the recommendation.

Part II - Additional Information

Appendix A. Audit Process

Scope

The National Defense Authorization Act for FY 1998 requires an audit of FYs 1996 and 1997 procurements of military clothing and related items at one military installation of the Army, the Navy, the Air Force, and the Marine Corps. The audit is to determine the extent to which the installations procured military clothing and related items in violation of the Buy American Act. We expanded the scope to include clothing items procured for civilian employees, the Berry Amendment, and a review of 256 procurements of military clothing and related items by 70 military organizations.

Methodology

We reviewed the Buy American Act, the Berry Amendment, and the FAR and DFARS implementing guidance. We used those documents as criteria for determining whether contracting officers complied with the Buy American Act and the Berry Amendment when they procured military clothing and related items, including clothing items procured for civilian employees. We reviewed the contracts for 256 FYs 1996 and 1997 procurements of military clothing and related items. We interviewed contractors and reviewed contractor catalogues to determine the place of manufacture of the items procured. We discussed with contracting officers the process for procuring military clothing and related items and for ensuring compliance with the Buy American Act and the Berry Amendment. On items manufactured in a foreign country, we visited the contracting organizations, discussed the procurements with contracting and supply officials, and reviewed additional procurement documentation, such as Buy American Act certificates; findings and determinations; and price adjustment calculations, to determine whether the procurements were in compliance with the Buy American Act or the Berry Amendment as applicable.

Use of Computer-Processed Data. To achieve the audit objective, we relied on computer-processed data from the Defense Contract Action Data System to identify contract actions over $25,000. We assessed the reliability of the data in the system concerning the identification of contract numbers, award dates, and dollar amounts of the transactions. We determined that the contract numbers and dollar amounts in the database generally agreed with the identification and dollar amounts on the contract documents. We did not find errors that would preclude use of the computer processed data to meet the audit objectives or that would change the conclusion in the report.

Universe. Information provided by the Defense Contract Action Data System indicates that 94 military organizations executed 243 contracts valued at $25,000 or more for items in Federal Supply Codes (FSCs) 8415, 8430, 8435, and 8465 during FYs 1996 and 1997. We also obtained information on

108 contracts valued at less than $25,000 identified by military organizations. The FSCs cover the following types of military clothing and related items.

o FSC 8415 - Special Purpose. Includes flight clothing ensembles and components; helmets; safety, protective clothing, and athletic clothing; gloves; and submarine deck exposure clothing.

o FSC 8430 - Men's footwear. Includes rubber, athletic, safety, and submarine deck exposure footwear.

o FSC 8435 - Women's footwear. Includes rubber, athletic, and safety footwear.

o FSC 8465 - Individual equipment. Includes mussette bags, duffel bags, ammunition belts, pistol belts, handcuffs, packboards, sleeping bags, knapsacks, sunglasses, skis, snowshoes, swords and scabbards.

Sample. We excluded 95 contract actions from the universe because the actions were awarded overseas, contract files were not available, or the Buy American Act did not apply. The exclusions reduced the universe to 256 contract actions (55 over $100,000, 129 between $25,000 and $100,000, and 72 between $2,500 and $25,000). The 256 reviewed contract actions are detailed in the following list.

Number of Contracting Actions Reviewed

Military Organizations	Less than $25,000	Between $25,000 and $100,000	Over $100,000
Army			
Army Chemical Biological Defense Command, Aberdeen Proving Ground, MD*	0	4	0
Army Engineer District, Huntsville, AL*	0	0	1
Army Garrison, Aberdeen Proving Ground, MD*	3	6	3
Army Garrison, Fort Meade, MD*	0	1	0
Army Soldiers Systems Command, MA*	0	8	10
Fort Bragg, NC	0	2	0
Fort Campbell, KY*	0	0	1
Fort Carson, CO*	0	2	0
Fort Knox, KY*	0	3	1
Fort Lewis, WA	0	2	0
Fort Polk, LA*	0	4	2
Fort Shafter, HI*	0	0	2
Iowa Air National Guard*	0	1	0
Letterkenny Army Depot, PA*	0	0	1
Military Academy, NY*	0	4	2

*One or more contracts included incorrect or no Buy American Act or Berry Amendment clauses

Number of Contracting Actions Reviewed (Cont'd)

Military Organizations	Less than $25,000	Between $25,000 and $100,000	Over $100,000
Navy			
Coastal Systems Station, Panama City, FL*	0	1	2
Fleet and Industrial Supply Center, Bremerton, WA*	7	7	5
Fleet and Industrial Supply Center, Norfolk, VA*	6	1	0
Fleet and Industrial Supply Center, Pearl Harbor	0	1	1
Fleet and Industrial Supply Center, Philadelphia	0	1	0
Fleet and Industrial Supply Center, San Diego	0	1	0
Naval Air Station, Pensacola, FL	0	1	0
Naval Air Station, Whidbey Island, WA*	0	1	0
Naval Air Warfare Center, China Lake, CA*	0	4	0
Naval Air Warfare Center, Lakehurst, NJ*	0	1	0
Naval Inventory Control Point, Philadelphia	0	1	0
Naval Surface Warfare Center, Dahlgren, VA	1	1	0
Space and Naval Warfare Systems Center, Charleston, SC	0	0	1
Space and Naval Warfare Systems Center, San Diego, CA	0	1	0
Air Force			
Air Force Academy, CO*	0	11	7
Alabama Air National Guard, Birmingham, AL*	0	1	0
Bolling Air Force Base, DC*	0	3	0
Charleston Air Force Base, SC*	0	4	0
Davis-Monthan Air Force Base, AZ*	0	1	0
Dobbins Air Reserve Base, GA*	4	0	0
Dover Air Force Base, DE*	0	1	0
Eielson Air Force Base, AK*	3	2	0
Ellsworth Air Force Base, SD*	0	1	0
Elmendorf Air Force Base, AK*	3	6	0
Francis E. Warren Air Force Base, WY	0	3	1
Fairchild Air Force Base, WA*	0	2	0
Ft. Worth Joint Reserve Base, TX*	1	0	0
Goodfellow Air Force Base, TX*	9	2	0
Grand Forks Air Force Base, ND*	0	2	0
Grissom Air Reserve Base, IN*	1	1	0
Homestead Air Reserve Base, FL*	5	1	0
Hurlburt Field, FL*	0	2	0
Keesler Air Force Base, MS*	9	0	0
Lackland Air Force Base, TX	0	1	3
Langley Air Force Base, VA*	0	2	1

*One or more contracts included incorrect or no Buy American Act or Berry Amendment clauses

Number of Contracting Actions Reviewed (Cont'd)

Military Organizations	Less than $25,000	Between $25,000 and $100,000	Over $100,000
Air Force			
MacDill Air Force Base, FL*	0	1	0
March Air Reserve Base, CA*	14	0	0
Maxwell Air Force Base, AL*	0	6	4
McChord Air Force Base, WA*	0	2	0
Minot Air Force Base, ND*	0	2	0
Mississippi Air National Guard, Meridian, MS*	1	1	0
Nellis Air Force Base, NV*	0	1	0
Offutt Air Force Base, NE*	0	1	0
Patrick Air Force Base, FL*	0	2	0
Peterson Air Force Base, CO	0	1	1
Pittsburgh Air Reserve Station, PA*	5	0	0
Scott Air Force Base, IL*	0	0	2
Tinker Air Force Base, OK*	0	2	0
Westover Air Reserve Base, MA	0	1	0
Wright Patterson Air Force Base, OH*	0	1	0
Youngstown Air Reserve Station, OH	0	1	0
Marine Corps			
Marine Corps Headquarters, Washington, DC	0	1	0
Marine Corps Logistics Base, Albany, GA	0	0	2
Marine Corps Regional Contracting, Office, Kansas City, MO	0	1	0
Marine Corps Systems Command, Quantico, VA	0	0	2
Total	**72**	**129**	**55**

*One or more contracts included incorrect or no Buy American Act or Berry Amendment clauses

General Accounting Office High Risk Area. The General Accounting Office has identified several high risk areas in the Department of Defense. This report provides coverage of the Defense contract management high risk area.

Audit Type, Dates, and Standards. We performed this program audit from November 1997 through June 1998 in accordance with audit standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly, we included a review of management controls considered necessary.

Contacts During the Audit. We visited or contacted individuals and organizations within the DoD, the General Services Administration, and private companies. Further details are available upon request.

Management Control Program

DoD Directive 5010.38, "Management Control (MC) Program" dated August 26, 1996, requires DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended and to evaluate the adequacy of the controls.

Scope of Review of Management Control Program. We reviewed the adequacy of the management controls over procurement of military clothing and related items at 17 DoD contracting offices. Specifically, we examined management controls over compliance with the Buy American Act and the Berry Amendment when procuring military clothing and related items. We also reviewed the adequacy of management's self-evaluation of management controls.

Adequacy of Management Controls. We identified material management control weaknesses as defined by DoD Directive 5010.38. The Army, the Navy, and the Air Force had not implemented adequate management controls over contracting actions to ensure compliance with the Buy American Act and the Berry Amendment. The audit identified purchases of clothing items that do not comply with the Buy American Act and the Berry Amendment. The noncompliance occurred because management controls in effect at the contracting organizations did not always ensure appropriate clauses were included in the solicitations and contracts, and when the clauses were included, the controls did not ensure the clauses were enforced. In some cases, the items were purchased even though the contractors identified the items as foreign made in their catalogs, or through the Buy American Act certification process. Recommendations 1., 2., and 3., in this report, if implemented, will assist in correcting the weaknesses. A copy of the report will be provided to the senior official responsible for management controls in the Army, the Navy, and the Air Force.

Adequacy of Management's Self-Evaluation. Management's self-evaluation was not adequate. The Army, the Navy, and the Air Force organizations included in the audit did not identify compliance with the Buy American Act and the Berry Amendment as topics for self-assessment and, therefore, did not identify or report the material management control weaknesses identified by the audit. In addition, the Navy did not believe those laws applied to the types of purchases in question.

Prior Coverage. There have been no prior audits of compliance with the Buy American Act and the Berry Amendment when procuring military clothing and related items during the past 5 years.

Appendix B. Procurements of Boots Made in China Identified by the Air Force in 1997

Organization	Contract Number	Value
Altus Air Force Base, OK	F34612-97-P-0034	$ 7,050
Barksdale Air Force Base, LA	F16602-97-P-0726	3,038
	F16602-97-P-0880	2,882
	F16602-97-P-0900	3,623
Davis Monthan Air Force Base, AZ	F02601-97-F-0005	7,023
Hurlburt Field, FL	F08620-97-P-1426	4,666
	F08620-97-P-1241	4,851
	F08620-97-P-1125	6,776
	F08620-97-P-0602	11,579
	F08620-97-P-0450	6,317
	F08620-97-P-0292	19,869
MacDill Air Force Base, FL	Not Available*	4,200
McChord Air Force Base, WA	F34503-97-P-0055	2,714
	F34503-97-P-0242	3,962
McClellan Air Force Base, CA	F04699-97-P-1844	9,776
	F04699-97-P-1812	8,257
	F04699-97-P-0666	3,622
	F04699-97-P-0150	14,684
McConnell Air Force Base, KS	Not Available*	7,399

*Contract not available at time of audit. The Air Force investigation of potential Antideficiency Act violations should identify the contracts.

Appendix B. Procurements of Boots Made in China Identified by the Air Force in 1997

Organization	Contract Number	Value
Mountain Home Air Force Base, ID	F10603-97-P-0223	10,665
	F10603-97-P-0303	2,828
Pope Air Force Base, NC	F31601-97-P-0044	2,998
Warner Robins Air Force Base, GA	F09650-97-P-0907	8,756
	F09650-97-P-1501	9,751
	F09650-97-P-1802	2,678
Youngstown Air Reserve Station, OH	F33630-96-P-0258	7,497
	F33630-97-P-0024	5,050
Total		**$182,511**

Appendix C. Qualifying Countries Listed in DFARS 225.872

The Buy American Act and Balance of Payments Program does not apply to the acquisition of defense equipment which is mined, produced, or manufactured in any of the qualifying countries listed below.

Qualifying Countries

Australia	Belgium
Canada	Denmark
Egypt	Federal Republic of Germany
France	Greece
Israel	Italy
Luxembourg	Netherlands
Norway	Portugal
Spain	Turkey
United Kingdom of Britain and Northern Ireland	

The acquisition of products manufactured in the following qualifying countries may be exempted from the Buy American Act and Balance of Payments Program on a purchase-by-purchase basis.

Qualifying Countries

Austria
Finland
Sweden
Switzerland

Appendix D. Procurements that Did Not Comply with the Buy American Act or the Berry Amendment

Army Organizations

Army Garrison, Aberdeen Proving Ground

Contract: DAAD05-96-D-7029
Awarded: September 1, 1996
Type of Contract: Indefinite Quantity
Contract Value: $907,959 (includes $446,113 for shoes manufactured in nonqualifying country)
Item Purchased: Safety Shoes
Procurement Method: Competitive, Small Business Set Aside
Contractor: Lehigh Valley Safety Supply Company, Allentown, PA

Details: The solicitation stated that the procurement was a small business set aside and required that the contractor provide safety shoes in various types and sizes through weekly mobile service (shoemobile visits) at Aberdeen Proving Ground. The contracting officer incorrectly included FAR Buy American Act provisions in the solicitation. The provisions were correctly marked not applicable in the contract. The contracting officer should have included in the solicitation and contract DFARS 252.225-7012, "Preference for Certain Domestic Commodities," (the Berry Amendment) prescribed by DFARS 225.7002-3, "Contract Clauses," for all solicitations and contracts that exceed the $100,000 simplified acquisition threshold unless an exception is known to apply. Lehigh Valley Safety Supply Company, stated that several types of shoes it offered, valued at $446,113, were manufactured in foreign countries. The contracting officer did not obtain the Secretary of the Army determination required by DFARS 225.7002-2 that shoes manufactured by United States sources were not available before awarding the contract to Lehigh Valley Safety Supply Company. Contracting officials at Aberdeen Proving Ground stated that the Berry Amendment is not applicable because as of January 1998, actual purchases of foreign made shoes did not exceed the $100,000 threshold. Also, the contracting officer's representative has been informed not to order any more of the foreign items. The contracting officials also stated that at the time the contract was awarded, DFARS was not clear that the Berry Amendment applied to contracts for commercial items. The contracting officer should have included DFARS 252.225-7012 in the solicitation and contract because the procurement exceeded $100,000, and the exceptions in DFARS 225.7002-2 did not apply. Additionally, inclusion in the contract of an estimated $446,133 for shoes manufactured in a foreign country shows that the contracting officer anticipated that purchases of foreign made shoes would exceed the $100,000 threshold.

Conclusion: The contracting officer did not comply with the Berry Amendment.

Army Garrison Fort George G. Meade, MD

Contract: DADW36-97-F-0066
Awarded: December 17, 1996
Type of Contract: Order under Federal Supply Schedule
Contract Value: $37,500
Items Purchased: Safety Shoes
Procurement Method: Competitive
Contractor: Lehigh Safety Shoe Company, Baltimore, MD

Details: Contract DADW36-97-F-0066 is an order under General Services Administration Federal Supply Schedule GS-07F-8203B. The order authorizes the contractor to deliver up to 500 pair of safety shoes with a ceiling price of $37,500 during the period December 17, 1996, through April 30, 1998. The contractor was required to visit Fort George G. Meade monthly or when there was a requirement to issue at least 10 pairs of safety shoes. The order also authorized the contractor to sell shoes to authorized employees at its store. The contracting officer's representative was to provide a list of authorized employees and the size and type of the shoes desired to the contractor. The Federal Supply Schedule shows the authorized styles and prices of shoes for purchase. No foreign made shoes are included in the Federal Supply Schedule. The General Services Administration permits purchases of incidental, non-Federal Supply Schedule items on a delivery order to a schedule contractor as long as the cost is small compared to the total cost of the procurement. We compared the shoe styles on invoices paid during the period February through September 1997 with the shoe styles authorized in the Federal Supply Schedule. Our analysis showed that the contracting office purchased 76 pairs of safety shoes valued at $6,170 that are not on the Federal Supply Schedule. Appropriated funds were used to pay $5,657 of the $6,170. The remaining $513 was paid by employees who selected shoes costing more than $75 a pair. We determined through the contractor's catalog and discussions with the contractor's customer service representative that the 76 pairs of shoes were manufactured in China. The purchase of shoes made in China occurred because the employees selected specific styles and the contracting officer's representative authorized the purchase without determining where the shoes were manufactured.

Conclusion: The contracting office did not comply with the Buy American Act.

Letterkenny Army Depot

Contract: DAAC67-92-D-0004
Awarded: August 14, 1992
Type of Contract: Indefinite Quantity
Contract Value: $674,195 (includes $399,123 for shoes manufactured in nonqualifying country)
Items Purchased: Safety Shoes
Procurement Method: Competitive
Contractor: Iron Age Safety Shoes, Pittsburgh, PA

Details: The solicitation required that the contractor provide safety shoes in various types and sizes through a mobile service at Letterkenny Army Depot. The contracting officer incorrectly included FAR Trade Agreement Act provisions and DFARS 252.225-7001, "Buy American Act and Balance of Payment Program," in the solicitation. The contracting officer should have included DFARS 252.225-7012, "Preference for Certain Domestic Commodities," (the Berry Amendment). The DFARS requires that DFARS 252.225-7012 be included in the solicitation and contract for all procurements that exceed the then $25,000 small purchase threshold (now the $100,000 simplified acquisition threshold) unless an exception is known to apply. The contracting officer did not obtain the Secretary of the Army determination required by DFARS 225.7002-2 that shoes manufactured by United States sources were not available before awarding the contract to Iron Age Safety Shoes. The contracting officer received two offers showing several types of shoes with certifications that they were manufactured in foreign countries. The contracting officer analyzed each line item using the procedures, and the 50 percent cost factor prescribed in DFARS for evaluating offers that include both domestic and nonqualifying country end products under the Buy American Act. The contracting officer did not believe the Berry Amendment applied because the solicitation was not issued for clothing item delivery. The solicitation included a provision for a shoemobile service to replace the Self-Service Supply Center that was previously available to employees. The contracting officer further stated that the Berry Amendment did not apply because none of the delivery orders for materials and services were expected to exceed the simplified acquisition threshold. We disagreed with the contracting officer because the primary purpose of the contract was to procure safety shoes, and in addition, the procurement exceeded the small purchase threshold. Further, none of the exceptions in DFARS 225.7002-2 applied. The inclusion in the contract of an estimated $399,123 for shoes manufactured in a nonqualifying country shows that the contracting officer anticipated that purchases of foreign made shoes would exceed the $25,000 small purchase threshold in effect at the time of contract award.

Conclusion: The contracting officer did not comply with the Berry Amendment.

Military Academy

Contracts: DAAG60-96-P-0010 and DAMA01-97-P-0129
Awarded: November 29, 1995 and March 11, 1997
Type of Contract: Purchase Orders
Contract Values: $49,951 and $43,983
Items Purchased: Athletic Shoes
Procurement Method: Competitive
Contractor: Anaconda Sports, Incorporated, Kingston, New York

Details: The solicitations included specifications for the shoes, but did not specify a brand name or otherwise limit competition. The contracting officer incorrectly included FAR 52.225-3, "Buy American Act - Supplies," in the solicitations. This clause is applicable to contracts awarded by non-DoD Federal agencies. The contracting officer should have included the Buy

American Act provision and clause required by DFARS 225.109 in the solicitation for contract DAAG60-96-P-0010. In the solicitation for contract DAMA01-97-P-0129, the contracting officer correctly included DFARS 252.225-7001, "Buy American Act and Balance of Payment Program," but failed to include DFARS 252.225-7000, "Buy American Act-Balance of Payments Program Certificate." None of the offers received over the Federal Acquisition Computer Network identified the place of manufacture or included a certification that the shoes were manufactured in the United States, a qualifying country, or a nonqualifying country. The three offers received by mail for contract DAAG60-96-P-0010, including the offer from Anaconda Sports, Incorporated, contained a statement that the shoes were manufactured in China or Taiwan, both nonqualifying countries. The contracting officer did not attempt to identify the place of manufacture for the other offers received and therefore could not give preference to domestic end products as required by DFARS 225.105, "Evaluating Offers." Further, the contracting officer did not obtain the determination required by DFARS 225.102(b) that the shoes were not reasonably available from domestic sources before awarding the contracts to a contractor that supplied nonqualifying country end products.

Conclusion: The contracting officer did not comply with the Buy American Act on both contracts.

Navy Organizations

Fleet and Industrial Supply Center (FISC), Bremerton, WA

Contract: N00406-96-M-BQ20
Awarded: August 5, 1996
Type of Contract: Purchase Order
Contract Value: $28,634
Items Purchased: Gloves, Cotton
Procurement Method: Competitive
Contractor: The Packaging People (operating as The Glove & Safety People), New Brunswick, NJ

Details: The solicitation provided specifications for the gloves, but did not include a brand name or otherwise limit competition. The contracting officer incorrectly used DFARS 252.225-7012, "Preference for Certain Domestic Commodities" in the solicitation but did not attempt to apply the clause. The clause is applicable in solicitations and contracts that exceed the $100,000 simplified acquisition threshold. The contracting officer should have included DFARS 252.225-7000, "Buy American Act -Balance of Payments Program Certificate," and DFARS 252.225-7001, "Buy American Act and Balance of Payment Program," required by DFARS 225.109. The abstract of quotes prepared by the contracting office showed 1 of the 14 offerors did not identify the country of origin for the gloves, 7 identified nonqualifying countries, 4 identified the United States as the place of manufacture, and the remaining 2 identified the United States or Mexico as the place of manufacture. The Packaging People submitted the lowest price offer to provide gloves manufactured in the Philippines, a nonqualifying country. The contracting officer awarded the contract to The Packaging People without evaluating the offers as required by DFARS 225.105, "Evaluating Offers." Had the contracting officer properly evaluated the offers, the 50 percent factor would have been added to The Packaging People offer, and the contractor with the lowest price offer on gloves manufactured in the United States would have been awarded the contract. The contracting officer stated that the error occurred because the assigned contracting technician misinterpreted guidance provided by the Small Business Office to mean that gloves manufactured in a foreign country could be procured without considering the Buy American Act. The guidance from the Small Business Office stated that there was inadequate small business available and that foreign sources could be considered. The contracting officer should have interpreted the guidance to mean offers to provide gloves manufactured by foreign sources could be considered but that preference must be given to domestic end products as required by the Buy American Act and the DFARS when evaluating the offers.

Conclusion: The contracting officer did not comply with the Buy American Act.

Air Force Organizations

Air Force Academy

Contracts: F05611-96-D-0402/5000 and F05611-97-D-0602/5000
Awarded: March 19, 1996 and March 13, 1997
Type of Contract: Indefinite Delivery
Contract Values: $134,352 and $119,588
Items Purchased: Athletic Shoes
Procurement Method: Competitive
Contractor: Blick's Sporting Goods, Colorado Springs, CO

Details: The contracting officer specified athletic shoes by brand name (Asics) in the solicitations for both contracts as requested by the customer. The customer (Cadet Issue Store) requested that specific brand because the shoes were recommended by the Cadet Uniform Board and approved by the Superintendent of the Academy and the Cadet Financial Advisory Group. The Cadet Uniform Board chooses items that will be used and worn by all cadets. The Superintendent of the Academy is the final approval authority on all Cadet Uniform Board recommendations. The Cadet Financial Advisory Group approves and controls cadet expenditures considering cash allowances, cadet indebtedness, deductions and charges, adequacy of held pay, and entrance deposit. The Asics shoes were recommended to the Cadet Uniform Board by the Podiatry Consultant to the Air Force Surgeon General. In 1991, the Podiatry Consultant conducted an Academy study that involved testing of 14 different brands and types of athletic shoes by medical and military personnel running more than 3 miles per day, 3 or more days per week. None of the tests included shoes that were manufactured in the United States. The study was prompted by the number of foot injuries sustained by cadets during training. Based on the study results, the Podiatry Consultant recommended the Asics shoes to the Cadet Uniform Board. Air Force officials at the Academy stated that the Berry Amendment and the Buy American Act do not apply because the working capital fund, commonly referred to as the Cadet Stock Fund, used to finance the contracts is not an appropriated fund. The Cadet Stock Fund is a revolving fund that is reimbursed through the Cadet Trust Account after a cadet has purchased items from the Cadet Issue Store. Air Force cadets receive $5,000 advance pay upon entering the Academy and also bring $2,500 of their own funds. The $7,500 is maintained in the individual cadet's pay account. The cadets give "power of attorney" to the Superintendent of the Academy to handle all of their pay and initial deposit. When a cadet charges an item at the Cadet Issue Store, funds are transferred from the cadet's pay account to the Cadet Trust Fund. At that point, the Cadet Trust Fund reimburses the Cadet Stock Fund. The Air Force officials contend that although military [cadet] pay is appropriated, when the funds are paid to the cadets [deposited in the cadet's individual pay account] the funds become the personal funds of the cadet and are not available to DoD to purchase items other than uniforms and academic supplies for the cadets. Air Force officials also contend that the Buy American Act and the Berry Amendment do not apply because the Cadet Issue Store is a "commissary similar" facility established to resell items to the cadets. However, Air Force officials could not identify any statute, regulation, ruling, or other

documentation that states that purchases financed with the Cadet Stock Fund are not subject to provisions of the Berry Amendment or the Buy American Act.

Conclusion: The contracting officer did not comply with the Berry Amendment on both contracts.

Air National Guard, Birmingham, AL

Contract: DAHA01-96-P-7158
Awarded: January 19, 1996
Type of Contract: Purchase Order
Contract Value: $33,325
Items Purchased: Hi-Tec Magnum Boots
Procurement Method: Competitive
Contractor: Hi-Tec Sports USA, Incorporated, Modesto, CA

Details: The contracting officer incorrectly included FAR 52.225-3, "Buy American Act - Supplies," in the solicitation. The contracting officer should have included DFARS 252.225-7000, "Buy American Act-Balance of Payments Program Certificate," and DFARS 252.225-7001, "Buy American Act and Balance of Payments Program," required by DFARS 225.109. The contracting officer received six offers and awarded the contract to Hi-Tec Sports USA, the low price offeror. The determination that the item is not reasonably available from domestic sources required by DFARS 225.102(b) before an award is made on a nonqualifying country end product was not made. When we informed the contracting officer that the procured boots were made in China and that the procurement did not comply with the Buy American Act, he stated that he was not aware of the Buy American Act requirements. The contracting officer also stated that the procurement on contract DAHA01-96-P-7158 was a one-time purchase to meet a special requirement.

Conclusion: The contracting officer did not comply with the Buy American Act.

Elmendorf Air Force Base, AK

Contract: FA65501-96-P-1092
Awarded: April 15, 1996
Type of Contract: Purchase Order
Contract Values: $32,279
Items Purchases: All-weather Gloves
Procurement Method: Competitive
Contractor: Tidewater Police Supplies, Newport News, VA

Details: The contracting officer received five offers and awarded the contract to Tidewater Police Supplies, the technically-acceptable low-price offeror. The determination that the item is not reasonably available from domestic sources required by DFARS 225.102(b) before an award is made on a nonqualifying country end product was not made. The contracting officer included the correct Buy American Act clause (DFARS 252.225-7001) in the contract, but did not enforce it. The contracting officer did not require the contractor to submit the

Buy American Act and Balance of Payment certificate required by DFARS 252.225-7001 and DFARS 252.225-7000. Additionally, the contractor did not comply with DFARS 252.225-7001 because it did not deliver a domestic end product and did not specify other end products in a Buy American Act and Balance of Payment certificate. The contractor stated he was not familiar with the Buy American Act and that we would have to talk to his supplier, Hatch Gloves, to determine the place of manufacture. The contracting officer stated that because the contractor was in Virginia and the gloves were being shipped from Hatch Gloves in Ventura, CA, she assumed the gloves were manufactured in California. The contracting officer made no further attempt to verify the country of origin. A customer service representative at Hatch Gloves stated the gloves (Hatch MT25) provided under the contract were made in Pakistan. The customer service representative provided a copy of the glove specifications, which states the country of origin is Pakistan. The contracting officer stated that neither she nor the customer knew that the gloves were made in Pakistan.

Conclusion: The contracting officer did not comply with the Buy American Act.

Homestead Air Reserve Base, FL

Contracts: FA6648-97-P-0297 and FA6648-97-P-0437
Awarded: January 10, 1997, and March 17, 1997
Type of Contract: Purchase Orders
Contract Values: $46,529 and $3,891
Items Purchases: Hi-Tec Magnum Boots
Procurement Method: Competitive
Contractor: Cousin's Enterprises, Columbus, OH

Details: Contract FA6648-97-P-0437 was a follow-on contract to obtain additional boots to supplement the original procurement on contract FA6648-97-P-0297. The solicitation for contract FA6648-97-P-0297 specified Hi-Tec Magnum Boots or equivalent. The contracting officer received 73 offers, 5 of which were for brand names other than Hi-Tec Magnum. The five other brand offers were rejected because the offered boots had D-ring laces. The customer requested Hi-Tec Magnum boots by brand name and required that the boots purchased have eyelet laces for safety purposes. The Hi-Tec Magnum boots have eyelet laces. Officials at Homestead Air Reserve Base stated that neither the contracting officer nor the customer knew the Hi-Tec Magnum boots were made in China. The contracting officer incorrectly included FAR 52.225-3, "Buy American Act - Supplies," in the solicitation for contract FA6648-97-P-0297. Contract FA6648-97-P-0437 was issued on a Standard Form 1449 for commercial items and FAR 52.212-5, "Contract Terms and Conditions Required to Implement Statues or Executive Orders-Commercial Items," was incorporated by reference. However, the addenda was not attached to the contract to verify the Buy American Act-Supplies clause (FAR 52.225-3) had been incorporated. The contracting officer should have included DFARS 252.225-7000, "Buy American Act-Balance of Payments Program Certificate," and DFARS 252.225-7001, "Buy American Act and Balance of Payments Program," required by DFARS 225.109. The contracting officer awarded the

contracts to Cousin's Enterprises, the technically-acceptable, low price offeror. The contracting officer should have also determined the country of origin of the brand name boot before issuing the solicitation.

Conclusion: The contracting officer did not comply with the Buy American Act on both contracts.

Keesler Air Force Base, MS

Contract: F22600-96-M-8175
Awarded: August 29, 1996
Type of Contract: Purchase Order
Contract Value: $6,327
Items Purchased: Hi-Tec Magnum Boots
Procurement Method: Competitive
Contractor: United States Sales Corporation, Virginia Beach, VA

Details: The contract file was not available during our March 1998 visit. Contracting officials at Keesler Air Force Base stated that the file was destroyed because it was more than 1 year after final payment. The contracting officer who prepared the contract stated that the customer requested Hi-Tec Super Magnum safety boots by brand name and that he did not know the boots were made in China. The preparing contracting officer sought to satisfy the customer's request and telephoned three contractors on a current vendor list to obtain quotes on Hi-Tec Super Magnum safety boots. The preparing contracting officer further stated that it is a normal practice at Keesler Air Force Base to solicit quotes for common commodities by telephone and complete a commodities quote sheet. One of the check if applicable items on the commodities quote sheet is labeled Vendor Advised: FAR 52.225-3, "Buy American Act Supplies." The preparing contracting officer stated that the contractor told him the boots were made in the United States, because he would not have recommended an award if the contractor stated anything different. Because the contract file was not available, we could not determine whether the contractor submitted a written statement attesting to the fact that the boots were manufactured in the United States. We also could not determine whether the contractor submitted the Buy American Act-Balance of Payments Program Certificate required by DFARS 252.225-7001 and DFARS 252.225-7000, "Buy American Act-Balance of Payments Program Certificate." The Supply team chief/contracting officer reviewed and signed the contract because the $6,327 exceeded the preparing contracting officer's $2,500 warrant.

Conclusion: The contracting officers who prepared and signed the contract did not comply with the Buy American Act.

Mississippi Air National Guard, Meridian, MS

Contracts: DAHA22-97-P-7084 and DAHA22-97-P-7085
Awarded: November 26, 1996 and November 27, 1996
Type of Contract: Purchase Order
Contract Values: $17,192 and $64,078
Items Purchased: Hi-Tec Magnum Boots
Procurement Method: Competitive
Contractors: Cousin's Enterprises, Columbus, OH, and The Quartermaster, Long Beach, CA

Details: The contracting officer received 11 offers in response to the solicitation for contract DAHA22-97-P-7084, which specified Bates boots for women, and nine offers in response to the solicitation for contract DAHA22-97-P-7085, which specified Hi-Tec Magnum boots for men. The contracting officer did not include any FAR or DFARS Buy American Act clauses in the solicitation for contract DAHA22-97-P-7084 and incorrectly included FAR 52.225-3, "Buy American Act - Supplies," in the solicitation for contract DAHA22-97-P-7085. The contracting officer should have included DFARS 252.225-7000, "Buy American Act-Balance of Payments Program Certificate," and DFARS 252.225-7001, "Buy American Act and Balance of Payments Program," required by DFARS 225.109. The low price offeror for contract DAHA22-97-P-7084, Cousin's Enterprises, proposed Hi-Tec Magnum boots rather than Bates boots. The contracting officer informed the Chief of Supply that Cousin's Enterprises offered Hi-Tec Magnum boots at a lower price than the offers to provide the requested Bates boots. The Chief of Supply told the contracting officer that because the men who had Hi-Tec Magnum boots were well pleased, Supply would accept the Hi-Tec Magnum boots for women. Cousin's Enterprises certified that the boots were manufactured in a nonqualifying country. All offerors for contract DAHA22-97-P-7085 quoted on Hi-Tec Magnum boots and the contracting officer awarded the contract to The Quartermaster, the low price offeror. However, The Quartermaster Company, in its offer, certified that Hi-Tec Magnum boots were made in the United States. The contracting officer contacted both contractors to resolve where the boots were manufactured. The Quartermaster Company again stated that its Hi-Tec Magnum boots were made in the United States and Cousin's Enterprises again stated that its Hi-Tec Magnum boots were foreign made. The contracting officer stated she considered the cost factor analyses prescribed in the FAR and DFARS, but did not add the cost factor to the price of the Hi-Tec Magnum boots because she was unable to resolve where the boots were manufactured. Had the contracting officer applied the 50 percent cost factor required by DFARS 225.105 to the price of the Hi-Tec Magnum boots offered by Cousin's Enterprises, contract DAHA22-97-P-7084 would have been awarded to a contractor offering Bates boots, which are manufactured in the United States and Puerto Rico. On contract DAHA22-97-P-7085, the contracting officer further stated that because of the number of quotes received, she concluded that it was in the best interest of the Government to award the contract to The

Quartermaster Company rather than continue to solicit until someone quoted a boot that she could be absolutely certain was American made.

Conclusion: The contracting officer did not comply with the Buy American Act on both contracts.

Pittsburgh Air Reserve Station, Coraopolis, PA (911 Airlift Wing)

Contract: F36629-96-P-0100
Awarded: October 23, 1995
Type of Contract: Purchase Order
Contract Value: $2,700
Items Purchased: Hi-Tec Magnum Boots
Procurement Method: Competitive
Contractor: United States Cavalry, Radcliff, KY

Details: The contracting officer issued the solicitation for Hi-Tec Magnum Boots by brand name in response to a request from the customer. The customer requested the boots for personnel who needed safety boots in the field. Personnel requested the Hi-Tec Magnum Boots by brand name because of price, comfort, safety, and durability. The Chief of Supply stated that the Defense Logistics Agency did not have any boots available to meet the requirement because the Defense Logistics Agency was revising its contract with Bates Shoe Company. The contracting officer and the customer were not aware that the Hi-Tec Magnum boots were made in China, and neither tried to determine the place of origin prior to awarding the purchase order. The contracting officer incorrectly included FAR 52.225-3, "Buy American Act - Supplies," in the solicitation. The contracting officer correctly included DFARS 252.225-7001, "Buy American Act and Balance of Payments Program," but did not include DFARS 252.225-7000, "Buy American Act-Balance of Payments Program Certificate," required by DFARS 225.109(a). The contracting officer received two offers in response to the solicitation and awarded the contract to United States Cavalry, the low price offeror.

Conclusion: The contracting officer did not comply with the Buy American Act.

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
  Deputy Under Secretary of Defense (Acquisition Reform)
  Deputy Under Secretary of Defense (Logistics)
  Director, Defense Procurement
  Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Comptroller)
  Deputy Comptroller (Program/Budget)
  Deputy Chief Financial Officer
  Director, Management Improvement
General Counsel of the Department of Defense
Assistant Secretary of Defense (Force Management Policy)
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)

Department of the Army

Assistant Secretary of the Army (Financial Management and Comptroller)
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Other Defense Organizations

Director, Defense Contract Audit Agency
Director, Defense Finance and Accounting Service
Director, Defense Logistics Agency
Director, National Security Agency
  Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

Non-Defense Federal Organizations and Individual

Office of Management and Budget
Office of Federal Procurement Policy
Technical Information Center, National Security and International Affairs Division, General Accounting Office
Inspector General, General Services Administration

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on Government Management, Information, and Technology, Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
House Committee on National Security

Congressman James A. Traficant, Jr.

Part III - Management Comments

Deputy Under Secretary of Defense (Acquisition Reform) Comments

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON DC 20301-3000

ACQUISITION AND TECHNOLOGY

October 1, 1998

DP/FC

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Audit Report on the Procurement of Military Clothing and Related Items by Military Organizations (Project No. 8CH-5001)

The Defense Acquisition University, on behalf of the Deputy Under Secretary of Defense (Acquisition Reform), has indicated concurrence with the recommendation made in the subject report that asks them to stress the importance of complying with the Buy American Act and the Berry Amendment and the ramifications of noncompliance within appropriate, existing courses for the Defense acquisition workforce.

I have attached a copy of the relevant guidance that the Defense Acquisition University (DAU) plans to issue to its affected course instructors upon receipt of your final report. In addition, the cognizant DAU representative indicated to my staff that this guidance would be implemented immediately upon its dissemination to the instructors. Course instructors will be expected to improve their emphasis on compliance with the Buy American Act and the Berry Amendment in all future courses.

Please direct any questions to my action officer, Mr. Gary Blasser, by calling 697-9351, fax 693-9616, or e-mail <blassegs@acq.osd.mil>.

Eleanor Spector

Eleanor R. Spector
Director, Defense Procurement

Attachment

Deputy Under Secretary of Defense (Acquisition Reform) Comments

Final Report Reference

INTEROFFICE MEMORANDUM

Date: 30-Sep-1998 11:25am
From: Tom Crean
Dept:
Tel No:

To: blassegs

Subject: Berry Amendment and Buy America Act in contracting courses

Gary:

I have been asked by Pat Brooks in the AR office to provide you comments on the IG Audit on the Procurement of Military Clothing and Related Items. I have been discussing the issue with Steve Cohen. Pat asked me to provide you draft comments. WE concur with recommendation 2 on Page 16. Upon issue of the final report, I will send to the schools the following message and also send them a copy of the report as indicated. Page 14

Tom Crean

To All:

The DoD Inspector General has completed an Audit Report On the Procurement of Military Clothing and Related Items by Military Organizations. They found procurements in which the contracting official either did not follow the provisions of either the Berry Amendment or the Buy America Act or incorrectly applied the provisions. They recommend that the ramification of noncompliance with these provisions be stressed in our courses.

The Berry Amendment and the Buy America Act are taught in CON 101, 104, 204, and 210 In fact in CON 101 there is an exercise on the Buy America Act provision. The provision may be mentioned in other courses. Please pass to all instructors teaching these courses the requirement to emphasis the provisions and the ramifications of noncompliance.

The IG Audit Report discusses a number of instances of noncompliance with the Berry Amendment or Buy America Act These instances can be excellent teaching tools and good examples for instructors to use in class. When the final report is received, I will forward a copy to each school for use by instructors.

Tom

ATTACHMENT

Director, Defense Procurement Comments

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

ACQUISITION AND TECHNOLOGY

October 1, 1998

DP/FC

MEMORANDUM FOR THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Audit Report on the Procurement of Military Clothing and Related Items by Military Organizations (Project No. 8CH-5001)

I concur with the recommendation made in the subject report that asks me to issue policy guidance to procuring contracting officers emphasizing the importance of incorporating, and complying with, provisions and clauses pertinent to the Buy American Act (41 U.S.C. 10a *et seq.*) and the Berry Amendment (10 U.S.C. 2441, note) in affected Department of Defense solicitations and contracts.

I will issue such guidance to Military Departments and Defense Agencies upon receipt of your final report and after I have had an opportunity to review the Military Departments' replies to your recommendation.

Eleanor R. Spector
Director, Defense Procurement

Department of the Army Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
FINANCIAL MANAGEMENT AND COMPTROLLER
109 ARMY PENTAGON
WASHINGTON DC 20310-0109

REPLY TO
ATTENTION OF

23 SEP 1998

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, DEPARTMENT OF DEFENSE

SUBJECT: Audit Report on Procurement of Military Clothing and Related Items by Military Organizations (Project No. 8CH-5001)

This is an interim response to the recommendation in the subject audit report involving procurement of military clothing and related items

In the audit report, you recommended Assistant Secretaries (Financial Management and Comptroller) of the Army, Navy and Air Force investigate the contracts under their cognizance listed in the report. The Office of General Counsel (OGC) is reviewing the draft audit report We will provide a copy of the preliminary review required by DOD Regulation 7000.14R, Volume 14, and if there are any potential violations of the Antideficiency Act, we will comply with the reporting requirements in DOD Directive 7200 1, DOD Regulation 7000 14R, Volume 14, and the recommendation. Estimated date for completion of the legal review is October 30, 1998.

If you have any questions regarding this action, please contact Ms Barbara Jefferson, (703) 697-2687, fax (703) 695-2028 or email jeffers@hqda.army.mil.

Martin A Erickson
Ernest J Gregory
Deputy Assistant Secretary of the Army
(Financial Operations)

Printed on Recycled Paper

Department of the Navy Comments

DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(FINANCIAL MANAGEMENT AND COMPTROLLER)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

11 SEP 1998

MEMORANDUM FOR DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR GENERAL FOR AUDITING

Subj: DRAFT REPORT ON THE AUDIT OF THE PROCUREMENT OF MILITARY CLOTHING AND RELATED ITEMS BY MILITARY ORGANIZATIONS (PROJECT NO. 8CH-5001)

Ref: (a) DODIG memo of 5 Aug 98

I am responding to the draft audit report forwarded by reference (a), concerning the procurement of military clothing and related items by military organizations.

The Department of the Navy concurs that provisions of the Buy American Act are important and should be followed, when appropriate, in all contracts. With regard to contract number N00406-96-M-BQ20, the Defense Federal Acquisition Regulation (DFAR) 212.503 allows exemption from application of the Buy American Act for procurement of commercial items for the Department of Defense. Accordingly, we recommend the General Counsel of the Department of Defense determine whether the DFAR effectively waives the Buy American Act for purchases of commercial items before we undertake an ADA review.

My point of contact for this matter is Barbara S. Arreguin, FMO-324, telephone number, 202-685-6747 or DSN 325-6747.

Gladys J. Commons

GLADYS J. COMMONS
Assistant Secretary of the Navy
(Financial Management and Comptroller)
Acting

Copy to:
CNO
COMNAVSUPSYSCOM

Department of the Air Force Comments

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

U.S. AIR FORCE 1947 - 1997

Office of the Assistant Secretary

30 SEP 1998

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

FROM: SAF/FM
1130 Air Force Pentagon
Washington DC 20330-1130

SUBJECT: DoD(IG) Daft Report, Procurement of Military Clothing and Related Items By Military Organizations, 5 August 1998 (Project No. 8CH-5001)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide Air Force comments on the subject report

The Air Force concurs that a potential Antideficiency Act (ADA) violation may have occurred The Air Force Office of the General Counsel, in conjunction with the office of General Counsels' from the other services and Department of Defense, is reviewing the applicability of the Buy America Act and Berry Amendment to the facts and circumstances presented in the subject audit report. If it is concluded that an ADA violations occurred, then the Assistant Secretary of the Air Force (Financial Management and Comptroller) will task the appropriate Air Force organization to appoint an investigating officer and perform an investigation The estimated completion date for completion of the legal review is November 16, 1998.

JAMES R. SPEER
Principal Deputy Assistant Secretary
of the Air Force (Financial Management)

Golden Legacy, Boundless Future Your Nation's Air Force

Audit Team Members

This report was prepared by the Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD.

Paul J. Granetto
Garold E. Stephenson
Eugene E. Kissner
Peter I. Lee
Bucceroni Mason
Arsenio M. Sebastian
Major Samuel R. Griffin, USAF
Janice Alston