



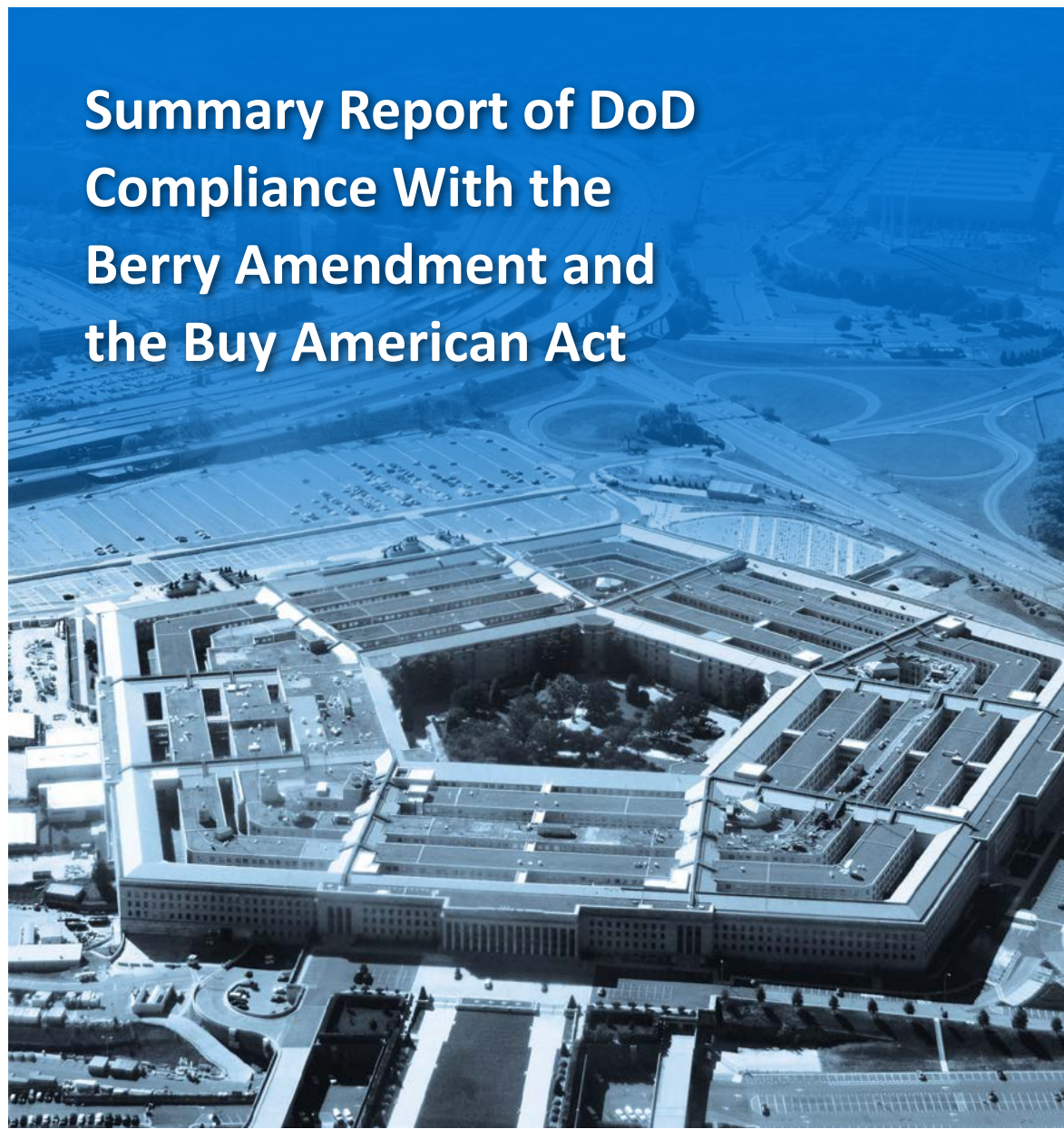
INSPECTOR GENERAL

U.S. Department of Defense

FEBRUARY 6, 2018



Summary Report of DoD Compliance With the Berry Amendment and the Buy American Act



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Results in Brief

Summary Report of DoD Compliance With the Berry Amendment and the Buy American Act

February 6, 2018

Objective

We determined whether the DoD awarded contracts that complied with the Berry Amendment and the Buy American Act when purchasing covered items such as food, clothing, tents, textiles, and hand or measuring tools.

Background

This report is a summary of the DoD Office of Inspector General's four prior audits of the Military Services' and the Defense Logistics Agency's (DLA) compliance with the Berry Amendment and the Buy American Act. We conducted the audits in response to Section 1601 of the National Defense Authorization Act for FY 2014.

We summarized the four nonstatistical samples from the four prior reports of 109 contracts, valued at \$598.6 million, awarded for items subject to the Berry Amendment and 171 contracts, valued at \$11.4 million, awarded for items subject to the Buy American Act. The prior four reports identified 86 deficiencies on 280 contracts awarded by 18 contracting offices and made 35 recommendations to the Military Services and DLA to correct the deficiencies. This report summarizes the primary deficiencies identified in the prior four reports and makes recommendations to the Director, Defense Pricing/Defense Procurement and Acquisition Policy, that address causes for the deficiencies that were common among the Military Services and the DLA.

Background (cont'd)

The Berry Amendment directs DoD personnel to ensure funds appropriated or otherwise available to the DoD are not used to procure covered items if the items were not grown, reprocessed, reused, or produced in the United States. The Buy American Act requires, with certain exceptions, that only articles, materials, and supplies that were mined, produced, or manufactured in the United States are used to fulfill Federal procurement and construction contracts.

Findings

We determined that DoD contracting personnel complied with the Berry Amendment for 69 of 109 contracts we reviewed, with an obligated value of \$387 million. However, contracting personnel did not comply with the Berry Amendment for the remaining 40 contracts, with an obligated value of \$211.6 million. We identified 41 deficiencies on 40 contracts.

Specifically, DoD contracting personnel:

- did not include the required Berry Amendment clause in 33 contracts because contracting officers were unfamiliar with the Berry Amendment and applicable Defense Federal Acquisition Regulation Supplement (DFARS) implementing clauses, relied on their electronic contract writing systems to include the implementing clause, and made administrative errors;
- did not prepare award notices containing Berry Amendment exception language when procuring foreign-made items on four contracts because contracting personnel were unaware of the requirement and relied on the electronic contract writing systems to generate and post award notices for them; and
- improperly purchased foreign-made items or items containing nondomestic components on four contracts without preparing supporting documentation or obtaining approval because they misinterpreted the Berry Amendment and DFARS requirements or did not provide adequate contractor oversight.



Results in Brief

Summary Report of DoD Compliance With the Berry Amendment and the Buy American Act

Findings (cont'd)

As a result, for 40 of the 109 contracts reviewed, DoD contracting personnel had limited assurance that items purchased on contracts complied with the Berry Amendment; did not notify the public of the lack of domestically-produced products; and committed potential Antideficiency Act violations by using appropriated funds to procure items not grown, reprocessed, reused, or reproduced in the United States.

We also found that DoD contracting personnel complied with the Buy American Act for 130 of 171 contracts reviewed, with an obligated value of \$8.8 million, but did not comply with the Buy American Act for the remaining 41 contracts, with an obligated value of \$2.6 million. We identified 42 deficiencies on 41 contracts. Specifically, DoD contracting personnel

- omitted the required Buy American Act clauses on 36 contracts because they were unfamiliar with the Buy American Act, did not complete a sufficient review of contracts before award, operated outside their functional area, or relied on the electronic contracting writing systems to include the implementing clause, and
- improperly purchased foreign-made items on six contracts because they awarded a contract for an excepted item without obtaining proper approval, prepared a domestic nonavailability determination when domestic sources were available, did not ensure items purchased were domestic end products, or did not identify a foreign supplier as being ineligible for contract award.

As a result, DoD contracting personnel had limited assurance that items purchased on contracts complied with the Buy American Act and committed potential Antideficiency Act violations by using appropriated funds to procure foreign-made items.

Corrective Actions Taken

As a result of our audits, the Military Services and DLA officials took actions to correct deficiencies identified during the audits and implemented changes in response to our report recommendations. Specifically, DoD contracting personnel modified contracts with the required Berry Amendment and Buy American Act implementing clauses, determined whether noncompliant items were delivered and, when appropriate, removed any items that were not produced in the United States and obtained replacement items. In addition, DoD contracting personnel issued a local notice to reinforce compliance with the Berry Amendment and the Buy American Act, required Berry Amendment and Buy American Act training, and updated standard operating procedures.

Recommendations

We made specific recommendations in the four prior reports to the Services and DLA. The recommendations in this report relate to systemic problems across DoD and not to a specific Service or DLA.

We recommend that the Director, Defense Pricing/ Defense Procurement and Acquisition Policy, re-emphasize guidance on the requirement to incorporate and enforce the Berry Amendment and the Buy American Act provisions and clauses in applicable solicitations and contracts. We also recommend that the Director re-emphasize the DFARS requirements regarding exceptions to the Berry Amendment. Finally, we recommend that the Director re-emphasize that the various electronic contract writing systems used by the Military Services and DLA should incorporate the requirements of the Berry Amendment and the Buy American Act, such as including clauses and posting award and exceptions notices, into their electronic systems.



Results in Brief

Summary Report of DoD Compliance With the Berry Amendment and the Buy American Act

Management Comments

The Director, Defense Pricing/Defense Procurement and Acquisition Policy, agreed with our recommendations to re-emphasize guidance to DoD contracting personnel on procuring items subject to the Berry Amendment and the Buy American Act. The Director stated that the Department will address the recommendation in conjunction with addressing an anticipated recommendation from the Director, Office of Management and Budget and Secretary of Commerce

to provide additional guidance and information to DoD contracting personnel as a result of an assessment of compliance with the April 18, 2017, Executive Order 13788, "Buy American and Hire American." Therefore, the recommendations are resolved and will be closed after Defense Pricing/Defense Procurement and Acquisition Policy personnel provide documentation to verify that the Department issued the recommended guidance. Please see the Recommendations Table on the next page.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Director, Defense Pricing/Defense Procurement and Acquisition Policy	None	A.1.a, A.1.b, A.1.c, B.1.a, B.1.b, and B.1.c	None

Note: The following categories are used to describe agency management's comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.



**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

February 6, 2018

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
DIRECTOR, DEFENSE LOGISTICS AGENCY
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
AUDITOR GENERAL, DEPARTMENT OF THE AIR FORCE

SUBJECT: Summary Report of DoD Compliance With the Berry Amendment and the
Buy American Act (Report No. DODIG-2018-070)

We are providing this report for your information and use. Of the 109 Berry Amendment contracts reviewed, valued at \$598.6 million, and 171 Buy American Act contracts reviewed, valued at \$11.4 million, the Military Services and Defense Logistics Agency (DLA) contracting personnel did not comply with the Berry Amendment for 40 contracts, valued at \$211.6 million, and did not comply with the Buy American Act for 41 contracts, valued at \$2.6 million. Specifically, contracting personnel did not consistently include the required Defense Federal Acquisition Regulation Supplement contract clauses and did not prepare the required public notices when procuring foreign-made items. Personnel also improperly purchased foreign-made items or items containing nondomestic components on ten contracts. The Military Services and DLA contracting personnel committed potential violations of the Antideficiency Act. Procuring nondomestic items in violation of the Berry Amendment and Buy American Act may harm the domestic industrial sectors, such as manufacturing, as well as result in the loss of jobs in the United States. We conducted this audit in accordance with generally accepted auditing standards.

We considered management comments on a draft of this report when preparing the final report. Comments from the Director, Defense Pricing/Defense Procurement and Acquisition Policy conformed to the requirements of DoD Instruction 7650.02; therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to me at Michael.Roark@dodig.mil, (703) 604-9187 (DSN 664-9187).

A handwritten signature in blue ink, appearing to read "M. Roark", is positioned above the printed name of the Assistant Inspector General.

Michael J. Roark
Assistant Inspector General
Readiness and Global Operations

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Introduction

Objective

We determined whether the DoD awarded contracts that complied with the Berry Amendment and the Buy American Act when purchasing covered items such as food, clothing, tents, textiles, and hand or measuring tools. See Appendix A for the scope, methodology, and prior coverage.

Background

This report is a summary of our four audits of the Military Services and the Defense Logistics Agency's (DLA) compliance with the Berry Amendment and the Buy American Act. We conducted the audits in response to Section 1601 of the National Defense Authorization Act (NDAA) for FY 2014.¹ The NDAA required the DoD Office of Inspector General (DoD OIG) to conduct periodic audits of contracting practices and policies related to procurement under the Berry Amendment.² After we announced the first audit, we received a request from Congress to amend the audit objective to also include a review of the Buy American Act.³ We re-announced a new audit in October 2013, the "Audit of DoD Compliance with the Berry Amendment and the Buy American Act for Selected Items."⁴ We conducted four prior audits of the Military Services and the DLA from October 2013 through July 2017.

The Berry Amendment

The Berry Amendment promotes the purchase of goods that are produced in the United States and directs the DoD to purchase items such as fabrics, clothing, food, and hand tools from U.S. sources. The Amendment applies to end products and components for purchases over the simplified acquisition threshold of \$150,000.⁵ Compliance with the Berry Amendment requires that DoD personnel ensure that

¹ Public Law 113-66, "National Defense Authorization Act for Fiscal Year 2014," December 26, 2013.

² Enacted under section 2533a, title 10, United States Code (10 U.S.C. § 2533a) and implemented by Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, "Foreign Acquisition," Subpart 225.70, "Authorization Acts, Appropriations Acts, And Other Statutory Restrictions On Foreign Acquisition," 225.7002-1, "Restrictions."

³ Re-codified under 41 U.S.C. § 8301-8305 (2010) and implemented under the Federal Acquisition Regulation Part 25, "Foreign Acquisition" and DFARS Part 225, "Foreign Acquisition."

⁴ Report No. DODIG-2015-026, "Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act," November 7, 2014.

⁵ According to DFARS Part 252, "Solicitation Provisions and Contract Clauses," Clause 252.2257012, "Preference For Certain Domestic Commodities," a component means any item supplied to the Government as part of an end product or of another component. An end product means supplies delivered under a line item of a contract.

funds appropriated or otherwise available to the DoD be used to procure covered items, with certain exceptions, from the following Federal Supply Group (FSGs) only if the items are grown, reprocessed, reused, or produced in the United States.

- FSG 51 – hand tools
- FSG 52 – measuring tools
- FSG 83 – textiles, leather, furs, apparel, and shoes
- FSG 84 – clothing, individual equipment, insignia
- FSG 89 – subsistence (food)

The purchase of noncompliant items may result in a violation of the Antideficiency Act.⁶

The Buy American Act

The Buy American Act of 1933 was enacted to foster and protect American industries and workers. The Act requires, with certain exceptions, that only articles, materials, and supplies that have been mined, produced, or manufactured in the United States are used to fulfill Federal procurement and construction contracts. The Buy American Act does not apply to services.

The Buy American Act is a Government-wide requirement that is implemented through the Defense Federal Acquisition Regulation Supplement (DFARS) for the DoD, and it applies to contracts that exceed the micro-purchase (small purchase) threshold.⁷ Federal and Defense regulations include a two-part test to define a manufactured domestic end product: the goods must be manufactured in the United States, and the cost of U.S. and qualifying country components must exceed 50 percent of the cost of all the components.⁸ Table 1 shows the key differences between the Berry Amendment and the Buy American Act and reflects the most restrictive domestic content requirements. The DFARS implementing clauses provide for less restrictive domestic-sourcing requirements for certain end items or components.⁹

⁶ All items subject to the Berry Amendment are contained in the five FSGs. However, the FSGs contain some items that are not subject to the Berry Amendment, such as leather and furs. The Antideficiency Act (31 U.S.C. § 1341) does not permit Government officials to make or authorize obligations or expenditures that exceed amounts appropriated or funded for that purpose. The Berry Amendment is a statutory prohibition on the use of DoD funds to purchase non-complaint goods, such as fabrics, clothing, food, and hand tools from non- U.S. sources.

⁷ DFARS Part 225, “Foreign Acquisition,” Subpart 225.1, “Buy American-Supplies.” The micro-purchase threshold was \$3,000 for FY 2015 and increased to \$3,500 for FY 2016; Federal Register, volume 80, no. 127, pages 38,293-38,294 (80 FR 38293, July 2, 2015).

⁸ FAR Part 25, “Foreign Acquisition,” and DFARS Part 225, respectively.

⁹ Berry Amendment implementing clauses applicable to the contracts we reviewed are DFARS clause 252.225-7012, “Solicitation Provisions and Contract Clauses,” and DFARS Clause 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools.” The Buy American Act implementing clauses applicable to the contracts we reviewed are DFARS Part 252, “Solicitation Provisions and Contract Clauses,” Clause 252.225-7001, “Buy American Act and Balance of Payments Program,” and Clause 252.225-7002, “Qualifying Country Sources as Subcontractors.”

Table 1. Comparison of the Berry Amendment and Buy American Act

	Berry Amendment	Buy American Act
Applies to	DoD	Government-wide
Covered items	Primarily FSGs 51, 52, 83, 84, and 89	Generally, most supplies—not just those from FSGs 51, 52, 83, 84, and 89
Thresholds	Greater than the simplified acquisition threshold (\$150,000) ¹	Greater than micro-purchase threshold (\$3,000 for FY 2015 and \$3,500 for FY 2016) ²
Domestic content	100 percent	Must exceed 50 percent
DFARS implementing clauses	252.225-7006, 252.225-7012, 252.225-7015	252.225-7001, 252.225-7002, 252.225-7036
Place of production or manufacture	United States	United States
Where item will be used	Anywhere	United States ³
Contractor certification	No	Yes

Source: The DoD OIG.

¹ The Berry Amendment applies unless acquisitions are at or below the simplified acquisition threshold, or a domestic nonavailability determination or an exception of compliance applies. The exceptions are established in DFARS Part 225, “Foreign Acquisition,” Subpart 225.70, “Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition,” 225.7002-2, “Exceptions.”

² The Buy American Act applies unless a waiver of compliance is granted or an exception to compliance applies.

³ The Buy American Act does not apply to the purchase of items for use outside the United States.

Defense Pricing/Defense Procurement and Acquisition Policy

The Defense Pricing/Defense Procurement and Acquisition Policy (DP/DPAP) is responsible for all pricing, contracting, and procurement policy matters, including e-Business, in the DoD. The Defense Procurement and Acquisition Policy (DPAP) executes policy through the timely update of the DFARS and Procedures, Guidance, and Information. The DFARS provides the DoD implementation and supplementation of the Federal Acquisition Regulation (FAR). The DFARS contains requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies and procedures that have a significant effect on the public. Relevant procedures, guidance, and information that do not meet the criteria for inclusion in the DFARS are issued in the DFARS companion resource; Procedures, Guidance, and Information. Unclassified, non-confidential memorandums, guidance, and other DPAP procurement-related policy documents can be found in the appropriate Procedures, Guidance, and Information subpart.

Updated Requirements to Procure U.S.-Produced Goods

In addition to the statutory requirements of the Berry Amendment and the Buy American Act, the President and the Secretary of Defense recently issued guidance that stresses that Federal procurement personnel should purchase U.S.-made goods and services.

Executive Order on Buy American and Hire American

On April 18, 2017, the President signed Executive Order 13788, which states, “It shall be the policy of the executive branch to buy American and hire American.” The order further states that it shall be the policy of the executive branch to maximize the use of goods, products, and materials produced in the United States. The purpose of the order is to promote economic and national security and to help stimulate economic growth, create good jobs at decent wages, strengthen our middle class, and support American manufacturing and defense industrial bases. The order requires agencies to scrupulously monitor, enforce, and comply with Buy American Laws and minimize the use of waivers.

Athletic Shoes for Recruits Status Update

Our audit report on Army compliance with the Berry Amendment and the Buy American Act discussed why the Military Services were not procuring Berry Amendment-compliant athletic footwear for newly enlisted personnel at basic training.¹⁰ As of March 2017, the Military Services were required to provide new recruits with athletic shoes that are compliant with the Berry Amendment. The Army, Navy, and Air Force previously provided a one-time allowance in the form of cash or a voucher for recruits to purchase their own athletic shoes while attending basic training.¹¹ The Secretary of Defense authorized the allowance paid to enlisted personnel for equipment that is not otherwise provided by the Service.¹² The allowance was used in part because no domestic contractor manufactured Berry Amendment-compliant athletic shoes, and because recruits’ individual running style, individual comfort, and fit made the allowance a reasonable option.¹³

On December 23, 2016, Section 817 of the National Defense Authorization Act (NDAA) for FY 2017 required the Secretary of Defense to furnish athletic footwear needed by members of the Army, Navy, Air Force, or Marines Corps upon their initial entry into the Armed Forces, instead of providing a cash allowances

¹⁰ Report No. DODIG-2015-026, “Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act,” November 7, 2014.

¹¹ The Marine Corps does not issue athletic shoes nor does it provide a cash allowance or voucher for purchase of athletic shoes.

¹² Section 418, Title 37, United States Code, “Clothing allowance: enlisted members.”

¹³ Report to House Armed Services Committee and Senate Armed Services Committee “Clothing Allowance Requirement,” Directorate of Compensation, Office of the Under Secretary of Defense, Military Personnel Policy, June 2011.

or vouchers. The Office of the Under Secretary of Defense for Personnel and Readiness issued a memorandum on March 10, 2017, that required the Military Departments, within 90 days, to cease payments of cash allowances to recruits for the purchase of athletic shoes, except for those recruits where it is medically required. It further required the Military Departments to implement a method to furnish athletic footwear that may or may not be Berry Amendment compliant to recruits upon their initial entry to military service. The Military Departments may continue to issue Berry compliant and noncompliant athletic footwear to recruits until a process to provide Berry Amendment compliant shoes is completed.

Contracts Reviewed and Deficiencies Identified

We summarized the four nonstatistical samples from the prior four reports of 109 contracts, valued at \$598.6 million, awarded for items subject to the Berry Amendment and 171 contracts, valued at \$11.4 million, awarded for items subject to the Buy American Act. The prior four reports identified 86 deficiencies on 280 contracts awarded by 18 contracting offices and made 35 recommendations to the Military Services and DLA to correct the deficiencies. This report summarizes the primary deficiencies identified in the prior four reports and makes recommendations to the Director, Defense Pricing/Defense Procurement and Acquisition Policy, that address causes for the deficiencies that were common among the Military Services and the DLA. Table 2 shows the number of contracts reviewed and the obligated contract values for each Military Service and the DLA. See the prior four reports for information on specific contracts.¹⁴

¹⁴ Report No. DODIG-2015-026, "Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act," November 7, 2014; Report No. DODIG-2015-161, "Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act," August 12, 2015; Report No. DODIG-2016-051, "Air Force Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act," February 24, 2016; and Report No. DODIG-2017-098, "Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act," July 7, 2017.

Table 2. *Berry Amendment and Buy American Act Contracts Reviewed*

	Berry Amendment Contracts		Buy American Act Contracts	
Contracting Organization	Number of Contracts	Dollars Obligated* (in millions)	Number of Contracts	Dollars Obligated* (in millions)
Army	33	\$124.6	50	\$4.7
Navy	23	73.0	32	1.5
Air Force	21	17.7	33	1.5
DLA	32	383.3	56	3.7
Total	109	\$598.6	171	\$11.4

Source: The DoD OIG.

*Total obligated value for the time period for Army contracts issued from October 1, 2012, through September 30, 2013; the Navy and Marine Corps contracts issued from October 1, 2012, through September 30, 2014; the Air Force contracts issued October 1, 2013, through May 15, 2015; and DLA contracts issued October 1, 2014, through March 31, 2016.

Finding A

DoD Compliance With Berry Amendment Requirements Needs Improvement

DoD contracting personnel complied with the Berry Amendment for 69 of 109 contracts reviewed, with an obligated value of \$387 million. However, contracting personnel did not comply with the Berry Amendment for the remaining 40 contracts, with an obligated value of \$211.6 million.¹⁵ Specifically, DoD contracting personnel:

- did not include the required Berry Amendment clause in 33 contracts because contracting officers were unfamiliar with the Berry Amendment and applicable DFARS implementing clauses, relied on their electronic contract writing systems to include the implementing clause, and made administrative errors;
- did not prepare award notices containing Berry Amendment exception language when procuring foreign-made items on four contracts because contracting personnel were unaware of the requirement and relied on the electronic contract writing systems to generate and post award notices; and
- improperly purchased foreign-made items or items containing nondomestic components on four contracts without preparing supporting documentation or obtaining approval because they misinterpreted the Berry Amendment and DFARS requirements or did not provide adequate contractor oversight.

As a result, for 40 of the 109 contracts reviewed, DoD contracting personnel had limited assurance that items purchased on contracts complied with the Berry Amendment; did not notify the public of the lack of domestically-produced products; and committed four potential Antideficiency Act violations by using appropriated funds to procure items not grown, reprocessed, reused, or reproduced in the United States, valued at \$8.9 million. During the four audits, contracting personnel took actions such as modifying the contracts to include the required clauses, verifying that ordered items complied with the Berry Amendment, and issuing local guidance on contracting for items subject to the Berry Amendment. As of November 2017, the Military Services and DLA officials had implemented or agreed to implement 14 of the 17 Berry Amendment recommendations from the prior reports.

¹⁵ One contract had more than one deficiency.

DoD Officials Complied with the Berry Amendment for 69 Contracts

Army, Navy, Air Force, and DLA contracting personnel complied with the Berry Amendment for 69 of 109 contracts reviewed, with an obligated value of \$387 million, by taking appropriate actions such as performing market research and including the required DFARS contract clauses to ensure that suppliers could provide U.S.-produced items. In addition, DLA contracting personnel appropriately applied exceptions to exempt select covered items or components from the domestic-sourcing requirement for three of these contracts.^{16,17,18}

DoD Contracting Personnel Did Not Comply With the Berry Amendment for 40 Contracts

Army, Navy, Air Force, and DLA contracting personnel did not comply with the Berry Amendment for 40 of the 109 contracts reviewed, with an obligated value of \$211.6 million.¹⁹ Contracting personnel omitted the Berry Amendment DFARS clauses from 33 contracts, did not prepare award notices when procuring foreign-made items on 4 contracts, and improperly procured foreign-made items on 4 additional contracts. Table 3 shows the Berry Amendment contracts reviewed and the number of noncompliant contracts.

¹⁶ DFARS Part 225, "Foreign Acquisition," Subpart 225.70, "Authorization Acts, Appropriations Acts, and other Statutory Restrictions on Foreign Acquisition," 225.7002-3, "Contract Clauses," does not require a Berry Amendment implementing clause in cases where an exception applies; however, DLA Troop Support Philadelphia contracting personnel were still required to include the clause because the exception(s) taken did not apply to every covered item purchased.

¹⁷ Covered items are any items identified as either end products or components—unless the items have been grown, reprocessed, reused, or produced in the United States—that are identified under the FSGs 51, 52, 83, 84, and 89.

¹⁸ According to DFARS Part 252, "Solicitation Provisions and Contract Clauses," Clause 252.2257012, "Preference for Certain Domestic Commodities," a component means any item supplied to the Government as part of an end product or of another component. An end product means supplies delivered under a line item of a contract.

¹⁹ For DLA, we identified 20 deficiencies on 19 contracts.

Table 3: Berry Amendment Contracts Reviewed and Noncompliant Contracts

Berry Amendment Contracts				
	Number of Contracts Reviewed	Contract Obligated Value*	Number of Noncompliant Contract(s)	Contract Obligated Value*
Army	33	\$124,649,824	4	\$12,455,867
Navy	23	73,004,606	11	17,023,489
Air Force	21	17,736,175	6	7,149,120
DLA	32	383,279,837	19	174,981,538
Total	109	\$598,670,442	40	\$211,610,014

Source: The DoD OIG.

* Total obligated value for the time period for Army contracts issued from October 1, 2012, through September 30, 2013; the Navy and Marine Corps contracts issued from October 1, 2012, through September 30, 2014; the Air Force contracts issued October 1, 2013, through May 15, 2015; and DLA contracts issued October 1, 2014, through March 31, 2016.

DoD Contracting Personnel Omitted the Required DFARS Clause

Army, Navy, Air Force, and DLA contracting personnel omitted the Berry Amendment DFARS clauses from 33 of 109 contracts reviewed. DoD contracting personnel did not include the required Berry Amendment clause primarily because contracting officers were unfamiliar with the Berry Amendment and its different DFARS implementing clauses for 17 contracts and relied on their electronic contract writing systems to include the implementing clause for 8 contracts. Contracting personnel omitted the proper clauses on the remaining contracts because they made administrative errors or did not review the contracts before award.²⁰

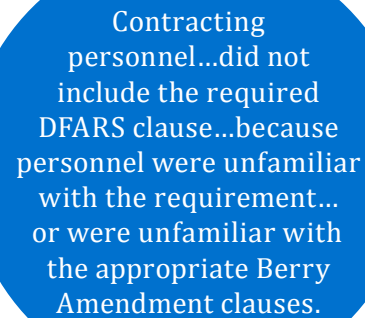
The Berry Amendment is implemented through the DFARS and requires contracting officers to include the applicable implementing clause—either DFARS clause 252.225-7012, “Preference for Certain Domestic Commodities,” or DFARS clause 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools”—based on the type of items procured under a contract.²¹ These clauses explicitly notify the contractor to provide goods that meet the domestic-content requirements specified in the Berry Amendment. Unless an exception applies under DFARS 225.7002-2, solicitations or contracts that do not include DFARS clause 252.225-7012 or 252.225-7015 do not explicitly inform the contractor of the preference to provide domestic products that exceed the simplified acquisitions threshold, thereby placing contracting offices at risk of purchasing and accepting nondomestic items.

²⁰ Each clause identifies particular requirements for the specific end-items covered. For example, DFARS clause 252.225-7012 identifies different textile items and states that those end-items and all its components must be domestic. DFARS clause 252.225-7015 is specific only to hand and measuring tools and states that end-items are only required to be forged in the United States.

²¹ DFARS 225.7002-1 and 225.7002-3.

Contracting Personnel Were Unaware of the Domestic Source Requirement

Contracting personnel from each of the Military Services and from the DLA did not include the required DFARS clause on 15 contracts reviewed because personnel were unfamiliar with the requirement to buy domestic items or were unfamiliar with the appropriate Berry Amendment clauses.



Contracting personnel...did not include the required DFARS clause...because personnel were unfamiliar with the requirement...or were unfamiliar with the appropriate Berry Amendment clauses.

- Army** – A contracting officer did not include the appropriate Berry Amendment implementing clause in a contract for the purchase of tool kits because she was not familiar with the Berry Amendment. The tool kits were mainly comprised of commercial off-the-shelf tools with individual national stock numbers. The tool kits were a contract line item that did not have assigned national stock numbers. The contracting officer stated that, because DFARS 204.7103, “Contract line items” defines items at the contract line item level, she did not know which clauses were applicable. The contracting officer should have determined whether the tools within the kit complied with the Berry Amendment.
- Navy** – Contracting personnel did not take action to ensure they procured domestically produced goods because they were unaware of the Berry Amendment. For nine contracts reviewed, valued at \$10.5 million, they omitted Berry Amendment contract clauses. Multiple Naval contracting officers stated that, before our audit, they were not aware of the Berry Amendment. In addition, the Navy routinely purchased items covered by domestic-source restrictions, such as the Berry Amendment, and did not receive specialized training. A Navy contracting officer stated that personnel sometimes used previous contracts as an example when they purchased similar items. However, this was only effective if the contracting officer on the previous contract was aware of the Berry Amendment and included the required clauses.
- Air Force** – Contract personnel did not take action to ensure they procured U.S.-produced goods on three contracts, valued at \$788,679, by omitting the Berry Amendment implementing DFARS clause from the solicitations and the contracts. The Air Force contracting officer stated that he had a team of contract specialists, who had an average of less than a year of contracting experience; prepare the contract documentation for him to review. In addition, the contracting officer stated that he was unfamiliar with the Berry Amendment and its requirements.

- **DLA** – Contracting personnel did not include a Berry Amendment DFARS implementing clause in two contracts when purchasing tools, valued at \$137,312. For both contracts, the contract specialist and the contracting officer acknowledged they were unfamiliar with the Berry Amendment at the time of award, but are now aware of the requirements. The contracting officer for the two contracts stated that she now looks for the DFARS implementing clause when reviewing contracts before award.

Contracting Personnel Relied on Contract Writing Systems

For eight contracts, Air Force and DLA contracting personnel who omitted the specific Berry Amendment implementing clause for tools stated that they relied on the contract writing system to insert the appropriate clauses, did not always verify that the contracts contained the appropriate clauses, and were not familiar with the Berry Amendment.

- **Air Force** – Contracting officers incorrectly included DFARS clause 252.225-7012 instead of DFARS clause 252.225-7015 in the solicitations and contract awards for two contracts with an obligated total of \$5.6 million.²² Contracting personnel for two contracts stated that the contract writing system used Clause Logic to insert the clauses depending on the type of items being purchased and the characteristics of the purchase.²³ A technical officer stated that Clause Logic was meant to assist the contracting officer when preparing the contract, not replace the contracting officer's knowledge of the regulations. Contracting personnel further stated that the Clause Logic worked properly when it added DFARS clause 252.225-7012; however, the contracting officer also needs to know to add DFARS clause 252.225-7015. The Air Force contracting officers were not familiar enough with the Berry Amendment requirements to know that the purchase of tools required a particular DFARS clause.
- **DLA** – Contracting personnel for six contracts stated that they relied on the contract writing system to either automatically include the clause in the contract or incorporate the terms and clauses in the solicitation by reference. However, in order to include the DFARS implementing clause, DLA contracting personnel stated that they had to manually enter the clause, select DFARS 252.225-7012 as an optional clause, or manually link the contract to the solicitation containing the clause when they created the six contracts in the contract writing system.

²² DFARS clause 252.225-7012, "Solicitation Provisions and Contract Clauses," and DFARS Clause 252.225-7015, "Restriction on Acquisition of Hand or Measuring Tools."

²³ Clause Logic Service is a web-based service designed to aid in the procurement process within the Department of Defense and other Federal agencies. The primary function of this service is to allow for consistent inclusion of provisions and clauses into procurement documents.

Contracting personnel relied upon the contract writing system to insert the proper clauses based upon the items being procured. However, contracting officers must have sufficient knowledge of the DFARS requirements to use the contract writing system properly. Unless an exception applies under DFARS 252.225-7002-2, solicitations or contracts that do not include DFARS clause 252.225-7012 do not explicitly inform the contractor of the preference to provide domestic products that exceeds the simplified acquisitions threshold, thereby placing the Air Force and DLA at risk of purchasing and accepting nondomestic items.²⁴

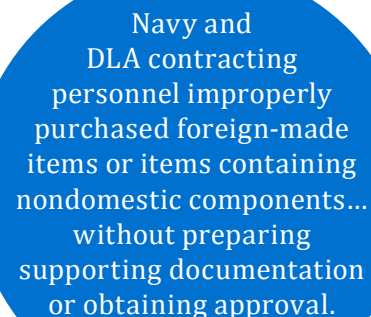
Because of our audit of Air Force compliance with the Berry Amendment and the Buy American Act, Air Force contracting personnel issued training slides and conducted formal training reiterating that contracting officers should not rely solely on the contract writing system.²⁵ In addition, because of the recommendation we made in our audit of DLA compliance with the Berry Amendment and the Buy American Act, the Director, DLA Acquisition, responded that DLA would update its contract writing system by November 30, 2017, to automatically include the Berry Amendment DFARS clauses.²⁶

DoD Contracting Personnel Did Not Properly Execute Procurements for Foreign-Made Items

DoD contracting personnel did not properly execute the procurement of foreign-made items or items containing foreign-made components for seven contracts. Specifically, Navy and DLA contracting personnel improperly purchased foreign-made items or items containing nondomestic components on four contracts, and DLA personnel did not post the required award notices on four contracts.²⁷

Navy and DLA Contracting Personnel Improperly Procured Nondomestic Items on Four Contracts

Navy and DLA contracting personnel improperly purchased foreign-made items or items containing nondomestic components on four contracts totaling \$6.6 million without preparing supporting documentation or obtaining approval because they misinterpreted the Berry Amendment and DFARS requirements or did not provide



Navy and DLA contracting personnel improperly purchased foreign-made items or items containing nondomestic components... without preparing supporting documentation or obtaining approval.

²⁴ DFARS 252.225-7002-2, "Exceptions," identifies exceptions to the domestic-sourcing restrictions and any additional requirements that apply to a stated exception.

²⁵ Report No. DODIG-2016-051, "Air Force Compliance With the Berry Amendment and the Buy American Act," February 24, 2016.

²⁶ Report No. DODIG-2017-098, "Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act," July 7, 2017.

²⁷ One contract for improperly procured items also did not include the required award notice.

adequate contractor oversight. Navy personnel allowed a contractor to sell non-U.S.-produced tools on a logistics support contract and procured protective vests containing noncompliant fibers. DLA personnel purchased steel-toe safety shoes that were not compliant with the Berry Amendment.

Navy and DLA contracting personnel improperly used appropriated funds on the four contracts to purchase goods that were not compliant with the Berry Amendment. The Berry Amendment requires that the DoD purchase certain end items, components, and materials that are wholly of U.S. origin unless the Secretary of Defense or military department determines that satisfactory quality and sufficient quantity are unavailable at market prices or if an exception applies.

In addition, the Antideficiency Act states that:

an officer or employee of the United States Government or the District of Columbia 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.

A violation of the Berry Amendment may result in an Antideficiency Act violation because the Berry Amendment is a statutory prohibition on the use of DoD funds.²⁸ DoD regulation requires DoD officials to evaluate whether a potential Antideficiency Act violation identified in an audit report has occurred and initiate a preliminary review when warranted.²⁹

Navy Personnel Procured Noncompliant Items on Two Contracts

Navy personnel improperly allowed a contractor operating the SERVMART, a logistics support contract, to sell non-U.S.-produced hand and measuring tools because the contracting officer did not ensure that the contractor was stocking items compliant with the Berry Amendment. SERVMART is a contractor-operated facility that sells items (such as office supplies, textiles, and hand tools) to Navy personnel who resupply ships while docked in Norfolk, Virginia. Navy contracting personnel issued a contract, with an obligated value of \$6.3 million, to operate the SERVMART facility and included the Berry Amendment clause in the contract. The Berry Amendment applicability is based on the total contract value, not the value

²⁸ 10 U.S.C. § 2533a, subsection (a): “Except as provided in subsections (c) through (h), funds appropriated or otherwise available to the Department of Defense may not be used for the procurement of an item described in subsection (b) if the item is not grown, reprocessed, reused, or produced in the United States.”

²⁹ DoD Regulation 7000.14-R, “Financial Management Regulation,” volume 14, chapter 3, “Preliminary Reviews of Potential Violations.”

of the Berry Amendment-covered items or components purchased by the contract.³⁰ Additionally, while most of the purchases to supply the facility were below the \$150,000 threshold set by the Berry Amendment, when combined, the dollar value of Berry Amendment items exceeded the threshold.

The Office of the Assistant Secretary of the Navy, Financial Management and Comptroller (OASN [FM&C]), initiated and completed a preliminary review for the potential Antideficiency Act violation. In December 2016, the OASN (FM&C) Office of General Counsel requested further liaison between Naval Supply Systems Command (NAVSUP) and the SERVMART vendor to determine which transactions were not Berry Amendment-compliant. Furthermore, NAVSUP stated that they will work with the vendor to reverse any transactions confirmed as noncompliant, either by asserting a claim for the non-compliant transactions or by allowing the vendor to replace noncompliant tools and the results of this mitigation.

A Navy contracting officer violated the Berry Amendment by improperly allowing a supplier to substitute synthetic microfibers for natural fibers in armored vests on a contract for \$184,101. The contract specialist allowed the supplier to substitute a non-U.S.-sourced microfiber to change the color of the vest from black to blue. The contracting officer allowed the substitution based on her interpretation of DFARS 225.7002-2(J), which allowed acquisition of incidental amounts of non-U.S.-produced cotton, other natural fibers, and wool as long as the substitution was under the simplified acquisition threshold and not more than 10 percent of the total price of the end product. However, microfiber is a synthetic fiber and not a natural fiber, which was not covered by the exception. As a result, by adding \$2,984 of non-U.S.-produced microfiber to the contract, the contracting officer violated the Berry Amendment and created a potential Antideficiency Act violation. The OASN (FM&C) initiated a preliminary review. The OASN (FM&C) Office of General Counsel found that no reportable violation of the Antideficiency Act occurred.

DLA Personnel Improperly Purchased Noncompliant Items on Two Contracts

For two contracts, DLA contracting personnel did not prepare supporting documentation or obtain approval to purchase foreign-made items or items containing nondomestic components because they misinterpreted the Berry Amendment and DFARS restrictions. The DFARS permits the Director of the DLA to waive the Berry Amendment restrictions if the Director determined that

³⁰ DPAP personnel confirmed that applicability of the Berry Amendment is based on total contract value and not the value of individual items on a contract.

items produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices and the requiring activity certified the determination in writing.³¹

For one contract, DLA Maritime Puget Sound contracting personnel improperly purchased footwear, totaling \$22,344, which contained nondomestic components (steel toes) without preparing a domestic nonavailability determination. The contracting officer incorrectly applied an exception from a different domestic-sourcing requirement, believing the requirement would waive the Berry Amendment restrictions.³² However, DFARS 225.7002-1(a)(2) identifies footwear as a type of clothing and states that the Berry Amendment applies to all the materials and components used to make clothing.

Contracting personnel were aware of the Berry Amendment and took steps to comply with its requirements. However, contracting personnel misinterpreted the restrictions in DFARS 225.7003, a domestic-sourcing restriction for specialty metals, and mistakenly believed its exceptions also applied to the procurement for steel-toe work boots.³³ Footwear, to include steel-toe work boots, is subject to the Berry Amendment, which provides for certain exceptions to its domestic-sourcing requirements under DFARS 225.7002-2, not DFARS 225-7003. DLA contracting officials acknowledged that the specialty metal exceptions at DFARS 225.7003 did not apply to the contract. Procurement of the safety shoes with nondomestic steel toes violated the Berry Amendment restrictions and potentially violated the Antideficiency Act. As of October 2017, DLA personnel were conducting a preliminary review to determine whether a violation of the Antideficiency Act occurred.

For another contract, contracting personnel at the DLA Troop Support Philadelphia purchased nondomestic items, valued at \$120,000 on one contract, without the required supporting documentation and approval because they excluded one item from the domestic nonavailability determination. DLA contracting personnel awarded a contract for women's personal dignity kits that contained a mix of items, including a dress, head cover, sewing kit, wet wipes, bath towel, and plastic slippers (plastic footwear) to support urgent humanitarian efforts. Contracting personnel prepared, and the Director of DLA approved, a domestic nonavailability determination for the contract that included seven of the eight items in the kit subject to the Berry Amendment. The contracting officer stated that the

³¹ DFARS 225.7002-2.

³² DFARS Subpart 225.70 contains restrictions on the acquisition of foreign products and services imposed by DoD appropriations, acts, and other statutes and provides exceptions for specific items covered under a given restriction, such as the Berry Amendment, restrictions on anchor and mooring chains, and restrictions on super computers.

³³ DFARS Part 225, "Foreign Acquisition," Subpart 225.70, "Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition," 225.7003, "Restrictions on Acquisition of Specialty Metals."

nonavailability determination included every item made from fabric or textiles (clothing). Contracting personnel did not classify the plastic slippers (footwear) as clothing and they believed the Berry Amendment did not apply to the plastic slippers. However, the DFARS 225.7002-1(a)(2) identifies footwear as a type of clothing and states that the Berry Amendment applies to all the materials and components used to make clothing. The Director of the DLA approved a retroactive domestic nonavailability determination after the contract was complete that included the previously excluded shoes.

DLA Contracting Personnel Did Not Comply With Award Notification Requirements on Four Contracts

DLA contracting personnel did not post or prepare award notices that included the required Berry Amendment exception language on four contracts because they mistakenly relied on the DLA's electronic contracting systems to generate and post an award notice for them or they misinterpreted the requirement. The DLA Internet Bid Board System automatically posted award notices to Federal Business Opportunities (FBO) for three contracts within the 7-day timeframe, but did not include the required exception language.

DLA contracting officers were unaware of the additional Berry Amendment notification requirement and explained that the system communicated with the contract writing system automatically posting the award notices for them. A DLA official familiar with the systems stated that contracting officers had to post award notices manually to FBO for purchases over \$150,000. However, the official noted that the DLA's contracting systems did not disclose the requirement, and personnel at the DLA did not know whether any guidance existed explaining when manual posting was required. DLA contracting officers generally should post notices to FBO because it is the single site for contractors to assess past contract awards and access potential work with the Government. Because of our audit, DLA personnel subsequently posted the required notices to FBO for the four contracts.

Corrective Actions Taken As a Result of the Audits

As a result of our audits, the Military Services and DLA officials took actions to address the deficiencies noted during the audits and implemented changes in response to our report recommendations. Specifically, the Army, Navy, Air Force, and DLA contracting personnel modified 25 contracts to either include the Berry Amendment DFARS implementing clause or incorporate the solicitation terms by reference. Contracting personnel reviewed items ordered and delivered for 22 contracts reviewed to ensure that the items purchased complied with the Berry Amendment domestic-content requirement. In addition, Defense Procurement

and Acquisition Policy personnel issued guidance reminding the Department's acquisition community of the importance of complying with domestic procurement laws and instructing the procurement workforce to complete training on the Berry Amendment. See Appendix B for the status of prior report recommendations.

Conclusion

This report summarizes systemic problems across DoD identified at more than one Service or DLA. The Military Services and DLA contracting personnel from 18 contracting offices did not consistently comply with the Berry Amendment. Contracting personnel were not always aware of the requirement to procure domestically produced items or were not familiar with the DFARS requirements that implement the Berry Amendment. DoD contracting personnel should follow the Federal and DoD acquisition requirements and include the required clauses and notifications because the clauses expressly notify suppliers that their goods must be U.S.-produced. Not all potential suppliers are aware of the Berry Amendment requirements. Unless expressly stated as a requirement, suppliers could provide products from the least expensive manufacturer, regardless of place of manufacture. Procurement of nondomestic items in violation of the Berry Amendment diminishes the protection of the DoD supply chain and the domestic production base for components and weapon systems that are vital to the warfighter. Furthermore, the contracting officers' practice of sourcing certain products and materials from foreign entities may harm the domestic industrial sectors, such as manufacturing, as well as result in the loss of jobs in the United States.

Recommendations, Management Comments, and Our Response

Recommendation A.1

We recommend that the Director, Defense Pricing/Defense Procurement and Acquisition Policy, re-emphasize guidance to DoD contracting personnel on:

- a. The requirement to incorporate and enforce the Berry Amendment provisions and clauses in applicable solicitations and contracts.**
- b. Defense Federal Acquisition Regulation Supplement requirements regarding exceptions to the Berry Amendment.**
- c. The requirements of the Berry Amendment, such as inclusion of clause, posting award notices, and exception notices into the electronic contract writing systems used by the Air Force and the Defense Logistics Agency.**

Defense Pricing/Defense Procurement and Acquisition Comments

The Director, Defense Pricing/Defense Procurement and Acquisition Policy, agreed, stating that the Department will address the recommendation in conjunction with addressing an anticipated recommendation from the Director, Office of Management and Budget and Secretary of Commerce to provide additional guidance and information to DoD contracting personnel as a result of an assessment of compliance with the April 18, 2017, Executive Order 13788, “Buy American and Hire American.”³⁴

Our Response

Comments from the Director addressed the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation after Defense Pricing/Defense Procurement and Acquisition Policy personnel provide documentation to verify that the Department issued the recommended guidance.

³⁴ The Director, Defense Pricing/Defense Procurement and Acquisition Policy, addressed the comments to the Deputy Inspector General for Special Plans and Operations; however, this was an audit report and the comments should have been addressed to the Deputy Inspector General for Audit.

Finding B

DoD Personnel Can Improve Compliance With Buy American Act Requirements

DoD contracting personnel complied with the Buy American Act for 130 of 171 contracts reviewed, with an obligated value of \$8.8 million. However, contracting personnel did not comply with the Buy American Act for the remaining 41 contracts, with an obligated value of \$2.6 million.³⁵ Specifically, DoD contracting personnel:

- did not include the required Buy American Act clauses in 36 contracts because they were unfamiliar with the Buy American Act, insufficiently reviewed contracts before award, operated outside their functional area, or relied on the electronic contracting writing systems to include the implementing clause; and
- improperly purchased foreign-made items on six contracts because they awarded a contract for an excepted item without obtaining proper approval, prepared a domestic nonavailability determination when domestic sources were available, did not ensure items purchased were domestic-end products, or did not identify a foreign supplier as being ineligible for contract award.

As a result, for 41 of the 171 contracts reviewed, DoD contracting personnel had limited assurance that items purchased on contracts complied with the Buy American Act and committed four potential Antideficiency Act violations by using appropriated funds to procure foreign-made items, valued at \$46,430. DoD contracting personnel corrected some of the deficiencies identified during the audits by modifying contracts to include the Buy American Act implementing clause, completing Buy American Act training, and amending standard operating procedures and internal control processes to improve compliance with the Buy American Act. As of November 2017, the Military Services and DLA officials had implemented or agreed to implement all of the 18 Buy American Act recommendations from the prior reports.

³⁵ We identified 42 deficiencies on 41 contracts.

DoD Contracting Personnel Complied with the Buy American Act for 130 Contracts

Army, Navy, Air Force, and DLA contracting personnel complied with the Buy American Act for 130 of 171 contracts reviewed with an obligated value of \$8.8 million. Contracting personnel took appropriate actions, such as performing market research and including the required DFARS contract clauses, to ensure suppliers could provide U.S.-produced items. Overall, personnel included the required language in solicitations, performed appropriate market research, and worked with suppliers to purchase domestic items. In addition, for nine contracts, DoD personnel followed proper procedures when procuring foreign-made items that were allowable exceptions to the Buy American Act.

DoD Contracting Personnel Did Not Consistently Ensure Compliance with the Buy American Act for 41 Contracts

Army, Navy, Air Force, and DLA contracting personnel did not consistently ensure compliance with the Buy American Act for 41 of the 171 contracts reviewed, valued at \$2.6 million. DoD contracting personnel omitted the Buy American Act implementing clause from 36 contracts and did not ensure items purchased on 6 contracts were domestic end products compliant with the Buy American Act. Table 4 identifies Buy American Act noncompliant contracts.

Table 4: Buy American Act Contracts Reviewed and Noncompliant Contracts

Buy American Act Contracts				
	Number of Contracts Reviewed	Contract Obligated Amount ¹	Number of Noncompliant Contract(s)	Contract Obligated Value
Army	50	\$4,738,678	5	\$400,386
Navy	32	1,450,707	12 ²	562,254
Air Force	33	1,538,197	12	453,085
DLA	56	3,667,727	12	1,187,996
Total	171	\$11,395,309	41	\$2,603,721

Source: The DoD OIG.

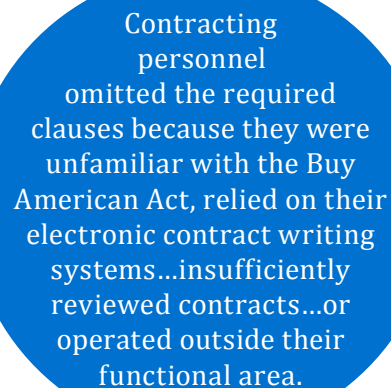
¹ Total obligated value for the time period for Army contracts issued from October 1, 2012, through September 30, 2013; the Navy and Marine Corps contracts issued from October 1, 2012, through September 30, 2014; the Air Force contracts issued October 1, 2013, through May 15, 2015; and DLA contracts issued October 1, 2014, through March 31, 2016.

² One contract had two deficiencies. Naval contracting personnel omitted the Buy American Act clause and did not ensure items met domestic-content requirement for one contract.

DoD Contracting Personnel Omitted Required DFARS Buy American Act Implementing Clauses

Contracting personnel at the Military Services and the DLA omitted the required Buy American Act DFARS clauses from 36 of 171 contracts reviewed.

The Buy American Act is implemented through the DFARS and requires contracting officers to include DFARS clause 252.225-7001 in the contracts.³⁶ Contracting officers should include the required clause because it explicitly notifies the contractor to provide goods that meet the domestic-content requirements specified in the Buy American Act. Contracting personnel omitted the required clauses because they were unfamiliar with the Buy American Act, relied on their electronic contract writing systems to include the implementing clause, insufficiently reviewed contracts before award, or operated outside their functional area.



Contracting personnel omitted the required clauses because they were unfamiliar with the Buy American Act, relied on their electronic contract writing systems...insufficiently reviewed contracts...or operated outside their functional area.

The Military Services' Contracting Personnel Were Not Aware of the Domestic Source Requirement

Contracting personnel from each of the Military Services were unfamiliar with the requirements to buy domestic items or were unfamiliar with the Buy American Act clauses. For example:

- **Army** – Contracting personnel did not include the Buy American Act implementing clauses for 4 of the 50 contracts reviewed. For example, contracting personnel did not include the Buy American Act implementing clause in three of the contracts, valued at \$256,356, because the procurements were outside of the contracting personnel's area of expertise. For one contract, a contracting officer did not include the required clause when he awarded a contract to procure a security storage unit. The contracting officer stated that the purchase was non-routine and outside of his normal area of expertise, which was information technology.
- **Navy** – Contracting personnel omitted the Buy American Act clauses on 10 contracts reviewed. For example, for seven of the contracts, valued at \$376,571, Navy contracting personnel stated that they were unaware of the Buy American Act or the need to purchase domestically-produced items. For two contracts, valued at \$125,624, Navy contracting personnel relied on a clause matrix aid that they developed in-house, which contained flawed logic and sometimes led to incorrect decisions.

³⁶ DFARS 252.225-7001, "Buy American Balance Payments Program," or its alternate at DFARS 252.225-7002, "Qualifying Country Sources as Subcontractors;" or DFARS 252.225-7035, "Buy American Act – Free Trade Agreements."

- **Air Force** – Contracting personnel did not include the Buy American Act contract clause for 10 contracts. For example, inexperienced contracting personnel omitted the Buy American Act clause from two contracts because they relied on previous contracts with similar purchases to determine which clauses to include. Contracting personnel also did not include the required DFARS clause in four contracts reviewed because they incorrectly inserted similar but inapplicable FAR or DFARS clauses. For these 10 contracts, contracting personnel were either not sufficiently familiar with the Buy American Act or relied upon the electronic contract writing system to insert the proper clauses.

DLA Personnel Relied Upon the Electronic Contract Writing System

DLA contracting personnel omitted the Buy American DFARS clause when required because they relied on the contract writing system to insert the clause.

- **DLA** – Contracting personnel did not include the Buy American Act clause in 12 contracts. Contracting personnel omitted the DFARS clause from 11 contracts because they relied on the electronic contract writing system to either automatically include the clause in the contracts or to incorporate the terms and clauses stated in the solicitations by reference. For one contract, the DLA contracting officer may have inadvertently deselected or bypassed the Buy American Act implementing clause when building the award in the contract writing system. Contracting officers must have sufficient knowledge of the FAR and DFARS requirements to use the contract writing system properly.

Contracting Personnel Improperly and Erroneously Purchased Items That Were Not Produced in the United States

Contracting personnel for the Army, Navy, and Air Force issued six contracts for goods from a non-qualifying foreign country without obtaining proper approval, preparing a domestic nonavailability determination when domestic sources were available, and identifying a foreign supplier as being ineligible for contract award. In addition, DLA Richmond personnel erroneously awarded a small business set-aside contract for non-U.S.-manufactured items to an ineligible foreign manufacturer.

Contracting personnel...issued six contracts for goods from a non-qualifying foreign country without proper approval, preparing a domestic nonavailability determination.... and identifying a foreign supplier as being ineligible for contract award.

- **Army** – A contracting officer issued a contract for goods from a non-qualifying foreign country without the proper approval, at the time of award, to use an exception to the Buy American Act. The contracting

officer issued a contract for boots from a non-qualifying country using the exception located at DFARS 225.103. The contracting officer properly applied the use of the exception; however, he did not obtain the proper level of approval before contract award because he approved the use of the exception himself instead of having it approved by someone at a level above him. In response to the audit, the contracting officer retroactively obtained approval for the use of the exception to the Buy American Act.

- **Navy** – Contracting personnel did not ensure items purchased on three contracts met domestic-content requirements. Navy contracting personnel did not review contractor certifications for Buy American Act compliance in the System for Award Management (SAM) when issuing two contracts because they were unaware of the FAR requirements to assess domestic content. Domestic content is determined by a two-part test in DFARS 225.101: (1) the end product must be manufactured in the United States, and (2) the cost of its U.S. and qualifying country components must exceed 50 percent of the cost of all its components. Contracting personnel did not assure compliance on one contract because the contracting officer incorrectly determined the items were commercial-off-the-shelf.
- **Air Force** – Contracting personnel issued two contracts for non-U.S.-produced football uniforms when domestic sources could have fulfilled the requirement. Air Force contracting officer issued a sources-sought notice for the wrong type of uniform and concluded that there were no U.S.-produced uniforms. Contracting personnel conducted oral requests for quotes for brand-name-or-equal jerseys and pants and received three quotes. All three vendors proposed foreign-made brand-name items. Based on the quotes, the contracting officer completed two determination and findings for nonavailability to purchase foreign-made brand-name items. Contracting personnel determined that U.S.-produced brand-name uniforms were not available based on the three quotes. However, contracting personnel did not conduct market research or issue a request for quotes for U.S.-produced Buy American Act-compliant football uniforms similar to the foreign brand-name uniforms.

Deficiencies Could Result in Antideficiency Act Violations

Army and Air Force contracting personnel used appropriated funds to purchase goods that were not compliant with the Buy American Act on four of the contracts reviewed. Purchasing items using DoD appropriations without using required contract clauses and assuring the purchases comply with the Buy American Act is a potential Antideficiency Act violation. Antideficiency Act violations occur when expenditures do not comply with an annual statutory restriction on appropriated funds, which must be expended in compliance with the Buy American Act.

DoD annual appropriations acts contain a recurring restriction on the use of appropriated funds that violate the Buy American Act. For example, the Consolidated Appropriations Act of 2014 states that:

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. For purposes of this subsection, the term “Buy American Act” means chapter 83 of title 41, United States Code.³⁷

Army Personnel Committed Potential Violations of the Antideficiency Act

The Army committed one potential Antideficiency Act violation by improperly awarding a contract for food storage containers. Army contracting personnel used appropriated funds to purchase goods that were not compliant with the Buy American Act. Specifically, contracting personnel failed to note that the place of manufacture was a non-qualifying country while reviewing the supplier’s representations and certifications in SAM.³⁸ The U.S. Army Materiel Command initiated a preliminary review. The Office of the Assistant Secretary of the Army, Financial Management and Comptroller, in coordination with the Army Office of General Counsel, confirmed regulatory violations of DFARS 225.103(b), but not of the Antideficiency Act.

Air Force Personnel Committed Potential Violations of the Antideficiency Act

For two contracts, Air Force contracting personnel purchased foreign-made football uniforms because the contracting officer completed two determination and findings for nonavailability to purchase foreign-made brand-name items when domestic sources could have fulfilled the requirement. Specifically, Air Force contracting personnel did not perform adequate market research for these items because they focused on purchasing the requested foreign-made brand-name uniforms rather than identifying U.S.-produced football uniforms. In addition, on a third contract, Air Force contracting personnel purchased a foreign-made fitness timing system from China, a non-qualifying country.³⁹

The Air Force Director, Reporting and Compliance, Financial Operations, initiated a preliminary review of the contracts for potential Antideficiency Act violations. The preliminary review of the football uniform contracts found credible evidence of an

³⁷ DoD annual appropriations acts for Fiscal Years 2012, 2013, and 2015 contain an identical provision.

³⁸ DFARS 252.225-7001, “Buy American and Balance of Payments Program,” defines a “qualifying country” as a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum of agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. § 2776) and with 10 U.S.C. § 2457.

³⁹ DFARS 252.225-7001, “Buy American and Balance of Payments program” defines a qualifying country.

Antideficiency Act violation. Air Force officials convened a formal Antideficiency Act investigation in July 2016. Ultimately, the Office of the Undersecretary of Defense, Comptroller, determined that no Antideficiency Act violation occurred. The preliminary review of the fitness timing systems contract determined that no violation of the Antideficiency Act occurred because the fitness timing system contract should have been coded as a commercial information technology product that is exempt from the Buy American Act.⁴⁰

Corrective Actions Taken As A Result Of the Audits

As a result of our audits, the Military Services and DLA officials took actions to correct deficiencies identified during the audits and implemented changes in response to our report recommendations. DoD contracting personnel modified two contracts to include the Buy American Act DFARS clauses, and the Military Services and DLA implemented mandatory Buy American Act training. Furthermore, DoD contracting personnel at the Navy and Air Force amended operating procedures and internal processes to improve compliance with the Buy American Act, and the Military Services and the DLA determined whether items noncompliant with the Buy American Act were delivered on 30 contracts. In addition, Defense Procurement and Acquisition Policy personnel issued guidance reminding the DoD's acquisition community of the importance of complying with domestic procurement laws and instructing the procurement workforce to complete training on the Buy American Act.

As of July 2017, three acquisition workflow-learning tools were added to the Defense Acquisition University website. According to the website, these workflow-learning tools can be used by the workforce to help understand, implement, and comply with the requirements of the Buy American statute and other domestic preference programs, such as the Berry Amendment. The tools visually show all of the concepts associated with the Buy American Statute. In addition, the tools help users determine which Buy American-Balance of Payments Program provisions and clauses should be included in the solicitation and resulting contract action. Furthermore, the tools can be used to help the user understand what the foreign offer evaluation steps are depending on the provisions and clauses included in the solicitation. See Appendix C for the status of prior report recommendations.

⁴⁰ FAR 25.103(e) "Exceptions" states that the restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item.

Conclusion

This report summarizes systemic problems across DoD identified at more than one Service or DLA. The Military Services and the DLA did not consistently comply with the Buy American Act. Contracting personnel omitted the Buy American Act implementing clauses and had limited assurance that procured goods were compliant with the Buy American Act. Army and Air Force contracting personnel committed four potential Antideficiency Act violations. In addition, the DLA erroneously purchased items manufactured outside the United States from a qualifying country when the requirement was a small business set-aside. Procuring nondomestic items in violation of the Buy American Act diminishes the protection of the DoD supply chain and domestic production base.

Recommendations, Management Comments, and Our Response

Recommendation B.1

We recommend that the Director, Defense Pricing/Defense Procurement and Acquisition Policy, re-emphasize policy guidance to DoD contracting personnel on:

- a. The requirement to incorporate and enforce the Buy American Act provisions and clauses in applicable solicitations and contracts.**
- b. The requirements of the Buy American Act, such as inclusion of clauses, into the electronic contract writing systems used by the Air Force and the Defense Logistics Agency.**
- c. Defense Federal Acquisition Regulation Supplement requirements regarding exceptions to the Buy American Act.**

Defense Pricing/Defense Procurement and Acquisition Policy Comments

The Director, Defense Pricing/Defense Procurement and Acquisition Policy, agreed, stating that the Department will address the recommendation in conjunction with addressing an anticipated recommendation from the Director, Office of Management and Budget and Secretary of Commerce to provide additional guidance and information to DoD contracting personnel as a result of an assessment of compliance with the April 18, 2017, Executive Order 13788, “Buy American and Hire American.”⁴¹

⁴¹ The Director, Defense Pricing/Defense Procurement and Acquisition Policy, addressed the comments to the Deputy Inspector General for Special Plans and Operations; however, this was an audit report and the comments should have been addressed to the Deputy Inspector General for Audit.

Our Response

Comments from the Director addressed the intent of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation after Defense Pricing/Defense Procurement and Acquisition Policy personnel provide documentation to verify that the Department issued the recommended guidance.

Appendix A

Scope and Methodology

We conducted this performance audit from May 2017 through December 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This report summarizes four DoD OIG-issued reports that determined whether the Military Services and DLA personnel complied with the Berry Amendment and Buy American Act when they purchased covered items such as food, clothing, tents, textiles, and hand or measuring tools. We did not review classified contracts. We reviewed the objectives, internal control weaknesses, criteria, findings, and open and closed recommendations.

This is a summary of the four previous reports in response to Section 1601 of the National Defense Authorization Act for FY 2014, which required the DoD OIG to conduct periodic audits of contracting practices and policies related to procurements under the Berry Amendment. We announced the first audit in August 2013 as the “Audit of DoD Compliance with the Berry Amendment.” Shortly after the announcement, we received inquiries from Congress to amend the audit objective to include a review of the Buy American Act. We re-announced a new audit in October 2013, the “Audit of DoD Compliance with the Berry Amendment and the Buy American Act for Selected Items.” In February 2014, we decided to issue separate reports for each Military Service and the DLA.

Review of Documentation and Interviews

This report summarizes the results of the four previously issued DoD OIG audit reports.⁴² We evaluated contract documentation from these prior audit reports in this series with the following applicable criteria.

- 10 U.S.C. § 2533a, “Requirement to buy certain articles from American sources; exceptions”
- 31 U.S.C. § 1341, “Limitations on expending and obligating amounts”

⁴² Report No. DODIG-2015-026, “Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act,” November 7, 2014; Report No. DODIG-2015-161, “Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act,” August 12, 2015; Report No. DODIG-2016-051, “Air Force Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act,” February 24, 2016; Report No. DODIG-2017-098, “Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act,” July 7, 2017.

- 41 U.S.C. § 8302, “American materials required for public use”
- Public Law 113-76, “Consolidated Appropriations Act, 2014”
- FAR Part 4, “Administrative Matters”
- FAR Part 10, “Market Research”
- FAR Part 25, “Foreign Acquisitions”
- FAR 52.225-2, “Buy American Certificate”
- DFARS Part 225, “Foreign Acquisition”
- DFARS 252.225-7001, “Buy American Act and Balance of Payments Program”
- DFARS 252.225-7012, “Preference for Certain Domestic Commodities”
- DFARS 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools”

Summary of Organizations Visited

The four previously issued DoD OIG audit reports, covering each Military Service and the DLA, determined that Army, Navy, Air Force, and DLA officials did not comply with Berry Amendment and Buy American Act requirements. To obtain command policy and guidance related to the audit objective of our reports, we interviewed contracting and oversight officials from the following 18 offices.

- Army
 - Soldier Systems Center, Natick, Massachusetts
 - Aberdeen Proving Ground, Maryland
 - Army Contracting Command, Warren, Michigan
- Navy
 - Marine Corps Systems Command, Quantico, Virginia
 - Naval Air Warfare Center, Aircraft Division, Lakehurst, New Jersey
 - Naval Supply Systems Command, Fleet Logistics Center, Norfolk, Virginia
 - Naval Sea Systems Command, Washington, D.C.
- Air Force
 - 10th Contracting Squadron, U.S. Air Force Academy, Colorado Springs, Colorado
 - 338th Specialized Contracting Squadron, Joint Base San Antonio, Texas
 - 355th Contracting Squadron, Davis-Monthan Air Force Base, Tucson, Arizona

- 502d Contracting Squadron, Joint Base San Antonio, Texas
 - 771st Enterprise Sourcing Squadron, Joint Base San Antonio, Texas
 - Air Force Life Cycle Management Center, Robins Air Force Base, Georgia
 - Air Force Sustainment Center, Robins Air Force Base, Georgia
- Defense Logistics Agency (DLA)
 - DLA Troop Support Philadelphia, Pennsylvania
 - DLA Aviation Richmond, Virginia
 - DLA Maritime Puget Sound, Washington
 - DLA Aviation Philadelphia, Pennsylvania

We interviewed Army, Navy, Air Force, and DLA personnel to discuss procedures that were completed when they awarded Berry Amendment and Buy American Act contracts. We obtained copies of contract documentation issued by the Military Services and DLA personnel including:

- purchase requests,
- market research,
- synopsis and solicitation information,
- contract memorandums,
- basic contracts,
- representation and certification reports,
- domestic nonavailability determinations,
- determination and findings of nonavailability, and
- modifications to issued contracts.

At the 18 offices, we nonstatistically selected and reviewed 280 contracts, obligated at \$610.1 million. Table 5 identifies the total contracts reviewed at each DoD Component during the four audits.

Table 5: Total Contracts Reviewed

DoD Component	Offices Visited	Contracts Reviewed	Contract Obligated Value (in millions)*
Army	3	83	\$129.3
Navy	4	55	74.5
Air Force	7	54	19.2
DLA	4	88	387.0
Total	18	280	\$610.0

Source: The DoD OIG.

* Total obligated value for the time period for Army contracts issued from October 1, 2012, through September 30, 2013; the Navy and Marine Corps contracts issued from October 1, 2012, through September 30, 2014; the Air Force contracts issued October 1, 2013, through May 15, 2015; and DLA contracts issued October 1, 2014, through March 31, 2016.

We summarized the audit results in three main areas: Berry Amendment or Buy American Act compliance, potential Antideficiency Act violations, and corrective actions taken during the audits. We physically inspected a nonstatistical sample of the items delivered on the sample contracts for indications of compliance with the Berry Amendment and Buy American Act. In addition, we interviewed item-accepting personnel at Army, Air Force, and the DLA to determine what acceptance procedures were conducted when goods were received. However, for the Navy, we verified that Navy personnel had ordered and received noncompliant items.

In addition, we made recommendations that will improve compliance with the Berry Amendment and Buy American Act based on the four previous audits in this series and by requesting comments from the organizations that we audited. We met with a procurement analyst at the Under Secretary for Defense, (Acquisition, Technology, and Logistics) Defense Pricing/Defense Procurement and Acquisition Policy, office in Arlington, Virginia, to aid in our understanding of how to improve the systemic compliance problems with the Berry Amendment and Buy American Act.

Use of Computer-Processed Data

We did not use computer-processed data that supported our findings, conclusions, and recommendations to perform this audit.

Use of Technical Assistance

We held discussions with personnel from the DoD OIG's Quantitative Methods Division to develop the nonstatistical plan.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and the DoD Office of Inspector General (DoD OIG) issued five reports discussing the award of contracts for items that are subject to Berry Amendment and Buy American Act review.

Unrestricted GAO reports can be accessed at <http://www.gao.gov>. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>.

GAO

Report No. GAO-13-57R, “Warfighter Support: Army’s and Defense Logistics Agency’s Approach for Awarding Contracts for the Army Combat Shirt,” February 14, 2013

The report summarized the procurement history of the Army combat shirt and found that the Army and the DLA applied applicable Federal regulations to past and future contracts for the Army combat shirt.

DoD OIG

Report No. DODIG-2017-098, “Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act,” July 7, 2017

DLA contracting personnel omitted the Berry Amendment clause in 14 contracts reviewed valued at \$385.9 million, and omitted the Buy American Act implementing clause in 12 contracts reviewed, valued at \$1.8 million. They did not notify potential suppliers of the need for domestically-produced items and committed potential Antideficiency Act violations on two contracts when they purchased nondomestic items or items containing nondomestic components without proper supporting documentation and approval. In addition, DLA contracting personnel erroneously awarded a small business set-aside contract for non-U.S.-manufactured items to an ineligible foreign manufacturer.

Report No. DODIG-2016-051, “Air Force Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act,” February 24, 2016

Air Force personnel may have purchased goods from foreign countries because they omitted the implementing clause in 6 of the 21 Berry Amendment contracts reviewed, valued at \$17.7 million in obligations, and in 10 of the 33 Buy American Act contracts reviewed, valued at \$1.5 million in obligations. Personnel from two contracting offices improperly purchased foreign-made items on three contracts, resulting in potential violations of the Antideficiency Act.

Report No. DODIG-2015-161, "Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act," August 12, 2015

Navy personnel omitted implementing clauses or did not assess whether suppliers could provide U.S.-produced items, or both actions, for 11 of the 23 Berry Amendment contracts reviewed, valued at \$73 million in obligations, and for 12 of the 32 Buy American Act contracts reviewed, valued at \$1.5 million in obligations. Navy personnel purchased goods from foreign countries resulting in four potential violations of the Antideficiency Act.

Report No. DODIG-2015-026, "Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act," November 7, 2014

Army personnel omitted the implementing clause in 4 of the 33 Berry Amendment contracts reviewed, valued at \$124.6 million in obligations, and in 4 of the 50 Buy American Act contracts reviewed, valued at \$4.7 million in obligations. However, Army personnel did not differentiate between commercial and commercial off-the-shelf products, did not complete component assessments, and purchased goods from a foreign country, resulting in a potential violation of the Antideficiency Act.

Appendix B

Status of Berry Amendment Recommendations in Previous Reports

In our previous reports, we made 17 recommendations to the Military Services and the DLA for improving their compliance with the Berry Amendment, and management agreed with 15 of them. DLA officials partially agreed with two recommendations. As of November 17, 2017, nine recommendations were resolved and closed (management took action that addressed the recommendations). Table 6 identifies the nine closed recommendations.

Table 6. Recommendations Closed

	Number In Report	Organization	Recommendation Text
Report No. DoDIG-2015-061 – Navy			
1	A.1	Naval Air Warfare Center, Aircraft Division-Lakehurst	Modify contract N68335-13-0164 to include the Berry Amendment contract clause and identify whether items in violation of the Berry Amendment were purchased on contracts N68335-13-C-0164 and N6835-13-C-0186, and take corrective actions as appropriate.
Report No. DoDIG-2016-051 – Air Force			
2	A.1	355th Contracting Squadron	Determine whether noncompliant Berry Amendment items were delivered on contracts FA4877-15-P-BJ19, FA4877-14-P-B101, and FA4877-14-P-B095 and, when appropriate, obtain replacement items that are compliant with the Berry Amendment.
3	A.2	Systems Support, Contracting Division, Air Force Life Cycle Management Center	Determine whether noncompliant Berry Amendment items have been delivered on contract FA8526-14-C-0003 and, when appropriate, obtain replacement items that are compliant with the Berry Amendment.
4	A.3	Air Force Sustainment Center	Determine whether noncompliant Berry Amendment items have been delivered on contract FA8517-14-C-0003 and, when appropriate, obtain replacement items that are compliant with the Berry Amendment.
Report No. DoDIG-2017-098 – Defense Logistics Agency			
5	A.1.a	Defense Logistics Agency Troop Support	Determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE1C1-16-C0007, SPE1C1-16-C-0008, SPE1C1-15-D-1023, SPE300-15-D-3130, SPE300-15-D-3129, SPE1C1-15-D-1032, and SPE1C1-15-D-1008 and, when appropriate, obtain replacement items that comply with the Amendment.

	Number In Report	Organization	Recommendation Text
Report No. DoDIG-2017-098 – Defense Logistics Agency (cont'd)			
6	A.1.b.2	Defense Logistics Agency Troop Support	Amend standard operating procedures and internal processes to improve compliance with the Berry Amendment, ensuring contracting personnel are knowledgeable on when to manually post award notices to the Federal Business Opportunities webpage.
7	A.1.b.3	Defense Logistics Agency Troop Support	Amend standard operating procedures and internal processes to improve compliance with the Berry Amendment, ensuring contracting personnel assigned to work in areas subject to the Berry Amendment are sufficiently aware of the Amendment and its restrictions before contracting for covered items.
8	A.1.c	Defense Logistics Agency Troop Support	Post a required notice on the Federal Business Opportunities website, as required by DFARS 205.301, "General," for contracts SPE1C1-15-M-2734, SPE1C1-15-M-2729, and SPE1C1-15-C-0017 to include the required language on the applicable Berry Amendment exception.
9	A.3.a	Defense Logistics Agency, Land and Maritime	Initiate a review to determine whether items noncompliant with the Berry Amendment were ordered or received on contract SPMYM2-15-C-0007, and, when appropriate, remove noncompliant items and obtain replacements that comply with the Amendment.

Status of Berry Amendment Recommendations in Previous Reports (cont'd)

As of November 17, 2017, seven recommendations were resolved but remained open (management agreed to take actions to address the recommendation, but the actions were not yet complete). Table 7 identifies the seven resolved but still open recommendations.

Table 7. Recommendations Resolved but Not Closed

	Number In Report	Organization	Recommendation Text
Report No. DoDIG-2015-161 – Navy			
1*	A.2.a	Assistant Secretary of the Navy (Financial Management and Comptroller)	Initiate a preliminary review in accordance with DoD 7000.14-R, “DoD Financial Management Regulation,” volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred as a result of any items purchased on contracts N00189-13-D-0001, N00189-13-P-1264, N68335-13-C-0164, and N68335-13-C-0186 in violation of the Berry Amendment
2*	A.2.b	Assistant Secretary of the Navy (Financial Management and Comptroller)	Complete the preliminary review as required by DoD 7000.14-R, “DoD Financial Management Regulation,” volume 14, chapter 3, and provide the results to the DoD Office of Inspector General. If an Antideficiency Act violation has occurred, determine which officials are responsible and recommend corrective actions.
Report No. DoDIG-2017-098 – Defense Logistics Agency			
3	A.1.b.1	Defense Logistics Agency Troop Support	Amend standard operating procedures and internal processes to improve compliance with the Berry Amendment, ensuring contracting personnel include the required Defense Federal Acquisition Regulation Supplement clause in the contract to implement the Berry Amendment are taken.
4	A.2	Defense Logistics Agency Aviation	Determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE4A6-15-C-0211, SPE4A6-15-D-0152, SPE4A6-15-D-0155, SPE4A6-15-D-0236, SPE4A6-15-D-0262, SPE4A6-15-D-0284, and SPE4A6-16-D-0042 and, when appropriate, obtain replacement items that comply with the Amendment.
5	A.3.b	Defense Logistics Agency Land and Maritime	Ensure staff are sufficiently aware of the Berry Amendment and its exceptions permitting the purchase of foreign items before contracting for covered items.

Table 7. Recommendations Resolved but Not Closed (cont'd)

	Number In Report	Organization	Recommendation Text
Report No. DoDIG-2017-098 – Defense Logistics Agency (cont'd)			
6*	A.4.a	Defense Logistics Agency Finance	Initiate a preliminary review in accordance with DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred on contract SPMYM2-15-C-0007.
7*	A.4.b	Defense Logistics Agency Finance	Complete the preliminary review as required by DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3 for contract SPMYM2-15-C-0007, and provide results to the DoD Office of Inspector General. If violations of the Antideficiency Act occurred, determine which officials are responsible and recommend corrective actions.

Source: The DoD OIG.

* Navy officials addressed the specifics of the recommendation for contracts N00189-13-P-1264, N68335-13-C-0164, and N68335-13-C-0186.

Status of Berry Amendment Recommendations in Previous Reports (cont'd)

As of November 17, 2017, three recommendations were unresolved (management did not agree with the recommendation). Table 8 identifies the three unresolved recommendations.

Table 8. Recommendations Unresolved

	Number In Report	Organization	Recommendation Text
Report No. DoDIG-2017-098 – Defense Logistics Agency			
1*	A.4.a	Defense Logistics Agency Finance	Initiate a preliminary review in accordance with DoD 7000.14-R, “DoD Financial Management Regulation,” volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred on contract SPE1C1-15-M-2729.
2*	A.4.b	Defense Logistics Agency Finance	Complete the preliminary review as required by DoD 7000.14-R, “DoD Financial Management Regulation,” volume 14, chapter 3, for contract SPE1C1-15-M-2729, and provide results to the DoD Office of Inspector General. If violations of the Antideficiency Act occurred, determine which officials are responsible and recommend corrective actions.
3	A.4.c	Defense Logistics Agency Finance	Provide the DoD policy concerning “retroactive” non-availability determinations to the DoD Office of Inspector General.

Source: The DoD OIG.

* DLA officials agreed with recommendations A.4.a and A.4.b for contract SPMYM2-15-C-0007.
DLA officials disagreed with recommendations A.4.a and A.4.b for contract SPE1C1-15-M-2729.

Appendix C

Status of Buy American Act Recommendations in Previous Reports

We made 18 recommendations in our previous reports for the Military Services and DLA to improve their compliance with the Buy American Act, and management agreed with all of them. As of November 17, 2017, sixteen recommendations were resolved and closed (management took action that addressed the recommendations). Table 9 identifies the sixteen closed recommendations.

Table 9. Recommendations Closed

	Number In Report	Organization	Recommendation Text
Report No. DODIG-2015-026 – Army			
1	B.1.a	Army Contracting Command–Headquarters	Require that contracting personnel receive training that incorporates the requirement to make clear distinctions between commercial and commercial off-the-shelf items and training on how to perform component assessments as required by the Buy American Act.
2	B.1.b	Army Contracting Command–Headquarters	Require that contracting personnel receive training to incorporate the requirements to include Buy American Act implementing clauses.
3	B.2.a	Assistant Secretary of the Army (Financial Management and Comptroller)	Initiate a preliminary investigation of the potential Antideficiency Act violations within 10 days to determine whether a violation occurred.
4	B.2.b	Assistant Secretary of the Army (Financial Management and Comptroller)	Complete the preliminary investigation in a timely manner (within 90 days) as required by DoD 7000.14-R, “DoD Financial Management Regulation,” volume 14, chapter 3, and provide the results of the preliminary investigation to the Office of the Inspector General.
Report No. DODIG-2015-161 – Navy			
5	B.1	Naval Air Warfare Center, Aircraft Division-Lakehurst	Determine whether the items purchased on contracts N68335-14-P-0320, N68335-13-P-0225, N68335-14-P-0117, N68335-14-P-0428, N68335-14-P-0266, N68335-14-P-0085, N68335-14-P-0002, and N68335-13-P-0328 complied with the domestic-content requirement of the Buy American Act and take corrective action as appropriate.
6	B.2	Naval Supply Systems Command Fleet Logistics Center-Norfolk	Determine whether the items purchased on contracts N00189-14-P-1036, N00189-13-P-0760, and N00189-14-P-0990 complied with the domestic-content requirement of the Buy American Act and take corrective action as appropriate.

Table 9. Recommendations Closed (cont'd)

	Number In Report	Organization	Recommendation Text
7	B.3	Marine Corps Systems Command-Quantico	Modify contract M67854-14-P-1016 to include the Buy American Act contract clause and ensure delivered items complied with the domestic-content requirement of the Buy American Act and take corrective action as appropriate.
Report No. DODIG-2016-051 – Air Force			
8	B.1.a	338th Specialized Contracting Squadron	Determine whether noncompliant Buy American Act items for a non-recurring buy were delivered on contract FA3002-15-P-0008 and, when appropriate, obtain replacement items that are compliant with the Buy American Act.
9	B.1.b	338th Specialized Contracting Squadron	Establish procedures or additional training for procurements subject to the Buy American Act.
10	B.2	355th Contracting Squadron	Determine whether noncompliant Buy American Act items were delivered on contracts FA4877-15-P-B032 and FA4877-14-P-A090 and, when appropriate, obtain replacement items that are compliant with the Buy American Act.
11	B.3	Air Force Sustainment Center	Determine whether noncompliant Buy American Act items were delivered on contracts FA8501-14-P-0050, FA8501-14-P-0076, FA8501-14-P-0020, and FA8501-14-P-0046 and, when appropriate, obtain replacement items that are compliant with the Buy American Act.
12	B.4	10th Contracting Squadron	Establish procedures or additional training for procurements subject to the Buy American Act.
13	B.5.a	Assistant Secretary of the Air Force (Financial Management and Comptroller)	Initiate a preliminary review in accordance with DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred as a result of noncompliant Buy American Act items purchased on contracts FA3047-14-P-0232, FA7000-14-P-0129, and FA7000-14-P-0137 in violation of the Buy American Act.
14	B.5.b	Assistant Secretary of the Air Force (Financial Management and Comptroller)	Complete the preliminary review as required by regulation and provide the results to the DoD Office of Inspector General. If an Antideficiency Act violation has occurred, determine which officials are responsible and recommend corrective actions.

Table 9. Recommendations Closed (cont'd)

	Number In Report	Organization	Recommendation Text
Report No. DoDIG-2017-098 – Defense Logistics Agency			
15	B.1.b	Defense Logistics Agency Troop Support	Amend standard operating procedures and internal processes to improve compliance with the Buy American Act to ensure the Defense Federal Acquisition Regulation Supplement clause implementing the Buy American Act is included in the contract.
16	B.2.b	Defense Logistics Agency Aviation	Require contracting and technical personnel to receive training that incorporates the Buy American Act and Small Business Program requirements when soliciting and awarding an acquisition as a small business set-aside.

Source: The DoD OIG.

Status of Buy American Act Recommendations in Previous Reports (cont'd)

As of November 17, 2017, two recommendations were resolved but remained open. Specifically, management agreed to take actions to address the recommendation, but the actions were not yet completed. Table 10 identifies the two resolved but open recommendations.

Table 10. Recommendations Resolved but Not Closed

	Number In Report	Organization	Recommendation Text
Report No. DODIG-2017-098 – Defense Logistics Agency			
1	B.1.a	Defense Logistics Agency Troop Support	Determine whether items noncompliant with the Buy American Act were delivered on contracts SPE1C1-15-M-1376, SPE1C1-15-M-1952, SPE1C1-15-M-2348, SPE1C1-15-M-2038, SPE3S1-16-M-0004, SPE300-16-D-S660, SPE300-15-D-S641, SPE300-15-D-S644, SPE1C1-16-M-0525, SPE1C1-16-M-0526, and SPE1C1-15-M-1392 and, when appropriate, obtain replacement items that comply with the Act.
2	B.2.a	Defense Logistics Agency Aviation	Determine whether items noncompliant with the Buy American Act were delivered on contract SPE4A6-16-D-5298 and, if appropriate, obtain replacement items that comply with the Act.

Source: The DoD OIG.

Management Comments

Defense Pricing/Defense Procurement and Acquisition Policy



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL SPECIAL PLANS AND OPERATIONS

THROUGH: DIRECTOR, ACQUISITION RESOURCES AND ANALYSIS *NS 11/21/18*

SUBJECT: Response to DoDIG Draft Summary Report on DoD Compliance With the Berry Amendment and the Buy American Act (Project No. D2017-D000CG-0144.000)

As requested, I am providing responses to the general content and recommendations contained in the subject report.

Recommendation A.1: We recommend that the Director, Defense Pricing/Defense Procurement and Acquisition Policy, re-emphasize guidance to DoD contracting personnel on:

- a. The requirement to incorporate and enforce the Berry Amendment provisions and clauses in applicable solicitations and contracts.
- b. Defense Federal Acquisition Regulation Supplement requirements regarding exceptions to the Berry Amendment.
- c. The requirements of the Berry Amendment, such as inclusion of clause, posting award notices, and exception notices into the electronic contract writing systems used by the Air Force and the Defense Logistics Agency.

Response:

Concur. It is anticipated the Director of the Office of Management and Budget (OMB) and the Secretary of Commerce will recommend in the near future that the Secretary of Defense provide additional guidance and information to DoD contracting personnel as a result of an assessment of compliance with the April 18, 2017 Executive Order 13788, Buy American and Hire American. In conjunction this effort, the Department will also address the recommendations of the subject DoDIG report at that time.

Recommendation B.1: We recommend that the Director, Defense Pricing/Defense Procurement and Acquisition Policy, re-emphasize policy guidance to DoD contracting personnel on:

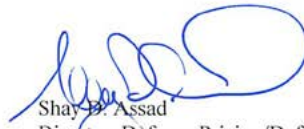
- a. The requirement to incorporate and enforce the Buy American Act provisions and clauses in applicable solicitations and contracts.
- b. The requirements of the Buy American Act, such as inclusion of clauses, into the electronic contract writing systems used by the Air Force and the Defense Logistics Agency.
- c. Defense Federal Acquisition Regulation Supplement requirements regarding exceptions to the Buy American Act.

Defense Pricing/Defense Procurement and Acquisition Policy (cont'd)

Response:

Concur. It is anticipated the Director of the Office of Management and Budget (OMB) and the Secretary of Commerce will recommend in the near future that the Secretary of Defense provide additional guidance and information to DoD contracting personnel as a result of an assessment of compliance with the April 18, 2017 Executive Order 13788, Buy American and Hire American. In conjunction this effort, the Department will also address the recommendations of the subject DoDIG report at that time.

Please contact [REDACTED] at [REDACTED] or [REDACTED] if additional information is required.



Shay B. Assad
Director, Defense Pricing/Defense Procurement
and Acquisition Policy

Acronyms and Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Agency
DPAP	Defense Procurement and Acquisition Policy
FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities
FPDS-NG	Federal Procurement Data System-Next Generation
FSG	Federal Supply Group
NDAA	National Defense Authorization Act
OASN(FM&C)	Office of the Assistant Secretary of the Navy (Financial Management and Comptroller)
SAM	System for Award Management
U.S.C.	United States Code



Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

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