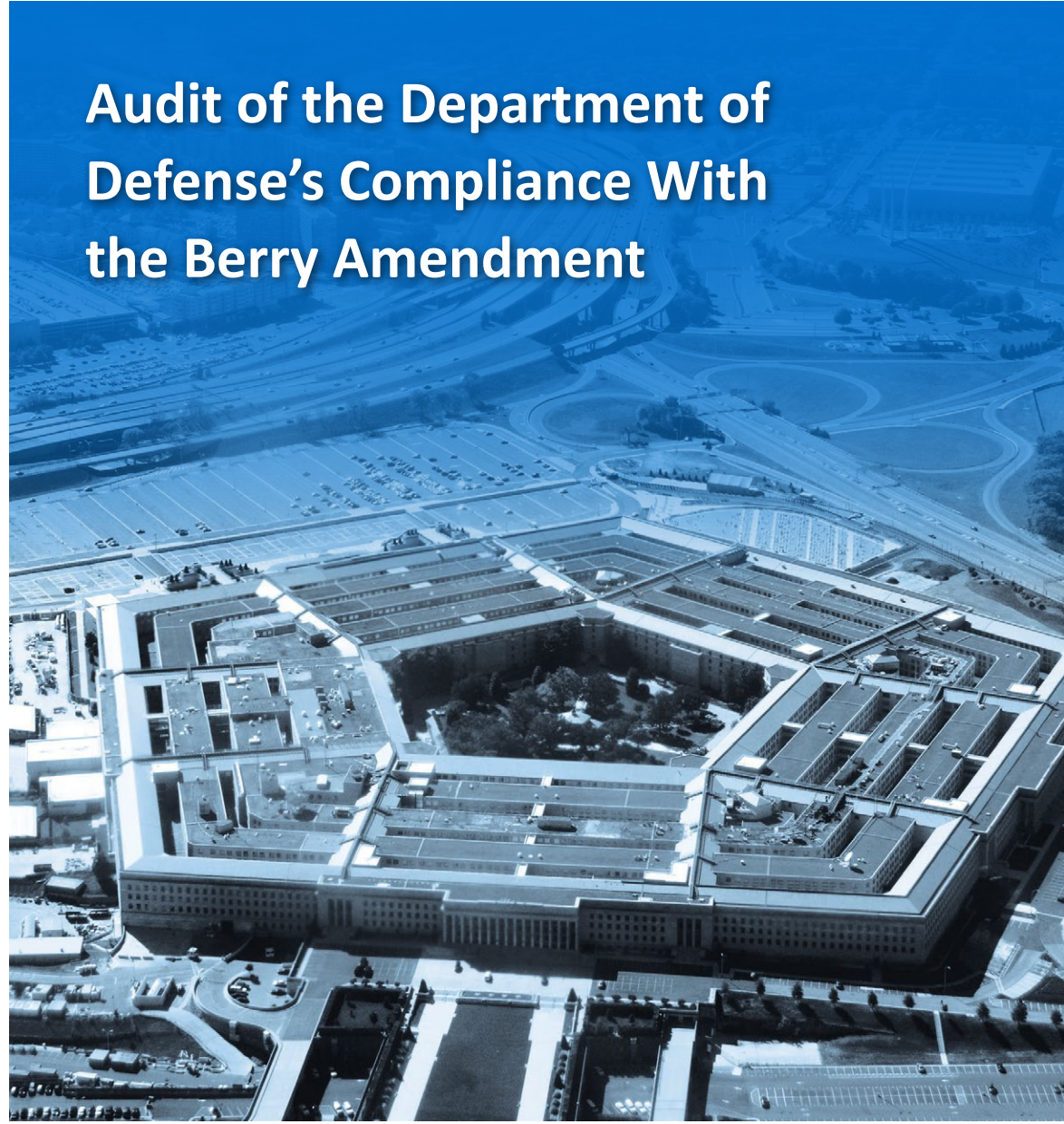




INSPECTOR GENERAL

U.S. Department of Defense

DECEMBER 14, 2020



Audit of the Department of Defense's Compliance With the Berry Amendment

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





Results in Brief

Audit of the Department of Defense's Compliance With the Berry Amendment

December 14, 2020

Objective

The objective of this audit was to determine whether the Military Services and the Defense Logistics Agency (DLA) complied with the Berry Amendment for DoD procurements and acquisitions when purchasing materials and supplies.

Background

The Berry Amendment applies to purchases over the simplified acquisition threshold using funds appropriated or otherwise made available to the DoD. Unless an exception under the Berry Amendment applies, it requires all covered items to be grown, reprocessed, reused, or produced in the United States, regardless of whether they are purchased as end items, components, or materials.

Finding

The Military Services and the DLA generally complied with the Berry Amendment requirements for DoD procurements and acquisitions. Specifically, the Military Services and DLA contracting officials:

- included the required Berry Amendment Defense Federal Acquisition Regulation Supplement (DFARS) clauses in solicitations, for 65 of 74 contracts reviewed, valued at \$4.4 billion; and
- complied with Berry Amendment requirements for the award of 118 of 135 contracts reviewed, valued at \$5.4 billion.

Finding (cont'd)

However, the Military Services and DLA contracting officials:

- issued solicitations for 9 of 74 contracts, valued at \$7 million, without the required Berry Amendment DFARS clauses;
- awarded 6 of 135 contracts, valued at \$14 million, without the required Berry Amendment DFARS clauses; and
- modified an additional 11 of 135 contracts, valued at \$14.3 million, to include the required Berry Amendment DFARS clauses, as a result of our audit.

Additionally, Defense Contract Management Agency officials did not document the Berry Amendment as an item for compliance when conducting initial reviews of contracts for 26 of 44 contracts reviewed, valued at \$796.6 million.

The Military Services and DLA contracting officials and the Defense Contract Management Agency officials did not fully comply with the Berry Amendment requirements due to oversights, limited experience with the Berry Amendment, and a lack of consistent training on the Berry Amendment requirements. In addition, the Military Services and the DLA contracting officials did not fully apply the Berry Amendment recommended best practices meant to help ensure compliance. As a result, the DoD has limited assurance that items procured and delivered were in compliance with the Berry Amendment.

Recommendations

We made recommendations to address our finding, including recommendations reinforcing the requirement to include clauses implementing the Berry Act Amendment in solicitations; establishing mandatory training, implementing best practices; and reviewing and correcting deficiencies identified at specific sites during the audit.



Results in Brief

Audit of the Department of Defense's Compliance With the Berry Amendment

Management Comments and Our Response

This report contains 13 recommendations addressed to Defense Pricing and Contracting, the Military Services, and the DLA. Of the 13 recommendations, 7 were resolved but will remain open until further actions are taken, and 6 were closed. Below is a description of management comments on the 13 recommendations.

The Defense Pricing and Contracting Acting Principal Director agreed to reinforce the requirement to include the Berry Amendment implementing clauses in contract solicitations for covered items; therefore, the recommendation is closed.

Comments and associated actions from the Military Services and the DLA addressed the specifics for eight recommendations to update and enhance training requirements and implement best practices. Of the eight recommendations, four were resolved but will remain open until further actions are taken, and four were closed.

The DLA Acquisition Director, responding for DLA Aviation–Richmond, reviewed active Berry Amendment contracts and determined no modifications were necessary; therefore, the recommendation is closed.

The Procurement Insight/Oversight Director in the Office of the Deputy Assistant Secretary of the Army (Procurement), responding for the Army Contracting Command–Aberdeen Proving Ground, agreed to finalize a standard operating procedure related to Berry Amendment compliance. Therefore, the recommendation is resolved, but will remain open until the Director provides documentation to support that the proposed action is completed.

The Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), responding for the Air Force 1st Special Operation Contracting Squadron, agree to develop a policy for awarding and administering Berry Amendment contracts, and reviewing Berry Amendment contracts. Therefore, the recommendations are resolved, but will remain open until the Principal Deputy Assistant Secretary provides documentation to support that the proposed actions are completed.

All of the recommendations, summaries of management's comments to the recommendations, and our responses are located in the "Recommendations, Management Comments, and Our Response" section of the report. Please see the Recommendations Table on the next page for the status of recommendations.

Recommendations Table

| Management | Recommendations Unresolved | Recommendations Resolved | Recommendations Closed |
|-------------------------------------------------------------------------------------------|----------------------------|--------------------------|------------------------|
| Director, Defense Pricing and Contracting | | | 1 |
| Director, Defense Logistics Agency Acquisition | | 5.a, 5.b | |
| Assistant Secretary of the Army, Acquisition, Logistics, and Technology | | | 2.a, 2.b |
| Assistant Secretary of the Navy, Research, Development, and Acquisition | | | 3.a, 3.b |
| Assistant Secretary of the Air Force, Acquisition, Technology, and Logistics | | 4.a, 4.b | |
| Head of Contracting Activity, Defense Logistics Agency Aviation | | | 6 |
| Head of Contracting Activity, Aberdeen Proving Ground, Natick Contracting Division–Natick | | 7 | |
| Squadron Commander, Air Force 1st Special Operation Contracting Squadron | | 8.a, 8.b | |

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**

December 14, 2020

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION AND SUSTAINMENT
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE NAVY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
AUDITOR GENERAL, DEPARTMENT OF THE AIR FORCE

SUBJECT: Audit of the Department of Defense's Compliance With the Berry Amendment
(Report No. DODIG-2021-033)

This final report provides the results of the DoD Office of Inspector General's audit. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

This report contains 6 recommendations that we consider closed and 7 recommendations that we consider resolved and open. As described in the Recommendations, Management Comments, and Our Response section of this report, we will close the open recommendations when you provide us documentation showing that all agreed-upon actions to implement the recommendations are completed. Therefore, please provide us within 90 days your response concerning specific actions in process or completed on the recommendations. Send your response to either followup@dodig.mil if unclassified or rfunet@dodig.smil.mil if classified SECRET.

If you have any questions, please contact me at [REDACTED]

A handwritten signature in cursive script, reading "Theresa S. Hull", is positioned above the typed name.

Theresa S. Hull
Assistant Inspector General for Audit
Acquisition, Contracting, and Sustainment

Contents

Introduction

| | |
|----------------------------------|----|
| Objective..... | 1 |
| Background..... | 1 |
| Contracts Reviewed..... | 7 |
| Review of Internal Controls..... | 10 |

Finding. The DoD’s Compliance With the Berry Amendment

| | |
|--------------------------------------------------------------------|----|
| | 11 |
| Berry Amendment Compliance During Pre-Award Process..... | 12 |
| Berry Amendment Compliance During Award Process..... | 16 |
| DCMA Contract Administration..... | 27 |
| Items Inspected During Site Visits..... | 29 |
| Comparison on Prior Series of Berry Amendment-Related Reports..... | 31 |
| Followup on DAU Training Completion..... | 34 |
| Conclusion..... | 36 |
| Recommendations, Management Comments, and Our Response..... | 36 |

Appendixes

| | |
|--------------------------------------------------------------------------------------------------------------------|----|
| Appendix A. Scope and Methodology..... | 45 |
| Universe and Sample Size Selection..... | 45 |
| Review of Documentation and Interviews..... | 47 |
| Contract Administration Sample..... | 49 |
| Prior Coverage..... | 50 |
| Use of Computer-Processed Data..... | 51 |
| Use of Technical Assistance..... | 51 |
| Appendix B. Contract Analysis..... | 52 |
| Appendix C. Site-Specific Results by Military Service and the DLA..... | 60 |
| Appendix D. DCMA Contract Analysis..... | 71 |
| Appendix E. Results for Defense Contract Management Agency Sites Reviewed..... | 74 |
| Appendix F. Exhibits of Berry Amendment DPC Recommended Best Practices and Additional Measures Implemented..... | 81 |

Contents (cont'd)

Management Comments

| | |
|----------------------------------------------------------------------------------------------|----|
| Defense Pricing and Contracting..... | 90 |
| Deputy Assistant Secretary of the Army (Procurement)..... | 91 |
| Deputy Assistant Secretary of the Navy (Procurement)..... | 93 |
| Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics)..... | 94 |
| Defense Logistics Agency Acquisition..... | 96 |
| Army Materiel Command-Aberdeen Proving Ground..... | 99 |

| | |
|----------------------------------------|------------|
| Acronyms and Abbreviations..... | 103 |
|----------------------------------------|------------|



Introduction

Objective

The objective of this audit was to determine whether the Military Services and the Defense Logistics Agency (DLA) complied with the Berry Amendment for DoD procurements and acquisitions when purchasing materials and supplies. See Appendix A for the scope and methodology and prior coverage related to the objective.

Background

We performed this audit in response to Section 1601 of the National Defense Authorization Act for FY 2014.¹ The National Defense Authorization Act for FY 2014 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 The DoD OIG previously conducted a series of audits on compliance with the Berry Amendment in FYs 2015 through 2018. The series included separate reports for the Army, Navy, Air Force, and DLA, and a summary report. See Appendix A for the DoD OIG's prior coverage on compliance with the Berry Amendment.

The Berry Amendment

The Berry Amendment promotes the purchase of goods manufactured in the United States by directing how the DoD can use funds to purchase items such as fabrics, food, and hand tools. The Amendment applies to end items and components for purchases over the simplified acquisition threshold (SAT) (\$250,000).³ The Berry Amendment directs that DoD officials must ensure that funds appropriated or otherwise available to the DoD are not used to procure the following Federal Supply Group (FSG) items if the items were not grown, reprocessed, reused, or produced in the United States:

- FSG 51 – hand tools
- FSG 52 – measuring tools

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, 2011 (amended 2019), and implemented by Defense Federal Acquisition Regulation Supplement Part 225, "Foreign Acquisition," Subpart 225.70, "Authorization Acts, Appropriations Acts, And Other Statutory Restrictions on Foreign Acquisition," 225.7002-1, "Restrictions."

³ According to Defense Federal Acquisition Regulation Supplement Part 252, "Solicitation Provisions and Contract Clauses," Clause 252.225-7012, "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.

- FSG 83 – textiles, leather, furs, apparel, and shoes⁴
- FSG 84 – clothing, individual equipment, and insignia
- FSG 89 – subsistence (food)⁵

Table 1 outlines the requirements for the Berry Amendment.

Table 1. Berry Amendment Requirements

| Berry Amendment | |
|------------------------------------|----------------------------------------------------------------|
| Applies to | DoD |
| Covered items | Primarily FSGs 51, 52, 83, 84, and 89 |
| Thresholds | Greater than the simplified acquisition threshold (\$250,000)* |
| Domestic content | 100 percent |
| Applicable DFARS clauses | 252.225-7006, 252.225-7012, 252.225-7015 |
| Place of production or manufacture | United States |
| Where item will be used | Anywhere |
| Contractor certification | No |

*The Berry Amendment applies unless acquisitions are at or below the simplified acquisition threshold, a domestic non-availability determination, or an exception to compliance applies. Defense Federal Acquisition Regulation Supplement 225.7002-2 establishes exceptions to compliance.

Source: The Defense Acquisition University.

DoD Stakeholders

Defense Pricing and Contracting

Defense Pricing and Contracting (DPC), Office of the Under Secretary of Defense for Acquisition and Sustainment, is responsible for all pricing, contracting, and procurement policy matters, including e-business, in the DoD. The DPC executes policy through the timely update of the Defense Federal Acquisition Regulation Supplement (DFARS) and Procedures, Guidance, and Information.

In response to the recommendations in Report No. DODIG-2018-070, in June 2017, the DPC issued a memorandum to improve compliance with the Berry Amendment, and stated that members of the contracting workforce should complete the revised Defense Acquisition University (DAU) training, “Continuous Learning Center (CLC) 125 Berry Amendment,” as part of their ongoing professional development. The memorandum does not require the contracting workforce to complete the training on an annual or refresher basis.

⁴ 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.

⁵ Our review did not include FSG 89 – subsistence (food). There are many exceptions for items within this FSG, and we were not able to pull a reliable sample to test compliance.

Defense Acquisition University, “CLC 125 Berry Amendment”

The Berry Amendment training is an online DAU course, “CLC 125 Berry Amendment.” In September 2016, the DAU issued a revised version of CLC 125, replacing outdated material and eliminating gaps in the steps for properly implementing the Berry Amendment for DoD procurements. The DAU re-arranged the course content to better align the course with implementing guidance in the DFARS. The revised course meets the goal of emphasizing the important aspects of the law and provides the user the best courses of action on implementing its requirements. Specifically, after completing the DAU’s “CLC 125 Berry Amendment” course, the DoD contracting workforce responsible for procuring textiles and other covered items should have the knowledge base to select the necessary statutory requirements to apply during the acquisition process in order to comply with the provisions of the Berry Amendment. According to the DAU, the DoD contracting workforce will learn the purpose of the Berry Amendment; its requirements during the acquisition process for covered items; its rules that direct the acquisition of textiles, clothing, and food; and exceptions within the Berry Amendment that apply to specific situations.⁶

Defense Contract Management Agency

The Defense Contract Management Agency (DCMA) provides contract administration services for the DoD and is an essential part of the acquisition process from pre-award to sustainment. The DCMA ensures that DoD customers get the equipment they need, at the projected cost, and that the equipment meets all performance requirements in the contracts.

Army

U.S. Army Materiel Command—Detroit, Michigan; Natick, Massachusetts; and Aberdeen, Maryland

The U.S. Army Materiel Command develops and delivers materiel readiness solutions to ensure globally dominant land force capabilities. As the Army’s lead materiel integrator, the Army Materiel Command manages the global supply chain, synchronizing logistics and sustainment activities across the Army. The Army Materiel Command oversees 10 major subordinate commands, including the U.S. Army Contracting Command (ACC). The ACC is the Army’s principal buying agent and ensures that soldiers have what they need to be successful, including food and clothing.

⁶ DAU, “CLC 125 Berry Amendment,” course objective.

U.S. Army Mission and Installation Contracting Command–Fort Sill, Oklahoma

The U.S. Army Mission and Installation Contracting Command is a major subordinate command of the ACC. The U.S. Army Mission and Installation Contracting Command serves the warfighter by acquiring equipment, supplies, and services vital to the U.S. Army mission and well-being of soldiers and their families.

Navy and Marine Corps

Naval Supply Systems Command Fleet Logistics Center–Norfolk, Virginia

The Naval Supply Systems Command (NAVSUP) Fleet Logistics Center manages the logistics of supply operations, conventional ordnance, contracting, resale, fuel, transportation, and security. NAVSUP is also responsible for providing quality-of-life services to warfighters, including food services, postal services, Navy Exchanges, and movement of household goods.

Naval Sea Systems Command–Panama City, Florida

The Naval Sea Systems Command supports the ships, aircraft, weapons systems, and computer systems of the Navy and Marine Corps. Naval Surface Warfare Center–Panama City Division is one of ten Naval Sea Systems Command’s warfare centers that supply the technical operations, people, technology, engineering services and products needed to equip and support the fleet and meet the warfighter’s needs.

Naval Air Systems Command–Lakehurst, New Jersey

The Naval Air Systems Command’s mission is to provide full life-cycle support of naval aviation aircraft, weapons, and systems operated by sailors and marines. This support includes research, design, development and systems engineering; acquisition; test and evaluation; training facilities and equipment; repair and modification; and in-service engineering and logistics support. The Naval Air Warfare Center Aircraft Division (NAWCAD) is one of two product centers within the Naval Air Systems Command. NAWCAD supports research, development, test, evaluation, engineering, and fleet support of Navy and Marine Corps air vehicle systems and trainers.

Marine Corps Systems Command–Quantico, Virginia

The Marine Corps Systems Command (MCSC) serves the Department of the Navy for the Marine Corps ground weapon and information technology system programs. The MCSC provides the Marine Corps with current and future expeditionary capabilities to respond to crises.

Air Force

Air Force Materiel Command–Tinker Air Force Base, Oklahoma and Wright Patterson Air Force Base, Ohio

The Air Force Materiel Command manages installation and mission support, discovery and development, test and evaluation, and life cycle management services and sustainment for every major Air Force weapon system. The Air Force Life Cycle Management Center is one of six centers reporting to the Air Force Materiel Command. The Air Force Life Cycle Management Center provides holistic management of weapon systems across their life cycle. Additionally, the Air Force Life Cycle Management Center’s portfolio includes information technology systems and networks; command, control, communications, intelligence, surveillance, and reconnaissance systems; weapons; strategic systems; aerial platforms; and various supporting systems such as training simulators and personal equipment.

The Air Force Sustainment Center is one of five specialized centers assigned to the Air Force Materiel Command. The Air Force Sustainment Center sustains weapon system readiness through depot maintenance, supply chain management, and installation support. The Air Force Sustainment Center also provides sustainment efforts for various weapons programs as well as aircraft engines and component parts.

Air Force Special Operations Command–Hurlburt Field, Florida

The Air Force Special Operations Command provides Air Force special operations forces for worldwide deployment and assignment to regional unified commands. The 1st Special Operations Wing is one of three Air Force active duty special operations wings that fall under Air Force Special Operations Command. The 1st Special Operations Contracting Squadron provides operational contract support to the 1st Special Operations Wing. Specifically, the 1st Special Operations Contracting Squadron provides a full range of operational contract support to award and administer commodity, service, and construction requirements and administers the installation’s Government Purchase Card Program and Quality Assurance Program.

U.S. Air Force Academy–Colorado Springs, Colorado

The U.S. Air Force Academy (USAFA) 10th Contracting Squadron is a part of the 10th Mission Support Group of the USAFA. The 10th Mission Support Group is responsible for supply and contracting support for more than 14,000 military and civilian personnel.

Defense Logistics Agency

DLA Troop Support–Philadelphia, Pennsylvania

DLA Troop Support manages five supply chains that provide the Nation’s military and government partners with food and feeding equipment, clothing and textile items, construction and equipment materials, medical material and pharmaceuticals, and industrial hardware consumable repair parts.

DLA Aviation–Richmond, Virginia

DLA Aviation manages the demand and supply for airpower solutions for the military. Specifically, DLA Aviation is the U.S. military’s integrated material manager for more than 1.2 million national stock number items, industrial retail supply, and depot-level repairable acquisitions.⁷

DLA Land and Maritime–Warren, Michigan

DLA Land and Maritime provides global logistical support to the Military Services. Specifically, DLA Land and Maritime provides logistical services to Navy shipyards and Army and Marine Corps industrial sites. Additionally, DLA Land and Maritime directly supports Navy, Army, and Marine Corps customers while working with numerous suppliers to fulfill requirements for assigned stock classes across the DoD.

Berry Amendment Criteria

United States Code

The Berry Amendment promotes the purchase of goods manufactured in the United States by directing how the DoD can use funds to purchase items such as fabrics, food, and hand tools.⁸ Section 2533a, title 10, United States Code, 2011, (10 U.S.C. § 2533a, [2011]) allows the Secretary of Defense or the Secretaries of the Military Departments exceptions for purchasing certain items from non-U.S. sources if those items are unavailable from U.S. manufacturers at satisfactory quality and sufficient quantity at U.S. market prices. The exceptions include the purchase for resale purposes in commissaries and purchases not greater than the SAT.⁹ Additionally, 10 U.S.C. § 2533a (2011), allows for the exception of chemical warfare protective clothing purchases. However, if the Secretary of Defense or

⁷ A national stock number is a 13-digit code that acts as the official label to an item of supply that is repeatedly procured, stocked, stored, issued, and used throughout the federal supply system.

⁸ Section 2533a, title 10, United States Code, 2011 (amended 2019).

⁹ Public Law 115-91, “National Defense Authorization Act for Fiscal Year 2018,” Section 805, “Increased Simplified Acquisition Threshold,” increased the SAT from \$150,000 to \$250,000 on December 12, 2017.

the Secretary of the Military Department concerned applies an availability or chemical warfare clothing exception with respect to the contract, the Secretary must, no later than 7 days after the award of the contract, post a notification that the exception has been applied on the Federal Business Opportunities website (FBO.gov).¹⁰

Defense Federal Acquisition Regulation Supplement

The DFARS provides the DoD implementation and supplementation of the Federal Acquisition Regulation (FAR). The DFARS contains requirements of law, DoD-wide policies, and 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.

The DFARS clauses required on contracts related to the Berry Amendment include DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” in solicitations and contracts exceeding the SAT; and DFARS 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools,” in solicitations and contracts exceeding the SAT that require delivery of hand or measuring tools. DFARS 252.225-7012 is required for contracts acquiring goods under FSG codes 83 and 84. DFARS 252.225-7015 is required on contracts whose acquisitions are under FSG codes 51 and 52.

Contracts Reviewed

We queried the Federal Procurement Data System–Next Generation, the central repository of Federal contracting information, and identified 533 contracts, valued at approximately \$10 billion, subject to the Berry Amendment. The Military Services and the DLA issued the contracts from October 1, 2017, through July 31, 2019, and Table 2 summarizes the contracts in our universe.

¹⁰ The System for Award Management (SAM.gov) replaced Federal Business Opportunities (FBO.gov) on November 12, 2019. The contract sample includes contracts issued from October 1, 2017, through July 31, 2019; therefore, this report will reference FBO.gov.

Table 2. Berry Amendment Contracts Universe

| DoD Component | Number of Contracts | Total Contract Value* (in millions) |
|---------------|---------------------|----------------------------------------|
| Army | 167 | \$4,012.3 |
| Navy | 37 | 538.4 |
| Air Force | 72 | 295.3 |
| DLA | 257 | 5,164.2 |
| Total | 533 | \$10,010.2 |

*The total contract value (base plus option years) represents contracts issued from October 1, 2017, through July 31, 2019.

Source: The DoD OIG.

We nonstatistically selected 15 contracting offices based on the number of contracts and the FSGs identified, to ensure that we had representation of each FSG subject to the Berry Amendment.¹¹ Our sample consisted of 135 contracts, valued at approximately \$5.4 billion. Table 3 shows the number of contracts reviewed and the total contract value by each site, for each Military Service and the DLA.¹² See Appendix B for the Berry Amendment contracts reviewed by Military Service and the DLA.

Table 3. Berry Amendment Contracts Reviewed

| Contracting Agency | Number of Contracts | Total Contract Value* (in millions) |
|-------------------------------------------------------------|---------------------|----------------------------------------|
| Army | 55 | \$3,328.1 |
| ACC–Detroit Arsenal | 9 | 225.1 |
| Aberdeen Proving Ground–Aberdeen | 20 | 1,376.2 |
| Aberdeen Proving Ground, Natick Contracting Division–Natick | 20 | 1,684.8 |
| Mission and Installation Contracting Command–Fort Sill | 6 | 42.0 |
| Navy | 27 | 504.9 |
| NAVSUP Fleet Logistics Center–Norfolk | 2 | 92.7 |
| Naval Surface Warfare Center–Panama City Division | 4 | 34.1 |
| NAWCAD–Lakehurst | 13 | 19.4 |
| MCSC–Quantico | 8 | 358.7 |

¹¹ We did not review FSG 89 – subsistence (food). There are many exceptions for items within this FSG, and we were not able to pull a reliable sample to test compliance.

¹² Our review included solicitations for 74 contracts. We did not review solicitations for 61 contracts (totaling 135 contracts) because the procurements (1) contained exceptions to the Berry Amendment, (2) were available through one of the required sources identified in FAR Part 8, “Required Sources of Supplies and Services,” (3) were Blanket Purchase Agreements and the Berry Amendment did not apply, or (4) did not contain formal solicitations.

Table 3. Berry Amendment Contracts Reviewed (cont'd)

| Contracting Agency | Number of Contracts | Total Contract Value* (in millions) |
|--------------------------------------------------------------------------------------------------------|---------------------|-------------------------------------|
| Air Force | 20 | 239.6 |
| Air Force Special Operations Command 1st Special Operations Contracting Squadron– Hurlburt Field | 2 | .8 |
| Air Force Sustainment Center– Tinker Air Force Base | 4 | 12.3 |
| Air Force Life Cycle Management Center– Wright Patterson Air Force Base | 5 | 214 |
| USAFA 10th Contracting Squadron– Colorado Springs | 9 | 12.5 |
| DLA | 33 | 1,327 |
| DLA Troop Support Clothing and Textiles–Philadelphia | 19 | 1,283 |
| DLA Aviation–Richmond | 10 | 8.6 |
| DLA Land and Maritime–Warren | 4 | 35.5 |
| Total | 135 | \$5,399.6 |

*The total contract value includes options for the period for contracts issued from October 1, 2017, through July 31, 2019. The individual total contract values per site do not add up to the overall totals due to rounding.

Source: The DoD OIG.

Contract Administration

The DCMA administered 88 out of 135 contracts reviewed.¹³ We nonstatistically selected 10 DCMA field offices that administered contracts across the Military Services and the DLA. Specifically, we reviewed the contract administration for 44 out of 88 contracts, valued at \$1.5 billion, assigned to the DCMA.¹⁴ Our sample also included DCMA field offices that administered contracts that did not contain the required Berry Amendment clauses, or contained modifications to include the required Berry Amendment clauses. See Appendix D for the contracts reviewed that the DCMA administered.

¹³ The Army, Navy, Air Force, and DLA administered the remaining 47 contracts.

¹⁴ DCMA officials at 2 sites did not have inspection responsibilities for 7 of the 44 contracts; however, officials at those sites provided contract administration documentation for the 7 contracts.

Review of Internal Controls

DoD Instruction 5010.40 requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls.¹⁵

We identified weaknesses with Army, Navy, Air Force, and DLA internal controls for awarding contracts in compliance with the Berry Amendment. Specifically, Military Service and DLA contracting officials did not initially include the required Berry Amendment DFARS clauses in all solicitations and contracts. As a result of our audit, contracting officials took corrective action and modified some, but not all, contracts to include the required Berry Amendment clauses. Additionally, the DCMA did not always identify the Berry Amendment requirement when administering contracts. We will provide a copy of the report to the senior officials responsible for internal controls in the Military Services, the DLA, and the DCMA.

¹⁵ DoD Instruction 5010.40, "Managers' Internal Control Program Procedures," May 30, 2013.

Finding

The DoD's Compliance With the Berry Amendment

The Military Services and the DLA generally complied with the Berry Amendment requirements for DoD procurements and acquisitions. Specifically, the Military Services and DLA contracting officials:

- included the required Berry Amendment DFARS clauses in solicitations, for 65 of 74 contracts reviewed, valued at \$4.4 billion;¹⁶ and
- complied with Berry Amendment requirements for the award of 118 of 135 contracts reviewed, valued at \$5.4 billion.¹⁷

However, opportunities exist to increase compliance and consistency in the implementation of Berry Amendment requirements throughout the pre-award, award, and administration phases of the contracting process.

Specifically, the Military Services and DLA contracting officials:

- issued solicitations for 9 of 74 contracts, valued at \$7 million, without the required Berry Amendment DFARS clauses;
- awarded 6 of 135 contracts, valued at \$14 million, without the required Berry Amendment DFARS clauses; and
- modified an additional 11 of 135 contracts, valued at \$14.3 million, to include the required Berry Amendment DFARS clauses, as a result of our audit.

Additionally, DCMA officials did not document the Berry Amendment as an item for compliance when conducting initial reviews of contracts assigned to the DCMA for administration for 26 of 44 contracts reviewed, valued at \$796.6 million.

The Military Services and DLA contracting officials and the DCMA officials did not fully comply with the Berry Amendment requirements due to oversights, limited experience with the Berry Amendment, and a lack of consistent training on the Berry Amendment requirements. Furthermore, the Military Services and the DLA did not consistently require the DAU "CLC 125 Berry Amendment," course or apply the DPC recommended best practices meant to help ensure compliance with the Berry Amendment. As a result, the Military Services, the DLA, and the DCMA have limited assurance that items procured and delivered were in compliance with

¹⁶ We did not review solicitations for 61 contracts (totaling 135 contracts) because the procurements (1) contained exceptions to the Berry Amendment, (2) were available through one of the required sources identified in FAR Part 8, "Required Sources of Supplies and Services," (3) were Blanket Purchase Agreements and the Berry Amendment did not apply, or (4) did not contain formal solicitations.

¹⁷ Military Services and the DLA contracting officials complied with Berry Amendment requirements by implementing the required DFARS clauses, properly applying exceptions, and evaluating the application of the Berry Amendment when awarding Blanket Purchase Agreements.

the Berry Amendment. The inclusion of the required Berry Amendment clauses provides reasonable assurance that the procured products will be grown, produced, reprocessed, or reused in the United States.

Berry Amendment Compliance During Pre-Award Process

The Army, Navy, Air Force, and DLA contracting officials at 11 of 15 sites visited included the required Berry Amendment implementing clauses in solicitations for 65 of 74 contracts reviewed, valued at \$4.4 billion.¹⁸ The DFARS states that clause 252.225-7012, “Preference for Certain Domestic Commodities,” should be used in solicitations issued for items subject to the Berry Amendment that exceed the simplified acquisition threshold. In addition, clause 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools,” should be used in solicitations issued for the acquisition of items subject to the Berry Amendment, that exceed the simplified acquisition threshold, and that require delivery of hand or measuring tools.¹⁹ Table 4 shows a summary of the results of our review of solicitations. See Appendix C for results at the specific sites.

Table 4. Solicitations Reviewed for Berry Amendment Compliance

| DoD Component | Number of Contracts Reviewed | Total Contract Value | Solicitations With DFARS Clauses | Total Contract Value | Solicitations Without DFARS Clauses | Total Contract Value |
|---------------|------------------------------|------------------------|----------------------------------|------------------------|-------------------------------------|----------------------|
| Army | 19 | \$2,955,018,068 | 19 | \$2,955,018,068 | – | – |
| Navy | 21 | 495,700,980 | 19 | 495,121,686 | 2 | 579,294 |
| Air Force | 9 | 11,962,034 | 7 | 11,166,755 | 2 | 795,279 |
| DLA | 25 | 995,869,131 | 20 | 1,080,138,777 | 5 | 5,638,398 |
| Total | 74 | \$4,548,458,257 | 65 | \$4,541,445,287 | 9 | \$7,012,971 |

Source: The DoD OIG.

Solicitations Issued Without the Required Berry Amendment DFARS Clauses

Navy, Air Force, and DLA contracting officials at 3 of 15 sites visited did not include the required Berry Amendment DFARS clauses in solicitations for 9 of 74 contracts reviewed, valued at \$7 million. Table 5 shows the sites visited where contracting officials awarded contracts without the required Berry Amendment DFARS clauses.

¹⁸ We did not review solicitations for 61 contracts (totaling 135 contracts) because the procurements (1) contained exceptions to the Berry Amendment, (2) were available through one of the required sources identified in FAR Part 8, “Required Sources of Supplies and Services,” (3) were Blanket Purchase Agreements and the Berry Amendment did not apply, or (4) did not contain formal solicitations.

¹⁹ DFARS Part 225, “Foreign Acquisition,” Subpart DFARS 225.7002-3, “Contract Clauses.”

Table 5. Army, Navy, Air Force, and DLA Solicitations Issued Without the Required Berry Amendment DFARS Clauses

| Contracting Agency | Number of Contracts Reviewed | Solicitations Without DFARS Clauses | Contract Number | Total Contract Value | Omitted Berry Amendment DFARS Clause |
|-------------------------------------------------------------------------------------------------|------------------------------|-------------------------------------|------------------|----------------------|--------------------------------------|
| NAWCAD–Lakehurst | 9 | N68335-18-R-0286 | N68335-19-C-0475 | \$299,419 | 252.225-7012 252.225-7015 |
| | | N68335-19-R-0026 | N68335-19-C-0219 | 279,875 | 252.225-7012 252.225-7015 |
| Air Force Special Operations Command 1st Special Operations Contracting Squadron–Hurlburt Field | 2 | FA4417-18-Q-0241 | FA4417-18-P-0186 | 491,784 | 252.225-7012 |
| | | FA4417-18-Q-0229 | FA4417-18-P-0155 | 303,495 | 252.225-7012 |
| DLA Aviation–Richmond | 5 | SPE4AX-19-R-0009 | SPE4AX-19-D-0011 | 1,843,856 | 252.225-7012 252.225-7015 |
| | | SPE4A6-19-R-0169 | SPE4A6-19-C-0091 | 1,833,243 | 252.225-7015 |
| | | SPE4A6-19-R-0110 | SPE4A6-19-D-0117 | 855,855 | 252.225-7015 |
| | | SPE4A5-18-R-0259 | SPE4A5-19-D-0002 | 610,518 | 252.225-7015 |
| | | SPE4A6-19-R-0129 | SPE4A6-19-C-0076 | 494,926 | 252.225-7012 252.225-7015 |
| Total | 16 | | | \$7,012,971 | |

Source: The DoD OIG.

Omission of the clauses in solicitations resulted in contracting officers issuing nine contracts without the required Berry Amendment DFARS clauses. As a result of our audit, contracting officials modified six of those contracts to include the required clauses.²⁰ Contracting officials at the identified sites stated that the omission of the clauses was an oversight due to the infrequent application of the Berry Amendment in their procurements and a lack of recent training on the topic. Additionally, two contracting officials at NAWCAD–Lakehurst issued two solicitations without the required DFARS clauses for two contracts awarded in 2019 and last completed the updated DAU training in 2017. Four contracting officials at DLA Aviation–Richmond issued five solicitations without the required DFARS clauses and awarded one contract in 2018 and four contracts in 2019. However, DLA Aviation–Richmond contracting officials last completed the updated DAU training in 2017.

²⁰ Contracting officials stated that they did not modify three contracts because deliveries for the procurements were completed.

Although contracting officials completed the updated DAU training, there are still inconsistencies with implementing the Berry Amendment requirements in solicitations. Including the required DFARS clauses in solicitations for Berry Amendment covered items, should provide reasonable assurance regarding the compliance with the Berry Amendment requirements. We recommend that the DPC Director issue a memorandum to the contracting workforce to reinforce the requirement to include the Berry Amendment implementing clauses in contract solicitations.

Best Practices and Additional Measures Implemented During Pre-Award Process

The Army, Navy, Air Force, and DLA sites reviewed inconsistently applied the DPC recommended best practices in the pre-award process for compliance with the Berry Amendment.²¹ Specifically, the DPC developed a list of best practices to help ensure compliance with the Berry Amendment, including conducting market research, placing a sources sought notification on FBO.gov, and including the full text of the clause in solicitations. Table 6 lists the DPC best practices by site and number of contracts to which contracting officials applied the best practice. See Appendix C for details of the DPC recommended best practices implemented by the sites reviewed.

Table 6. DPC Best Practices Used During the Pre-Award Process

| DPC Best Practice | Contracting Office | Number of Contracts Best Practice was Applied to |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------|--------------------------------------------------|
| Conduct market research to include considerations for the Berry Amendment Requirement. | ACC–Detroit Arsenal | 3 out of 6 |
| | Aberdeen Proving Ground–Aberdeen | 1 out of 14 |
| | Aberdeen Proving Ground, Natick Contracting Division–Natick | 4 out of 12 |
| | MCSC–Quantico | 4 out of 8 |
| | USAFA 10th Contracting Squadron–Colorado Springs | 5 out of 6 |
| | DLA Troop Support Clothing and Textiles–Philadelphia | 6 out of 18 |

²¹ The DPC recommended best practices can be found in the DAU “CLC 125 Berry Amendment” course and the DPC Frequently Asked Questions web site at https://www.acq.osd.mil/dpap/cpic/ic/berry_amendment_10_usc_2533a.html.

Table 6. DPC Best Practices Used During the Pre-Award Process (cont'd)

| DPC Best Practice | Contracting Office | Number of Contracts Best Practice was Applied to |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------|--------------------------------------------------|
| Place a sources sought on FBO.gov to determine whether product is available domestically. | Aberdeen Proving Ground, Natick Contracting Division–Natick | 3 out of 4 |
| | MCSC–Quantico | 3 out of 6 |
| | USAFA 10th Contracting Squadron–Colorado Springs | 3 out of 4 |
| | DLA Troop Support Clothing and Textiles–Philadelphia | 14 out of 15 |
| Develop solicitations that contain the appropriate DFARS clauses in full text. | NAVSUP Fleet Logistics Center–Norfolk | All 2 |
| | USAFA 10th Contracting Squadron–Colorado Springs | 4 out of 6 |
| | DLA Troop Support Clothing and Textile–Philadelphia | 8 out of 16 |

Source: The DoD OIG.

In addition to the DPC recommended best practices, some of the Army, Navy, Air Force, and DLA sites reviewed implemented additional measures during the pre-award process to ensure compliance with the Berry Amendment. For example, contracting officials at four sites included a Berry Amendment notice outlining the requirements for compliance in solicitations.²² Additionally, NAWCAD–Lakehurst contracting officials completed pre-solicitation procurement plans for procurements above the SAT, which included a section stating Berry Amendment requirements applied to the procurements. In February 2020, NAWCAD–Lakehurst contracting officials updated the pre-solicitation procurement plan to inform contracting personnel that the acquisition of hand or measuring tools requires both DFARS 252.225-7012 and 252.225-7015 to be included in solicitations and contracts. Contracting officials at three sites included Berry Amendment self-certifications in contractor proposals.²³ Contracting officials at two sites also included a requirement in solicitations for contractors to provide an identification of sources for all components of clothing or textile items.²⁴ These additional measures helped to clearly identify the Berry Amendment requirements throughout the contracting process. See Appendix F for examples of the site-specific additional measures.

²² ACC–Detroit Arsenal, Aberdeen Proving Ground–Aberdeen, Aberdeen Proving Ground, Natick Contracting Division–Natick, and DLA Troop Support Clothing and Textiles–Philadelphia.

²³ MCSC–Quantico, USAFA 10th Contracting Squadron–Colorado Springs, and DLA Troop Support Clothing and Textiles–Philadelphia.

²⁴ USAFA 10th Contracting Squadron–Colorado Springs and DLA Troop Support Clothing and Textiles–Philadelphia.

The DPC recommended best practices should be used to help ensure compliance with the Berry Amendment requirements. All of the Military Services and the DLA have opportunities to increase the use of DPC recommended best practices or implement additional measures for further compliance with the Berry Amendment. The Army, Navy, Air Force, and DLA should include the DPC recommended best practices as well as the additional measures identified during the audit into contracting guidance and practices for future procurements to further ensure compliance with the Berry Amendment.

Berry Amendment Compliance During Award Process

The Army, Navy, Air Force, and DLA contracting officials at 14 of 15 sites visited complied with Berry Amendment requirements when awarding 118 of 135 contracts reviewed, valued at \$5.4 billion, by implementing the required Berry Amendment DFARS clauses, properly applying exceptions, and evaluating the application of the Berry Amendment when awarding Blanket Purchase Agreements (BPAs).

Specifically, the Army, Navy, Air Force, and DLA contracting officials awarded 96 contracts, subject to the Berry Amendment, in accordance with DFARS section 225.7002.²⁵ Additionally, contracting officials properly applied exceptions to 16 contracts, valued at \$530 million, and awarded 11 contracts, as BPAs, valued at \$55 million. Table 7 shows the number of contracts reviewed, contracts with the required Berry Amendment DFARS clause, contracts with applied exceptions, and contracts awarded as BPAs.²⁶ See Appendix C for results on the specific sites.

²⁵ DFARS Part 225, "Foreign Acquisition," Subpart DFARS 225.7002, "Restrictions on food, clothing, fabrics, hand or measuring tools, and flags."

²⁶ Contracts with applied exceptions or that were awarded as BPAs with call order limits under the SAT are not subject to the Berry Amendment.

Table 7. Berry Amendment Contracts Reviewed, Contracts With DFARS Clauses, Contracts With Applied Exceptions, and Contracts Awarded as BPAs

| DoD Component | Number of Contracts Reviewed | Total Contract Value | Number of Contracts Awarded With DFARS Clauses ¹ | Total Contract Value | Number of Contracts With Applied Exceptions | Total Contract Value | Number of Contracts Awarded as BPAs | Total Contract Value |
|------------------|------------------------------|------------------------|-------------------------------------------------------------|------------------------|---------------------------------------------|----------------------|-------------------------------------|----------------------|
| Army | 55 | \$3,328,204,333 | 42 ² | \$3,264,703,151 | 7 | \$267,267,002 | 6 | \$42,000,000 |
| Navy | 27 | 504,911,507 | 22 | 502,765,944 | – | – | – | – |
| Air Force | 20 | 239,602,117 | 9 | 28,278,640 | 3 | 197,240,798 | 5 | 12,950,000 |
| DLA | 33 | 1,326,890,288 | 23 | 1,318,262,074 | 6 | 65,657,511 | – | - |
| Total | 135 | \$5,399,608,245 | 96 | \$5,114,009,809 | 16 | \$530,165,311 | 11 | \$54,950,000 |

¹ This table does not include contracts that contracting officials awarded without the DFARS clauses or contracts that were modified after our audit announcement to include the clauses.

² Army contracts awarded with the DFARS clauses includes one contract awarded without the DFARS clause; however, the contracting official modified the contract before our audit announcement to include the clause.

Source: The DoD OIG.

Contracts Awarded Without the Required Berry Amendment DFARS Clauses

For the Army, Navy, and Air Force sites visited, contracting officials did not include the required Berry Amendment DFARS clauses for six contracts reviewed, valued at \$14 million. Table 8 shows the sites visited where contracting officials awarded contracts without the required Berry Amendment DFARS clauses.

Table 8. Military Service and DLA Contracts Awarded Without the Required Berry Amendment DFARS Clauses

| Contracting Agency | Number of Contracts Reviewed | Contracts Without DFARS Clause | Total Contract Value | Omitted Berry Amendment DFARS Clause |
|-------------------------------------------------------------------------------------------------|------------------------------|----------------------------------------|----------------------|--------------------------------------|
| Aberdeen Proving Ground, Natick Contracting Division–Natick | 20 | 47QSWA-18-D-002P (DO W911QY-18-F-0300) | \$10,787,065 | 252.225-7012 |
| | | W911QY-18-C-0126 | 1,871,100 | |
| NAWCAD–Lakehurst | 13 | N68335-19-C-0219 | 279,875 | 252.225-7012 |
| | | N68335-19-C-0228 | 261,022 | |
| Air Force Special Operations Command 1st Special Operations Contracting Squadron–Hurlburt Field | 2 | FA4417-18-P-0186 | 491,784 | 252.225-7012 |
| | | FA4417-18-P-0155 | 303,495 | |
| Total | | | \$13,994,341 | |

*This table does not include contracts that contracting officials awarded without the DFARS clauses, but modified to include the clauses.

Source: The DoD OIG.

Contracting officials at the three sites stated that they did not include DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” in the contracts because of administrative oversights. The contracting officials did not modify these contracts during the course of the audit because delivery of the items already occurred.

Contracting officials at NAWCAD–Lakehurst stated that they verified that the delivered items complied with the Berry Amendment. Specifically, the contractor confirmed the items for the identified contracts were manufactured in the United States to satisfy the country of origin requirement. Additionally, NAWCAD technical points of contact provided an e-mail stating that they inspected every box to verify that the procured tools were made in the United States. In February 2020, contracting officials updated the pre-solicitation procurement plan to inform NAWCAD–Lakehurst contracting personnel that the acquisition of hand or measuring tools requires both DFARS 252.225-7012 and 252.225-7015 to be included in solicitations and contracts.

At Aberdeen Proving Ground, Natick Contracting Division–Natick, contracting officials stated that they did not modify the two contracts that did not include the required Berry Amendment DFARS clauses because the items were already delivered. The officials also stated that they rely on DCMA officials to ensure Berry Amendment compliance once items have been delivered. However, a DCMA Headquarters contract policy official stated that DCMA officials would not know that the Berry Amendment applied to a procurement unless the related clauses were included in the contract. Because the identified contracts did not include the require Berry Amendment clause, DCMA officials would not have known to verify Berry Amendment compliance when administering the contracts. Additionally, a Natick official stated that Aberdeen Proving Ground, Natick Contracting Division–Natick is developing a standard operating procedure related to the Berry Amendment that will establish a framework for internal reviews and responsibilities of the contracting officer and branch chief. We recommend that the Head of Contracting Activity at Aberdeen Proving Ground, Natick Contracting Division–Natick finalize and implement the standard operating procedure that establishes a framework for internal reviews and responsibilities related to compliance with the Berry Amendment.

An Air Force Special Operations Command 1st Special Operations Contracting Squadron contracting official did not modify two contracts for portable tent systems to include the required Berry Amendment DFARS clause because the items were already delivered. Additionally, the contracting official awarded the two contracts in September 2018, but had not completed the updated DAU training, “CLC 125 Berry Amendment,” until October 2019, which was after we announced the audit. Receiving officials for both contracts were not aware of Berry Amendment requirements and stated that items were not inspected for Berry Amendment compliance when received. As a result, Air Force Special Operations Command 1st Special Operations Contracting Squadron contracting officials did not have any assurance that items purchased under the two contracts were compliant with the Berry Amendment. We recommend that the Head of Contracting Activity at the Air Force Special Operations Command 1st Special Operation Contracting Squadron:

- develop a policy for awarding and administering contracts that require compliance with the Berry Amendment; and
- review all active contracts within all of the Berry Amendment FSGs in order to ensure compliance with Berry Amendment requirements, and modify the contracts as necessary.

Army, Navy, Air Force, and DLA contracting officials are required to implement the Berry Amendment DFARS clauses when acquiring certain items.²⁷ Compliance with the Berry Amendment is essential for the DoD to not depend on foreign sources of supply and support and maintain the defense industrial base.²⁸ The implementation of the Berry Amendment DFARS clauses in the solicitation and contracts ensures that contractors, contracting officials, and acceptance officials are aware of the Berry Amendment requirements associated with the procured items. Additionally, the inclusion of the required Berry Amendment clauses provides reasonable assurance that the procured products would be grown, produced, reprocessed, or reused in the United States. Purchasing covered items without complying with the Berry Amendment may result in an Antideficiency Act violation because contracts are funded directly with appropriated funds that are not meant for the purchase of foreign-produced items.

Contracts Modified to Include the Required Berry Amendment DFARS Clauses

Contracting officials at five Army, Navy, Air Force, and DLA sites properly modified 11 contracts, valued at \$14.3 million, to include all the required Berry Amendment DFARS clauses as a result of our audit. Army, Navy, Air Force, and DLA contracting officials originally awarded the contracts with only one or none of the required DFARS clauses.²⁹ However, the contracting officials awarded these contracts for covered items that required the inclusion of the Berry Amendment clause, DFARS 252.225-7012 “Preference for Certain Domestic Commodities.” Additionally, the contracts awarded for hand and measuring tools required the inclusion of an additional clause, DFARS 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools.”³⁰ Table 9 shows the Army, Navy, Air Force, and DLA sites visited where contracting officials modified contracts after our audit announcement to include the required Berry Amendment clauses.

²⁷ DFARS Subpart 225.7002-1, “Restrictions on food, clothing, fabrics, hand or measuring tools, and Flags,” provides the complete list of items and materials subject to the Berry Amendment.

²⁸ DAU “CLC 125 Berry Amendment” course, Berry Amendment purpose.

²⁹ Eight contracts included DFARS 252.225-7012, “Preference for Certain Domestic Commodities.”

³⁰ DFARS Subpart 225.7002-3(b), “Contract Clauses,” states to include Clause 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools” in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that exceed the SAT that require delivery of hand or measuring tools.

Table 9. Army, Navy, Air Force, and DLA Contracts Modified to Include Required Berry Amendment DFARS Clauses.

| Contracting Agency | Number of Contracts Reviewed | Contracts Modified to Include DFARS Clauses | Total Contract Value | Modification Clauses |
|------------------------------------------------------------------------|------------------------------|---------------------------------------------|----------------------|------------------------------|
| ACC–Detroit Arsenal | 9 | W56HZV-18-D-0085 | \$6,000,000 | 252.225-7012 |
| Aberdeen Proving Ground–Aberdeen | 20 | W911SR-18-C-0026 | 686,000 | 252.225-7015 |
| NAWCAD–Lakehurst | 13 | N68335-19-D-0034 | 880,853 | 252.225-7015 |
| | | N68335-19-C-0213 | 424,394 | |
| | | N68335-19-C-0475 | 299,419 | 252.225-7012 252.225-7015 |
| Air Force Life Cycle Management Center–Wright Patterson Air Force Base | 5 | FA8629-19-C-5000 | 337,400 | 252.225-7012 |
| DLA Aviation–Richmond | 10 | SPE4AX-19-D-0011 | 1,843,856 | 252.225-7012 252.225-7015 |
| | | SPE4A6-19-C-0091 | 1,833,243 | 252.225-7015 |
| | | SPE4A6-19-D-0117 | 855,855 | |
| | | SPE4A5-19-D-0002 | 610,518 | |
| | | SPE4A6-19-C-0076 | 494,926 | |
| Total | | | \$14,266,464 | |

Source: The DoD OIG.

The Army, Navy, Air Force, and DLA contracting officials stated that the omissions of the required Berry Amendment DFARS clauses in the contracts reviewed were oversights. For example, DLA Aviation–Richmond contracting officials stated that the omissions of the contract clauses were due to oversights because of the infrequent application of the Berry Amendment in their procurements and a lack of recent training on the topic. In addition, one DLA Aviation–Richmond contracting officer did not include DFARS 252.225-7015, “Hand and Measuring Tools,” in one contract because she misinterpreted the DFARS. As a result of our audit, DLA Aviation–Richmond officials modified the contract to include DFARS 252.225-7015, “Hand and Measuring Tools.” NAWCAD–Lakehurst contracting officials stated that the omissions of the required clauses were due to a transition in staff at the time of award as well as confusion related to the national stock number during market research. NAWCAD–Lakehurst contracting officials stated that they identified the missing DFARS clauses during a post-award review of the contracts, and the

contracting officials contacted the contractors to make sure they were aware of the requirement to comply with the Berry Amendment. The modifications the contracting officials made to the contracts reviewed underline the importance to include the required Berry Amendment DFARS clause.

For DLA Aviation–Richmond, two contracts contained scheduled deliveries before contracting officials modified the contracts to include the required Berry Amendment clauses. The contracting officer for one of the contracts obtained confirmation through e-mail that the contractor manufactured applicable components domestically.³¹ However, the contracting officer for the remaining contract stated that she was unaware of any actions taken by DLA Aviation to ensure Berry Amendment compliance for the deliveries.³² Therefore, noncompliant items may have been delivered on the contract. DLA Aviation took steps to update its contracting guidance for awarding and administering contracts that require compliance with the Berry Amendment. These updates address the majority of the issues identified during our review. However, these updates do not address previously awarded contracts. We recommend that the Head of Contracting Activity at DLA Aviation–Richmond review all active contracts within all of the Berry Amendment FSGs in order to ensure compliance with Berry Amendment requirements, and modify the contracts as necessary.

Exceptions to the Berry Amendment

For the Army, Navy, Air Force, and DLA sites visited, contracting officials complied with Berry Amendment requirements by properly applying exceptions to 16 contracts, valued at \$530 million. Specifically, 10 U.S.C. § 2533a (2011) states that there are “exceptions to certain procurements” to which the Berry Amendment does not apply. The exceptions applied to the contracts reviewed are as follows.

Chemical, Biological, Radiological, and Nuclear Exceptions

ACC–Detroit Arsenal contracting officials properly applied the Chemical, Biological, Radiological, or Nuclear (CBRN) exception to two contracts, valued at \$1.3 million.³³ FAR parts 18 and 12.102 allow the contracting activity to use emergency acquisition flexibilities when procuring items that will be used to facilitate defense against or recovery from CBRN attacks.³⁴ The procured items were mask carrier units, which protect vital face assembly components from contact with nerve agent pretreatment and contamination. The mask carrier

³¹ Contract SPE4A5-19-D-0002.

³² Contract SPE4A6-19-D-0117.

³³ Contracts W56HZV-19-C-0066 and W56HZV-19-C-0054.

³⁴ FAR Part 18, “Emergency Acquisition Flexibilities,” and FAR Part 12.102, “Acquisition of Commercial Items-General.”

allows the user to safely use the gas mask in defense of a chemical or biological attack and prevents exposure, allowing the user to carry on mission-critical tasks shortly after the attack. FAR part 2 states that the CBRN designation raises the SAT to \$750,000.³⁵ Section 2533a, title 10, United States Code, 2011, directs that the Berry Amendment does not apply to purchases for amounts less than the SAT. Therefore, contracting officials properly applied the exception because the two contracts, valued at \$749,950 and \$572,900, were below the SAT.

Special Emergency Procurement Authority Exceptions

DLA Aviation–Richmond contracting officials properly applied Special Emergency Procurement Authority exceptions for four contracts, valued at \$2 million.³⁶ Contracting officials awarded two contracts in support of a contingency operation, each with a total value below \$750,000.³⁷ Contracting officials awarded the other two contracts to facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack against the United States, each with a total value below \$750,000.³⁸ Section 1903, title 41, United States Code, 2018, states that an increased SAT of \$750,000 applies to contracts performed in the United States that are in support of a contingency operation or which facilitate the defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack against the United States. Therefore, contracting officials properly applied these exceptions.

Exception for Chemical Warfare Protective Clothing

An Aberdeen Proving Ground, Natick Contracting Division–Natick contracting official properly applied the exception for chemical warfare protective clothing for one contract, valued at \$834,167.³⁹ The DFARS states that the Berry Amendment does not apply “to chemical warfare protective clothing produced in a qualifying country.”⁴⁰ The statement of work states that the items procured under the contract “offer protection against chemical and biological warfare agents to various mission specific area teams.” Additionally, the contractor provided a letter to the program manager stating that components of the procured item are manufactured in Germany, which the DFARS lists as a qualifying country.⁴¹ Therefore, the contracting official properly applied this exception.

³⁵ FAR Part 2, “Definitions of Words and Terms,” Subpart 2.1, “Definitions,” Section 2.101, “Definitions.”

³⁶ Contracts SPE4A6-19-P-H593, SPE4A6-19-P-D135, SPE4A6-19-P-9611, and SPE4A6-19-P-9657.

³⁷ Contracts SPE4A6-19-P-H593 (\$734,152) and SPE4A6-19-P-D135 (\$343,294).

³⁸ Contracts SPE4A6-19-P-9611 (\$630,840) and SPE4A6-19-P-9657 (\$262,850).

³⁹ Contract W911QY-18-C-0191.

⁴⁰ DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” Section C (5).

⁴¹ DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” Section A, “Qualifying Countries.”

Incidental Amounts Exceptions

An Air Force Life Cycle Management contracting official properly applied an incidental amounts exception to the Berry Amendment for two contracts, valued at \$197 million.⁴² The DFARS states that the Berry Amendment does not apply to “incidental amounts of cotton, other natural fibers, or wool incorporated in an end product” for which the estimated value is not more than 10 percent of the total price of the end product.⁴³ The end products in these contracts were protective spectacles. The end product components included a repair kit that includes “ancillary items” such as a carrying case, a cleaning cloth, and a head strap. These components require compliance with the Berry Amendment. However, the contracting official stated that the repair kits fall under the “Incidental Amounts” exception to Berry Amendment requirements. The unit price of the repair kits fell below 1 percent of the total price of the end product. Therefore, the repair kit would fall under the “Incidental Amounts” exception to Berry Amendment requirements. As a result, the contracting official properly applied the exception.

Unusual and Compelling Requirement

A DLA Aviation–Richmond contracting official properly issued one contract, valued at \$1.02 million, under an unusual and compelling requirement.⁴⁴ Section 2533a, title 10, United States Code, 2011, states that the Berry Amendment does not apply to procurements of food and hand or measuring tools relating to an unusual and compelling urgency of need. The contracting official appropriately determined that the procurement met the unusual and compelling requirement because the item met the conditions for the highest priority backorder, which included work stoppage or an aircraft on the ground. Specifically, based on the quantity needed, the item had one of the highest priority backorders at the time of award. Therefore, the contracting official appropriately applied this exception.

Qualifying Country Exception

A USAFA 10th Contracting Squadron contracting official properly applied a qualifying country exception to the Berry Amendment for one contract reviewed, valued at \$640,798.⁴⁵ The contracting official awarded the contract to procure swords. Swords are listed under FAR 25.104, “Non-available articles.” FAR 25.104 provides a list of items that have been determined to not be available from U.S. manufacturers and can be acquired from qualifying countries. For example,

⁴² Contracts FA8606-18-D-0031 and FA8606-18-D-0019.

⁴³ DFARS Subpart 225.7002-2 (j), “Exceptions.”

⁴⁴ Contract SPE4A6-19-C-0089. FAR Part 6.302-2, “Unusual and compelling urgency,” states that this authority applies to situations where (1) an unusual and compelling urgency prevents full and open competition, and (2) delay in award of a contract would result in serious injury, financial or other, to the Government.

⁴⁵ Contract FA7000-18-D-0003.

the contractor manufactured swords in Spain, which is included in the list of qualifying countries. The DFARS lists FAR 25.104 as an exception to the Berry Amendment.⁴⁶ Therefore, the contracting official properly applied this exception.

Domestic Non-Availability Determination

Contracting officials at ACC–Detroit Arsenal, Aberdeen Proving Ground–Aberdeen, and DLA Troop Support Clothing and Textiles–Philadelphia properly issued Domestic Non-Availability Determinations in order to acquire jigsaws, hand files, zippers, and front fusible material for four contracts with a total value of \$176 million.⁴⁷ For each of these contracts, contracting officials included the required Berry Amendment clauses and only used a Domestic Non-Availability Determination for specific components. The DFARS states, “Acquisitions of any of the items in 225.7002-1, if the Secretary concerned determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices” are exempt from the Berry Amendment.⁴⁸ Contracting officials prepared documentation for each contract, including the required determination made and the approval signed by the Secretary concerned. For example, the Secretary of the Army determined that certain hand and measuring tools, including jigsaws procured on one of the contracts reviewed, were not produced in the United States in a satisfactory quality or sufficient quantity. The Secretary’s determination was documented in the Domestic Non-Availability Determination document. A similar approach was used for the other contracts requiring Domestic Non-Availability Determinations; therefore, contracting officials properly applied these exceptions.

Exception for Fabric Used as a Component of a Non-Textile End Item

An Aberdeen Proving Ground–Aberdeen contracting official properly applied the exception for fabric used as a component of a non-textile end item for one contract, valued at \$151 million.⁴⁹ The contracting official included the required Berry Amendment clause and used this exception for only a single component. The DFARS states that the Berry Amendment does not apply “to fibers and yarns that are for use in synthetic fabric or coated synthetic fabric if the fabric is to be used as a component of an end product that is not a textile

⁴⁶ DFARS Subpart 225.7002-2 (c), “Exceptions.”

⁴⁷ Contracting officials properly used Domestic Non-Availability Determinations on four contracts reviewed at ACC–Detroit Arsenal for two contracts (W56HZV-19-D-0020 and W56HZV-18-D-0085), Aberdeen Proving Ground–Aberdeen for one contract (W911QY-18-D-0131/W911SR-19-F-0061), and DLA Troop Support Clothing and Textiles–Philadelphia for one contract (SPE1C1-18-D-1079).

⁴⁸ DFARS Subpart 225.7002-2 (b) “Exceptions.”

⁴⁹ Contract W91CRB-19-D-0010.

product.”⁵⁰ A letter signed by the contracting officer states that the fabric used in the procured item, carbon fiber, makes up less than 1 percent of the cost of the end item, which is a ceramic product. Therefore, the contracting official properly applied this exception.

Blanket Purchase Agreements

For the Army and Air Force sites visited, contracting officials complied with Berry Amendment requirements by evaluating the application of the Berry Amendment in the award of 11 contracts reviewed, as BPAs, valued at \$55 million. Contracting officials interpreted the guidance for when to apply the Berry Amendment to BPAs in different ways. The FAR states that unless a clause prescription specifies otherwise, if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.⁵¹ The BPA’s purchase limitation specifies the maximum amount for each individual purchase under the BPA. Therefore, if a purchase limitation included in a BPA is at or below the SAT, the Berry Amendment does not apply to the contract.

- **Mission and Installation Contracting Command–Fort Sill:** U.S. Army Mission and Installation Contracting Command–Fort Sill contracting officials included DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” in six contracts, valued at \$42 million, even though the clause was not required.⁵² A contracting official stated that the Berry Amendment applied to the BPAs because the Berry Amendment determination was not tied to the BPA’s call order limitation of \$25,000, but the total value of the BPAs. Although the inclusion of the Berry Amendment clauses was not detrimental to the contracts, in accordance with the FAR, the Berry Amendment did not apply to these contracts because the individual call order limits were under the SAT.
- **Air Force Sustainment Center–Tinker Air Force Base:** Air Force Sustainment Center–Tinker Air Force Base contracting officials properly awarded three BPAs, valued at \$12 million, that were not subject to Berry Amendment requirements based on the dollar value of the call order limits.⁵³ Contracting officials specified in each of the three contracts

⁵⁰ DFARS Subpart 252.225-7012, “Preference for Certain Domestic Commodities,” Section C (6).

⁵¹ FAR Part 13, “Simplified Acquisition Procedures,” Subpart 13.3, “Simplified Acquisition Methods,” Section 13.303, “Blanket Purchase Agreements (BPAs).”

⁵² Contracts W9124L-19-A-0001, W9124L-19-A-0002, W9124L-19-A-0003, W9124L-19-A-0004, W9124L-19-A-0005, W9124L-19-A-0006.

⁵³ Contracts FA8125-18-A-0001, FA8125-18-A-0002, and FA8125-18-A-0003.

that no call order limit would exceed \$150,000.⁵⁴ Therefore, in accordance with the FAR, the Berry Amendment did not apply to these contracts based on the individual order limit.⁵⁵

- **USAFA 10th Contracting Squadron–Colorado Springs:** USAFA 10th Contracting Squadron–Colorado Springs contracting officials properly awarded two BPAs, valued at \$950,000, that were not subject to Berry Amendment requirements based on the dollar value of the call order limits.⁵⁶ Contracting officials specified in each of the two contracts that any order under the BPAs may not exceed \$25,000. Therefore, in accordance with the FAR, the Berry Amendment did not apply to these contracts based on the individual order limit.⁵⁷

DCMA Contract Administration

DCMA officials did not identify the Berry Amendment requirement when conducting contract reviews for 26 of 44 contracts, valued at \$796.6 million.⁵⁸ Additionally, DCMA officials (1) did not provide contract review documentation for four contracts, valued at \$96.3 million because officials were unable to download the documentation, and (2) did not document the contract reviews for three contracts, valued at \$11.5 million because DCMA policy at the time of award did not require the contract reviews to be documented for contracts with obligations under \$5 million.⁵⁹ Additionally, DCMA officials stated that the DCMA does not have a specific process for administering contracts subject to the Berry Amendment and that DCMA officials are not required to complete the DAU training specific to the Berry Amendment, “CLC 125 Berry Amendment.” Therefore, the DCMA, the Military Services, and the DLA have limited assurance items delivered on 33 contracts complied with the Berry Amendment. See Appendix E for the site specific results of the 10 DCMA sites we reviewed.

DCMA officials identified the Berry Amendment requirement when they administered 11 of 44 contracts, valued at \$635 million. Specifically, DCMA officials identified the Berry Amendment requirement when conducting contract receipt and review or obtained certificates of conformance from contractors

⁵⁴ The SAT at the time the contracts were awarded (April 19, 2018) was \$150,000. On March 7, 2019, the contracting officer modified these contracts to raise the call order limit to align with the updated SAT of \$250,000. Public Law 115-91, “National Defense Authorization Act for Fiscal Year 2018,” Section 805, “Increased Simplified Acquisition Threshold,” increased the SAT from \$150,000 to \$250,000 on December 12, 2017.

⁵⁵ FAR Part 13, “Simplified Acquisition Procedures,” Subpart 13.3, “Simplified Acquisition Methods,” Section 13.303, “Blanket Purchase Agreements (BPAs).”

⁵⁶ Contracts FA7000-18-A-0008 and FA7000-18-A-0009.

⁵⁷ FAR Part 13.303, “Blanket Purchase Agreements (BPAs).”

⁵⁸ DCMA officials did not identify the Berry Amendment requirement when conducting required reviews for 1 of the 26 contracts because the contract did not include the required Berry Amendment clause.

⁵⁹ The system that DCMA Chicago used to store contract review documents was recently updated, and the applicable files could not be located. DCMA Instruction 118, “Contract Receipt and Review,” June 17, 2015, required DCMA officials to conduct contract receipt and review for procurements over \$5 million. However, DCMA Manual 2501-01, “Contract Receipt and Review,” March 24 2019, replaced DCMA Instruction 118 and requires DCMA officials to conduct contract receipt and review for all procurements.

certifying that products provided complied with the Berry Amendment. DCMA policy requires DCMA officials to conduct initial reviews of contracts within 30 calendar days of receipt, which is known as contract receipt and review.⁶⁰ During contract receipt and review, officials review contracts to identify key contract requirements such as the Berry Amendment. Following the contract receipt and review process, DCMA officials use key contract requirements evaluations to assess risk, and document risk assessments in surveillance plans.

DCMA officials used varying methods to identify the Berry Amendment requirement. DCMA Manual 2501-01 requires DCMA officials to conduct contract receipt and review within 30 calendar days of receipt. A DCMA Contracts Policy official stated that the manual also includes a resource page with a checklist that identifies key contract requirements to be reviewed when administering a contract, including key contract requirements specific to the Berry Amendment. However:

- DCMA officials at three field offices used internally created checklists for conducting contract receipt and review that did not always include the Berry Amendment;
- a DCMA quality assurance official at DCMA Headquarters stated that the DCMA does not have a specific process for conducting surveillance on contracts subject to the Berry Amendment; and
- a DCMA Headquarters contract policy official stated that DCMA officials would not know that the Berry Amendment applied to a procurement unless the related clauses were included in the contract.

It is important for DCMA officials to identify the Berry Amendment requirement during the contract receipt and review process because risk assessments are based on key contract requirement evaluations that result from contract receipt and reviews.

In FY 2020, the DCMA introduced a new contract review tool that standardized contract review checklists and automated the contract receipt and review process by searching for clauses and key words to identify contract administration requirements. Specifically, the tool automatically identifies and displays key contract requirements for review and validation, and identifies functional areas responsible for contract review. Additionally, the Berry Amendment clauses are included in the standardized checklist. A DCMA Headquarters contracts policy official confirmed the contract review tool has been deployed across the DCMA sites identified in this report. The DCMA's ongoing actions may improve the inconsistencies identified in this report; therefore, we are not making recommendations to the DCMA at this time.

⁶⁰ DCMA Manual 2501-01, "Contract Receipt and Review," March 24, 2019.

Items Inspected During Site Visits

The audit team did not find evidence of compliance with the Berry Amendment for four contracts when conducting physical inspections for available items delivered on seven contracts at four sites. However, contracting officials at three sites took action to ensure that the items delivered on the three contracts complied with the Berry Amendment. Not all of the sites visited had items available for inspection. Table 10 shows a summary of the inspections and actions taken by contracting officials.

Table 10. Summary of Items Inspected

| Contract Number | Items Inspected | Summary | Actions Taken |
|--------------------------------------------------------------------|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aberdeen Proving Ground, Natick Contracting Division–Natick | | | |
| W911QY-18-D-0210* | Camouflage Net System | <ul style="list-style-type: none"> Item did not contain tags specifying the country of origin. Quality control report and performance evaluation documentation did not contain information related to Berry Amendment compliance. | <ul style="list-style-type: none"> Contractor provided a certificate of compliance certifying that the items delivered complied with the Berry Amendment. |
| NAWCAD–Lakehurst | | | |
| N68335-19-C-0376 | Tool Kit | <ul style="list-style-type: none"> Order packing list identified the United States as country of origin. Items contained engravings stating that the products were made in the United States. | <ul style="list-style-type: none"> No action necessary |
| N68335-18-C-0667* | Hand Tools and Tool Boxes | <ul style="list-style-type: none"> Bill of materials did not identify country of origin. Items contain markings stating that they were made in the United States. | <ul style="list-style-type: none"> No action necessary |

Table 10. Summary of Items Inspected (cont'd)

| Contract Number | Items Inspected | Summary | Actions Taken |
|-----------------------------------------------------------|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| N68335-19-C-0219 | Aircraft Hand Tools | <ul style="list-style-type: none"> Order packing list identified the United States as country of origin. | <ul style="list-style-type: none"> No action necessary |
| Air Force Sustainment Center–Tinker Air Force Base | | | |
| FA8125-19-P-A018 | Fuel Tooling and Fixtures | <ul style="list-style-type: none"> Items inspected did not identify a country of origin. Receiving and inspection reports did not identify Berry Amendment compliance. | <ul style="list-style-type: none"> Contractor provided an e-mail confirming all end items for the contract were manufactured in the United States. |
| USAFA 10th Contracting Squadron–Colorado Springs | | | |
| FA7000-18-D-0001 | Uniforms | <ul style="list-style-type: none"> Six items included tags that identified the contractor, contract number, and the United States as the country of origin. One item included tags that did not identify a country of origin. | <ul style="list-style-type: none"> Contractor provided a certificate of compliance in the request for proposal certifying products would comply with the Berry Amendment. |
| FA7000-18-D-0002 | Jacket and Parkas | <ul style="list-style-type: none"> Items included tags that did not identify a country of origin. Packaging slips, invoice, and inspection record did not identify Berry Amendment compliance. | <ul style="list-style-type: none"> Contractor provided a certificate of compliance in the request for proposal certifying products would comply with the Berry Amendment. |

*The DCMA administered contracts W911QY-18-D-0210 and N68335-18-C-0667.

Source: The DoD OIG.

Additional Measures Identified During Contract Administration

NAVSUP Fleet Logistics Center–Norfolk contracting officials implemented additional measures to ensure compliance with the Berry Amendment during contract administration. This additional measure helped to clearly identify compliance with the Berry Amendment. The NAVSUP Fleet Logistics Center–Norfolk contracting officials conducted random monthly inspections using a “Country of Origin Compliance Inspection Sheet.” See Appendix C for details of the site-specific additional measures that were taken to ensure compliance with

the Berry Amendment. Additionally, see Appendix F, Exhibit F for the “Country of Origin Compliance Inspection Sheet,” which is an additional measure that NAVSUP Fleet Logistics Center–Norfolk used to ensure compliance with the Berry Amendment.

Comparison on Prior Series of Berry Amendment-Related Reports

Overall, the Military Services and the DLA sites visited during the prior and current audits made improvements when awarding contracts subject to the Berry Amendment. The DoD OIG issued individual reports on Berry Amendment compliance for the Army, Navy, Air Force, and DLA in FYs 2015, 2016, and 2017. We also issued a summary report in FY 2018. This audit included nine locations across the Military Services and the DLA that we also reviewed in the prior reports. Table 11 shows a comparison of the findings for the duplicate sites from the prior reports and this report.

Table 11. Comparison of Findings from Sites in Prior Audits and This Audit

| Contracting Agency | Findings | |
|-------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Army | Report No. DODIG-2015-026 | Project No. D2019-D000AV-0193.000 |
| ACC–Detroit Arsenal | <ul style="list-style-type: none"> Five of six contracts reviewed included the required Berry Amendment DFARS clauses. | <ul style="list-style-type: none"> Six of seven contracts reviewed included the required Berry Amendment DFARS clause. One contract was modified to include a missing clause. Appropriately used Domestic Non-Availability Determinations for two contracts. Appropriately used exceptions for two contracts. |
| Aberdeen Proving Ground–Aberdeen | <ul style="list-style-type: none"> Six of seven contracts reviewed included the required Berry Amendment DFARS clauses. | <ul style="list-style-type: none"> 18 of 20 contracts reviewed included applicable DFARS clauses. Two contracts reviewed did not contain required clauses and were modified to include the clauses. |
| Aberdeen Proving Ground, Natick Contracting Division–Natick | <ul style="list-style-type: none"> 18 of 20 contracts reviewed included the required Berry Amendment DFARS clauses. | <ul style="list-style-type: none"> 18 of 20 contracts reviewed included the required Berry Amendment DFARS clauses. |

Table 11. Comparison of Findings from Sites in Prior Audits and This Audit (cont'd)

| Contracting Agency | Findings | |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Navy | Report No. DODIG-2015-061 | Project No. D2019-D000AV-0193.000 |
| NAVSUP Fleet Logistics Center–Norfolk | <ul style="list-style-type: none"> • The four contracts reviewed included the required Berry Amendment DFARS clause. • Officials allowed a contractor operating a logistics support program to sell non-U.S.-produced hand and measuring tools covered by the Berry Amendment. • Officials permitted the substitution of non-U.S. produced synthetic fabric on a contract due to the misinterpretation of a DFARS exception to the Berry Amendment. | <ul style="list-style-type: none"> • The two contracts reviewed included the required Berry Amendment DFARS clause. • Officials conducted random monthly physical inspections of shipments for Berry Amendment compliance for one of the contracts reviewed. • Deliveries for the remaining contract have not taken place. |
| NAWCAD–Lakehurst | <ul style="list-style-type: none"> • The nine contracts reviewed omitted the required Berry Amendment DFARS clauses. • Officials ordered and received items that were not Berry Amendment compliant for four of the nine contracts reviewed. • Officials were not familiar with the Berry Amendment. | <ul style="list-style-type: none"> • 8 of 13 contracts reviewed included the required Berry Amendment DFARS clauses. • 3 of 13 contracts reviewed were missing one of the required Berry Amendment DFARS clauses and were modified to include the clauses. • 2 of 13 contracts reviewed were not modified because delivery had taken place and compliance was confirmed via e-mail. • Officials updated the pre-solicitation plan to include clarifying guidance on how to apply the required clauses. |
| MCSC–Quantico | <ul style="list-style-type: none"> • The six contracts reviewed included the required Berry Amendment DFARS clause. | <ul style="list-style-type: none"> • The eight contracts reviewed included the required Berry Amendment DFARS clause. |
| Air Force | Report No. DODIG-2016-051 | Project No. D2019-D000AV-0193.000 |
| USAFA 10th Contracting Squadron–Colorado Springs | <ul style="list-style-type: none"> • The seven contracts reviewed included required DFARS clauses. | <ul style="list-style-type: none"> • The six contracts reviewed included the required Berry Amendment DFARS clauses. • Officials appropriately used an exception for one contract. • Two contracts were BPAs and did not require Berry Amendment compliance. |

Table 11. Comparison of Findings from Sites in Prior Audits and This Audit (cont'd)

| Contracting Agency | Findings | |
|------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| DLA | Report No. DODIG-2017-098 | Project No. D2019-D000AV-0193.000 |
| DLA Troop Support Clothing and Textiles–Philadelphia | <ul style="list-style-type: none"> • 7 of 21 contracts reviewed omitted the required Berry Amendment clause. • All seven contracts were modified to include the required clause or incorporate solicitation terms by reference as necessary. • Officials did not comply with the exception requirements for four contracts. • Officials omitted an item from the Domestic Non-Availability Determination used to support the DLA’s decision and approval to purchase nondomestic items for one contract. | <ul style="list-style-type: none"> • The 19 contracts reviewed included the required Berry Amendment DFARS clause. • Officials appropriately applied a Domestic Non-Availability Determination for one component of one contract. |
| DLA Aviation–Richmond | <ul style="list-style-type: none"> • The seven contracts reviewed did not include the required DFARS clauses. • Officials took limited action to notify suppliers of the Berry Amendment requirement and ensure compliance. | <ul style="list-style-type: none"> • 4 of 10 contracts reviewed were missing one of the required Berry Amendment clauses and were modified to include the clauses. • 1 of 10 contracts reviewed did not include one of the required Berry Amendment clauses. • Officials appropriately applied exceptions to 5 of 10 contracts reviewed. |

Source: The DoD OIG.

Overall, the Military Services and the DLA sites visited during the prior audits and this audit made some improvements when awarding contracts subject to the Berry Amendment. Specifically, when compared to the previous series of Berry Amendment audits, contracting officials awarded more contracts with the required Berry Amendment DFARS clauses. Contracting officials also properly applied exception requirements for the applicable contracts. While improvements in ensuring compliance with the Berry Amendment were made, opportunities exist to increase further compliance with the Berry Amendment. Continued improvements in compliance with the Berry Amendment will further ensure that the DoD is procuring domestic products.

Followup on DAU Training Completion

The Army, Navy, and Air Force did not consistently require the DAU “CLC 125 Berry Amendment” course for the contracting workforce, as prescribed by the DPC.⁶¹ The DAU “CLC 125 Berry Amendment” course was updated in response to a recommendation from Report No. DODIG-2018-070, “Summary Report of DoD Compliance with the Berry Amendment and the Buy American Act,” issued on February 6, 2018. The DPC and DAU improved the training to allow personnel responsible for procuring textiles and other covered items to learn the purpose of the Berry Amendment; its requirements during the acquisition process for covered items; its rules that direct the acquisition of textiles, clothing, and food; and exceptions within the amendment that apply to specific situations.

The Army, Navy, and Air Force Did Not Consistently Require Berry Amendment Training

The Army, Navy, and Air Force did not consistently require the DAU “CLC 125 Berry Amendment” course for the contracting workforce. The Navy, Air Force, and DLA disseminated the DPC memorandum requiring the training to the contracting workforce; however, the Army did not provide evidence of DPC memorandum dissemination to the contracting workforce.

Some of the Military Services and DLA sites we reviewed had site-specific training related to the Berry Amendment, but not all required the completion of the DAU “CLC 125 Berry Amendment” course. For example, three of the Navy and Air Force sites provided Berry Amendment training other than the DAU “CLC 125 Berry Amendment” course.⁶² Specifically:

- Naval Surface Warfare Center–Panama City Division provided Berry Amendment guidance through its quarterly “All Hands” trainings and through informal methods, such as e-mail or verbal communications;
- the USAFA 10th Contracting Squadron–Colorado Springs provided Berry Amendment training to new employees through its squadron training; and
- the Air Force Sustainment Center–Tinker Air Force Base issued Berry Amendment guidance through its Air Force Materiel Command Bulletins.

⁶¹ DPC memorandum, “Improving Compliance with the Berry Amendment and Buy American Act,” June 20, 2017, outlines requirements for compliance and training related to the Berry Amendment.

⁶² The Army sites reviewed did not provide Berry Amendment training other than the DAU’s “CLC 125 Berry Amendment” course.

Additionally, DLA Troop Support Clothing and Textiles–Philadelphia required the DAU “CLC 125 Berry Amendment” training and held an annual conference for staff and industry to discuss updates to contracting practices, including Berry Amendment requirements.

Contracting Officials Did Not Consistently Complete the Updated DAU Course

The 58 Army, Navy, Air Force, and the DLA contracting officers interviewed at the 15 sites visited did not consistently complete the DAU “CLC 125 Berry Amendment” course. Of the 58 Army, Navy, Air Force, and DLA contracting officers interviewed, 44 completed the updated DAU “CLC 125 Berry Amendment” course.⁶³ However, 14 of the 58 contracting officials did not take the updated DAU course. Additionally, 8 of the 58 contracting officials did not complete the training course until after we announced this audit.⁶⁴

- Of the 44 contracting officials who completed the updated DAU “CLC 125 Berry Amendment” course, one DLA Aviation contracting official awarded 1 contract, valued at \$495,000, without the required Berry Amendment clause.⁶⁵
- Of the 14 contracting officials who did not take the updated DAU course, one Aberdeen Proving Ground, Natick Contracting Division–Natick contracting official awarded or had assigned responsibility for 2 contracts, valued at \$12.6 million, without the required Berry Amendment clause.⁶⁶
- Of the eight contracting officials who did not complete the DAU “CLC 125 Berry Amendment” course until after our audit announcement, one Air Force Special Operations Command 1st Special Operations Contracting Squadron contracting official awarded two contracts in 2017, valued at \$795,000, without the required Berry Amendment clause.⁶⁷

In the three instances where Army, Air Force, and DLA contracting officials completed the training but awarded contracts without the required Berry Amendment clauses, those contracting officials cited their limited exposure to Berry Amendment concepts and a lack of recent training on the Berry Amendment as reason for the omission. Completion of the Berry Amendment course on a recurring basis would help close the knowledge gap required to execute contracts in compliance with the Berry Amendment. For example, four Army, three Navy, two Air Force, and nine DLA contracting officials interviewed explained having

⁶³ The DAU’s “CLC 125 Berry Amendment” course was last updated on September 27, 2016.

⁶⁴ The Audit Announcement was dated August 5, 2019.

⁶⁵ Contract SPE4A6-19-C-0076.

⁶⁶ Contracts W911QY-18-C-0126 and 47QSWA-18-D-002P (DO W911QY-18-F-0300).

⁶⁷ Contracts FA4417-18-P-0186 and FA4417-18-P-0155.

limited experience with contracts related to the Berry Amendment because their typical workload does not involve the Berry Amendment. As a result, without continual required training on the Berry Amendment requirements, the DoD is at risk of procuring items that do not comply with the Berry Amendment. The Army, Navy, Air Force, and DLA (as applicable) should establish the DAU “CLC 125 Berry Amendment” course as a mandatory training for those contracting workforce officials who procure goods and services subject to the Berry Amendment on a regular basis or are assigned a contract subject to the Berry Amendment. Furthermore, the training should be required every 2 years as a refresher course.

Conclusion

The Military Services and the DLA did not always comply with the Berry Amendment requirements for DoD procurements and acquisitions. Because of this, the Military Services, the DLA, and the DCMA have limited assurance that items procured and delivered complied with the Berry Amendment. The inclusion of the required Berry Amendment clauses provides reasonable assurance that the procured products will be grown, produced, reprocessed, or reused in the United States.

Opportunities exist to increase compliance and consistency in the implementation of Berry Amendment requirements throughout the pre-award, award, and administration phases of the contracting process. Additionally, more consistent training through the DAU’s “CLC 125 Berry Amendment” course will increase awareness and implementation for the Berry Amendment. Increased awareness, oversight, and training should improve the DoD’s compliance with the Berry Amendment.

Recommendations, Management Comments, and Our Response

Recommendation 1

We recommend that the Director of Defense Pricing and Contracting reinforce the requirement to include the Berry Amendment implementing clauses in contract solicitations for covered items.

Defense Pricing and Contracting Comments

The DPC Acting Principal Director agreed with the recommendation and signed a memorandum to the DoD Acquisition workforce requesting support in continuing to reinforce training needs and clause logic functions of contract writing systems, which should ensure that correct contract terms are properly used in solicitations and contracts.

Our Response

Comments from the Acting Principal Director addressed the specifics of the recommendation; therefore, the recommendation is closed. We consider the memorandum provided to the DoD acquisition workforce as adequate action to address the recommendation.

Recommendation 2

We recommend that the Assistant Secretary of the Army (Acquisition, Logistics, and Technology):

- a. Establish the Defense Acquisition University “CLC 125 Berry Amendment” course as a mandatory training for those contracting workforce officials who procure goods and services subject to the Berry Amendment on a regular basis or are assigned a contract subject to the Berry Amendment. Furthermore, the training should be required every 2 years as a refresher course.**

Deputy Assistant Secretary of the Army (Procurement) Comments

The Procurement Insight/Oversight Director in the Office of the Deputy Assistant Secretary of the Army (Procurement), responding for the Assistant Secretary of the Army (Acquisition, Logistics, and Technology), agreed with the recommendation and issued a training alert on October 15, 2020, mandating contracting personnel complete the CLC 125 Berry Amendment course. In addition, the Director mandated the course as refresher training required every 2 years.

Our Response

Comments from the Director addressed the specifics of the recommendation; therefore, the recommendation is closed. We consider the training alert provided as adequate action to address the recommendation.

- b. Implement the Defense Pricing and Contracting and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements.**

Deputy Assistant Secretary of the Army (Procurement) Comments

The Procurement Insight/Oversight Director in the Office of the Deputy Assistant Secretary of the Army (Procurement), responding for the Assistant Secretary of the Army (Acquisition, Logistics, and Technology), agreed with the recommendation, and issued a training alert on October 15, 2020, encouraging contracting personnel to apply DPC recommended best practices when procuring goods and services

subject to the Berry Amendment. Additionally, the Director stated that the DPC recommended best practices are being considered for update to the Army Federal Acquisition Regulation Procurement, Guidance, and Information publication.

Our Response

Comments from the Director addressed the specifics of the recommendation; therefore, the recommendation is closed. We consider the training alert provided as adequate action to address the recommendation.

Recommendation 3

We recommend that the Assistant Secretary of the Navy (Research, Development, and Acquisition):

- a. Establish the Defense Acquisition University “CLC 125 Berry Amendment” course as a mandatory training for those contracting workforce officials who procure goods and services subject to the Berry Amendment on a regular basis or are assigned a contract subject to the Berry Amendment. Furthermore, the training should be required every 2 years as a refresher course.**

Deputy Assistant Secretary of the Navy (Procurement) Comments

The Deputy Assistant Secretary of the Navy (Procurement), responding for the Assistant Secretary of the Navy (Research, Development, and Acquisition), partially agreed with the recommendation, stating that she will require all contracting officers to complete the training course within 180 days of the final audit report. On November 17, 2020, the Office of the Deputy Assistant Secretary of the Navy (Procurement) issued policy requiring all contracting officers to complete the training course by May 1, 2021. Additionally, the Office of the Deputy Assistant Secretary of the Navy (Procurement) will highlight the Berry Amendment in policy at least every 2 years thereafter.

Our Response

Although the Deputy Assistant Secretary of the Navy (Procurement) partially agreed with the recommendation, the Office of the Deputy Assistant Secretary of the Navy (Procurement) issued policy requiring all contracting officers to complete the training course by May 1, 2021. Therefore, the recommendation is closed. We consider the policy provided as adequate action to address the recommendation.

- b. Implement the Defense Pricing and Contracting, and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements.**

Deputy Assistant Secretary of the Navy (Procurement) Comments

The Deputy Assistant Secretary of the Navy (Procurement), responding for the Assistant Secretary of the Navy (Research, Development, and Acquisition), agreed with the recommendation and the Office of the Deputy Assistant Secretary of the Navy (Procurement) issued policy highlighting the Berry Amendment best practices on November 17, 2020.

Our Response

Comments from the Deputy Assistant Secretary of the Navy (Procurement) addressed the specifics of the recommendation; therefore, the recommendation is closed. We consider the policy provided as adequate action to address the recommendation.

Recommendation 4

We recommend that the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics):

- a. Establish the Defense Acquisition University “CLC 125 Berry Amendment” course as a mandatory training for those contracting workforce officials who procure goods and services subject to the Berry Amendment on a regular basis or are assigned a contract subject to the Berry Amendment. Furthermore, the training should be required every 2 years as a refresher course.**

Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) Comments

The Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), responding for the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), disagreed with the recommendation, stating that the Air Force does not have a systemic issue with Berry Amendment compliance because 18 of the 20 (90 percent) contracts reviewed included the required clauses. Instead, the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) proposed an alternative solution to issue a notice through the Air Force contracting policy distribution tool reminding the contracting workforce of the Berry Amendment requirements and reference the availability of the CLC 125 Berry Amendment course.

Our Response

Although the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) disagreed with the recommendation, we found the proposed alternative action to issue a notice through the Air Force contracting policy distribution tool reinforcing Berry Amendment requirements, and the availability of the Berry Amendment course, to be an acceptable alternative. Although we did not identify a systemic issue with Berry Amendment compliance, we found that the DAU “CLC 125 Berry Amendment” training and the DPC best practices were inconsistently implemented across the Air Force sites we visited. We agree that the proposed alternative actions will strengthen controls and ensure future compliance with the Berry Amendment requirements. Therefore, the recommendation is resolved but will remain open. We will close the recommendation when the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) provides evidence that the notice was issued through the Air Force contracting policy distribution tool.

- b. Implement the Defense Pricing and Contracting, and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements.**

Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) Comments

The Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), responding for the Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), disagreed with the recommendation, stating that the Air Force already implements best practices in accordance with processes established in existing contracting guidance. In addition, the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) referenced several other Air Force internal controls in place that ensure compliance with the Berry Amendment, and stated that the proposed corrective action referenced in the response for Recommendation 4.a further reinforces compliance with the Berry Amendment.

Our Response

Although the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) disagreed with the recommendation, the proposed actions in Recommendation 4.a to issue a notice through the Air Force contracting policy distribution tool, that includes Berry Amendment requirements, meets the intent of the recommendation and further reinforces compliance with the Berry Amendment and related best practices; therefore, the recommendation

is resolved but will remain open. We will close the recommendation when the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) provides documentation to support that a notice was issued to address the recommendation.

Recommendation 5

We recommend that the Director of Defense Logistics Agency Acquisition:

- a. Establish the Defense Acquisition University “CLC 125 Berry Amendment” course as a required refresher course every 2 years.**

Defense Logistics Agency Acquisition Comments

The DLA Acquisition Director agreed with the recommendation, stating that DLA had established a requirement for contracting personnel to take the CLC 125 Berry Amendment course in August 2017; however, the course was only mandated as a one-time requirement, and to be taken again if there were major revisions to the course. The Director also stated that by November 30, 2020, the DLA Senior Procurement Executive will issue a memorandum that now requires designated contracting personnel to complete the training course every 2 years.

Our Response

Comments from the Director addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when the Director provides the memorandum requiring designated contracting personnel to complete the training course every 2 years.

- b. Implement the Defense Pricing and Contracting, and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements.**

Defense Logistics Agency Acquisition Comments

The DLA Acquisition Director partially agreed with the recommendation, stating that best practices should be highlighted and encouraged to the extent that the practices are applicable and relevant to the contracting activity in question; however, best practices are not considered policy and are not appropriate for incorporation into agency-level guidance and policy documents. Instead, the Director stated that the DLA will issue a procurement letter to all designated contracting personnel highlighting the DPC best practices, by November 30, 2020.

Our Response

Although the Director partially agreed with the recommendation, the comments provided addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when the Director provides the procurement letter issued to all designated contracting personnel highlighting the DPC best practices.

Recommendation 6

We recommend that the Head of Contracting Activity at Defense Logistics Agency Aviation–Richmond review all active contracts for the Federal Supply Groups that the Berry Amendment applies to, in order to ensure compliance with Berry Amendment requirements, and modify the contracts as necessary.

Defense Logistics Agency Acquisition Comments

The DLA Acquisition Director, responding for the Head of Contracting Activity, agreed with the recommendation, stating that the DLA Aviation Programs Division Branch Chief completed the requested review on August 12, 2020. As a result, the Director stated that the review identified two contracts subject to the Berry Amendment. The Director stated that one contract was previously audited and modified, and the other contract was awarded under an overarching contract that included the Berry Amendment requirements.

Our Response

Comments from the Director addressed the specifics of the recommendation; therefore, the recommendation is closed. We consider the documentation provided to support that a review was conducted on August 12, 2020, as adequate corrective action to address the recommendation.

Recommendation 7

We recommend that the Head of Contracting Activity at Aberdeen Proving Ground, Natick Contracting Division–Natick finalize and implement the standard operating procedure that establishes a framework for internal reviews and responsibilities related to compliance with the Berry Amendment.

Army Contracting Command–Aberdeen Proving Ground Comments

The ACC Aberdeen Proving Ground Executive Director, responding for the Head of Contracting Activity, agreed with the recommendation, stating that the Head of Contracting Activity will finalize and implement the standard operating procedure that establishes a framework for internal reviews and responsibilities related to compliance with the Berry Amendment by February 28, 2021.

Our Response

Comments from the ACC Aberdeen Proving Ground Executive Director addressed the specifics of the recommendation; therefore, the recommendation is resolved, but will remain open. We will close the recommendation when the Head of Contracting Activity provides the standard operating procedure that establishes a framework for internal reviews and responsibilities related to compliance with the Berry Amendment.

Recommendation 8

We recommend that the Squadron Commander at the Air Force Special Operations Command, 1st Special Operations Contracting Squadron:

- a. Develop a policy for awarding and administering contracts that require compliance with the Berry Amendment.**

Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) Comments

The Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), responding for the Air Force 1st Special Operations Contracting Squadron, disagreed with the recommendation, stating that additional policy would be duplicative to existing regulations requiring compliance with the Berry Amendment. Instead, the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) proposed an alternative action to have the 1st Special Operations Contracting Squadron include the DAU “CLC 125 Berry Amendment” course in its annual training plan.

Our Response

Although the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) disagreed with the recommendation, the proposed actions to include the training course in the annual training plan meet the intent of the recommendation and will reinforce the requirements of the Berry Amendment in future procurements; therefore, the recommendation is resolved but will remain open. We will close the recommendation when the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) provides documentation to support that the 1st Special Operations Contracting Squadron included the training course in their annual training plan.

- b. Review all active contracts for the Federal Supply Groups that the Berry Amendment applies to, in order to ensure compliance with Berry Amendment requirements, and modify the contracts as necessary.**

Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) Comments

The Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics), responding for the Air Force 1st Special Operations Contracting Squadron, agreed with the recommendation, stating that the 1st Special Operations Contracting Squadron plans to conduct an audit of active contracts to confirm compliance with the Berry Amendment requirements and modify any contracts as necessary.

Our Response

Comments from the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) addressed the specifics of the recommendation; therefore, the recommendation is resolved but will remain open. We will close the recommendation when the Principal Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) provides documentation to support that the 1st Special Operations Contracting Squadron completed its review of active contracts and modified any contracts as necessary.

Appendix A

Scope and Methodology

We conducted this performance audit from August 2019 through September 2020 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 objectives.

Our audit objective was to determine whether the Military Services and the DLA complied with the Berry Amendment for DoD procurements and acquisitions when purchasing materials and supplies. We did not review classified contracts. Our scope was limited to contracts issued by the Military Services and the DLA, from

October 1, 2017 to July 31, 2019, with the following Federal Supply Group (FSG) codes:⁶⁸

- 51 – Hand Tools
- 52 – Measuring Tools
- 83 – Textiles, Leathers, Furs, Apparel and Shoes, Tents, Flags
- 84 – Clothing, Individual Equipment, and Insignia

This report is in response to Section 1601 of the National Defense Authorization Act for FY 2014, which required the DoD OIG to conduct periodic audits on contract practices and policies related to procurements under the Berry Amendment. We announced the audit in August 2019, as the “Audit of the DoD’s Compliance with the Berry Amendment.” The report addresses the compliance of each Military Service and the DLA with the Berry Amendment.

Universe and Sample Size Selection

We used the Federal Procurement Data System – Next Generation to identify contracts issued by the Military Services and the DLA. We limited the query to actions covered by the Berry Amendment issued contracts awarded from October 1, 2017, through

⁶⁸ Our review did not include FSG 89 – subsistence (food). There are many exceptions for items within this FSG, and we were not able to pull a reliable sample to test compliance.

July 31, 2019, coded with a “product or service code” beginning with 51, 52, 83, or 84. We limited the query to actions valued above the SAT of \$250,000. We selected sites that awarded the most contracts subject to the Berry Amendment and provided the most varied mix of FSG codes to review. Specifically, we selected the following components to visit.

- Army
 - Aberdeen Proving Ground, Natick Contracting Division, Natick, Massachusetts
 - Aberdeen Proving Ground, Maryland
 - Army Contracting Command, Warren, Michigan
 - Mission and Installation Contracting Command, Fort Sill, Oklahoma
- 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 Surface Warfare Center, Panama City, Florida
- Air Force
 - Air Force Life Cycle Management Center, Wright Patterson Air Force Base, Ohio
 - Air Force Sustainment Center, Tinker Air Force Base, Oklahoma
 - 10th Contracting Squadron, U.S. Air Force Academy, Colorado Springs, Colorado
 - 1st Special Operations Contracting Squadron, Air Force Special Operations Command, Hurlburt Field, Florida
- DLA
 - DLA Troop Support Clothing and Textiles, Philadelphia, Pennsylvania
 - DLA Aviation Richmond, Virginia
 - DLA Land and Maritime Warren, Michigan

We identified 533 Berry Amendment contracts valued at \$10 billion. We selected a nonstatistical sample of contracts from those awarded by each of the components subject to the Berry Amendment. We initially selected 139 contracts to review; however, we excluded 4 contracts during the fieldwork phase of the audit because contracting officials cancelled two contracts, and we determined that the Berry Amendment did not apply to the remaining two contracts. Additionally, during

the fieldwork of the audit, we replaced 10 contracts. Our final review included 135 contracts, valued at approximately \$5.4 billion. Our review included 74 solicitations related to the 135 contracts. We did not include the remaining 61 solicitations in our review because the procurements:

- contained exceptions to the Berry Amendment;
- were available through one of the required sources identified in FAR Part 8, “Required Sources of Supplies and Services;”
- were BPAs and the Berry Amendment did not apply; or
- did not contain formal solicitations.

We did not review classified contracts. Unless otherwise noted, dollar values depicted in the report are base award contract values and include the maximum dollar amount the Military Services and the DLA contracting officials could obligate under a contract with undefined ordering quantities.

Our nonstatistical sample was limited to specific contracts, and our results should not be projected across other contracts issued by the selected Components or other Military Service and the DLA-issued contracts.

Review of Documentation and Interviews

We evaluated documentation against 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”
- 31 U.S.C. § 1517, “Prohibited obligations and expenditures”
- FAR Part 4, “Administrative Matters”
- FAR Part 5, “Publicizing Contract Actions”
- FAR Section 52.246-15, “Certificate of Conformance”
- FAR Part 8, “Required Sources of Supplies”
- FAR Part 10, “Market Research”
- FAR Part 12, “Acquisition of Commercial Items”
- FAR Part 45, “Quality Assurance”
- DFARS Part 225, “Foreign Acquisition”
- DFARS 252.225-7012, “Preference for Certain Domestic Commodities”
- DFARS 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools”

To obtain command policy and guidance related to the audit objective, we interviewed contracting and oversight officials from the selected Military Service and DLA locations. We interviewed Military Service and DLA officials to discuss procedures that were completed when they awarded Berry Amendment contracts. We obtained and reviewed copies of contract documentation issued by Military Service and DLA officials, including:

- internal processes/guidelines,
- market research,
- synopsis and solicitation information,
- domestic non-availability determinations,
- base contracts,
- modifications to issued contracts,
- delivery orders,
- domestic origin certificates,
- receiving reports, and
- training certificates.

At Aberdeen Proving Ground, Natick Contracting Division–Natick, we interviewed a program officer to determine the program officer’s role in determining compliance with the Berry Amendment. We physically inspected a sample of the items delivered on 1 of 20 contracts for indications of compliance with the Berry Amendment.

At NAWCAD–Lakehurst, we interviewed technical points of contact to determine their role in determining compliance with the Berry Amendment. We physically inspected a sample of the items delivered on 3 of 13 contracts for indications of compliance with the Berry Amendment.

At the 10th Contracting Squadron, USAFA, Colorado Springs, we interviewed an inspection official to determine that official’s role in determining compliance with the Berry Amendment. We physically inspected a sample of the items delivered on two of nine contracts for indications of compliance with the Berry Amendment.

At Air Force Sustainment Center, Tinker Air Force Base, we interviewed surveillance team officials to determine their role in determining compliance with the Berry Amendment. We physically inspected a sample of the items delivered on one of four contracts for indications of compliance with the Berry Amendment.

Contract Administration Sample

The DCMA administered 88 of the 135 contracts in our sample. We nonstatistically selected 10 DCMA field offices that administered contracts across the Military Services and the DLA. We initially selected 52 contracts to review; however, we excluded 8 contracts during the fieldwork of our audit. Specifically, we determined the applicable field offices did not have inspection and acceptance responsibilities for six contracts and they were unable to provide supporting contract administration documentation. Additionally, contracting officials properly applied exceptions to two contracts and the Berry Amendment did not apply. Our final review included 44 out of 88 contracts across the Military Services and the DLA. Our sample also included DCMA field offices that administered contracts that did not contain the required Berry Amendment clauses or contained contract modifications to include the required Berry Amendment clauses. We selected the following DCMA field offices to interview.

- DCMA Chicago, Illinois
- DCMA Hampton, Virginia
- DCMA Orlando, Florida
- DCMA Detroit, Michigan
- DCMA Manassas, Virginia
- DCMA Baltimore, Maryland
- DCMA Santa Ana, California
- DCMA Hartford, Connecticut
- DCMA Boston, Massachusetts
- DCMA Boeing St. Louis, Missouri

To obtain DCMA policy and guidance related to the audit objective, we interviewed contracting and quality officials from the selected DCMA field office locations. We interviewed DCMA officials to discuss procedures implemented when administering contracts subject to the Berry Amendment. We reviewed DCMA policies and contract documentation provided by DCMA officials, including:

- DCMA Manuals,
- Contract Receipt and Review Checklists,
- Surveillance Plans,
- Counterfeit Detection and Avoidance System Checklists,
- Process Reviews,
- Material Certifications, and
- Certificates of Conformance.

Prior Coverage

During the last 6 years, the DoD Office of Inspector General (DoD OIG) issued five reports discussing the award of contracts for items that are subject to the Berry Amendment. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>.

DODIG-2018-070, “Summary Report of DoD Compliance with the Berry Amendment and the Buy American Act,” February 6, 2018

The DoD OIG summarized the findings of the prior four audits of the Military Services’ and the DLA’s compliance with the Berry Amendment. The DoD OIG determined that DoD contracting officials complied with the Berry Amendment for 69 of 109 contracts reviewed, with an obligated value of \$387 million. However, contracting officials did not comply with the Berry Amendment for the remaining 40 contracts, with an obligated value of \$211.6 million. The DoD OIG recommendations relate to systemic problems across the DoD and not to a specific service. Specifically, DoD contracting officials did not include the required Berry Amendment clause in 33 contracts, did not prepare award notices containing Berry Amendment exception language when procuring foreign-made items on four contracts and improperly purchased foreign-made items or items containing nondomestic components on four contracts without preparing supporting documentation or obtaining. As of May 29, 2020, the DoD OIG recommendations remain open.

DODIG-2017-098, “Defense Logistics Agency Compliance with the Berry Amendment and the Buy American Act,” July 7, 2017

The DoD OIG determined that DLA contracting officials complied with the Berry Amendment for 13 of the 32 contracts reviewed, with an obligated value of \$383.3 million. However, DLA contracting officials did not comply with the Berry Amendment for the remaining 19 contracts, valued at \$453.2 million. The contracts were issued from October 1, 2014, through March 31, 2016. The DoD OIG recommended that DLA officials determine whether noncompliant items were delivered and obtain compliant replacement items; amend standard operating procedures and internal processes to improve compliance with the Berry Amendment; issue special notices to inform the public on the lack of domestically produced items; and review the potential Antideficiency Act violations. The DoD OIG recommendations in this report are closed.

DODIG-2016-051, “Air Force Personnel Can Improve Compliance with the Berry Amendment and the Buy American Act,” February 24, 2016

The DoD OIG determined that Air Force contracting officials complied with the Berry Amendment for 15 of the 21 contracts reviewed, with an obligated value of \$17.7 million. However, Air Force contracting officials did not comply with the Berry Amendment for six contracts, with an obligated value of \$7.1 million. The contracts were issued from October 1, 2014, through May 15, 2015. The DoD OIG recommended that Air Force officials determine whether noncompliant items were delivered and, when appropriate, obtain compliant replacement items, as well as review potential Antideficiency Act violations. The DoD OIG recommendations in this report are closed.

DODIG-2015-161, “Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act,” August 12, 2015

The DoD OIG determined that Navy contracting officials did not consistently comply with the Berry Amendment for 11 of the 23 contracts reviewed, with an obligated value of \$73 million. The contracts were issued from October 1, 2012 through September 30, 2014. The DoD OIG recommended that Navy modify noncompliant contracts to include the appropriate clauses and review potential Antideficiency Act violations. The DoD OIG recommendations in this report are closed.

DODIG-2015-026, “Army Personnel Complied With the Berry Amendment But Can Improve Compliance with the Buy American Act,” November 7, 2014

The DoD OIG determined that Army contracting officials complied with the Berry Amendment for 29 of the 33 contracts reviewed, with an obligated value of \$124.6 million. The Army contracting officials took corrective action to modify the remaining four contracts to include the required clause. The contracts were issued from October 1, 2012, through September 30, 2013. The DoD OIG did not make any recommendations related to the Berry Amendment, and the recommendations in this report are closed.

Use of Computer-Processed Data

We did not use computer-processed data to perform this audit.

Use of Technical Assistance

We held discussions with officials from the DoD OIG’s Quantitative Methods Division to develop the nonstatistical sample.

Appendix B

Contract Analysis

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|----------------------|---------------------|----------|---------------------------------------------------|----------------------------------------|------------------------------------|
| Aberdeen Proving Ground, Natick Contracting Division–Natick, Massachusetts – 20 contracts valued at \$1,684,848,025 | | | | | | | |
| 1 | W911QY-18-D-0211 | \$480,000,000 | March 30, 2018 | 83 | Ultra-Lightweight Camouflage Net System | Yes | Yes |
| 2 | W911QY-18-D-0213 | 480,000,000 | March 30, 2018 | 83 | Ultra-Lightweight Camouflage Net System | Yes | Yes |
| 3 | W911QY-18-D-0210 | 480,000,000 | March 30, 2018 | 83 | Ultra-Lightweight Camouflage Net System | Yes | Yes |
| 4 | W911QY-18-D-0202 | 49,000,000 | December 22, 2017 | 84 | First Aid Kits | N/A ⁹ | Yes |
| 5 | W911QY-18-D-0223 | 49,000,000 | July 30, 2018 | 84 | Handgun Holsters | Yes | Yes |
| 6 | W911QY-19-C-0043 | 24,969,191 | March 15, 2019 | 84 | Individual Equipment/Soft Armor Ballistic Inserts | N/A ⁹ | Yes |
| 7 | W911QY-18-D-0227 | 22,000,000 | September 27, 2018 | 84 | Army Combat Shirt | N/A ⁹ | Yes |
| 8 | W911QY-18-D-0214 | 22,000,000 | September 27, 2018 | 84 | Combat Coat and Trouser | N/A ⁹ | Yes |
| 9 | W911QY-18-C-0186 | 14,547,195 | July 18, 2018 | 84 | Improved Hot Weather Combat Uniform Trouser | N/A ⁹ | Yes |
| 10 | W911QY-19-C-0025 | 13,673,411 | December 20, 2018 | 84 | Combat Shirt | N/A ⁹ | Yes |
| 11 | 47QSWA-18-D-002P (DO W911QY-18-F-0300) | 10,787,065 | April 18, 2018 | 84 | Combat Boots | N/A ¹¹ | No |
| 12 | W911QY-18-C-0151 | 10,481,247 | May 25, 2018 | 84 | First Aid Kits | N/A ⁹ | Yes |
| 13 | W911QY-19-C-0059 | 6,574,457 | April 30, 2019 | 84 | Rucksacks | N/A ⁹ | Yes |
| 14 | W911QY-19-C-0057 | 5,148,234 | April 30, 2019 | 84 | Assault Panels | N/A ⁹ | Yes |
| 15 | W911QY-18-C-0168 | 5,141,449 | June 27, 2018 | 84 | Uniform Pants | N/A ⁹ | Yes |
| 16 | W911QY-18-C-0187 | 4,982,324 | July 19, 2018 | 84 | Uniform Coats | N/A ⁹ | Yes |

Contract Analysis (cont'd)

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|---------------------------------------------------------------------------------------------|------------------|----------------------|---------------------|----------|------------------------------------------------------|----------------------------------------|------------------------------------|
| 17 | W911QY-18-C-0193 | 3,562,185 | July 27, 2018 | 84 | Individual Equipment/Rucksacks | N/A ⁹ | Yes |
| 18 | W911QY-18-C-0126 | 1,871,100 | May 1, 2018 | 84 | Individual Equipment/Hydration Bladder Cleaning Kit | N/A ⁹ | No |
| 19 | W911QY-18-C-0191 | 834,167 | September 5, 2018 | 84 | CBRL Bodies/Socks | N/A ¹³ | N/A ¹³ |
| 20 | W911QY-19-C-0052 | 276,000 | April 10, 2019 | 84 | Weather Combat Uniforms (Coats & Trousers) | N/A ⁹ | Yes |
| Aberdeen Proving Ground, Aberdeen, Maryland – 20 contracts valued at \$1,376,217,491 | | | | | | | |
| 21 | W91CRB-19-D-0012 | \$279,094,392 | March 6, 2019 | 84 | Personal Protective Equipment-Vital Torso Protection | Yes | Yes |
| 22 | W91CRB-19-D-0013 | 254,737,296 | March 6, 2019 | 84 | Personal Armor | Yes | Yes |
| 23 | W91CRB-19-D-0014 | 170,407,119 | March 6, 2019 | 84 | Personal Armor | Yes | Yes |
| 24 | W91CRB-19-D-0010 | 151,562,634 | December 21, 2018 | 84 | Personal Armor | Yes | Yes |
| 25 | W91CRB-19-D-0009 | 145,359,367 | December 21, 2018 | 84 | Personal Armor | Yes | Yes |
| 26 | W91CRB-19-D-0011 | 131,942,368 | December 21, 2018 | 84 | Personal Armor | Yes | Yes |
| 27 | W91CRB-18-D-0020 | 110,231,607 | September 14, 2018 | 84 | Personal Armor | N/A ¹² | Yes |
| 28 | W91CRB-19-D-0007 | 47,203,546 | January 30, 2019 | 84 | Bomb Suits | Yes | Yes |
| 29 | W91CRB-19-D-0006 | 7,834,750 | July 5, 2019 | 84 | Retention Systems | N/A ⁹ | Yes |
| 30 | W91CRB-18-C-0022 | 2,789,747 | January 17, 2018 | 84 | Hard Armor Protective Inserts | N/A ¹⁴ | Yes |
| 31 | W91CRB-18-C-0009 | 312,137 | January 16, 2018 | 84 | Advanced Fabric for Armor Protection | N/A ¹⁴ | Yes |
| 32 | W91CRB-18-C-0015 | 2,101,985 | November 20, 2017 | 84 | Shrapnel Vests | N/A ¹² | Yes |
| 33 | W91CRB-19-C-0011 | 1,646,660 | April 8, 2019 | 84 | Helmets & Covers | N/A ¹² | Yes |
| 34 | W91CRB-18-C-0061 | 1,635,404 | September 27, 2018 | 84 | Shrapnel Vests | N/A ¹² | Yes |
| 35 | W91CRB-18-C-0030 | 4,160,765 | March 27, 2018 | 84 | Shrapnel Vests | N/A ¹² | Yes |

Contract Analysis (cont'd)

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|---------------------------------------------------------------------------------------------------------------|---------------------------------------|----------------------|---------------------|----------|-------------------------------------------------------|----------------------------------------|------------------------------------|
| 36 | W911QY-18-D-0131/ W911SR-19-F-0061 | 61,895,379 | June 27, 2019 | 83 | Tent/Shelter Systems | Yes | Yes |
| 37 | W91CRB-18-C-0007 | 999,716 | November 30, 2017 | 84 | Hybrid Ceramics in Hard Armor | N/A ¹⁴ | Yes |
| 38 | W91CRB-19-C-0026 | 923,726 | June 21, 2019 | 84 | Ballistic Inserts/Plate Carrier/ Bungee Strap/Belt | N/A ¹² | Yes |
| 39 | W91CRB-18-C-0038 | 692,893 | May 30, 2018 | 84 | Fist Article Test/Ballistic Battle Belt | N/A ⁹ | Yes |
| 40 | W911SR-18-C-0026 | 686,000 | March 16, 2018 | 51 | Valve Cassette | N/A ⁹ | Yes ¹ |
| ACC Detroit Arsenal, Michigan – 9 contracts valued at \$225,138,817 | | | | | | | |
| 41 | W56HZV-19-D-0022 | \$45,007,608 | March 29, 2019 | 51 | Urban Operation Platoon Set | Yes | Yes |
| 42 | W56HZV-18-D-0079 | 63,500,000 | August 10, 2018 | 51 | General Mechanics Tool Kit | Yes | Yes |
| 43 | W56HZV-18-C-0067 | 55,040,165 | May 1, 2018 | 84 | Organizational Clothing & Individual Equipment | Yes | Yes |
| 44 | W56HZV-19-D-0020 | 45,651,972 | March 29, 2019 | 51 | Urban Operations Squad Sets | Yes | Yes |
| 45 | W56HZV-18-D-0009 | 8,198,956 | January 11, 2018 | 51 | Kits for Evidence Collection & Detainee Processing | Yes | Yes |
| 46 | W56HZV-18-D-0085 | 6,000,000 | September 25, 2018 | 51 | Refrigeration Tool Kits | Yes | Yes ¹ |
| 47 | W56HZV-19-C-0066 | 749,950 | March 6, 2019 | 84 | Chemical Carriers | N/A ² | N/A ² |
| 48 | W56HZV-19-C-0054 | 572,900 | February 7, 2019 | 84 | Individual Carriers | N/A ² | N/A ² |
| 49 | W56HZV-18-D-0087 | 417,266 | September 5, 2018 | 51 | Tool Sets | Yes | Yes |
| Mission and Installation Contracting Command, Fort Sill, Oklahoma – 6 contracts valued at \$42,000,000 | | | | | | | |
| 50 | W9124L-19-A-0001 | \$7,000,000 | December 1, 2018 | 84 | Supply Requirements | N/A ³ | N/A ³ |
| 51 | W9124L-19-A-0002 | 7,000,000 | December 1, 2018 | 84 | Supply Requirements | N/A ³ | N/A ³ |
| 52 | W9124L-19-A-0003 | 7,000,000 | December 1, 2018 | 84 | Supply Requirements | N/A ³ | N/A ³ |

Contract Analysis (cont'd)

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|---------------------------------------------------------------------------|------------------|----------------------|---------------------|-------------------|-------------------------------------------------|----------------------------------------|------------------------------------|
| 53 | W9124L-19-A-0004 | 7,000,000 | December 1, 2018 | 84 | Supply Requirements | N/A ³ | N/A ³ |
| 54 | W9124L-19-A-0005 | 7,000,000 | December 1, 2018 | 84 | Supply Requirements | N/A ³ | N/A ³ |
| 55 | W9124L-19-A-0006 | 7,000,000 | December 1, 2018 | 84 | Supply Requirements | N/A ³ | N/A ³ |
| MCSC Quantico, Virginia – 8 contracts valued at \$358,784,868 | | | | | | | |
| 56 | M67854-19-D-1500 | \$215,978,567 | June 14, 2019 | 84 | Lightweight Plates | Yes | Yes |
| 57 | M67854-18-D-1309 | 62,612,464 | September 26, 2018 | 84 | Plate Carrier Gen III | Yes | Yes |
| 58 | M67854-19-D-1509 | 59,369,617 | October 25, 2018 | 84 | Plate Carrier Gen III Soft Armor | Yes | Yes |
| 59 | M67854-18-D-1402 | 9,085,675 | September 27, 2018 | 84 | Military Ski System | Yes | Yes |
| 60 | M67854-18-D-1392 | 6,912,910 | August 8, 2018 | 84 | Drawers, Undershirts, Pullovers | N/A ⁸ | Yes |
| 61 | M67854-19-D-1598 | 3,588,380 | July 19, 2019 | 84 | Rifle Magazine Pouches | Yes | Yes |
| 62 | M67854-19-C-5138 | 672,355 | July 31, 2019 | 83 | Equipment Covers | Yes | Yes |
| 63 | M67854-18-P-1396 | 564,900 | September 7, 2018 | 84 | Enhanced Combat Helmet Covers | N/A ⁸ | Yes |
| NAWCAD Lakehurst, New Jersey – 13 contracts valued at \$19,403,334 | | | | | | | |
| 64 | N68335-18-C-0667 | \$11,924,503 | September 26, 2018 | 51 | Hand Tools and Tool Boxes | Yes | Yes |
| 65 | N68335-19-D-0136 | 1,703,619 | July 15, 2019 | 51 | Peculiar Support Equipment | Yes | Yes |
| 66 | N68335-19-D-0019 | 1,242,700 | January 29, 2019 | 51 | Tube Servicing Machine & Chipless Cutter System | Yes | Yes |
| 67 | N68335-19-D-0034 | 880,853 | March 26, 2019 | 52 | Digital Torque Multiplier Set | N/A ⁹ | Yes ¹ |
| 68 | N68335-19-G-0043 | 1,094,159 | July 3, 2019 | R699 ⁴ | Kitting Services | Yes ¹⁰ | Yes |
| 69 | N68335-19-C-0376 | 450,176 | May 2, 2019 | 51 | Tool Kit for V-22 | Yes | Yes |
| 70 | N68335-19-C-0213 | 424,394 | December 21, 2018 | 51 | Wing Transmission Lug Bushing Tool Kit | Yes ¹⁰ | Yes ¹ |
| 71 | N68335-19-D-0056 | 337,184 | July 3, 2019 | 51 | Peculiar Support Equipment | N/A ⁹ | Yes |

Contract Analysis (cont'd)

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|----------------------------------------------------------------------------------------------------------------------------|------------------|----------------------|---------------------|----------|--------------------------------------------------------------------|----------------------------------------|------------------------------------|
| 72 | N68335-19-C-0475 | 299,419 | May 23, 2019 | 51 | Hand Tools | No | Yes ¹ |
| 73 | N68335-19-C-0219 | 279,875 | February 21, 2019 | 51 | Aircraft Hand Tools | No | No |
| 74 | N68335-19-C-0228 | 261,022 | January 15, 2019 | 51 | Hand Tools | N/A ⁹ | No |
| 75 | N68335-19-D-0024 | 253,658 | June 26, 2019 | 52 | Peculiar Support Equipment | N/A ⁹ | Yes |
| 76 | N68335-18-C-0202 | 251,772 | August 29, 2017 | 51 | Hand Tools | Yes | Yes |
| NAVSUP Fleet Logistics Center, Norfolk, Virginia – 2 contracts valued at \$92,661,220 | | | | | | | |
| 77 | N00189-18-D-0048 | \$92,000,000 | November 1, 2018 | 84 | Servmart Supplies | Yes | Yes |
| 78 | N00189-19-D-0023 | 661,220 | June 27, 2019 | 84 | Parade Coats and Trousers | Yes | Yes |
| Naval Sea Systems Command, Panama City, Florida – 4 contracts valued at \$34,062,085 | | | | | | | |
| 79 | N61331-18-D0005 | \$10,732,523 | February 7, 2018 | 84 | Naval Security Forces Vests | Yes | Yes |
| 80 | N61331-18-D-0004 | 10,418,528 | February 7, 2018 | 84 | Naval Security Forces Vests | Yes | Yes |
| 81 | N61331-18-D-0003 | 9,231,076 | February 7, 2018 | 84 | Naval Security Forces Vests | Yes | Yes |
| 82 | N61331-18-D-0006 | 3,679,958 | March 27, 2018 | 84 | Neutrally Buoyant Ballistic Plates | Yes | Yes |
| Air Force Life Cycle Management Center, Wright Patterson Air Force Base, Ohio – 5 contracts valued at \$214,049,285 | | | | | | | |
| 83 | FA8606-18-D-0031 | \$98,300,000 | September 28, 2018 | 84 | Aircrew Laser Eye Protection – Day/Night Spectacles & related kits | N/A ⁵ | N/A ⁵ |
| 84 | FA8606-18-D-0019 | 98,300,000 | September 28, 2018 | 84 | Aircrew Laser Eye Protection – Day/Night Spectacles & related kits | N/A ⁵ | N/A ⁵ |
| 85 | FA8606-18-C-0034 | 15,498,493 | September 26, 2019 | 84 | In-Flight Bladder Relief System/ Female Starter Kits | N/A ⁹ | Yes |
| 86 | 36F797-18-D-0358 | 1,613,392 | March 16, 2018 | 84 | In-Flight Bladder Relief System/ Female Starter Kits | N/A ¹¹ | Yes |
| 87 | FA8629-19-C-5000 | 337,400 | February 12, 2019 | 84 | Equipment Harnesses | N/A ⁹ | Yes ¹ |

Contract Analysis (cont'd)

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|----------------------------------------------------------------------------------------------------------------------------------------------------|------------------|----------------------|---------------------|----------|-------------------------------------------|----------------------------------------|------------------------------------|
| Air Force Sustainment Center, Tinker Air Force Base, Oklahoma – 4 contracts valued at \$12,254,508 | | | | | | | |
| 88 | FA8125-18-A-0001 | \$4,000,000 | April 19, 2018 | 51 | Reamers/Core Drills & Countersinks | N/A ³ | N/A ³ |
| 89 | FA8125-18-A-0002 | 4,000,000 | April 19, 2018 | 51 | Reamers/Core Drills & Countersinks | N/A ³ | N/A ³ |
| 90 | FA8125-18-A-0003 | 4,000,000 | April 19, 2018 | 51 | Reamers/Core Drills & Countersinks | N/A ³ | N/A ³ |
| 91 | FA8125-19-P-A018 | 254,508 | March 20, 2019 | 51 | Fuel Tooling and Fixtures | Yes | Yes |
| USAFA 10th Contracting Squadron, Colorado Springs, Colorado – 9 contracts valued at \$12,503,045 | | | | | | | |
| 92 | FA7000-18-D-0001 | \$5,643,399 | October 1, 2017 | 84 | Uniforms | Yes | Yes |
| 93 | FA7000-19-D-A004 | 1,762,180 | March 21, 2019 | 84 | Athletic Wear | Yes | Yes |
| 94 | FA7000-18-D-0002 | 1,469,416 | October 1, 2017 | 84 | Jackets & Parkas | Yes | Yes |
| 95 | FA7000-18-D-0006 | 932,938 | February 15, 2018 | 84 | Flight Caps | Yes | Yes |
| 96 | FA7000-18-D-0005 | 813,554 | December 28, 2017 | 84 | Socks | Yes | Yes |
| 97 | FA7000-18-D-0003 | 640,798 | November 14, 2017 | 84 | Swords | N/A ⁶ | N/A ⁶ |
| 98 | FA7000-18-A-0008 | 475,000 | September 13, 2018 | 84 | Military items (insignias, gloves) | N/A ³ | N/A ³ |
| 99 | FA7000-18-A-0009 | 475,000 | September 11, 2018 | 84 | Military items (insignias, gloves) | N/A ³ | N/A ³ |
| 100 | FA7000-18-P-0028 | 290,760 | March 2, 2018 | 84 | Athletic Wear | Yes | Yes |
| Air Force Special Operations Command 1st Special Operations Contracting Squadron, Hurlburt Field, Florida – 2 contracts valued at \$795,279 | | | | | | | |
| 101 | FA4417-18-P-0186 | \$491,784 | September 26, 2018 | 83 | Tent Systems | No | No |
| 102 | FA4417-18-P-0155 | 303,495 | September 18, 2018 | 83 | Air Rapid Response Kits (Water & Weather) | No | No |
| DLA Troop Support Clothing and Textiles, Philadelphia, Pennsylvania – 19 contracts valued at \$1,282,787,525 | | | | | | | |
| 103 | SPE1C1-18-D-1011 | \$40,434,006 | November 13, 2017 | 84 | Boot, Combat | Yes | Yes |
| 104 | SPE1C1-19-D-1128 | 216,120,702 | October 9, 2018 | 83 | Coat & Trousers | Yes | Yes |
| 105 | SPE1C1-19-D-1130 | 200,000,000 | May 10, 2019 | 83 | Commercial Shelter System | Yes | Yes |

Contract Analysis (cont'd)

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|-----------------------------------------------------------------------------|------------------|----------------------|---------------------|----------|-----------------------------------------------|----------------------------------------|------------------------------------|
| 106 | SPE1C1-19-D-N057 | 186,375,600 | January 22, 2019 | 84 | Coat & Trouser | N/A ⁸ | Yes |
| 107 | SPE1C1-18-D-1073 | 111,912,000 | August 16, 2018 | 84 | Enhanced Side Ballistic Inserts (EBSI) | Yes | Yes |
| 108 | SPE1C1-19-D-1154 | 92,881,740 | May 6, 2019 | 84 | Enhanced Small Arms Protective Insert (ESAPI) | Yes | Yes |
| 109 | SPE1C1-18-D-1079 | 62,667,695 | August 9, 2018 | 84 | Men's Marine Corps Dress Blue Coat & Collar | Yes | Yes |
| 110 | SPE1C1-18-D-1045 | 49,582,467 | April 6, 2018 | 83 | Air Force Cloth | Yes | Yes |
| 111 | SPE1C1-18-D-N041 | 48,774,001 | May 25, 2018 | 84 | Jacket, Fleece, Green | N/A ⁸ | Yes |
| 112 | SPE1C1-18-D-1008 | 48,411,186 | October 25, 2017 | 84 | Marine Corps Combat Utility Uniform (MCCUU) | Yes | Yes |
| 113 | SPE1C1-19-D-1113 | 47,951,352 | November 19, 2018 | 83 | Cloth | Yes | Yes |
| 114 | SPE1C1-19-D-1136 | 47,642,384 | February 21, 2019 | 84 | Extreme Cold, Wet Weather Jacket | Yes | Yes |
| 115 | SPE1C1-18-D-1076 | 43,646,220 | August 9, 2018 | 84 | Army Combat Uniform | Yes | Yes |
| 116 | SPE1C1-19-D-1100 | 40,563,765 | November 5, 2018 | 83 | Cloth | Yes | Yes |
| 117 | SPE1C1-18-D-1009 | 23,862,885 | October 31, 2017 | 84 | Gloves | Yes | Yes |
| 118 | SPE1C1-18-D-1091 | 10,243,526 | September 18, 2018 | 84 | Patrol Caps, Ripstop Airman Battle Uniform | Yes | Yes |
| 119 | SPE1C1-18-D-1053 | 6,194,366 | May 18, 2018 | 83 | Tarpaulin | Yes | Yes |
| 120 | SPE1C1-18-D-B032 | 2,973,696 | November 7, 2017 | 84 | Neckerchief | N/A ⁸ | Yes |
| 121 | SPE1C1-19-D-1141 | 2,549,934 | March 4, 2019 | 84 | Women's Skirts | Yes | Yes |
| DLA Aviation Richmond, Virginia – 10 contracts valued at \$8,628,214 | | | | | | | |
| 122 | SPE4AX-19-D-0011 | \$1,843,856 | March 18, 2019 | 51 | Jack, Screw, Hand | No | Yes ¹ |
| 123 | SPE4A6-19-C-0091 | 1,833,243 | May 10, 2019 | 51 | Tool, Kit, Impact Wrench | No | Yes ¹ |
| 124 | SPE4A6-19-C-0089 | 1,018,680 | April 30, 2019 | 51 | Wrench, Impact, Electric | N/A ⁷ | N/A ⁷ |

Contract Analysis (cont'd)

| | Contract Number | Total Contract Value | Contract Award Date | FSG Code | Item Description | Required DFARS Clauses in Solicitation | Required DFARS Clauses in Contract |
|------------------------------------------------------------------------------------|------------------|----------------------|---------------------|----------|-----------------------------------|----------------------------------------|------------------------------------|
| 125 | SPE4A6-19-D-0117 | 855,855 | March 6, 2019 | 51 | Puller and Pump, End | No | Yes ¹ |
| 126 | SPE4A6-19-P-H593 | 734,152 | June 25, 2019 | 51 | Wrench, Impact, Electric | N/A ² | N/A ² |
| 127 | SPE4A6-19-P-9611 | 630,840 | February 19, 2019 | 51 | Tools, Kits, Impact Wrenches | N/A ² | N/A ² |
| 128 | SPE4A5-19-D-0002 | 610,518 | October 16, 2018 | 51 | Aircraft Components & Accessories | No | Yes ¹ |
| 129 | SPE4A6-19-C-0076 | 494,926 | April 9, 2019 | 51 | Tool Kit | No | No |
| 130 | SPE4A6-19-P-D135 | 343,294 | April 11, 2019 | 51 | Special Tool Kits | N/A ² | N/A ² |
| 131 | SPE4A6-19-P-9657 | 262,850 | February 19, 2019 | 51 | Tool, Kit, Impact Wrench | N/A ² | N/A ² |
| DLA Land and Maritime Warren, Michigan – 4 contracts valued at \$35,474,549 | | | | | | | |
| 132 | SPRDL1-18-D-0129 | \$24,214,623 | August 16, 2018 | 51 | Refrigeration Tool Kit | Yes | Yes |
| 132 | SPRDL1-18-F-0051 | 6,929,676 | August 22, 2018 | 51 | Small Arms Tool Kit | Yes | Yes |
| 134 | SPRDL1-18-C-0326 | 3,509,820 | July 22, 2018 | 51 | Tool Kits | Yes | Yes |
| 135 | SPRDL1-18-D-0051 | 820,430 | March 21, 2018 | 51 | Pipefitter Tool Kit | Yes | Yes |

¹ Contracting officials modified the identified contracts to include the required Berry Amendment DFARS clauses as a result of our audit.

² Berry Amendment N/A for identified contracts due to CBRN or Special Emergency Procurement Authority exception.

³ Berry Amendment N/A for identified contracts due to BPA order limits.

⁴ The FSG for contract N68335-19-G-0043 is R699, "Support - Administrative: Other." However, the kitting services include putting together tool sets, which are subject to the Berry Amendment. In addition, the contractor is responsible for purchasing all of the toolboxes and tools required to build the tool sets.

⁵ Berry Amendment N/A for identified contracts due to "Incidental Amounts" exception.

⁶ Berry Amendment N/A for identified contract due to qualifying country exception.

⁷ Berry Amendment N/A for identified contract due to unusual and compelling requirement.

⁸ The purchase requirements for the identified contracts were available through one of the required sources identified in FAR Part 8, "Required Sources of Supplies and Services." Therefore, a solicitation was not prepared for the contracts or we did not include the solicitation as part of our review.

⁹ The identified contracts were sole source procurements and contracting officials did not issue a formal solicitation.

¹⁰ Solicitation states the Berry Amendment applies to the procurement, but does not identify the specific required DFARS clauses.

¹¹ The identified contracts were awarded through a General Services Administration schedule, and contracting officials did not issue a formal solicitation.

¹² The identified contracts were Foreign Military Sales procurements and contracting officials did not issue a formal solicitation.

¹³ Berry Amendment N/A for identified contract due to exception for chemical warfare protective clothing.

¹⁴ The identified contracts were awarded from a Broad Agency Announcement and contracting officials did not issue a formal solicitation.

Appendix C

Site-Specific Results by Military Service and the DLA

This Appendix summarizes the results of our review for each of the Army, Navy, Air Force, and DLA sites reviewed.

Army

Army contracting officials complied with the Berry Amendment for 53 of 55 contracts reviewed, valued at \$3.3 billion. Specifically, Army contracting officials awarded contracts subject to the Berry Amendment in accordance with DFARS section 225.7002.⁶⁹ Army contracting officials issued solicitations with the required Berry Amendment DFARS clauses for 19 of 19 contracts, valued at \$2.94 billion.⁷⁰

Additionally, contracting officials complied with Berry Amendment requirements by properly applying exceptions and evaluating the application of the Berry Amendment when awarding Blanket Purchase Agreements (BPAs). Contracting officials applied exceptions to seven contracts reviewed, and awarded six contracts reviewed as BPAs. As a result of our audit, Army contracting officials modified two contracts, valued at \$6.7 million, to include the required Berry Amendment DFARS clauses. However, Army contracting officials did not comply with the Berry Amendment requirements on the remaining two contracts, valued at \$12.7 million.

Army contracting officials also implemented DPC recommended best practices and additional measures related to the Berry Amendment to help contracting officers identify the requirement for a procurement and to explicitly notify suppliers of the requirement to provide U.S.-produced items. The results for each individual Army site visited and best practices are below.

Army Contracting Command–Detroit Arsenal

ACC–Detroit Arsenal contracting officials did not consistently award contracts with the Berry Amendment clauses for nine contracts reviewed, valued at \$225.1 million. Specifically, contracting officials:

- included the required Berry Amendment DFARS clauses in the solicitations for the seven contracts which required the clauses;⁷¹

⁶⁹ DFARS Part 225, “Foreign Acquisition,” Subpart DFARS 225.7002, “Restrictions on food, clothing, fabrics, hand or measuring tools, and flags.”

⁷⁰ The solicitations for the remaining 36 contracts (totaling 55 contracts) were not included in our review because the Berry Amendment did not apply to the procurements or contracting officials did not issue formal solicitations.

⁷¹ Two contracts used exceptions to the Berry Amendment; therefore, DFARS clause 252.225-7012 was not required in the solicitations.

- awarded contracts with all required Berry Amendment DFARS clauses in six of seven contracts;
- modified 1 contract to include the required Berry Amendment DFARS clause during the course of our audit;⁷²
- used Domestic Non-Availability Determinations in the award of two contracts in order to acquire specific foreign components, while complying with Berry Amendment requirements for all other components;⁷³ and
- applied Chemical, Biological, Radiological, or Nuclear (CBRN) exceptions in the award of two contracts.⁷⁴

ACC–Detroit Arsenal contracting officials implemented a DPC recommended best practice to three contracts to ensure compliance with the Berry Amendment. Specifically, contracting officials included mention of the Berry Amendment in market research documents for the three contracts.

Aberdeen Proving Ground–Aberdeen

Aberdeen Proving Ground–Aberdeen contracting officials did not consistently award contracts with the required Berry Amendment clauses for 20 contracts reviewed, valued at \$1.4 billion. Specifically, contracting officials:

- awarded 19 contracts with the required Berry Amendment DFARS clauses;⁷⁵
- modified 1 contract after the audit announcement to include the required DFARS clause specific to hand and measuring tools. The contracting officer responsible for the contract stated that the clause was initially omitted due to an administrative oversight;⁷⁶
- used a Domestic Non-Availability Determination in the award of one contract in order to acquire a specific foreign component, while complying with Berry Amendment requirements for all other components;⁷⁷ and
- properly applied an exception for fabric used as a component of a non-textile end item for one contract, valued at \$151 million. This contract included the required Berry Amendment DFARS clause, as the exception applied to a single component.

⁷² Contract W56HZV-18-D-0085.

⁷³ Contracts W56HZV-19-D-0020 and W56HZV-18-D-0085.

⁷⁴ Contracts W56HZV-19-C-0066 and W56HZV-19-C-0054.

⁷⁵ Contracting officials awarded one contract (Contract W91CRB-18-D-0020) without the DFARS clause; however, the contracting official modified the contract before our audit announcement to include the clause.

⁷⁶ Contract W911SR-18-C-0026.

⁷⁷ Contract W911QY18D0131/W911SR19F0061.

Additionally, Aberdeen Proving Ground–Aberdeen contracting officials included the required Berry Amendment DFARS clause in solicitations for 8 contracts, valued at \$1.2 billion.⁷⁸

Aberdeen Proving Ground–Aberdeen contracting officials implemented a DPC recommended best practice to one contract to ensure compliance with the Berry Amendment. Specifically, contracting officials included mention of the Berry Amendment in market research documents for the contract.

Aberdeen Proving Ground, Natick Contracting Division–Natick

Aberdeen Proving Ground, Natick Contracting Division–Natick contracting officials did not consistently award contracts with the required Berry Amendment DFARS clause for 20 contracts reviewed, valued at \$1.7 billion. Specifically, contracting officials:

- awarded 18 contracts with the required Berry Amendment DFARS clause;
- awarded 2 contracts without the required Berry Amendment DFARS clause and did not modify the contracts because deliveries were completed. The contracting officer responsible for the contracts stated that the clauses were omitted from the contracts due to contracting official oversight; and⁷⁹
- properly applied an exception for chemical warfare protective clothing for 1 contract, valued at \$834,167.⁸⁰

Additionally, Aberdeen Proving Ground, Natick Contracting Division–Natick contracting officials included the required DFARS clause in solicitations for four contracts reviewed.⁸¹

Aberdeen Proving Ground, Natick Contracting Division–Natick contracting officials implemented DPC recommended best practices to ensure compliance with the Berry Amendment. Specifically, contracting officials (1) included mention of the Berry Amendment in market research documents for 4 contracts, and (2) included mention of the Berry Amendment in FBO.gov postings for 3 contracts.

⁷⁸ We did not include solicitations for the remaining 12 contracts in our review (totaling 20 contracts) because contracting officials did not issue formal solicitations.

⁷⁹ Contracts 47QSWA-18-D-002P (DO W911QY-18-F-0300) and W911QY-18-C-0126.

⁸⁰ Contract W911QY-18-C-0191.

⁸¹ Solicitation was not reviewed for one contract because it was exempt from the Berry Amendment. Contracting officials did not issue formal solicitations for the remaining 15 contracts (totaling 19 contracts). Specifically, 13 contracts were sole source and 2 contracts were awarded through a General Services Administration schedule.

Mission and Installation Contracting Command–Fort Sill

U.S. Army Mission and Installation Contracting Command–Fort Sill contracting officials consistently awarded six BPAs, valued at \$42 million, with Berry Amendment DFARS clauses. Although the inclusion of the Berry Amendment clauses was not required because the individual call order limits of the BPAs were under the SAT, the inclusion of the clauses was not detrimental to the contracts. Additionally, contracting officials did not issue solicitations for the six contracts.

Additional Measure for Berry Amendment Compliance Identified Across Army Contracting Activities

During our site visits to ACC–Detroit Arsenal, Aberdeen Proving Ground–Aberdeen, and Aberdeen Proving Ground, Natick Contracting Division–Natick, we identified an additional measure used by contracting officials for contracts that required compliance with the Berry Amendment. In 11 solicitation documents and 23 base contracts, contracting officials at these sites included a Berry Amendment notice that provided a description of the Berry Amendment requirements. Each notice references DFARS 252.225-7012 and requires the contractor (and entire supply chain) to adhere to the Berry Amendment requirements. Additionally, some of the notices require documentation for compliance from the supplier for each purchase order, including the contract number, product identification, lot number, and quantities supplied, along with a signature from a company representative. See Appendix F – Exhibit C for an example of the language included in these notices.

Navy and Marine Corps

Navy and Marine Corps contracting officials complied with the Berry Amendment for 22 of 27 contracts reviewed, valued at \$502.7 million. Specifically, Navy and Marine Corps contracting officials awarded contracts subject to the Berry Amendment in accordance with DFARS section 225.7002. However, contracting officials at NAWCAD–Lakehurst did not comply with the Berry Amendment requirements for the remaining five contracts, valued at \$2.1 million.

Additionally, Navy and Marine Corps contracting officials issued solicitations with the required DFARS clauses for 19 of 21 contracts, valued at \$495 million.⁸² Navy and Marine Corps contracting officials implemented additional measures related to the Berry Amendment to help contracting officers identify the requirement

⁸² The solicitations for the remaining 6 contracts (totaling 27 contracts) were not included in our review. Specifically, four contracts were sole source and contracting officials did not issue formal solicitations, and two contracts were for procurements that were available through one of the required sources identified in FAR Part 8, “Required Sources of Supplies and Services.”

for a procurement and to explicitly notify suppliers of the requirement to provide U.S.-produced items. The results for each individual Navy and Marine Corps site visited are below.

Naval Supply Systems Command Fleet Logistics Center–Norfolk

NAVSUP Fleet Logistics Center–Norfolk contracting officials included DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” in the solicitations and contracts for two contracts reviewed, valued at \$92.7 million.

NAVSUP Fleet Logistics Center–Norfolk contracting officials implemented DPC recommended best practices related to the Berry Amendment by including the full text of DFARS 252.225-7012 and 252.225-7015 in the solicitations. Additionally, contracting officials implemented additional measures to ensure compliance with the Berry Amendment by conducting random inspections monthly from November 2018 through February 2019 and April 2019 through September 2019 for one contract, valued at \$92 million.⁸³ The contracting officials conducted random monthly physical inspections, when deliveries were made, and documented the results on the Country of Origin Compliance Checklist Summary. This document outlines specific contract requirements for inspection, including the Berry Amendment. See Exhibit F in Appendix F for an example of the Country of Origin Compliance Checklist Summary.

Naval Surface Warfare Center–Panama City

Naval Surface Warfare Center–Panama City Division contracting officials included DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” in the solicitations and contracts for four contracts reviewed, valued at \$34 million.

Naval Air Warfare Center Aircraft Division–Lakehurst

NAWCAD–Lakehurst contracting officials did not consistently award contracts with all the required Berry Amendment clauses for the 13 contracts reviewed, valued at \$19.4 million. Specifically, contracting officials:

- included the required DFARS clauses in solicitations for 9 of the 13 contracts;⁸⁴
- awarded eight contracts with the required DFARS clauses;
- awarded three contracts without the required DFARS clause specific to hand and measuring tools, but later modified three contracts after the audit announcement to include the required DFARS clause; and

⁸³ Contract N00189-18-D-0048.

⁸⁴ NAWCAD–Lakehurst contracting officials did not issue formal solicitations for four contracts because the procurements were sole source.

- awarded two contracts without the required clause, DFARS 252.225-7012, and did not modify two contracts because deliveries were completed, and inspected the items for compliance with the Berry Amendment.

NAWCAD–Lakehurst contracting officials stated that the omissions of the DFARS clauses were oversights due to a change in staff during award and confusion related to the national stock number during market research. Contracting officials stated that they identified the missing clauses when conducting post-award reviews of the contracts and followed up with the contractors to ensure that the contractors were aware of the requirement to comply with the Berry Amendment.

Additionally, NAWCAD–Lakehurst contracting officials updated an additional measure for ensuring compliance with the Berry Amendment. Specifically, contracting officials prepared pre-solicitation plans for contracts that included a section on foreign acquisition, requiring contracting officials to determine if a procurement was subject to the Berry Amendment. NAWCAD–Lakehurst contracting officials complete a pre-solicitation procurement plan for every action above the SAT. Contracting officials updated the pre-solicitation plan to include clarifying guidance on how to apply the Berry Amendment required clauses. See Exhibit B in Appendix F for an excerpt from the NAWCAD pre-solicitation plan that contains guidance on applying Berry Amendment required clauses.

Marine Corps Systems Command–Quantico

MCSC–Quantico contracting officials included DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” in the eight contracts reviewed, with a total contract value of \$358.8 million. Additionally, contracting officials included the required clause in solicitations for six of the eight contracts reviewed.⁸⁵

MCSC–Quantico contracting officials implemented DPC recommended best practices and additional measures related to the Berry Amendment for some of the eight contracts reviewed. Specifically, MCSC–Quantico contracting officials:

- required contractors to provide Berry Amendment self-certifications in their proposals for three of the eight contracts reviewed;
- included the Berry Amendment requirement when performing market research for four of the eight contracts reviewed; and
- included the Berry Amendment requirement when placing a synopsis and sources sought notification on FBO.gov for three of six contracts reviewed.⁸⁶

⁸⁵ MCSC contracting officials did not issue a solicitation for two contracts because the procurements were available through one of the required sources identified in FAR Part 8, “Required Sources of Supplies and Services.”

⁸⁶ A synopsis or a sources sought was not prepared for two contracts.

Air Force

Air Force contracting officials complied with the Berry Amendment for 18 of the 20 contracts reviewed, valued at \$239.6 million. Specifically, Air Force contracting officials awarded the contracts in accordance with DFARS section 225.7002. Contracting officials issued solicitations with the required Berry Amendment DFARS clauses for seven of nine contracts, valued at \$11.2 million.⁸⁷ Air Force contracting officials complied with Berry Amendment requirements by properly applying exceptions to three contracts, and evaluating the application of the Berry Amendment when awarding five BPAs. However, Air Force contracting officials did not comply with the Berry Amendment requirements for the remaining two contracts.

Air Force contracting officials also implemented DPC recommend best practices and additional measures related to the Berry Amendment to help contracting officers identify the requirement for a procurement and to explicitly notify suppliers of the requirement to provide U.S.-produced items. The results for each individual Air Force site visited are below.

Air Force Special Operations Command 1st Special Operations Contracting Squadron–Hurlburt Field

Contracting officials at Air Force Special Operations Command 1st Special Operations Contracting Squadron–Hurlburt Field did not include DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” in two contracts valued at \$795,279.⁸⁸ Contracting officials also did not include the required Berry Amendment DFARS clause in solicitation documents for the two contracts. The required clauses were not included in the contracts due to contracting official oversight and a lack of awareness of Berry Amendment requirements.

Air Force Sustainment Center–Tinker Air Force Base

Air Force Sustainment Center–Tinker Air Force Base contracting officials implemented the required Berry Amendment DFARS clauses for one of four contracts reviewed, valued at \$254.5 million. Additionally, contracting officials appropriately awarded the remaining three contracts, valued at \$12 million, as BPAs that were not subject to Berry Amendment requirements based on the dollar value of the call order limits. Contracting officials included the required Berry Amendment DFARS clause in the solicitation for one contract.⁸⁹

⁸⁷ The solicitations for the remaining 11 contracts (totaling 20 contracts) were not included in our review because the Berry Amendment did not apply to the procurements or contracting officials did not issue formal solicitations.

⁸⁸ Contracts FA4417-18-P-0186 and FA4417-18-P-0155.

⁸⁹ We did not review solicitations for the remaining three contracts because the procurements were BPAs and the Berry Amendment did not apply.

Air Force Life Cycle Management Center–Wright Patterson Air Force Base

Air Force Life Cycle Management Center–Wright Patterson Air Force Base contracting officials did not consistently award contracts with the required Berry Amendment clauses for five contracts reviewed, valued at \$214 million.⁹⁰ Specifically, contracting officials:

- awarded contracts with all required Berry Amendment DFARS clauses in two contracts;
- awarded one contract without the required Berry Amendment DFARS clause, but later modified the contract after our audit announcement. The contracting officer responsible for the contract stated that Berry Amendment requirements were initially overlooked by contracting officials while the contracting officer was on leave; and
- appropriately applied exceptions (Incidental Amount) to the Berry Amendment for two contracts.⁹¹

U.S. Air Force Academy 10th Contracting Squadron–Colorado Springs

USAFA 10th Contracting Squadron–Colorado Springs contracting officials appropriately applied the Berry Amendment requirements in all nine contracts reviewed, valued at \$11.6 million. Specifically, contracting officials:

- issued solicitations and awarded contracts with all required Berry Amendment DFARS clauses for six contracts;⁹²
- properly applied an exception (Qualifying Country) to the Berry Amendment for one contract;⁹³ and
- properly awarded the remaining two contracts as BPAs that were not subject to Berry Amendment requirements based on the dollar value of the call order limits.⁹⁴

⁹⁰ We did not include solicitations for the five contracts in our review because contracting officials did not issue formal solicitations for three contracts, and two contracts contained exceptions to the Berry Amendment.

⁹¹ Contracts FA8606-18-D-0031 and FA8606-18-D-0019.

⁹² We did not review the solicitations for the remaining three contracts (totaling nine contracts) because the Berry Amendment did not apply. Specifically, two procurements were BPAs and one procurement contained an exception (qualifying country) to the Berry Amendment.

⁹³ Contract FA7000-18-D-0003.

⁹⁴ Contracts FA7000-18-A-0008 and FA7000-18-A-0009.

USAFA 10th Contracting Squadron–Colorado Springs contracting officials implemented DPC recommended best practices to ensure compliance with the Berry Amendment. Specifically, contracting officials:

- included DFARS 252.225-7012 in full text in the solicitations for four contracts;
- included mention of the Berry Amendment in market research documents for five contracts; and
- included mention of the Berry Amendment in FBO.gov postings for three contracts.

Additionally, USAFA 10th Contracting Squadron–Colorado Springs contracting officials implemented additional measures related to the Berry Amendment for five contracts reviewed. Specifically, contracting officials ensured Berry Amendment compliance by including a Berry Amendment certificate as an attachment to the solicitation. The contractor signed and returned the certificate with its proposal, signifying compliance. The Berry Amendment certificate included sections for the contractor to list the place of manufacture for each component of the end item procured. USAFA 10th Contracting Squadron contracting officials included a signed certificate in each contract file that required compliance with the Berry Amendment. See Appendix F – Exhibits D and E for an example of these certificates.

DLA

For the 33 contracts reviewed, DLA contracting officials implemented the required DFARS clauses in 23 of 28 contracts that required the clauses, with a combined total contract value of \$1.32 billion.⁹⁵ However, DLA Aviation–Richmond contracting officials did not implement the required Berry Amendment clauses for the remaining five contracts, valued at \$5.6 million. As a result, contracting officials awarded five contracts without the required DFARS clauses, but modified the contracts to include the clauses during the course of our audit.

DLA contracting officials issued solicitations with the required DFARS clauses for 20 of 25 contracts, valued at \$1.1 billion. However, DLA Richmond–Aviation contracting officials issued solicitations for the remaining 5 contracts without the required DFARS clauses.⁹⁶ The results for each individual DLA site visited are below.

⁹⁵ DLA Aviation–Richmond contracting officials appropriately applied exceptions to procurements that were exempt from the Berry Amendment for five contracts reviewed, valued at \$3 million.

⁹⁶ The solicitations for the remaining 8 contracts (totaling 33 contracts) were not included in our review. Specifically, five contracts contained exceptions to the Berry Amendment, and three contracts were for procurements that were available through one of the required sources identified in FAR Part 8, “Required Sources of Supplies and Services.”

DLA Troop Support Clothing and Textiles–Philadelphia

DLA Troop Support Clothing and Textiles–Philadelphia contracting officials implemented the required Berry Amendment clause for the 19 contracts reviewed, valued at \$1.28 billion. Additionally, contracting officials included the required Berry Amendment clause in solicitations for 16 of the 19 contracts reviewed.⁹⁷ Specifically, contracting officials:

- awarded 19 contracts with the required DFARS clauses; and
- applied an exception to one component of one contract and properly applied the Berry Amendment to the remaining components of that contract.

Additionally, DLA Troop Support Clothing and Textiles–Philadelphia contracting officials implemented DPC best practices, as well additional measures to ensure compliance with the Berry Amendment. Specific examples of the additional measures implemented are included in Appendix F. Specifically, contracting officials:

- included DFARS 252.225-7012 in full text in the solicitations for 8 of the 19 contracts reviewed;
- included an additional “Caution Notice” or general note stating that the Berry Amendment applies to the procurements in the solicitations for 11 of 19 contracts reviewed (Appendix F, Exhibit C);
- required potential vendors to provide an identification of sources for components in proposals for the 19 contracts reviewed (Appendix F, Exhibit D);
- documented the Berry Amendment in market research surveys to notify potential vendors of the Berry Amendment requirement for 6 of the 18 contracts reviewed; and⁹⁸
- included the Berry Amendment requirement when placing a synopsis and sources sought notification on FBO.gov for 14 of the 15 contracts reviewed (Appendix F, Exhibit A).⁹⁹

DLA Aviation–Richmond

DLA Aviation–Richmond contracting officials appropriately applied exceptions to items that were exempt from the Berry Amendment for 5 of 10 contracts reviewed, valued at approximately \$3 million. However, contracting officials did

⁹⁷ We did not include solicitations for the remaining three contracts in our review because the procurements were available through one of the required sources identified in FAR Part 8, “Required Sources of Supplies and Services.”

⁹⁸ We did not review market research for one contract because the procurement was a mandatory buy and contracting officials waived conducting market research.

⁹⁹ A synopsis or a sources sought was not required for four contracts.

not consistently award contracts with all the required Berry Amendment clauses for the remaining five contracts reviewed, valued at \$5.6 million. Contracting officials modified the five contracts after the audit announcement to include the required clauses.¹⁰⁰ Additionally, contracting officials did not include the required DFARS clauses in the solicitations for the five contracts. DLA Aviation–Richmond contracting officials stated that the omissions of the clauses were due to oversights and a lack of recent training on the Berry Amendment.

Additionally, items were scheduled to be delivered on two of the five contracts before contracting officials modified the contracts. The contracting officer for one of the contracts obtained confirmation that the contractor manufactured the applicable components delivered domestically. However, the contracting officer for the remaining contract stated that she was unaware of any actions taken by DLA Aviation–Richmond to ensure Berry Amendment compliance for the deliveries. Therefore, noncompliant items may have been delivered on the remaining contract. DLA Aviation took steps to update its contracting guidance for awarding and administering contracts that require compliance with the Berry Amendment.

DLA Land and Maritime–Warren

DLA Land and Maritime–Warren contracting officials complied with the Berry Amendment for the four contracts reviewed, valued at \$35.5 million. Specifically, contracting officials included DFARS 252.225-7012 as well as DFARS 252.225-7015, which is required for the acquisition of hand or measuring tools, in the five contracts. Additionally, contracting officials included the required DFARS clauses in the solicitations for the four contracts.

¹⁰⁰ Contracting officials modified contracts SPE4A6-19-C-0091, SPE4A6-19-C-0076, SPE4A6-19-D-0117, and SPE4A5-19-D-0002 to include DFARS 252.225-7015. Contracting officials modified contract SPE4AX-19-D-0011 to include both DFARS 252.225-7012 and 252.225-7015.

Appendix D

DCMA Contract Analysis

| | Contract Number | Contracting Agency | Berry Clauses Included | Modification to Include Berry Clauses | Considered Berry Requirements ¹ |
|---------------------|-------------------------------------------|--------------------------------------------------------------------|------------------------|---------------------------------------|--------------------------------------------|
| DCMA Orlando | | | | | |
| 1 | W911QY-18-C-0168 | Aberdeen Proving Ground, Natick Contracting Division–Natick (Army) | Yes | | Yes |
| 2 | W911QY-18-C-0186 | | Yes | | Yes |
| 3 | W91CRB-19-D-0011 | Aberdeen Proving Ground–Aberdeen (Army) | Yes | | Yes |
| 4 | N61331-18-D-0005 | Naval Surface Warfare Center–Panama City Division | Yes | | Yes |
| 5 | M67854-19-D-1500 | MCSC–Quantico (Navy) | Yes | | No |
| 6 | SPE1C1-18-D-1091 | DLA Troop Support Clothing and Textiles–Philadelphia | Yes | | No |
| 7 | SPE1C1-19-D-1136 | | Yes | | No |
| 8 | SPE1C1-19-D-1154 | | Yes | | No |
| DCMA Chicago | | | | | |
| 9 | W56HZV-18-D-0009 | ACC–Detroit Arsenal | Yes | | — ² |
| 10 | W56HZV-18-D-0079 | | Yes | | — ² |
| 11 | W56HZV-18-D-0085 | | No | Yes | No |
| 12 | W56HZV-18-D-0087 | | Yes | | — ² |
| 13 | W56HZV-19-D-0020 | | Yes | | No |
| 14 | W56HZV-19-D-0022 | | Yes | | No |
| 15 | 47QSWA-18-D-002P (DO W911QY-18-F-0300) | Aberdeen Proving Ground, Natick Contracting Division–Natick (Army) | No | No | No |
| 16 | N68335-18-C-0667 | NAWCAD–Lakehurst (Navy) | Yes | | No |
| 17 | M67854-19-C-5138 | MCSC–Quantico (Navy) | Yes | | No |

DCMA Contract Analysis (cont'd)

| | Contract Number | Contracting Agency | Berry Clauses Included | Modification to Include Berry Clauses | Considered Berry Requirements ¹ |
|----------------------|------------------|--------------------------------------------------------------------|------------------------|---------------------------------------|--------------------------------------------|
| 18 | SPE4A5-19-D-0002 | DLA Aviation–Richmond | No | Yes | No |
| 19 | SPRDL1-18-D-0051 | DLA Land and Maritime–Warren | Yes | | No |
| 20 | SPRDL1-18-D-0129 | | Yes | | — ² |
| 21 | SPRDL1-18-F-0051 | | Yes | | No |
| DCMA Detroit | | | | | |
| 22 | W911QY-19-C-0059 | Aberdeen Proving Ground, Natick Contracting Division–Natick (Army) | Yes | | No ⁴ |
| 23 | M67854-18-D-1392 | MCSC–Quantico (Navy) | Yes | | No |
| 24 | M67854-19-D-1509 | | Yes | | No |
| 25 | SPE1C1-18-D-N041 | DLA Troop Support Clothing and Textiles–Philadelphia | Yes | | No |
| DCMA Hampton | | | | | |
| 26 | W91CRB-19-D-0006 | Aberdeen Proving Ground–Aberdeen (Army) | Yes | | No |
| 27 | W911QY-18-D-0223 | Aberdeen Proving Ground, Natick Contracting Division–Natick (Army) | Yes | | Yes |
| 28 | N61331-18-D-0003 | Naval Surface Warfare Center–Panama City Division | Yes | | Yes |
| 29 | SPE1C1-18-D-1045 | DLA Troop Support Clothing and Textiles–Philadelphia | Yes | | No |
| 30 | SPE1C1-18-D-1011 | | Yes | | No |
| 31 | SPE1C1-19-D-1100 | | Yes | | No |
| DCMA Manassas | | | | | |
| 32 | W911QY-18-C-0187 | Aberdeen Proving Ground, Natick Contracting Division–Natick (Army) | Yes | | — ³ |
| 33 | W911QY-18-C-0193 | | Yes | | — ³ |
| 34 | W911QY-19-C-0025 | | Yes | | No ⁴ |
| 35 | W911QY-19-C-0043 | | Yes | | No ⁴ |
| 36 | W911QY-19-C-0052 | | Yes | | No ⁴ |

DCMA Contract Analysis (cont'd)

| | Contract Number | Contracting Agency | Berry Clauses Included | Modification to Include Berry Clauses | Considered Berry Requirements ¹ |
|-----------------------------|------------------|------------------------------------------------------|------------------------|---------------------------------------|--------------------------------------------|
| 37 | SPE1C1-18-D-B032 | DLA Troop Support Clothing and Textiles–Philadelphia | Yes | | — ³ |
| DCMA Santa Ana | | | | | |
| 38 | W91CRB-19-D-0012 | Aberdeen Proving Ground–Aberdeen (Army) | Yes | | Yes |
| DCMA Baltimore | | | | | |
| 39 | W911SR-18-C-0026 | Aberdeen Proving Ground–Aberdeen (Army) | Yes | | No |
| 40 | W91CRB-18-D-0020 | | Yes | | Yes ⁴ |
| 41 | SPE4A6-19-C-0091 | DLA Aviation–Richmond | No | Yes | No |
| DCMA Boeing St Louis | | | | | |
| 42 | N68335-19-C-0213 | NAWCAD–Lakehurst (Navy) | No | Yes | Yes |
| DCMA Hartford | | | | | |
| 43 | N68335-19-D-0034 | NAWCAD–Lakehurst (Navy) | No | Yes | Yes |
| DCMA Boston | | | | | |
| 44 | SPE1C1-18-D-1009 | DLA Troop Support Clothing and Textiles–Philadelphia | Yes | | Yes |

¹ “Considered Berry Requirement” is defined “yes” or “no” as to whether the DCMA sites documented the Berry Amendment requirement when administering the identified contracts.

² DCMA Chicago officials could not provide contract receipt and review documentation for the identified contracts because they were unable to download the documentation. Specifically, DCMA Chicago officials stated that the system that DCMA Chicago uses to store contract receipt and review documents was recently updated and the applicable files could not be located.

³ DCMA Manassas did not have acceptance and inspection responsibilities for the identified contracts; however, DCMA Manassas officials stated that a contract receipt and review was not documented for the identified contracts. Contract receipt and review was not documented because DCMA policy at the time of award did not require a documented contract receipt and review for contracts valued below \$5 million. The current DCMA policy, DCMA Manual 2501-01, “Contract Receipt and Review,” March 24, 2019, requires officials to document contract receipt and review for all contracts.

⁴ The DCMA Field Office did not have acceptance and inspection responsibilities for the identified contracts; however, officials from the identified field offices provided supporting documentation related to contract administration for the identified contracts.

Appendix E

Results for Defense Contract Management Agency Sites Reviewed

This Appendix summarizes the results of our review for each of the DCMA sites reviewed. The DCMA administered 88 out of 135 contracts we reviewed. We nonstatistically selected 10 DCMA field offices that administered contracts across the Military Services and the DLA. Specifically, we reviewed the contract administration for 44 out of 88 contracts assigned to the DCMA across the Military Services and the DLA.

DCMA Baltimore

DCMA Baltimore officials delegated contract administration for one of three contracts reviewed, valued at \$110 million, to DCMA Huntsville. However, DCMA Baltimore officials provided contract receipt and review documentation related to the contract. Additionally, DCMA Baltimore officials did not identify the Berry Amendment requirement during contract administration for two of three contracts reviewed, valued at \$2.5 million.

Contract Receipt and Review

DCMA officials conducted contract receipt and review for one of the three contracts identified, valued at \$110 million. Specifically:

- contract receipt and review documentation provided for one contract, valued at \$110 million, showed that DCMA Huntsville officials identified the Berry Amendment requirement; and
- DCMA Baltimore officials did not conduct contract receipt and review for two contracts, valued at \$2.5 million. Instead, DCMA Baltimore officials conducted contract technical reviews on the two contracts; however, the contract technical review documentation showed DCMA Baltimore officials did not identify the Berry Amendment requirement.

Identifying the Berry Amendment requirement during the contract receipt and review process is important because if DCMA officials do not identify the requirement, then DCMA officials may not consider the Berry Amendment during the risk assessment of contract requirements.

Other Documentation Assessed

DCMA Baltimore officials provided contract administration related to the three contracts, including a certificate of compliance and a counterfeit detection avoidance system checklist. Specifically, DCMA Baltimore officials:

- provided a certificate of compliance for one contract, valued at \$110 million, where the contractor certified items related to the contract were Berry Amendment compliant;
- provided a certificate of compliance for 1 contract, valued at \$1.8 million, where the contractor certified items related to the contract met the terms of the contract, but did not identify the Berry Amendment specifically;
- did not include the Berry Amendment as an area of review in the surveillance plan for one contract, valued at \$1.8 million; and
- did not include the Berry Amendment requirement in the counterfeit detection and avoidance system checklist for two contracts, valued at \$2.5 million.

The DCMA Baltimore Quality Assurance Director stated that the checklists were based on risks identified in surveillance plans, and that there was not a specific risk factor used to review Berry Amendment compliance.

DCMA Boeing St. Louis

DCMA Boeing St. Louis officials identified the Berry Amendment requirement during contract administration for one contract reviewed, valued at \$424,000.

Contract Receipt and Review

The customer contract requirements document identified the Berry Amendment requirement for the contract. The DCMA Boeing St. Louis Quality Assurance Director stated that the customer contract requirements document is the equivalent of a contract receipt and review.

DCMA Boston

DCMA Boston officials identified the Berry Amendment requirement during contract administration for one contract reviewed, valued at \$24 million.

Contract Receipt and Review

The DCMA Boston Contracts Director stated that DCMA officials would identify the Berry Amendment requirement for a procurement during a contract receipt and review. However, the contract receipt and review documentation provided for the contract reviewed at DCMA Boston did not include the Berry Amendment

requirement. The Contracts Director stated that DCMA Boston uses an internal checklist to conduct contract receipt and review and recently updated the checklist to include the Berry Amendment.

Other Documentation Assessed

DCMA Boston officials provided a counterfeit mitigation checklist related to the contract. In the checklist, DCMA Boston officials documented the contractor's use of Government-approved suppliers and that the materials used complied with the Berry Amendment.

DCMA Chicago

DCMA Chicago officials did not identify the Berry Amendment during contract administration for 9 of 13 contracts reviewed, valued at \$128.4 million. The DCMA Chicago Quality Assurance Director stated that during contract administration, the Berry Amendment is an identified key contract requirement in the contract receipt and review process, and functional specialists conduct risk-based surveillance to ensure compliance; however, there are no specific requirements for the Berry Amendment.

Contract Receipt and Review

DCMA Chicago officials did not identify the Berry Amendment requirement when conducting contract receipt and review for 9 of 13 contracts reviewed, valued at \$128.4 million. Specifically, DCMA Chicago officials did not:

- identify the Berry Amendment during contract receipt and review for five of the identified contracts;
- identify the Berry Amendment requirement when conducting a contract receipt and review for one contract because the Berry Amendment requirement was not included in the contract; and
- conduct contract receipt and review for the remaining three contracts and did not identify the Berry Amendment when conducting contract technical reviews for the three contracts.¹⁰¹

Additionally, DCMA Chicago officials could not verify whether the Berry Amendment requirement was identified during contract receipt and review for 4 of the 13 contracts reviewed, valued at \$96.3 million. Specifically, DCMA Chicago officials stated that they were unable to download the applicable files related to

¹⁰¹ DCMA Chicago officials did not know why contract receipt and reviews were not conducted, and stated that a contract technical review, which is similar to a contract receipt and review, may have been conducted instead.

contract receipt and review. DCMA Chicago officials conducted contract technical reviews for the four contracts; however, they did not identify the Berry Amendment requirement while conducting the technical reviews.

DCMA Detroit

DCMA Detroit officials did not consistently identify the Berry Amendment during contract administration for four contracts reviewed, valued at \$121.6 million. The DCMA Quality Assurance Director stated that the results of contract receipt and review are used to identify potential risks and that the surveillance plan was developed in conjunction with the risk assessment.

Contract Receipt and Review

DCMA Detroit officials did not consistently identify the Berry Amendment when conducting contract receipt and review for the four contracts reviewed, valued at \$121.6 million. Specifically:

- the contract receipt and review documented the Berry Amendment requirement; however, the DFARS clause identified was incorrect; and
- the contract receipt and review results for one of the four contracts marked the Berry Amendment line item as “yes,” while the remaining three contract receipt and review results showed that the Berry Amendment line items were left blank.

The DCMA Quality Assurance Director stated that DCMA officials verified specific Berry Amendment language and clauses during the contract receipt and review, coordinated with DCMA quality officials, and discussed compliance requirements with the contractor.

Other Documentation Assessed

DCMA Detroit officials provided surveillance plans related to three contracts. However, the surveillance plans for the contracts did not identify the Berry Amendment. The DCMA Detroit Quality Assurance Director stated that the steps for conducting a risk assessment do not vary for contracts subject to the Berry Amendment; however, the Berry Amendment would be identified as a potential risk area.

DCMA Hampton

DCMA Hampton officials considered the Berry Amendment requirement during contract administration for two of six contracts reviewed, valued at \$58.2 million. However, DCMA Hampton officials did not identify the Berry Amendment requirement when conducting initial reviews for the six contracts reviewed, valued at \$196.6 million.

Contract Receipt and Review

DCMA Hampton officials did not identify the Berry Amendment requirement when conducting initial reviews for the six contracts reviewed, valued at \$196.6 million. Specifically, the contract receipt and review results for the identified contracts did not include the Berry Amendment requirement as an area for review. The DCMA Hampton Quality Assurance Director stated that DCMA Hampton officials used a contract receipt and review checklist provided by DCMA Headquarters.

Other Documentation Assessed

DCMA Hampton officials obtained certificates of conformance for three contracts. Specifically, DCMA Hampton officials provided a certificate of conformance for one contract, valued at \$49 million, where the contractor certified that the supplies or services for the procurement complied with the Berry Amendment. However, the certificates of conformance provided for the remaining two contracts, valued at \$48.3 million, did not address or confirm compliance with the Berry Amendment.

The contractor for one contract, valued at \$9.2 million, provided a packing slip self-certifying that the items delivered complied with the Berry Amendment. DCMA Hampton officials provided counterfeit mitigation checklists for three contracts; however, the checklist did not address the Berry Amendment requirement. Additionally, the surveillance plans provided for the six contracts did not address the Berry Amendment.

DCMA Hartford

DCMA Hartford officials identified the Berry Amendment requirement when conducting a contract receipt and review for one contract reviewed, valued at \$880,853.

Contract Receipt and Review

DCMA Hartford officials could not locate contract receipt and review documentation for the base contract; however, DCMA Hartford officials conducted a contract receipt and review and identified the Berry Amendment when the buying activity modified the contract to include the additional Berry Amendment clause required when purchasing tools.¹⁰²

¹⁰² DFARS 252.225-7015, "Restriction on Acquisition of Hand or Measuring Tools."

DCMA Manassas

DCMA Manassas officials did not have item acceptance and inspection responsibilities for the six contracts reviewed, valued at \$50.4 million. However, DCMA Manassas officials conducted contract receipt and review related to the six contracts and provided supporting contract receipt and review documentation.

Contract Receipt and Review

The contract receipt and review documentation for three contracts, valued at \$39 million, did not include the Berry Amendment as an area for review. The DCMA Manassas Quality Director stated that DCMA Manassas officials used the DCMA Headquarters checklist for conducting contract receipt and review.

Additionally, contract receipt and reviews were not documented for the remaining three contracts, valued at \$11.5 million, because DCMA policy at the time of award did not require the contracts to have a documented contract receipt and review.¹⁰³

DCMA Orlando

DCMA Orlando officials considered the Berry Amendment requirement during contract administration for four of eight contracts reviewed, valued at \$162.4 million. However, DCMA Orlando officials did not consider the Berry Amendment during contract administration for the remaining four contracts reviewed, valued at \$366.7 million.

Contract Receipt and Review

DCMA Orlando officials did not identify the Berry Amendment requirement when conducting contract receipt and review for six of eight contracts reviewed, valued at \$386.4 million.¹⁰⁴ Specifically, DCMA Orlando officials:

- did not select the Berry Amendment as an area for review on the contract receipt and review checklist for two contracts; and
- did not have the option to select the Berry Amendment as an area for review on the contract receipt and review checklist for four contracts.

¹⁰³ At the time of award, DCMA policy required documented contract receipt and review for contracts with obligations over \$5 million, and the identified contracts were valued below \$5 million. The current DCMA policy, DCMA Manual 2501-01, "Contract Receipt and Review," March 24, 2019, requires officials to document contract receipt and review for all contracts.

¹⁰⁴ The buying activity for one contract withdrew administrative authority, so DCMA Orlando did not perform a contract receipt and review. A contract receipt and review was not provided for the remaining identified contract; DCMA Orlando officials stated that the contract receipt and review for the base contract could not be identified because information technology problems inhibited the ability to capture contracts.

The Quality Assurance Director stated that DCMA Orlando officials use an internally created checklist to conduct contract receipt and review. Additionally, DCMA Orlando updated the contract receipt and review checklist in March 2020 to include the Berry Amendment as an area for review. The checklist now includes all applicable DFARS clauses related to the Berry Amendment.

Other Documentation Assessed

DCMA Orlando officials provided documentation for the contracts reviewed related to contract administration, including certificates of conformance, surveillance plans, and counterfeit detection and avoidance system checklists. A summary of this information is provided below.

- Certificates of conformance provided by the contractors certified that supplies or services complied with the Berry Amendment for four contracts, valued at \$164.4 million.
- Certificates of conformance provided by the contractors for three contracts, valued at \$319.1 million, certified that the services or supplies met contract requirements, but did not identify the Berry Amendment specifically.
- The surveillance plans and the counterfeit detection and avoidance system checklists related to the eight contracts reviewed did not include specific information related to the Berry Amendment requirement.

The DCMA Orlando Quality Assurance Director stated that DCMA Orlando does not have systemic, routine, and discrete actions for Berry Amendment compliance, although contractors are risk assessed annually, at a minimum.

DCMA Santa Ana

DCMA Santa Ana officials identified the Berry Amendment requirement during contract administration for one contract reviewed, valued at \$279.1 million. Overall, DCMA Santa Ana officials did not identify any instances of noncompliance with the Berry Amendment for the identified contract. However, the DCMA Santa Ana Quality Assurance Director stated that administrative contracting officers often do not have responsibilities specific to ensuring Berry Amendment compliance and that the lack of expertise with enforcing the Berry Amendment is a gap in the contract administration process.

Contract Receipt and Review

DCMA Santa Ana officials conducted a contract receipt and review and included the Berry Amendment as an area for review for the contract reviewed, valued at \$279.1 million.

Appendix F

Exhibits of Berry Amendment DPC Recommended Best Practices and Additional Measures Implemented

Exhibit A. Synopsis Statement

DLA Troop Support Clothing and Textiles - Philadelphia Synopsis Statement

***The Defense appropriations and authorization acts and other statutes (including what is commonly referred to as "The Berry Amendment") impose restrictions on the DoD's acquisition of foreign products and services. Generally, Clothing and Textile items (as defined in DFARS clause 252.225-7012) and "specialty metals" (as defined in DFARS clause 252.225-7014), including the materials and components thereof (other than sensors, electronics, or other items added to, and not normally associated with clothing), must be grown, reprocessed, reused, melted or produced in the United States, its possessions or Puerto Rico, unless one of the DFARS 225.7002-2 exceptions applies.

Exhibit B. Excerpt from Pre Solicitation Procurement Plan

PRE-SOLICITATION/PROCUREMENT PLAN PRESENTATION FORM

SOLICITATION/CONTRACT #. _____ PR/PMT # _____

REQ. CODE _____ CONTRACT TYPE _____

TOTAL EST. AMT. (include options) _____ PSC _____

TYPE OF FUNDS / EXP. DATE _____ NAICS _____

BRIEF DESCRIPTION OF REQUIREMENT: *[This section should be a short statement summarizing the requirement; nomenclature, quantity/period of performance, who is the customer/where is it being used?]*

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>REASON FOR PRESENTATION</p> <p><input type="checkbox"/> Approval of Procurement Plan</p> <p><input type="checkbox"/> Admin. Action _____</p> <p><input type="checkbox"/> Commercial Item over SAP threshold</p> <p><input type="checkbox"/> Other _____</p> <p>_____ Contract Specialist Date</p> <p>_____ Contracting Officer Date</p> <p>CRB No. _____</p> <p>DATE _____</p> <p><input type="checkbox"/> APPROVED</p> <p><input type="checkbox"/> CONDITIONALLY APPROVED</p> <p><input type="checkbox"/> DISAPPROVED</p> <p><u>COMMENTS:</u></p> | <p>CONTRACT CLASSIFICATION</p> <p><input type="checkbox"/> Supply <input type="checkbox"/> Service</p> <p><input type="checkbox"/> R&D <input type="checkbox"/> Other</p> <p>COUNSEL HAS REVIEWED/APPROVED</p> <p><input type="checkbox"/> J & A</p> <p><input type="checkbox"/> Non-Personal Svcs. Determination</p> <p><input type="checkbox"/> D & F</p> <p>_____ Counsel Date</p> <p>REVIEW BOARD CONCURRENCE</p> <p>_____ Member Date</p> <p>_____ Member Date</p> <p>_____ Member Date</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

NAWCAD - Lakehurst
1
CRB SOP 4280.1C (REV 2/2020)

Exhibit B. Excerpt from Pre Solicitation Procurement Plan (cont'd)

4. FOREIGN ACQUISITION: NOTE THAT DoD utilizes the DFARS clauses, NOT the FAR clauses applicable to Foreign Acquisition. Solicitations and Contracts must include the appropriate DFARS clauses, including those for Commercial Items under part 12 which are over the simplified acquisition threshold (commercial over \$150K).

a. BERRY AMENDMENT (See DFARS 225.7002, PGI 225.7002-1)

This procurement is not subject to the Berry Amendment.

This procurement involves Hand and Measuring Tools (FSC categories 51 or 52), is over the Simplified Acquisition Threshold, and is subject to the Berry Amendment. The clause at **252.225-7015, "Restriction on Acquisition of Hand or Measuring Tools"**, as well as the clause at **252.225-7012, "Preference for Certain Domestic Commodities"** will be included in the solicitation and resulting contract.

This procurement involves procurement of Food, Clothing, Tents, Tarpaulins or Covers, Cotton and other natural fiber products, woven silk or woven silk blends, spun silk yard for cartridge cloth, synthetic fabric or coated synthetic fabric, including all textile fibers and yarns that are for use in such fabrics, canvas products, wool, OR any item of individual equipment (FSC 8465) manufactured from or containing any of the fibers, yarns, fabrics, or materials listed above. The restriction applies to the above items, either as end products or components. If the procurement is over the Simplified Acquisition Threshold, the Berry Amendment applies, and the clause at **252.225-7012, "Preference for Certain Domestic Commodities"** will be included in the solicitation and resulting contract.

A domestic nonavailability determination has been made in accordance with DFARS 225.7002-2(b) by The Under Secretary of Defense (Acquisition, Technology, and Logistics) dated _____, attachment _____ hereto.

**Note, even if the majority of the procurement is not subject to the Berry Amendment, if it contains any items subject to the Berry Amendment, valued in the aggregate over the simplified acquisition threshold, include the appropriate clauses.*

b. BUY AMERICAN/TRADE AGREEMENTS (See DFARS Part 225) – check all that apply

Buy American and Balance of Payments Program Applies

This procurement is exempt from the Buy American and Balance of Payments Program

EXEMPTION: _____

Trade Agreements applies to this contract. (the total estimated value of end products covered by Trade Agreements - FSCs listed at 225.401-70 - must be \$204,000 or more)

Trade Agreements does not apply to the entire requirement, only to the following items:

(list items) _____

Trade Agreements does NOT apply

Buy American--Free Trade Agreements--Balance of Payments Program applies (use when total estimated value of end products covered by Trade Agreements – FSC s listed at 225.401-70 – is less than \$204,000 but more than \$25,000.)

Exhibit C. Berry Amendment Notice

Berry Amendment Notice (Included in solicitations and contracts)

From Contract # W911QY19C0059

"This acquisition is subject to the Berry Amendment, 10 USC 2241, and Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.225-7012 Preference for Certain Domestic Commodities (Section I). The Prime Contractor and the entire supply chain are required to adhere to the Berry Amendment. The Prime Contractor shall educate and mentor the entire supply chain in the implementation and maintenance of Berry Amendment compliance. The Prime Contractor shall assess the entire supply chain for compliance to the Berry Amendment and shall provide compliance documentation. Documentation for compliance shall include a certification from the supplier for each purchase order to include the contract number, product identification, lot number and quantities supplied along with a signature from a company representative.

The Government will assess the Prime Contractor's compliance to the Berry Amendment. The Government cannot accept noncompliant equipment, and the Contractor will not be paid for any items in violation of the Berry Amendment. If a Berry Amendment violation is determined to have occurred after the government has accepted delivery, the Contractor is required to replace the item in violation of the Act with an item from a domestic source, at their own expense. Once the Contractor has provided items from an acceptable source; the Government may again accept delivery and compensate the Contractor. The Government may pursue additional claims against the Contractor if the Government incurred other damages due to noncompliance."

DLA Troop Support Clothing and Textiles - Philadelphia Berry Amendment Caution Notice (Included in solicitations and contracts)

CAUTION NOTICE

Offers are cautioned that ALL components must be of domestic origin in compliance with clause 252.225-7012, Preference for Certain Domestic Commodities (DEC 2017).

This solicitation includes domestic preference requirements as identified in the Berry Amendment.

With regard to your offer under this solicitation, and any amendments thereto, the offeror shall confirm, in writing, compliance with the following:

Section 833 of the National Defense Authorization Act for Fiscal Year 2006 added language to 10 U.S. C. 2533a, requiring that all articles or items of "clothing", including the materials and components thereof, purchased by the Department of Defense be grown, reprocessed, reused, or produced in the United States, other than sensor, electronics or other items added to, and not normally associated with, clothing (and the materials and components thereof).

Very Important: The vendor must certify their agreement to these terms and conditions of the solicitation by signing and dating the certification located on the last page of this solicitation.

Exhibit C. Berry Amendment Notice (cont'd)

**Marine Corps System Command – Quantico
Berry Amendment Note (Included in solicitations and contracts)**

**BERRY AMENDMENT COMPLIANCE
B-2 BERRY AMENDMENT COMPLIANCE.**

The Defense Appropriations and Authorizations Acts and other Statutes (including what is commonly referred to as the “Berry Amendment”) imposes restrictions on the DOD’s acquisition of foreign products and services. A preference for certain domestic commodities is required by 10 USC 2533a and DFARS 252.225-7012. These references require the Department of Defense to acquire specific end items or components that have been grown, reprocessed, reused, or produced in the United States. Items provided under this solicitation and the resulting contract shall be compliant with the above references, as applicable.

Offerors shall maintain additional documentation substantiating the claim that all materials, including components and raw materials, submitted under this solicitation and the resultant contract are Berry Amendment compliant. Offerors shall be able to provide this documentation to Government personnel upon request.

Exhibit D. Identification of Sources

USAFA 10th Contracting Squadron - Colorado Springs Identification of Sources (Included in solicitations)

1. IDENTIFICATION OF SOURCES FOR CLOTH/TEXTILE COMPONENTS

a. Offerors must list all components used for each clothing item on a worksheet and attach it to this certificate. It is imperative this is completed correctly and all components are listed on the worksheet.

b. The offeror shall identify the names and addresses of those suppliers from whom each cloth or textile component item will be obtained for use in the performance of any resultant contract. In addition, if the supplier is not the manufacturer, for each cloth or textile component item, the offeror shall also identify the item's manufacturer, the address of the manufacturing facility, and a **Certificate of Compliance** from the manufacturer that asserts the component is compliant with the Berry Amendment. Failure to furnish this information with the offer may result in a rejection of the offer. A separate certification of compliance is needed for each component.

c. Each component is listed in the applicable product description and specification. It is the offeror's responsibility to identify sources of supply that are compliant with the Berry Amendment. The Government is not responsible for providing suggested sources of supply for this acquisition.

d. No change in the supplier(s) or manufacturer(s) listed by the offeror shall be permitted after the opening/closing date of the offer and the award. Offerors may submit changes prior to the opening/closing date, but must provide required certification information.

e. Any change in the supplier(s) or manufacturer(s) listed by the offeror, and in any resultant contract, is prohibited unless it is specifically approved in advance by the contracting officer and the appropriate certification, as addressed above, is provided.

f. Offerors shall comply with the Berry Amendment. If the Government discovers that the listed source of supply is not compliant with the Berry Amendment, this may disqualify the proposal from further consideration of an award.

2. PLACE OF PERFORMANCE

a. The offeror or respondent, in the performance of any contract resulting from this solicitation, () intends, () does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

b. If the offeror or respondent checks "intends" in paragraph (a) of this provision, it shall insert in the following spaces the required information:

Place of Performance (Street Address, City, State, County, Zip Code)

Name and Address of Owner and Operator of the Plant or Facility if Other Than Offeror or Respondent

Exhibit D. Identification of Sources (cont'd)

DLA Troop Support Clothing and Textiles - Philadelphia Identification of Sources (Included in solicitations)

IDENTIFICATION OF SOURCES FOR ALL COMPONENTS FOR CLOTHING/TEXTILE ITEMS

(a) The offeror shall indicate below the names and addresses of those suppliers from whom each component will be obtained for use in the performance of any resultant contract. In addition, for each component, the offeror shall also identify the name of the item's manufacturer and the address of the manufacturing location. Failure to furnish this information with the offer may result in rejection of the offer.

(b) No change in the supplier(s) or manufacturer(s) listed below shall be permitted between the opening/closing date of the offer and the award, except where time permits and then only upon receipt of the Contracting Officer's written approval.

(c) Any change in the supplier(s) or manufacturer(s) listed below, and in any resultant contract, is prohibited unless it is specifically approved in advance by the Contracting Officer.

| Component and Quantity | Name and Address of Supplier | Address of Manufacturer |
|------------------------|------------------------------|-------------------------|
| | | |

Exhibit E. Berry Amendment Self-Certification

**Marine Corps System Command – Quantico
Berry Amendment Certification (Included in solicitations)**

BERRY AMENDMENT SELF CERTIFICATION

Offerors are advised the Berry Amendment specifically states that it applies to clothing and the materials and components thereof other than....items added to, and not normally associated with, clothing. The hard armor inserts are added to, and not normally associated with clothing. Procedures, Guidance, and Information (PGI) 225.7002-1(a)(5) specifically states that "synthetic fabric or a coated synthetic fabric" is not covered by the Berry Amendment. Fabric from cotton and other natural fiber products, however, are.

If the Berry Amendment does NOT apply to a proposed solution, the Offeror shall make an affirmative statement in its proposal that its proposed plates do not contain any natural fibers or other items subject to 10 U.S. Code § 2533a.

If the Berry Amendment does apply, Offerors shall use the following self certification:

I, (*sign name here*), in submitting this offer under solicitation number _____, affirm that only products compliant with the Berry Amendment (10 USC 2533a) will be delivered to the Government. As such, all items delivered, either as end products or components, will be grown, reprocessed, reused, or produced in the United States (as defined in DFARS 252.225-7012(b) included by reference herein). This certification covers all materials (including those of all components) and components supplied by subcontractors at any tier, and all labor (including that of all intervening processes), whether performed by the offeror or any of its subcontractors at any tier.

**USAFA 10th Contracting Squadron - Colorado Springs
Berry Amendment Certificate (Included in solicitations)**

Certificate of Compliance to Berry Amendment

As prescribed at DFARS 225.7002, "Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools" and implemented via DFARS clauses 252.225-7012 and 252.225-7015, the undersigned understands and will comply with 10 U.S.C. 2533a (the "Berry Amendment").

Furthermore, the undersigned understands that the Berry Amendment applies to both end items AND components to assemble the end item, as well as any and all subcontracted components. These components can include (but are not limited to) buttons, zippers, thread, clips, fasteners, and ties.

Fill-in the requirements below this certificate.

Name of Company Official Representative

Date Signed

Management Comments

Defense Pricing and Contracting



ACQUISITION
AND SUSTAINMENT

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

MEMORANDUM FOR PROGRAM DIRECTOR FOR AUDIT ACQUISITION,
CONTRACTING, AND SUSTAINMENT, OFFICE OF THE
INSPECTOR GENERAL

SUBJECT: Draft Report "Audit of the Department of Defense's Compliance With the Berry
Amendment," Project No. D2019-D000AV-0193.000

As requested, I am providing a response to Recommendation 1, contained in the subject
draft report.

Recommendation 1: We recommend that the Director of Defense Pricing and Contracting
reinforce the requirement to include the Berry Amendment implementing clauses in contract
solicitations for covered items.

Response: Concur. In response to recommendation one, I have signed the attached
memorandum to the Department of Defense acquisition workforce. My signature documents the
completion of this recommendation. As such, no further action is required and therefore, I
recommend closure of this audit recommendation.

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

HERRING
TON, KIM [REDACTED]

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting

Attachment:
As stated

Deputy Assistant Secretary of the Army (Procurement)



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
ACQUISITION LOGISTICS AND TECHNOLOGY
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

SAAL-ZP

MEMORANDUM FOR DEPARTMENT OF DEFENSE, INSPECTOR GENERAL
OFFICE, PROGRAM DIRECTOR FOR AUDIT ACQUISITION, CONTRACTING AND
SUSTAINMENT, 4800 MARK CENTER DRIVE, ALEXANDRIA, VA 22350-1500

SUBJECT: Draft Audit of the Department of Defense's Compliance With the Berry
Amendment (Project No. D2019-D000AV-0193.000)

1. On behalf of the Assistant Secretary of the Army (Acquisition, Logistics and
Technology), the Office of the Deputy Assistant Secretary of the Army (Procurement)
reviewed the subject draft report and I am providing the official Army position.

2. After reviewing the draft audit report, I concur with the responses to the
recommendations 2.a & 2.b. The enclosure report provides a detailed response to the
report. The point of contact is [REDACTED] or
[REDACTED]

COURTIS.JOH
N.T. [REDACTED]

John T. Courtis
Director, Procurement
Insight/Oversight

Encl

Deputy Assistant Secretary of the Army (Procurement) (cont'd)

**Assistant Secretary of the Army (Acquisition, Logistics, and Technology)
Deputy Assistant Secretary of the Army for Procurement
Responses to Department of Defense, Inspector General Draft
Audit Report on the Department of Defense's
Compliance with the Berry Amendment
Project No. D2019-D000AV-0193.000**

Recommendation 2.a. Recommend that the Assistant Secretary of the Army (Acquisition, Logistics, and Technology): Establish the Defense Acquisition University "CLC 125 Berry Amendment" course as a mandatory training for those contracting workforce officials who procure goods and services subject to the Berry Amendment on a regular basis or are assigned a contract subject to the Berry Amendment. Furthermore, the training should be required every 2 years as a refresher course.

DASA(P) Response 2a: Concur. On 15 October 2020, the ODASA(P) issued Training Alert #21-01, Compliance with the Berry Amendment to the Army enterprise mandating completion of the Defense Acquisition University continuous learning module "CLC 125 Berry Amendment" course by contracting personnel who, on a regular basis, procure goods and services or are assigned a contract subject to the Berry Amendment. This course is mandated as a refresher training required every 2 years. Recommend closure of this recommendation.

Comments provided by [REDACTED]

Recommendation 2.b. Implement the Defense Pricing and Contracting and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements

DASA(P) Response 2b: Concur. Training Alert #21-01, Compliance with the Berry Amendment dated 15 October 2020 encourages contracting personnel to apply DPC recommended best practices when procuring goods and services subject to the Berry Amendment. These practices are being considered for update to the Army Federal Acquisition Regulation Procurement, Guidance and Information publication and will include the following.

Conduct market research to include considerations for the Berry Amendment Requirement, place a sources sought on FBO.gov to determine whether product is available domestically and develop solicitations that contain the appropriate DFARS clauses in full text. Recommend closure of this recommendation.

Comments provided by [REDACTED]

Deputy Assistant Secretary of the Navy (Procurement)



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(RESEARCH, DEVELOPMENT, AND ACQUISITION)
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

13 Oct 20

From: Deputy Assistant Secretary of the Navy (Procurement)
To: U.S. Department of Defense Inspector General

Subj: DEPARTMENT OF THE NAVY RESPONSE TO THE DRAFT REPORT -
AUDIT OF THE DEPARTMENT OF DEFENSE'S COMPLIANCE WITH THE
BERRY AMENDMENT (PROJECT NO. D2019-D000AV-0193.000)

Ref: (a) [REDACTED] email of 11 Sep 20 with DoD OIG draft report for project
D2019-D000AV-0193.000

The Department of the Navy (DON) appreciates the opportunity to review the draft report, Audit of the Department Of Defense's Compliance with the Berry Amendment provided by reference (a). The DON's response to recommendations 3a and 3b are provided below, as required by reference (a).

Recommendation 3

We recommend that the Assistant Secretary of the Navy (Research, Development, and Acquisition):

- a. Establish the Defense Acquisition University "CLC 125 Berry Amendment" course as a mandatory training for those contracting workforce officials who procure goods and services subject to the Berry Amendment on a regular basis or are assigned a contract subject to the Berry Amendment. Furthermore, the training should be required every 2 years as a refresher course.

DON Response: Partially Concur. I will require all contracting officers to complete the Defense Acquisition University "CLC 125 Berry Amendment" course within 180 days of the final audit report. Additionally, my office will highlight the Berry Amendment in the "Policy Push" at least every two years thereafter.

- b. Implement the Defense Pricing and Contracting, and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements.

DON Response: Concur. No later than 1 November 2020, my office will issue via the "Policy Push", the Berry Amendment's best practices.

Cindy R. Shaver

Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics)



OFFICE OF THE ASSISTANT SECRETARY

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

27 Oct 20

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: SAF/AQ
1060 Air Force Pentagon
Washington, DC 20330-1060

SUBJECT: Air Force Response to DoD Office of Inspector General Draft Report, "Audit of the Department of Defense's Compliance with the Berry Amendment" (Project No. D2019-D000AV-0193.000)

This memorandum serves as the Department of the Air Force response to the DoDIG Draft Report, "Audit of the Department of Defense's Compliance with the Berry Amendment" (Project No. D2019-D000AV-0193.000). The DAF concurs with the report as written and provides the following responses to the recommendations included in the draft report.

RECOMMENDATION 4: The DODIG recommends that the Assistant Secretary of the Air Force (Acquisition, Technology and Sustainment):

- (a) Establish the Defense Acquisition University "CLC 125 Berry Amendment" course as mandatory training for those contracting workforce officials who procure goods and services subject to the Berry Amendment on a regular basis or are assigned a contract subject to the Berry Amendment. Furthermore, the training should be required every 2 years as a refresher course.

AIR FORCE RESPONSE: The Air Force non-concurs and proposes an alternate action to address this recommendation. Based on the draft audit, there is not a systemic issue with Berry Amendment compliance. The results indicate the Air Force included the required clauses in 18 out of 20 (90%) contracts reviewed for Berry Amendment compliance. As such, we propose an alternate solution: issuance of a notice through AF Contracting's "What's New in Air Force Contracting?" policy distribution tool. The notice will remind the Air Force contracting workforce of the overarching requirements of DFARS clauses 252.225-7012 and 252.225-7015 and reference the DAU CLC 125 Berry Amendment course availability, especially for entities who contract for items covered in the applicable Federal Supply Groups.

- (b) Implement the Defense Pricing and Contracting, and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements.

AIR FORCE RESPONSE: The Air Force non-concurs with the recommendation. The draft audit report, page 62, states the Air Force "implemented DPC recommended best practices and additional measures related to the Berry Amendment to help contracting officers identify the requirement for a procurement and to explicitly notify suppliers of the requirement to provide

Deputy Assistant Secretary of the Air Force (Acquisition, Technology, and Logistics) (cont'd)

U.S.-produce items.” The Air Force already performs market research, solicitation, and post award compliance in accordance with the processes established in the FAR, DFARS, and AFFARS. Additionally, the Clause Logic Service embedded within the Air Force contracting writing systems requires inclusion of the Berry Amendment provision and clauses as prescribed in DFARS 225.7002-3. Lastly, the AFFARS self-inspection system includes Berry Amendment compliance as an assessment item. The proposed corrective action for Recommendation 4.a. further reinforces compliance.

RECOMMENDATION 8: The DoDIG recommends that the Head of Contracting Activity at the Air Force Special Operations Command, 1st Special Operations Contracting Squadron: [NOTE: This needs to be revised to “The DoDIG recommends that the Squadron Commander at the Air Force Operations Command, 1st Special Operations Chief of Contracting Office:”, this is a unit specific recommendation and there is no HCA at 1 SOCONS.]

(a) Develop a policy for awarding and administering contracts that require compliance with the Berry Amendment.

AIR FORCE RESPONSE: The Air Force non-concurs and proposes an alternate action to address this recommendation. Regulations that require compliance with the Berry Amendment already exist (DFARS 225.7002-3, DFARS 252.225-7006, DFARS 252.225-7012, and DFARS 252.225-7015). Additional policy, therefore, would be duplicative to this regulatory governance. Furthermore, Air Force processes are already in place that promote compliance with the Berry Amendment (e.g., contract writing system clause logic and unit level self-inspection program). As an alternative, and in addition to Air Force actions in response to recommendation 4, the 1 SOCONS will include CLC 125 Berry Amendment training in their annual training plan.

(b) Review active contracts for the Federal Supply Groups that the Berry Amendment applies to, in order to ensure compliance with Berry Amendment requirements, and modify the contracts as necessary.

AIR FORCE RESPONSE: The Air Force concurs with the recommendation. The 1 SOCONS will conduct an audit of active contracts to confirm compliance with the Berry Amendment requirements and modify any contracts as necessary.

The SAF/AQ point of contact for this audit is [REDACTED] SAF/AQC, [REDACTED], or via email at [REDACTED]

COSTELLO.DARL [REDACTED]
ENE.J [REDACTED]

DARLENE J. COSTELLO
Principal Deputy Assistant Secretary of the Air
Force (Acquisition, Technology & Logistics)

Attachment:
Congressional Media Interest Item

Defense Logistics Agency Acquisition



DEFENSE LOGISTICS AGENCY
HEADQUARTERS
8725 JOHN J. KINGMAN ROAD
FORT BELVOIR, VIRGINIA 22060-6221

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL (ACQUISITION,
CONTRACTING AND SUSTAINMENT)

SUBJECT: Response to Office of Inspector General Draft Report "Audit of the Department of
Defense's Compliance With the Berry Amendment" (Project No. D2019-D000AV-
0193.000)

DLA appreciates the opportunity to review and comment on the entirety of the report.
We concur with the report's overall recommendations for the DLA.

The point of contact for this audit is [REDACTED] DLA Office of the Inspector
General, [REDACTED] or email [REDACTED]

BEEBE.MATTHE
W.RICHARD [REDACTED]
[REDACTED]
MATTHEW R. BEEBE
Director, DLA Acquisition

Attachment:
Individual responses to each of the report recommendations

Defense Logistics Agency Acquisition (cont'd)

**DOD OIG DRAFT REPORT DATED SEPTEMBER 11, 2020
“AUDIT OF THE DEPARTMENT OF DEFENSE’S COMPLIANCE WITH THE BERRY
AMENDMENT” (PROJECT NO. D2019-D000AV-193.000)**

**DEFENSE LOGISTICS AGENCY’S RESPONSE TO THE DOD OIG
RECOMMENDATION**

RECOMMENDATION 5: We recommend that the Director of Defense Logistics Agency Acquisition:

RECOMMENDATION 5.a: Establish the Defense Acquisition University “CLC 125 Berry Amendment” course as a required refresher course every 2 years.

DLA RESPONSE: Concur. In response to previous audits, the "Buy American and Hire American" Executive Order signed by the President on April 18, 2017, and in support of the DPAP memorandum dated June 20, 2017 (Subject: Improving Compliance with the Berry Amendment and Buy American Act), DLA established a requirement in August 2017 for designated contracting coded personnel (1102s and 1105s) to complete CLC 125 - Berry Amendment, as part of their required training. At that time, the course was mandated as a one-time requirement, to be taken again in the event of major revisions.

By November 30, 2020, the DLA Senior Procurement Executive will issue a memorandum that requires designated contracting personnel to complete CLC 125 - Berry Amendment every two years. Compliance with the requirement will be delivered and tracked via the DLA Learning Management System (LMS).

RECOMMENDATION 5.b: Implement the Defense Pricing and Contracting, and Berry Amendment best practices identified during the audit into contracting guidance and practices for future procurements.

DLA RESPONSE: Partially Concur. While DLA agrees that certain best practices should be highlighted and encouraged to the extent that the practices are applicable and relevant to the contracting activity in question, they are not considered policy and therefore not appropriate for incorporation into Agency-level guidance and policy documents. Instead, by November 30, 2020, DLA J7 will issue an exhortatory Procurement Letter (PROCLTR) highlighting the DPC best practices. The PROCLTR will be issued to all designated contracting personnel.

RECOMMENDATION 6: We recommend that the Head of Contracting Activity at Defense Logistics Agency Aviation – Richmond review all active contracts for the Federal Supply Groups that the Berry Amendment applies to, in order to ensure compliance with Berry Amendment requirements, and modify the contracts as necessary.

DLA RESPONSE: Concur. DLA Aviation Programs Division Branch Chief completed the requested review on August 12, 2020. That review identified a total of eighteen active orders for items in the Federal Supply Groups for which the Berry Amendment applies. The Berry Amendment was not applicable to those eighteen orders because they were below the Simplified Acquisition Threshold.

Defense Logistics Agency Acquisition (cont'd)

**DOD OIG DRAFT REPORT DATED SEPTEMBER 11, 2020
“AUDIT OF THE DEPARTMENT OF DEFENSE’S COMPLIANCE WITH THE BERRY
AMENDMENT” (PROJECT NO. D2019-D000AV-193.000)**

While the eighteen individual orders reviewed were below the SAT and therefore Berry was not applicable, several of the delivery orders reviewed were issued against two basic contracts which did require inclusion of Berry Amendment clauses. One of those contracts had been previously audited and was modified to include the clauses after that audit. The remaining contract has been subsumed under an umbrella contract which includes the Berry Amendment clauses, so a modification to add them was not necessary. Delivery orders issued against both of these contracts include the Berry Amendment clauses, as applicable. DLA considers the actions taken to meet the intent of the recommendation and requests closure.

Army Materiel Command-Aberdeen Proving Ground



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND
4400 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

AMIR


01 OCT 2020

MEMORANDUM FOR Department of Defense Inspector General (DoDIG [REDACTED]), Program Director, Audit Acquisition, Contracting and Sustainment, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Command Comments to DoDIG Draft Report – Audit of the Department of Defense's Compliance With the Berry Amendment, Dated: 11 September 2020, Project: D2019-D000AV-0193.000

1. The U.S. Army Materiel Command has reviewed and endorses the subject draft report and response from the U.S. Army Contracting Command. Specific comments are included at the enclosure.
2. The U.S. Army Materiel Command point of contact is [REDACTED] or email: [REDACTED]

- 2 Encls
1. ACC Comments
2. DoDIG Report


LISHA H. ADAMS
Executive Deputy to the
Commanding General

Army Materiel Command-Aberdeen Proving Ground (cont'd)



DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
4505 MARTIN ROAD
REDSTONE ARSENAL, AL 35898-5000

AMCC-IR

24 September 2020

MEMORANDUM FOR [REDACTED], Internal Review Audit and Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road, Redstone Arsenal, AL 35898

SUBJECT: Department of Defense Inspector General (DoDIG) Audit Draft Report Project No. D2019-D000AV-0193.000 (FOUO) Audit of the Department of Defense's (DoD) Compliance with the Berry Amendment

1. Reference, DoDIG Audit Draft Report (FOUO) "DoD Compliance with the Berry Amendment" 11 September 2020 (Project No. D2019-D000AV-0193.000)
2. The Commanding General, U.S. Army Contracting Command (ACC) concurs with Recommendation 7.

By 28 February 2021, the Head of Contracting Activity at Aberdeen Proving Ground, Natick Contracting Division – Natick will finalize and implement the standard operating procedure that establishes a framework for internal reviews and responsibilities related to compliance with the Berry Amendment.

3. The ACC point of contact for this memorandum is [REDACTED], Internal Review Audit and Compliance Office, at [REDACTED] or [REDACTED]

Encls

A handwritten signature in black ink, appearing to read "P. PardeW", written over a white background.

PAUL H. PARDEW
Major General, USA
Commanding

Army Materiel Command-Aberdeen Proving Ground (cont'd)



DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND - ABERDEEN PROVING GROUND
6472 INTEGRITY COURT, BUILDING 4401
ABERDEEN PROVING GROUND, MD 21005-3013

CCAP-OPC

18 September 2020

MEMORANDUM THRU [REDACTED] U. S. Army Contracting Command Internal Review and Audit Compliance Office, 4505 Martin Road, Redstone Arsenal, AL 35898-5000

For [REDACTED], Program Director for Audit, Acquisition, Contracting and Sustainment, Department of Defense Inspector General, 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Response to Draft Report "Audit of the Department of Defense's Compliance With the Berry Amendment," Project No. D2019-D000AV-0193.000

1. Reference Email, HQ U.S. Army Contracting Command, [REDACTED], 15 September 2020, subject: HQDA-200914-SKVP D1935-19AV0193 - Draft Report for Comment - Rec 7 Department of Defense's Compliance with the Berry Amendment.
2. U.S. Army Contracting Command – Aberdeen Proving Ground comment on recommendation with subject audit are enclosed.
3. The point of contact is [REDACTED] CCAP-OPC, [REDACTED]

WESLEY.KENYATA.LEJA [REDACTED]

Encl

KENYATA L. WESLEY, SR.
Executive Director

Army Materiel Command-Aberdeen Proving Ground (cont'd)

U.S. ARMY CONTRACTING COMMAND-ABERDEEN PROVING GROUND REPOSE TO DRAFT REPORT "AUDIT OF THE DEPARTMENT OF DEFENSE'S COMPLIANCE WITH THE BERRY AMENDMENT," PROJECT NO. D2019-D000AV-0193.000

Background

The Department of Defense Inspector General (DoDIG) conducted audit work at U.S. Army Contracting Command-Aberdeen Proving Ground (ACC-APG) Natick Contracting Division. The Berry Amendment applies to purchases over the simplified acquisition threshold using funds appropriated or otherwise made available to the DoD. Unless an exception under the Berry Amendment applies, it requires all covered items to be grown, reprocessed, reused, or produced in the United States, regardless of whether they are purchased as end items, components, or materials.

Overall, the draft audit report makes eight recommendations with one specifically for ACC-APG.

Report Recommendation 7 for Executive Director, ACC-APG

We recommend that the Head of Contracting Activity at Aberdeen Proving Ground, Natick Contracting Division – Natick finalize and implement the standard operating procedure that establishes a framework for internal reviews and responsibilities related to compliance with the Berry Amendment.

Response to Recommendation 7

ACC-APG agreed with the recommendation. ACC-APG will complete and distribute to its workforce the standard operating procedure establishing a framework for internal reviews and responsibilities related to compliance with the Berry Amendment no later than 28 February 2021.

Enclosure

Acronyms and Abbreviations

| | |
|---------------|---------------------------------------------------|
| ACC | Army Contact Command |
| BPA | Blanket Purchase Agreement |
| CBRN | Chemical, Biological, Radiological, or Nuclear |
| CLC | Continuous Learning Center |
| DAU | Defense Acquisition University |
| DCMA | Defense Contract Management Agency |
| DFARS | Defense Federal Acquisition Regulation Supplement |
| DLA | Defense Logistics Agency |
| DPC | Defense Pricing and Contracting |
| FBO | Federal Business Opportunities |
| FAR | Federal Acquisition Regulation |
| FSG | Federal Supply Group |
| MCSC | Marine Corps Systems Command |
| NAVSUP | Naval Supply Systems Command |
| NAWCAD | Naval Air Warfare Center Aircraft Division |
| SAT | Simplified Acquisition Threshold |
| USAFA | United States Air Force Academy |



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For more information about DoD OIG reports or activities, please contact us:

Congressional Liaison

703.604.8324

Media Contact

public.affairs@dodig.mil; 703.604.8324

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