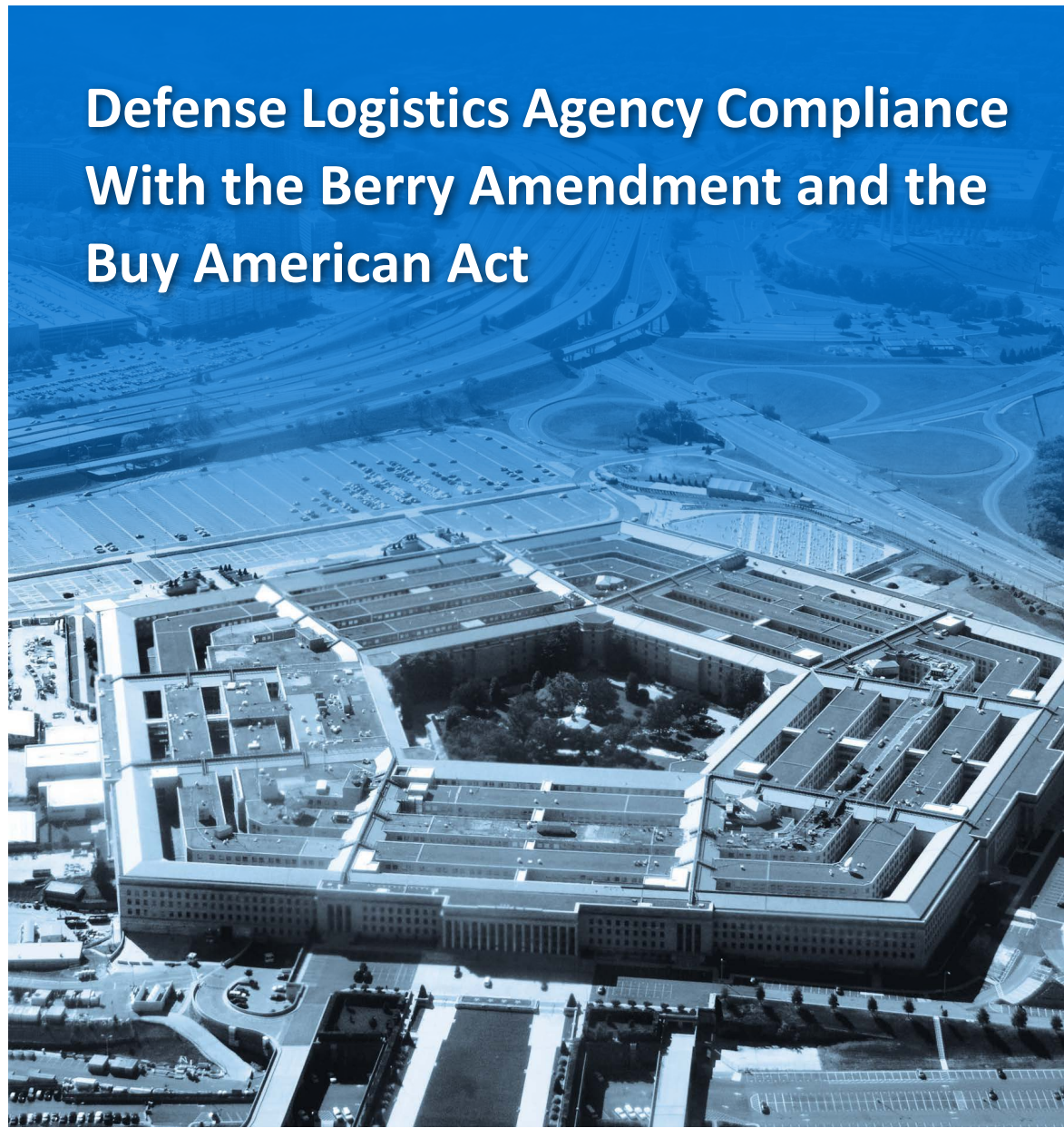




INSPECTOR GENERAL

U.S. Department of Defense

JULY 7, 2017



Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act

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Results in Brief

Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act

July 7, 2017

Objective

We determined whether Defense Logistics Agency (DLA) personnel complied with the Berry Amendment and the Buy American Act when they purchased covered items such as food, clothing, tents, textiles, and hand or measuring tools.

Background

We performed this audit in response to Section 1601 of the National Defense Authorization Act for FY 2014.¹ To determine whether DLA personnel complied with the Berry Amendment and the Buy American Act, we reviewed a nonstatistical sample of 88 contracts with an obligated value of \$386.9 million, out of 2,382 contracts across DLA with an obligated value of \$700.4 million, awarded from October 1, 2014, through March 31, 2016. The Berry Amendment directs DoD personnel to ensure funds appropriated or otherwise available to the DoD are not used to procure covered items if the items were not grown, reprocessed, reused, or produced in the United States. The Buy American Act requires, with certain exceptions, that only articles, materials, and supplies that were mined, produced, or manufactured in the United States are used to fulfill Federal procurement and construction contracts.

¹ Public Law 113-66, "National Defense Authorization Act for Fiscal Year 2014," December 26, 2013, which requires the DoD Inspector General to conduct periodic audits of contracting practices and policies related to procurement under section 2533a, title 10, United States Code (U.S.C.).

Findings

DLA contracting personnel complied with the Berry Amendment for 13 of the 32 contracts reviewed. However, DLA personnel at 3 of the 4 contracting offices visited did not comply with the Berry Amendment for the remaining 19 contracts, valued at \$453.2 million.²

Specifically, for 14 of the 19 noncompliant contracts, DLA contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond omitted the Berry Amendment implementing clause because they: were unfamiliar with the Berry Amendment, relied on their contract writing system, relied on another official to prepare and review the contract before award, or committed an administrative error. For four noncompliant contracts, contracting personnel at DLA Troop Support Philadelphia did not prepare award notices containing required language to notify the public of the purchase of nondomestic items because they were unaware of the requirement and mistakenly relied on DLA's electronic contracting systems to include the information or they misinterpreted the requirement and believed that it did not apply. For one of these contracts, DLA Troop Support Philadelphia contracting personnel also purchased foreign-made items without the required supporting documentation and approval because they misinterpreted the Berry Amendment requirements. Contracting personnel at DLA Maritime Puget Sound purchased items containing nondomestic components on the remaining noncompliant contract without the required supporting documentation and approval because they improperly applied an exception to waive the Berry Amendment requirements.

As a result, contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond had limited assurance that purchased items complied with the Berry Amendment and suppliers may have provided nondomestic items. In addition, DLA Troop Support

² We identified 20 deficiencies on 19 contracts.



Results in Brief

Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act

Findings (cont'd)

Philadelphia personnel did not notify the public regarding a lack of domestically-produced items, and contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound committed potential violations of the Antideficiency Act.³

DLA personnel at the three contracting offices visited⁴ complied with the Buy American Act for 44 of the 56 contracts reviewed but did not comply for the 12 remaining contracts, valued at \$1.8 million.

DLA contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond omitted the Buy American Act implementing clause because they relied on their contract writing system or because of an administrative error. In addition, DLA Aviation Richmond contracting personnel purchased non-U.S.-manufactured items on one contract because they erroneously awarded a small business set-aside contract to an ineligible foreign manufacturer.

As a result, contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond had limited assurance that items purchased on 12 contracts complied with the Buy American Act and suppliers may have provided nondomestic items.

Corrective Actions Taken

Contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond corrected some of the deficiencies identified during the audit. Specifically, DLA contracting personnel modified all 14 Berry Amendment contracts and modified 1 of the 12 Buy American Act

contracts with the required implementing clause. In addition, DLA Aviation Richmond contracting personnel issued a local notice to reinforce compliance with the Berry Amendment and the Buy American Act and officials at both contracting offices conducted training on both domestic-sourcing restrictions.

Recommendations

We recommend that DLA officials determine whether noncompliant items were delivered and, when appropriate, obtain compliant replacement items; amend standard operating procedures and internal processes to improve compliance with the Berry Amendment and Buy American Act; issue special notices to inform the public on the lack of domestically-produced items; require that contracting and technical personnel receive training that incorporates the Buy American Act and Small Business Program requirements when soliciting and awarding an acquisition as a small business set-aside; and review the potential Antideficiency Act violations.

Management Comments and Our Response

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency Troop Support; Commander, Defense Logistics Agency Aviation; and the Commander, Defense Logistics Agency Land and Maritime, generally agreed with our findings and recommendations. The Director agreed to modify contracts we identified as deficient to include the required Berry Amendment and Buy American Act implementing clauses and to determine whether non-compliant items were delivered under the contracts, and where appropriate, obtain replacement items. The Director also agreed to provide training to contracting personnel on procurements subject to the Berry

³ The Antideficiency Act (31 U.S.C. § 1341) does not permit Government officials to make or authorize obligations or expenditures that exceed amounts appropriated or funded for that purpose. The Berry Amendment is a statutory prohibition on the use of DoD funds.

⁴ We did not review contracts at DLA Aviation Philadelphia for compliance with the Buy American Act.



Results in Brief

Defense Logistics Agency Compliance With the Berry Amendment and the Buy American Act

Management Comments (cont'd)

Amendment and the Buy American Act. Therefore, the recommendations are resolved but will remain open until DLA provides documentation to verify that the contracts have been modified, the product reviews are completed, and that the training satisfies the recommendation specifics.

The Director, Defense Logistics Agency Acquisition, commenting for the Director, Defense Logistics Agency Finance, partially agreed with the recommendation to initiate a preliminary review in accordance with the DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred on contracts SPE1C1-15-M-2729 and SPMYM2-15-C-0007 on which DLA contracting personnel procured nondomestically produced footwear that did not comply with the Berry Amendment. The Director stated that a preliminary review was initiated on March 3, 2017, for contract SPMYM2-15-C-0007 and will be completed by June 30, 2017. However, the Director disagreed that a preliminary review was required for contract SPE1C1-15-M-2729 because the Director of Defense Logistics Agency, approved a domestic nonavailability determination for footwear on January 18, 2017, that retroactively applied to contract SPE1C1-15-M-2729.

We disagree that the Director, Defense Logistics Agency's approval of a domestic nonavailability determination more than a year after contracting personnel procured the noncompliant footwear, and more than a year after the footwear was delivered and the contract closed, eliminated the preliminary review for a potential Antideficiency Act violation. Therefore, the recommendation is unresolved and remains open.

We request that the Director, Defense Logistics Agency Finance, initiate a preliminary review in accordance with DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred on contract SPE1C1-15-M-2729. Additionally, we request that the Director, Defense Logistics Agency Finance, provide DoD policy on "retroactive" nonavailability determinations. We request that the Director, Defense Logistics Agency Finance, provide comments to the final report by August 7, 2017. Please see the Recommendations Table on the next page for the recommendations status.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Director, Defense Logistics Agency Finance	A.4.a, A.4.b, A.4.c		None
Commander, Defense Logistics Agency Troop Support		A.1.a, A.1.b.1, A.1.b.2, A.1.b.3, A.1.c, B.1.a, B.1.b	None
Commander, Defense Logistics Agency Aviation		A.2, B.2.a, B.2.b	None
Commander, Defense Logistics Agency Land and Maritime		A.3.a, A.3.b	None

Please provide Management Comments by August 7, 2017.

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**

July 7, 2017

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY,
AND LOGISTICS
DIRECTOR, DEFENSE LOGISTICS AGENCY**

**SUBJECT: Defense Logistics Agency Compliance With the Berry Amendment and the
Buy American Act (Report No. DODIG-2017-098)**

We are providing this report for review and comment. Of the 32 Berry Amendment contracts reviewed, valued at \$718.4 million and 56 Buy American Act contracts reviewed, valued at \$5.3 million, Defense Logistics Agency (DLA) contracting personnel omitted the Berry Amendment implementing clause in 14 contracts, valued at \$385.9 million, and omitted the Buy American Act implementing clause in 12 contracts, valued at \$1.8 million. In addition, personnel at DLA Troop Support Philadelphia did not notify potential suppliers of the need for domestically-produced items for four contracts. Personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound committed potential violations of the Antideficiency Act on two contracts, valued at \$2.5 million, when they purchased nondomestic items or items containing nondomestic components without proper supporting documentation and approval. Finally, personnel at DLA Aviation Richmond erroneously awarded a small business set-aside contract for non-U.S.-manufactured items to an ineligible foreign manufacturer. DLA personnel corrected some of the deficiencies identified during the audit.

This is the fourth report in response to Section 1601 of the National Defense Authorization Act for FY 2014. We conducted this audit in accordance with generally accepted government auditing standards.

We considered comments on a draft of this report. DoD Instruction 7650.03 requires that recommendations be resolved promptly. Comments from the Director, Defense Logistics Agency Acquisition, partially addressed Recommendations A.4.a and A.4.b. As a result of management comments, we added Recommendation A.4.c. Therefore, those recommendations are unresolved. Comments from the Director, Defense Logistics Agency Acquisition, addressed all specifics of the remaining recommendations and conformed to DoD Instruction 7650.03. We request additional comments on Recommendation A.4.a, A.4.b, and A.4.c by August 7, 2017.

Please send a PDF file containing your comments to audcmp@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We cannot accept the /Signed/ symbol in place of the actual signature. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9187 (DSN 664-9187).

A handwritten signature in black ink, appearing to read 'MJR', with a long horizontal stroke extending to the right.

Michael J. Roark
Assistant Inspector General
Contract Management and Payments



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Introduction

Objective

We determined whether Defense Logistics Agency (DLA) personnel complied with the Berry Amendment and the Buy American Act when they purchased covered items such as food, clothing, tents, textiles, and hand or measuring tools. This report is the fourth in a series on DoD contracting personnel's compliance with the Berry Amendment and Buy American Act. See Appendix A for scope and methodology and prior coverage.

Background

We performed this audit in response to Section 1601 of the National Defense Authorization Act for FY 2014.⁵ The DoD Office of Inspector General (DoD OIG) is required to conduct periodic audits of contracting practices and policies related to procurement under the Berry Amendment.⁶ After we announced an audit of DoD compliance with the Berry Amendment on August 13, 2013, we received requests from Congress to amend the audit objective to include a review of the Buy American Act.⁷ We included the Buy American Act and used the same Federal Supply Groups (FSG) as the Berry Amendment for contracts awarded from October 1, 2014, through March 31, 2016.

The Berry Amendment

The Berry Amendment promotes the purchase of goods produced in the United States by directing how the DoD uses funds to purchase items such as fabrics, clothing, food, and hand tools. The Amendment applies to end products and components⁸ for purchases over the simplified acquisition threshold of \$150,000. The Berry Amendment directs DoD personnel to ensure funds appropriated or otherwise available to the DoD are not used to procure covered items from the following FSGs if the items were not grown, reprocessed, reused, or produced in the United States.

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

⁵ Public Law 113-66, "National Defense Authorization Act for Fiscal Year 2014," December 26, 2013.

⁶ Enacted under section 2533a, title 10, United States Code (10 U.S.C. § 2533a) and implemented by Defense Federal Acquisition Regulation Supplement (DFARS) Part 225, "Foreign Acquisition," Subpart 225.70, "Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition," 225.7002-1, "Restrictions."

⁷ Re-codified under 41 U.S.C. § 8301-8305 (2010) and implemented under the Federal Acquisition Regulation Part 25, "Foreign Acquisition" and DFARS Part 225, "Foreign Acquisition."

⁸ According to DFARS 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 shoes⁹
- FSG 84 – clothing, individual equipment, insignia
- FSG 89 – subsistence (food)

If these items are purchased without complying with the Berry Amendment, it may result in a potential violation of the Antideficiency Act because, with certain exceptions, the Berry Amendment restricts funding appropriated or available to the DoD from being used to buy end products unless they are wholly of U.S. origin.

The Buy American Act

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

The Buy American Act is a Government-wide requirement that is implemented through the Defense Federal Acquisition Regulation Supplement (DFARS) for the DoD, and it applies to contracts that exceed the micro-purchase (small purchase) threshold.^{10, 11} Federal regulations include a two-part test to define a manufactured domestic end product: (1) the goods must be manufactured in the United States and (2) the cost of U.S. and qualifying country components must exceed 50 percent of the cost of all the components.¹² Table 1 shows the key differences between the Berry Amendment and the Buy American Act and reflects the most restrictive domestic content requirements. The DFARS implementing clauses provide for less restrictive domestic-sourcing requirements for certain end items or components.¹³

⁹ 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.

¹⁰ DFARS Part 225, "Foreign Acquisition," Subpart 225.1, "Buy American-Supplies."

¹¹ The micro-purchase threshold was \$3,000 for FY 2015 and increased to \$3,500 for FY 2016; Federal Register, volume 80, no. 127, pages 38,293-38,294 (80 FR 38293, July 2, 2015).

¹² FAR Part 25, "Foreign Acquisition," and DFARS Part 225, respectively.

¹³ Berry Amendment implementing clauses applicable to the contracts we reviewed are DFARS clause 252.225-7012 and DFARS Part 252, "Solicitation Provisions and Contract Clauses," Clause 252.225-7015, "Restriction on Acquisition of Hand or Measuring Tools." The Buy American Act implementing clauses applicable to the contracts we reviewed are DFARS Part 252, "Solicitation Provisions and Contract Clauses," Clause 252.225-7001, "Buy American Act and Balance of Payments Program," and Clause 252.225-7002, "Qualifying Country Sources as Subcontractors."

Table 1. Berry Amendment and Buy American Act Comparison

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

Source: DoD OIG.

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

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

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

Contracts Reviewed

We queried the Federal Procurement Data System-Next Generation (FPDS-NG), the central repository of Federal contracting information, and identified 166 Berry Amendment contracts with an obligated value of \$641.9 million and 2,216 Buy American Act contracts with an obligated value of \$58.5 million. DLA issued the contracts from October 1, 2014, through March 31, 2016. We nonstatistically selected four DLA locations with the most contracts subject to the Berry Amendment, and we nonstatistically selected Buy American Act contracts at three of those sites to ensure coverage within each FSG. We visited:

- DLA Troop Support Philadelphia, Pennsylvania;
- DLA Aviation Richmond, Virginia;
- DLA Maritime Puget Sound, Washington; and
- DLA Aviation Philadelphia, Pennsylvania.¹⁴

¹⁴ We did not review contracts at DLA Aviation Philadelphia for compliance with the Buy American Act.

We reviewed a nonstatistical sample of 32 Berry Amendment contracts with an obligated value of \$383.3 million and 56 Buy American Act contracts with an obligated value of \$3.7 million. See Appendix B for Berry Amendment contracts reviewed and Appendix C for Buy American Act contracts reviewed. Table 2 shows the number, base award value, and total obligated value of Berry Amendment and Buy American Act contracts reviewed at each site.

Table 2. Berry Amendment and Buy American Act Contracts Reviewed

Contracting Organization	Berry Amendment Contracts			Buy American Act Contracts		
	Number Of Contracts	Base Contract Award Value	Dollars Obligated ¹	Number Of Contracts	Base Contract Award Value	Dollars Obligated ¹
DLA Troop Support Philadelphia	21	\$715,036,523	\$382,123,171	19	\$2,827,554	\$1,927,609
DLA Aviation Richmond	7	2,386,000	386,275	16	1,408,782	674,824
DLA Maritime Puget Sound	3	727,231	535,732	21	1,101,782	1,065,294
DLA Aviation Philadelphia	1	234,659	234,659	-	-	-
Total²	32	\$718,384,414	\$383,279,837	56	\$5,338,300	\$3,667,727

¹ Total obligated value for the time period of October 1, 2014 to March 31, 2016.

² Totals may not equal the actual sum because base award and obligated values are rounded.

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 DLA internal controls for awarding contracts in compliance with the Berry Amendment and the Buy American Act. DLA Troop Support Philadelphia and DLA Aviation Richmond personnel did not include the required Berry Amendment and Buy American Act clauses for 26 contracts and may have purchased goods from foreign countries. DLA Troop Support Philadelphia personnel did not notify potential suppliers of the need for domestically-produced items for four contracts. In addition, personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound committed potential violations of the Antideficiency Act on two contracts when they purchased nondomestic items or items containing nondomestic components without the proper supporting documentation and

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

approval. Finally, DLA Richmond Aviation contracting personnel erroneously purchased non-U.S.-manufactured items on a small business set-aside contract from an ineligible foreign manufacturer. We will provide a copy of the final report to the senior official responsible for internal controls at DLA.

Finding A

DLA Personnel Did Not Consistently Comply With the Berry Amendment

DLA contracting personnel did not comply with the Berry Amendment for 19 of the 32 contracts reviewed. Contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound complied with the Berry Amendment for 12 contracts valued at \$264.9 million and DLA Aviation Philadelphia contracting personnel complied with the Berry Amendment for the single contract reviewed, valued at \$234,659.¹⁶ DLA contracting personnel took appropriate steps before awarding these contracts to ensure the procured items complied with the Berry Amendment requirements.

However, DLA contracting personnel did not comply with the Berry Amendment for the 19 remaining contracts, valued at \$453.2 million.¹⁷ Specifically:

- for 14 contracts, DLA Troop Support Philadelphia and DLA Aviation Richmond contracting personnel did not include the required Berry Amendment clause because they relied on their contract writing system to include the implementing clause, were unfamiliar with the Berry Amendment and its different DFARS implementing clauses, relied on another official to prepare and review the contract before award, or because of an administrative error.
- for all four contracts with additional public notification requirements, DLA Troop Support Philadelphia contracting personnel did not prepare award notices containing Berry Amendment exception language because they were unaware of the requirement and mistakenly relied on DLA's electronic contracting systems to generate and post the award notice for them or misinterpreted the requirement and believed that it did not apply; and
- for two contracts, DLA Troop Support Philadelphia and DLA Maritime Puget Sound contracting personnel did not prepare supporting documentation and obtain approval to purchase foreign-made items or items containing nondomestic components because they misinterpreted the Berry Amendment requirements.

As a result, DLA contracting personnel had limited assurance that items purchased on 14 contracts complied with the Berry Amendment, and they did not notify the public regarding a lack of domestically-produced items on 4 contracts.

¹⁶ Dollar values are base award contract values, unless otherwise noted.

¹⁷ In total, we identified 20 deficiencies on 19 contracts.

Additionally, DLA personnel committed potential Antideficiency Act violations by using appropriated funds to procure items not grown, reprocessed, reused, or produced in the United States on two contracts. DLA personnel corrected some of the deficiencies identified during the audit.

DLA Contracting Personnel Complied With Berry Amendment Requirements on 13 Contracts

Contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound complied with the Berry Amendment for 12 of the 24 contracts reviewed, valued at \$264.9 million, and DLA Aviation Philadelphia contracting personnel complied with the Amendment for the single contract reviewed, valued at \$234,659. DLA personnel at the three contracting offices took appropriate action to ensure suppliers would provide U.S.-produced items by including the applicable Berry Amendment DFARS implementing clause in 13 contracts. In addition, DLA Troop Support Philadelphia contracting personnel appropriately applied exceptions to exempt select covered items or components from the domestic-sourcing requirement for three of these contracts.¹⁸

Personnel at Three DLA Contracting Offices Did Not Consistently Ensure Berry Amendment Compliance for 19 Contracts

DLA contracting personnel at DLA Troop Support Philadelphia, DLA Aviation Richmond, and DLA Maritime Puget Sound did not comply with the Berry Amendment for 19 of the 32 contracts reviewed, with a combined value of \$453.2 million.¹⁹ Contracting personnel at DLA Troop Support Philadelphia omitted the required DFARS implementing clause from seven contracts, omitted the required Berry Amendment exception language or did not post the required award notice for four contracts, and omitted an item from the domestic nonavailability determination used to support DLA's decision and approval to purchase nondomestic items for one contract. In addition, contracting personnel at DLA Aviation Richmond omitted the required DFARS implementing clause from seven contracts. Finally, contracting personnel at DLA Maritime Puget Sound did not prepare a domestic nonavailability determination or receive approval to

¹⁸ DFARS Part 225, "Foreign Acquisition," Subpart 225.70, "Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition," 225.7002-3, "Contract Clauses," does not require a Berry Amendment implementing clause in cases where an exception applies; however, DLA Troop Support Philadelphia contracting personnel were still required to include the clause because the exception(s) taken did not apply to every covered item purchased.

¹⁹ We identified 20 deficiencies on 19 contracts. Obligations for the 19 contracts totaled \$175 million in FPDS-NG, as of March 31, 2016.

purchase foreign components on one contract because they misinterpreted the requirements and improperly applied an exception to waive the Berry Amendment domestic-sourcing restrictions instead.

The Berry Amendment is implemented through DFARS and required DLA Troop Support Philadelphia and DLA Aviation Richmond contracting officers to include the applicable implementing clause based on the type of items procured under a contract, either DFARS clause 252.225-7012, "Preference for Certain Domestic Commodities," or DFARS clause 252.225-7015, "Restriction on Acquisition of Hand or Measuring Tools."²⁰ These clauses explicitly notify the contractor to provide goods that meet the domestic-content requirements specified in the Berry Amendment.

DLA Troop Support Philadelphia Contracting Personnel Omitted the Required DFARS Clause

Contracting personnel at DLA Troop Support Philadelphia omitted DFARS clause 252.225-7012 from 7 of the 18 contracts reviewed, valued at \$383.5 million.^{21, 22} Contracting personnel for six contracts stated they relied on the contract writing system to either automatically include the clause in the contract or incorporate the terms and clauses stated in the solicitation by reference. However, in order to include the DFARS implementing clause, DLA Troop Support Philadelphia contracting personnel stated they had to instead either manually enter the clause, select DFARS 252.225-7012 as an optional clause, or manually link the contract to the solicitation containing the clause when they created the six contracts in the contract writing system. The contracting officer for SPE1C1-15-D-1008 stated that he was aware that the solicitation and contract must be manually linked and cited an administrative error for not doing so.

Unless an exception applies under DFARS 225.7002-2, solicitations or contracts that do not include DFARS clause 252.225-7012 do not explicitly inform the contractor of the preference to provide domestic products which exceed the simplified acquisitions threshold, thereby placing DLA at risk of purchasing and accepting nondomestic items. Contracting personnel at DLA Troop Support Philadelphia acknowledged that, without the implementing clause in the contract, personnel administering the contract, such as Defense Contract Management Agency, would not know that a sourcing restriction applied and that they should

²⁰ DFARS 225.7002-1 and DFARS 225.7002-3.

²¹ We did not assess whether DLA Troop Support Philadelphia contracting personnel included implementing clauses in 3 of the 21 contracts reviewed because an exception, in accordance with DFARS 225.7002-3, applied to each covered item. In addition, contracting personnel improperly purchased foreign items on 1 of 11 contracts that included the DFARS Berry Amendment implementing clause.

²² Obligations for the seven contracts totaled \$79 million in FPDS-NG, as of March 31, 2016.

consider compliance when inspecting items for acceptance. Defense Contract Management Agency personnel administered two of the seven DLA Troop Support Philadelphia contracts that did not include the DFARS clause implementing the Berry Amendment. Table 3 identifies contracts awarded without the required DFARS implementing clause.

Table 3. DLA Troop Support Philadelphia Contracting Personnel Omitted the Required Berry Amendment DFARS Clause

Contract Number	Base Award Value	Item	Contract Omission
SPE1C1-15-D-1008	\$6,771,718	Field jackets	Contract did not include the implementing clause or incorporate the solicitation by reference. The solicitation included DFARS clause 252.225-7012.
SPE1C1-15-D-1023	9,089,063	Flame resistant combat boots for hot weather	
SPE1C1-15-D-1032	3,754,875	Tropical cloth	
SPE1C1-16-C-0007	15,291,717	Temperate weather boots	
SPE1C1-16-C-0008	6,614,150	Temperate weather boots	
SPE300-15-D-3129	141,000,000	Full line food and beverage distribution	Contract incorporated solicitation by reference; however, neither the contract nor the solicitation included DFARS clause 252.225-7012.
SPE300-15-D-3130	201,000,000	Full line food and beverage distribution	

DLA Troop Support Philadelphia Contracting Personnel Performed Other Actions to Notify Suppliers of the Domestic-Sourcing Requirement

Although contracting personnel omitted the required clause for seven contracts, they notified potential suppliers of the requirement for a domestic product using other means. For example, DLA Troop Support Philadelphia contracting personnel included:

- both the DFARS implementing clause and other language in five solicitations and other language in two solicitations to inform interested suppliers of the domestic-sourcing requirement;
- a local requirement in three solicitations that instructed vendors to identify the source of all components for textile and clothing items and received the requested information for contracts SPE1C1-15-D-1032, SPE1C1-16-C-0007, and SPE1C1-16-C-0008; and
- language in market research documentation sent to potential suppliers indicating that the Berry Amendment applied to contracts SPE1C1-15-D-1008, SPE1C1-15-D-1032, SPE300-15-D-3129, and SPE300-15-D-3130.

The Commander, DLA Troop Support, should determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE1C1-16-C-0007, SPE1C1-16-C-0008, SPE1C1-15-D-1023, SPE300-15-D-3130, SPE300-15-D-3129, SPE1C1-15-D-1032, and SPE1C1-15-D-1008 and, when appropriate, obtain replacement items that comply with the Amendment. In addition, the Commander should amend standard operating procedures and internal processes to improve compliance with the Berry Amendment to ensure that implementing clauses are included in the contract.

Corrective Action Taken by DLA Troop Support Philadelphia

As a result of our audit, DLA Troop Support Philadelphia contracting personnel took corrective action and modified all seven contracts to either include the DFARS implementing clause or incorporate the solicitation terms by reference. The Director of Procurement Process Support also issued a “Contracting Broadcast News” memorandum in October 2016 to remind the acquisition workforce of the importance of linking the solicitation and award documents. Furthermore, DLA Troop Support Philadelphia personnel held a mandatory acquisition forum in September 2016 to remind acquisition officials about Berry Amendment requirements.

DLA Troop Support Philadelphia Contracting Personnel Did Not Properly Execute Procurements for Excepted Items

Contracting personnel at DLA Troop Support Philadelphia did not comply with Berry Amendment exception requirements when awarding four of the nine contracts for nondomestic items or items containing nondomestic components.²³ Under certain circumstances, DFARS 225.7002-2 identifies exceptions to the domestic-sourcing restrictions and any additional requirements that apply to a stated exception.²⁴ DLA Troop Support Philadelphia contracting personnel did not properly execute procurements for excepted items when additional DFARS 205.301 requirements applied.²⁵ Specifically, contracting personnel

Contracting personnel at DLA Troop Support Philadelphia did not comply with Berry Amendment exception requirements when awarding four of the nine contracts for nondomestic items or items containing nondomestic components.

²³ In total, we identified five deficiencies on four contracts.

²⁴ DFARS Part 225, “Foreign Acquisition,” Subpart 225.70, “Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition,” 225.7002-2, “Exceptions,” does not stipulate additional requirements for every Berry Amendment exception.

²⁵ DFARS Part 205, “Publicizing Contract Actions,” Subpart 205.3, “Synopsis of Contract Awards,” 205.301, “General,” stipulates required statements to be included as applicable: “The exception at DFARS 225.7002-2(b) applies to this acquisition, because the Secretary concerned has determined that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in satisfactory quality and sufficient quantity at U.S. market prices” or “The exception at DFARS 225.7002-2(n) applies to this acquisition, because the contracting officer has determined that this acquisition of chemical warfare protective clothing furthers an agreement with a qualifying country identified in DFARS 225.003(10).”

either did not include the DFARS 205.301 required exception language in the award notice or did not prepare the required award notice for all four contracts with additional public notification requirements. Contracting personnel also omitted one item (plastic footwear) from the required documentation and did not receive approval to exempt all the covered items purchased on one contract from the Berry Amendment restrictions. See Table 4 for contracts containing foreign-made items or components exempted from the restrictions.

Table 4. Contracting Personnel at DLA Troop Support Philadelphia Awarded Contracts Under Exceptions to the Berry Amendment

Contract Number	Exception	Additional DFARS Exception Requirements	Berry Amendment Compliance
SPE1C1-15-C-0017	DFARS 225.7002-2(b) ¹	Yes	No
SPE1C1-15-D-N005	DFARS 225.7002-2(n) ²	Yes	No
SPE1C1-15-M-2729	DFARS 225.7002-2(b) ¹	Yes	No
SPE1C1-15-M-2734	DFARS 225.7002-2(b) ¹	Yes	No
SPE1C1-15-C-0015	DFARS 225.7002-2(m)(2) ³	No	Yes
SPE1C1-15-D-1077	DFARS 225.7002-2(c) ⁴	No	Yes
SPE300-15-D-3129	DFARS 225.7002-2(c) ⁴ and DFARS 225.7002-2(l) ⁵	No	No ⁸
SPE300-15-D-3130	DFARS 225.7002-2(c) ⁴ and DFARS 225.7002-2(l) ⁵	No	No ⁸
SPE300-15-D-4008	DFARS 225.7002-2(c), ⁴ and DFARS 225.7002-2(e), ⁶ DFARS 225.7002-2(f)(2), ⁷ and DFARS 225.7002-2(l) ⁵	No	Yes

¹ Determination of domestic nonavailability.

² Chemical warfare protective clothing that furthers an agreement with countries listed in DFARS Part 225, "Foreign Acquisition," Subpart 225.8 "Other International Agreements and Coordination," 225.872, "Contracting with Qualifying Country Sources."

³ Para-aramid yarn from countries listed in DFARS 225.872 used in synthetic or coated synthetic fabric.

⁴ Acquisition of nonavailable articles.

⁵ Foods domestically-manufactured or processed, regardless of where grown or produced.

⁶ Perishable foods for consumption outside the United States.

⁷ Acquisition of food to address an unusual and compelling need.

⁸ The exceptions taken did not apply to every covered item purchased and DLA Troop Support Philadelphia contracting personnel did not include the required DFARS implementing clause in the contract.

Contracting Personnel at DLA Troop Support Philadelphia Did Not Comply With Additional Award Notification Requirements for Excepted Contracts

Contracting personnel at DLA Troop Support Philadelphia purchased items, such as clothing, blankets, and chemical warfare protective clothing, under DFARS Berry Amendment exceptions, but did not prepare award notices containing the exception language for any of the four contracts with additional public notification requirements.²⁶ DFARS allows for the acquisition of nondomestically-produced clothing, fiber, yarn, or fabric items under an exception in accordance with DFARS 225.7002-2 but requires contracting personnel to post an award notice within 7 days of contract award on the Federal Business Opportunities (FBO) website specifically identifying the use of the domestic nonavailability or chemical warfare protective clothing exceptions. FBO is the single point where Government contracting officers publicize contract opportunities greater than \$25,000 and award information for Government contracts.

DLA Troop Support Philadelphia contracting personnel did not post or prepare award notices that included the required Berry Amendment exception language for four contracts because they mistakenly relied on DLA's electronic contracting systems to generate and post an award notice for them, or they misinterpreted the requirement. The DLA Internet Bid Board System automatically posted award notices to FBO for contracts SPE1C1-15-C-0017, SPE1C1-15-M-2734, and SPE1C1-15-M-2729, and within the 7-day timeframe, but did not include the required exception language.²⁷ Contracting officers were unaware of the additional Berry Amendment notification requirement and explained that the system communicated with the contract writing system to automatically post the award notices for them. A DLA Troop Support Philadelphia official familiar with the systems stated that contracting officers had to manually post award notices to FBO for purchases over \$150,000. However, the official noted that DLA's contracting systems did not disclose that requirement, and personnel at DLA Troop Support Philadelphia did not know whether any guidance existed explaining when manual posting was required. Furthermore, one contracting officer stated that she was unaware that she could manually post information to FBO. The contracting officer for the remaining contract did not post an award notice to FBO. She acknowledged

Contracting officers were unaware of the additional Berry Amendment notification requirement and explained that the system communicated with the contract writing system to automatically post the award notices for them.

²⁶ DFARS 225.7002-2 states that the award notice requirements in DFARS Part 205, "Publicizing Contract Actions," Subpart 205.3, "Synopsis of Contract Awards," 205.301, "General" apply to procurements citing the domestic nonavailability or chemical warfare protective clothing exceptions.

²⁷ The DLA Internet Bid Board System is a web-based application agency personnel use to publically post notices and communicate with potential vendors and automatically posts select requirements to FBO.

that she should have prepared an award notice for contract SPE1C1-15-D-N005 and stated it was an administrative error for not doing so. The contracting officer stated that DLA did not require award notices at that time for contracts under the AbilityOne Program; however, the DLA notice waiver applied to another public announcement requirement.

Contracting officers generally should post notices to FBO because it is the single site for contractors to assess past contract awards and access potential work with the Government. As a result of our audit, the contracting officer for contract SPE1C1-15-D-N005 prepared and posted a notice to FBO to notify the public of the use of the Berry Amendment exception and the lack of domestically-produced items. The Commander, DLA Troop Support, should amend standard operating procedures and internal processes to improve compliance with the Berry Amendment when posting award notices to FBO. The Commander should also issue required notices on FBO for contracts SPE1C1-15-M-2734, SPE1C1-15-M-2729, and SPE1C1-15-C-0017.

Contracting Personnel at DLA Troop Support Philadelphia Purchased a Nondomestic Item Without Proper Support and Approval

Contracting personnel at DLA Troop Support Philadelphia purchased nondomestic items valued at \$120,000 on one contract without the required supporting documentation and approval because they excluded one item from the domestic nonavailability determination. DLA contracting personnel awarded contract SPE1C1-15-M-2729 on September 29, 2015, for personal dignity kits that contained a mix of 13 covered and non-covered items, such as women's dress, women's head cover, panties, sanitary pads, sewing kit, wet wipes, bath towel, and women's slippers (plastic slippers) to support urgent humanitarian efforts.²⁸ DFARS permits the Director of DLA to waive the Berry Amendment restrictions if the Director determined that items produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices and the requiring activity certified the determination in writing. In addition, the requiring activity must also analyze domestic alternatives and certify why the alternatives are unacceptable.²⁹

DLA Troop Support Philadelphia contracting personnel prepared and the Director of DLA approved a domestic nonavailability determination for contract SPE1C1-15-M-2729, on September 25, 2015, that included seven of the eight items in the kit (kitted items) subject to the Berry Amendment. DLA contracting personnel described in the nonavailability determination the efforts taken to identify a domestic alternative for each of the seven items and justified why none

²⁸ Contracting personnel at DLA Troop Support Philadelphia included DFARS clause 252.225-7012 in the contract.

²⁹ DFARS 225.7002-2.

could meet the requirements in the allotted timeframe. In addition, contracting personnel at DLA described the market research conducted in order to determine if there are any domestic sources who could provide the items that are subject to the Berry Amendment. The nonavailability determination also stated that there were only seven components of the dignity kit that are subject to the Berry Amendment. However, the domestic nonavailability determination did not include the eighth kitted item (plastic footwear) in the nonavailability determination. As a result, contracting personnel did not support the need or obtain an exception to the Berry Amendment to purchase the foreign-made footwear.

DFARS identifies footwear as a type of clothing and states that components and materials normally associated with a clothing item are subject to the Berry Amendment. The contracting officer stated the nonavailability determination included every kitted item made from fabric or textiles, but contracting personnel did not consider classifying the footwear as clothing because the product description indicated the kitted item was plastic footwear and they believed the Berry Amendment did not apply.³⁰ Contracting officials explained that available contracting personnel from other functional areas awarded multiple contracts for urgently needed humanitarian supplies and that the non-exempted item was not a type of clothing that DLA typically purchased.

As a result of the audit, the Director of DLA approved a domestic nonavailability determination for the footwear on January 18, 2017. DLA officials stated that the determination applied retroactively to the September 2015 contract.³¹ The January 2017 determination discussed the urgent need for the kitted item and described why DLA believed a domestic alternative could not have met the requirement. However, the Director based his decision on market research DLA Troop Support Philadelphia personnel conducted on plastic footwear a year after the items purchased were delivered and performance on contract SPE1C1-15-M-2729 was complete. Contracting personnel are required to conduct market research before awarding a contract to determine if sources capable of satisfying an agency's requirements exist.³² Because the market research for the plastic footwear was conducted after the award of the contract, DLA could not provide assurance whether U.S.-produced footwear was available for the kit at the time of the award. The Commander, DLA Troop Support, should amend standard operating procedures and internal processes to ensure assigned staff are sufficiently aware of the Berry Amendment and its restrictions before contracting for covered items .

³⁰ Domestic-sourcing restrictions are identified separately for clothing, fabric, and textiles in DFARS 225.7002-1.

³¹ Contract SPE1C1-15-M-2729 completion date was November 30, 2015.

³² FAR Part 10, "Market Research," 10.001, "Policy."

DLA Aviation Richmond Contracting Personnel Omitted the Required DFARS Clause

Contracting personnel at DLA Aviation Richmond did not include the required DFARS contract clause in any of the seven contracts reviewed, valued at \$2.1 million. DLA Aviation Richmond contracting personnel mistakenly included the general DFARS 252.225-7012 clause in four contracts to implement the Berry Amendment when purchasing tools. However, DFARS 225.7002-3 states that, unless an exception applies, contracting officers should use the clause at 252.225-7015 in contracts for hand or measuring tools that exceed the simplified acquisition threshold. Contracting personnel did not include DFARS clause 252.225-7012 or DFARS clause 252.225-7015 in the remaining three contracts to implement the Berry Amendment. Table 5 shows the contracts contracting personnel issued without the required clause.

Table 5. DLA Aviation Richmond Contracting Personnel Omitted the Required Berry Amendment DFARS Clause

Contract Number	Base Award Value	Item	Contract Omission
SPE4A6-16-D-0042	\$232,916	Removal installer sets	Contract did not include any DFARS implementing clause.
SPE4A6-15-D-0152	39,312	Hydraulic hand Jacks	
SPE4A6-15-D-0155	98,000	Tool hose assemblies	
SPE4A6-15-C-0211	239,460	Aircraft maintenance toolkits	Contract did not include the applicable DFARS clause related to tools.
SPE4A6-15-D-0236	198,254	Aircraft maintenance toolkits	
SPE4A6-15-D-0262	624,012	Electric disk sanders	
SPE4A6-15-D-0284	954,046	Bushing and bearing removal and installation kits	

In four contracts, contracting personnel at DLA Aviation Richmond mistakenly included the DFARS implementing clause, 252.225-7012, and omitted the applicable clause, DFARS clause 252.225-7015, the Berry Amendment implementing clause specific to hand and measuring tools. By including the wrong implementing clause, the supplier may not know whether an exception to the Berry Amendment applies to the specific contracted item.³³

DLA Aviation Richmond contracting personnel did not include a Berry Amendment DFARS implementing clause in the remaining three contracts because they either relied on another official to prepare the contract or were unfamiliar with the

³³ Each clause identifies particular requirements for the specific end-items covered. For example, DFARS clause 252.225-7012 identifies different textile items and states that those end-items and all its components must be domestic. DFARS clause 252.225-7015 is specific only to hand and measuring tools and states that end-items are only required to be forged in the United States.

requirements. For example, the contracting officer for contract SPE4A6-16-D-0042 stated that although he signed the contract, he was not the contracting officer of record when it was prepared and he believed the initial contracting officer should have reviewed the contract for any omissions. In addition, both the acquisition specialist and the contracting officer for contracts SPE4A6-15-D-0152 and SPE4A6-15-D-0155 acknowledged they were unfamiliar with the Berry Amendment at the time of award, but are now aware of the requirements. The contracting officer for the two contracts stated that she now looks for the DFARS implementing clause when reviewing contracts before award.

DLA Aviation Richmond Contracting Personnel Took Limited Action to Notify Suppliers of the Domestic-Sourcing Requirement and Ensure Compliance

Contracting personnel at DLA Aviation Richmond did not perform other actions to inform potential suppliers of their intent to buy domestically-produced items. DLA personnel can use market research to identify and notify potential suppliers of domestic-sourcing requirements. However, contracting personnel did not consider the Berry Amendment's domestic preference, or its exceptions, during market research and omitted the DFARS implementing clause in the solicitation for all seven contracts reviewed. According to the FAR, market research should consider the requirements of any laws and regulations unique to the item being acquired and should be used to determine whether sources capable of satisfying the agency's needs exist.³⁴

Additionally, in accordance with DFARS 225.7002-3, contracting officers should use the clause at DFARS 252.225-7015 in the solicitations and contracts for hand and measuring tools that exceed the simplified acquisition threshold of \$150,000. If the contracting officers had included DFARS clause 252.225-7015 in the solicitation when appropriate, potential suppliers would have been informed of the agency's domestic-content preference. Without including the appropriate Berry Amendment implementing clause, the Government is at risk of purchasing and receiving non-U.S.-produced items.

DLA Aviation Richmond contracting personnel, however, took limited action to ensure compliance with the Berry Amendment. For example, contracting personnel requested vendors to identify the actual manufacturer of the items offered in their response to the solicitation for five contracts. Each vendor confirmed that it was the actual manufacturer; however, DLA Aviation Richmond contracting personnel did not request vendors to provide the place of manufacture in their

³⁴ FAR Part 10, "Market Research."

response. Vendors for three of these contracts responded to another solicitation provision and indicated that manufacturing would predominately take place in the United States.³⁵

Contracting officers at DLA Aviation Richmond also stated they would contact the supplier if they had any concerns about the domestic content of an item and relied on DLA Aviation Richmond technical specialists and post-award acquisition specialists to assess compliance with the Berry Amendment. However, DLA Aviation Richmond technical specialists and post-award acquisition specialists stated that they do not assess an item for compliance and believed compliance should be verified by the agency requesting a part-numbered item, contracting personnel awarding the contract, or another DLA official. The Commander, DLA Aviation Richmond, should determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE4A6-15-C-0211, SPE4A6-15-D-0152, SPE4A6-15-D-0155, SPE4A6-15-D-0236, SPE4A6-15-D-0262, SPE4A6-15-D-0284, and SPE4A6-16-D-0042 and, when appropriate, obtain replacement items that comply with the Amendment.

Corrective Action Taken by DLA Aviation Richmond

Shortly after we announced our audit, contracting officers at DLA Aviation Richmond modified all seven contracts in June 2016 to include DFARS clause 252.225-7015, the Berry Amendment implementing clause specific to hand and measuring tools. In addition, the Office of Counsel at DLA Aviation Richmond presented Berry Amendment training, and policy officials issued a “Broadcast Acquisition Message” to remind the acquisition workforce about the different DFARS clauses that implement the Berry Amendment. In July 2016, policy officials also issued a newsletter regarding the Berry Amendment to the acquisition workforce.

DLA Maritime Puget Sound Contracting Personnel Purchased Nondomestic Components Without Proper Support or Approval

Contracting personnel at DLA Maritime Puget Sound purchased footwear containing nondomestic components without the required supporting documentation or approval, and instead improperly applied an exception from a different domestic-sourcing requirement believing it would waive the restrictions.³⁶ DLA Maritime Puget Sound contracting personnel purchased 10 different styles of

³⁵ FAR 52.225-18, “Place of Manufacture.”

³⁶ DFARS Subpart 225.70 contains restrictions on the acquisition of foreign products and services imposed by DoD appropriations, acts, and other statutes and provides exceptions for specific items covered under a given restriction, such as the Berry Amendment, restrictions on anchor and mooring chains, and restrictions on super computers.

safety footwear on contract SPMYM2-15-C-0007, including one style of steel-toe work boot that contained nondomestic-specialty metal.³⁷ DFARS 225.7002-1(a)(2) identifies footwear as a type of clothing and states that the Berry Amendment applies to all the materials and components used to make clothing (with the exception of unusual components, like electronics).

DLA Maritime Puget Sound contracting personnel were aware of the Berry Amendment and took steps to comply with its requirements during the pre-award phase of the contract. For example, contracting personnel properly applied an exception to waive the domestic-sourcing restrictions for a different work boot component and removed two items from the solicitation because domestically-produced materials could not be located.³⁸ However, contracting personnel misinterpreted the restrictions in DFARS 225.7003, a different domestic-sourcing restriction for specialty metals, and mistakenly believed its exceptions also applied to the procurement for steel-toe work boots.³⁹ Footwear, to include steel-toe work boots, is subject to the Berry Amendment, which provides for certain exceptions to its domestic-sourcing requirements under DFARS 225.7002-2, not DFARS 225-7003. Therefore, the Berry Amendment's restrictions could have only been waived if the DLA Director determined that domestic metal was not available to meet the Government's needs, and the requiring activity certified the determination and its analysis of domestic alternatives in writing.

As a result, the Berry Amendment requirements applied to the procurement of steel-toe work boots, and contracting personnel did not prepare a domestic nonavailability determination or obtain the proper approval to exempt the component from the restrictions, as required.

DLA Maritime Puget Sound contracting officials acknowledged that the specialty metal exceptions at DFARS 225.7003 did not apply to the contract, and stated that those who awarded it were no longer with the agency. However, as of February 7, 2017, contracting personnel purchased noncompliant footwear totaling \$22,344 and additional optional ordering periods still remain on the contract. The Commander, DLA Land and Maritime should initiate a review to determine whether items noncompliant with the Berry Amendment were ordered or received on contract SPMYM2-15-C-0007, and, when appropriate, remove noncompliant items and obtain replacements that comply with the Amendment. In addition, the Commander should ensure staff are sufficiently aware of the Berry Amendment and its exceptions permitting the purchase of foreign items before contracting for covered items.

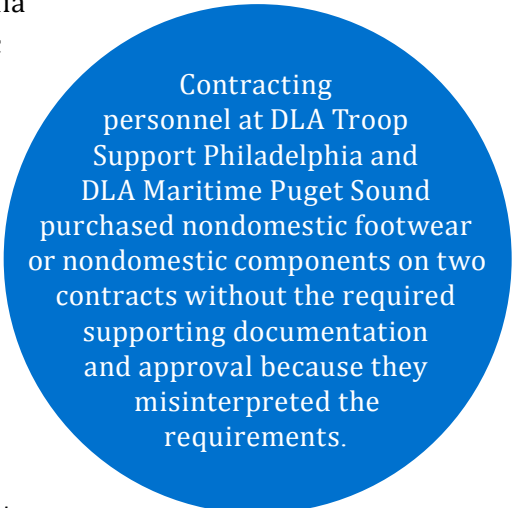
³⁷ Contracting personnel at DLA Maritime Puget Sound included DFARS clause 252.225-7012 in the contract.

³⁸ DFARS 225.7002-2(c).

³⁹ DFARS Part 225, "Foreign Acquisition," Subpart 225.70, "Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisition," 225.7003, "Restrictions on Acquisition of Specialty Metals."

DLA Personnel Committed Potential Violations of the Antideficiency Act

Contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound purchased nondomestic footwear or nondomestic components on two contracts without the required supporting documentation and approval because they misinterpreted the requirements.⁴⁰ DLA Troop Support Philadelphia contracting personnel improperly purchased plastic footwear on contract SPE1C1-15-M-2729 because they believed the Berry Amendment requirements did not apply to footwear made of plastic and excluded the plastic footwear from the domestic nonavailability determination. As a result of the audit, DLA Troop Support Philadelphia personnel prepared, and the Director of DLA approved, a domestic nonavailability determination for the footwear on January 18, 2017. DLA officials stated the determination applied retroactively to the September 2015 contract. However, DLA personnel did not support or approve the nondomestic purchase until a year after the items were delivered and the performance on the contract was complete.



Contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound purchased nondomestic footwear or nondomestic components on two contracts without the required supporting documentation and approval because they misinterpreted the requirements.

In addition, contracting personnel at DLA Maritime Puget Sound did not prepare a domestic nonavailability determination before purchasing steel-toe footwear that contained nondomestic-specialty metal on contract SPMYM2-15-C-0007. Instead, contracting personnel improperly applied an exception from a different domestic-sourcing requirement believing it would waive the restrictions. However, the exception cited, DFARS 225.7003, did not apply to footwear items covered under the Berry Amendment. The Berry Amendment requires that the Department of Defense purchase certain end products, components, and materials that are wholly of U.S. origin unless the Secretary of Defense or Military Department determines that satisfactory quality and sufficient quantity are unavailable at market prices or if an exception applies.

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

an officer or employee of the United States Government or of the District of Columbia government may not—(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation.

⁴⁰ Contract obligations for the two contracts totaled \$2.4 million in FPDS-NG, as of March 31, 2016.

A violation of the Berry Amendment may result in a violation of the Antideficiency Act because the Berry Amendment is a statutory prohibition on the use of DoD funds.⁴¹ Contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound ordered and received items on two contracts that violated the Berry Amendment. DoD regulation requires the Director of DLA Finance to evaluate whether potential violations of the Antideficiency Act identified in an audit report have occurred, and to initiate a preliminary review when warranted.⁴²

The Director, DLA Finance, should initiate a preliminary review in accordance with DoD Regulation 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred on contract SPE1C1-15-M-2729 and contract SPMYM2-15-C-0007. The Director, DLA Finance, should complete the preliminary review as required by the Regulation and provide the results to the DoD OIG. If violations of the Antideficiency Act occurred, the Director should determine which officials are responsible and recommend corrective actions.

Conclusion

Contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound complied with the Berry Amendment for 12 of the 24 contracts reviewed and contracting personnel at DLA Aviation Philadelphia complied with the Berry Amendment for the single contract reviewed. However, for the remaining 19 contracts,⁴³ contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond omitted the DFARS implementing clause in 14 contracts and therefore may have received noncompliant items. In addition, contracting personnel at DLA Troop Support Philadelphia did not notify the public of a lack of domestically-produced items on four contracts because they did not post award notices containing the required language to FBO. Finally, contracting personnel at DLA Troop Support Philadelphia and DLA Maritime Puget Sound improperly obtained nondomestic items or components on two contracts, resulting in potential violations of the Antideficiency Act. DLA personnel corrected some of the deficiencies identified during the audit.

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

⁴² DoD Regulation 7000.14-R, "Financial Management Regulation," volume 14, chapter 3, "Preliminary Reviews of Potential Violations."

⁴³ We identified 20 deficiencies on 19 contracts.

Recommendations, Management Comments, and Our Response

Revised Recommendation

As a result of management comments, we added Recommendation A.4.c. to Director, Defense Logistics Agency Finance, to provide DoD policy concerning “retroactive” non-availability determinations.

Recommendation A.1

We recommend the Commander, Defense Logistics Agency Troop Support:

- a. **Determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE1C1-16-C-0007, SPE1C1-16-C-0008, SPE1C1-15-D-1023, SPE300-15-D-3130, SPE300-15-D-3129, SPE1C1-15-D-1032, and SPE1C1-15-D-1008 and, when appropriate, obtain replacement items that comply with the Amendment.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency Troop Support, agreed with the recommendation, stating that only Berry Amendment compliant material was supplied under contracts SPE1C1-16-C-0007, SPE1C1-16-C-0008, SPE1C1-15-D-1023, SPE1C1-15-D-1032, and SPE1C1-15-D-1008. The Director also stated that the subsistence contracts SPE300-15-D-3130 and SPE300-15-D-3129, were modified on September 7, 2016, to include the Berry Amendment clause and the items shipped on the contracts were Berry Amendment compliant and have been consumed and paid for.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation to verify that only compliant items were delivered.

- b. **Amend standard operating procedures and internal processes to improve compliance with the Berry Amendment, ensuring the following actions are taken.**
 1. **Contracting personnel include the required Defense Federal Acquisition Regulation Supplement clause in the contract to implement the Berry Amendment.**
 2. **Contracting personnel are knowledgeable on when to manually post award notices to the Federal Business Opportunities webpage.**

3. Contracting personnel assigned to work in areas subject to the Berry Amendment are sufficiently aware of the Amendment and its restrictions before contracting for covered items.

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency Troop Support, agreed with the recommendation, stating that DLA Troop Support modified all required contracts to either include the DFARS implementing clause or incorporate the solicitation by reference. The DLA Troop Support, Director of Supplier Operations, issued guidance on January 18, 2017, requiring the inclusion of all applicable Berry Amendment clauses in solicitations with an award value over \$150,000. In addition, for Recommendation A.1.b.1, the Defense Logistics Agency Acquisition will update their contract writing system to automatically include the Berry Amendment DFARS clauses by November 30, 2017.

For Recommendation A.1.b.2 and A.1.b.3, the Director, Defense Logistics Agency Acquisition, agreed and stated that the DLA Troop Support, Director of Procurement Process Support, issued a “Contracting Broadcast News” memorandum in October 2016 to remind the acquisition workforce of the importance of linking the solicitation and award documents. The Executive Director for Troop Support Contracting and Acquisition Management released a memorandum on April 13, 2017, requiring completion of the Defense Acquisition University on-line course, CLC 125, Berry Amendment, by employees assigned to GS-1101, GS-1102, and GS-1105 positions, no later than July 1, 2017. Defense Logistics Agency Troop Support Office of Counsel will provide commodity-specific Berry Amendment training as part of Subsistence University by July 1, 2017.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation to verify that the training was completed and addressed the recommendation specifics, and that the contract writing system was updated to automatically include the Berry Amendment DFARS clauses.

- c. Post a required notice on the Federal Business Opportunities website, as required by DFARS 205.301, “General,” for contracts SPE1C1-15-M-2734, SPE1C1-15-M-2729, and SPE1C1-15-C-0017 to include the required language on the applicable Berry Amendment exception.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency Troop Support, agreed with the recommendation, stating that the required notices for contracts SPE1C1-15-M-2734, SPE1C1-15-M-2729, and SPE1C1-15-C-0017 were posted to the Federal Business Opportunities website on May 22, 2017.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation showing that the required notices were posted.

Recommendation A.2

We recommend the Commander, Defense Logistics Agency Aviation, determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE4A6-15-C-0211, SPE4A6-15-D-0152, SPE4A6-15-D-0155, SPE4A6-15-D-0236, SPE4A6-15-D-0262, SPE4A6-15-D-0284, and SPE4A6-16-D-0042 and, when appropriate, obtain replacement items that comply with the Amendment.

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding on behalf of the Commander, Defense Logistics Agency Aviation, agreed with the recommendation, stating that the Defense Logistics Agency Aviation modified contracts SPE4A6-15-C-0211, SPE4A6-15-D-0152, SPE4A6-15-D-0155, SPE4A6-15-D-0236, SPE4A6-15-D-0262, SPE4A6-15-D-0284, and SPE4A6-16-D-0042 to include the Berry Amendment DFARS clause and is screening all on-hand inventory for the contracts to determine if the material is Berry compliant, and expects the review to be completed by June 30, 2017.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation showing that the contracts were modified and the on-hand inventory contains Berry compliant material.

Recommendation A.3

We recommend the Commander, Defense Logistics Agency, Land and Maritime:

- a. Initiate a review to determine whether items noncompliant with the Berry Amendment were ordered or received on contract SPMYM2-15-C-0007, and, when appropriate, remove noncompliant items and obtain replacements that comply with the Amendment.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency, Land and Maritime, agreed with the recommendation, stating that the preliminary investigation completed by Defense Logistics Agency Maritime Puget Sound, concluded that noncompliant boots were ordered and supplied under the contract SPMYM2-15-C-0007. The Commander also stated that the contracting officer issued a modification on May 17, 2017, that excludes the noncompliant items.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation showing that the May 17, 2017, contract modification excluded noncompliant items.

- b. Ensure staff are sufficiently aware of the Berry Amendment and its exceptions permitting the purchase of foreign items before contracting for covered items.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency, Land and Maritime, agreed with the recommendation, stating that DLA Maritime Puget Sound acquisition personnel received additional Berry Amendment training in March 2017. DLA Acquisition also conducted local training and will review contracts for required Berry Amendment and Buy American Act clauses during Agency Management Reviews to determine if additional action is required.

Our Responses

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation showing that the training addressed the Berry Amendment requirements and exceptions.

Recommendation A.4

We recommend the Director, Defense Logistics Agency Finance:

- a. Initiate a preliminary review in accordance with DoD 7000.14-R, “DoD Financial Management Regulation,” volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred on contract SPE1C1-15-M-2729 and contract SPMYM2-15-C-0007.**
- b. Complete the preliminary review as required by DoD 7000.14-R, “DoD Financial Management Regulation,” volume 14, chapter 3, and provide results to the DoD Office of Inspector General. If violations of the Antideficiency Act occurred, determine which officials are responsible and recommend corrective actions.**
- c. Provide to the DoD Office of Inspector General DoD policy concerning “retroactive” non-availability determinations.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Director, Defense Logistics Agency Finance, partially agreed with the recommendation, stating the Director, DLA approved a domestic nonavailability determination for contract SPE1C1-15-M-2729 on January 18, 2017, that applied retroactively and a preliminary review is not required. The Director cited Comptroller General decisions as support that the nonavailability determination retroactively applied to the procurement. The Director also stated that a preliminary review was initiated on March 3, 2017, for contract SPMYM2-15-C-0007 and will be completed by June 30, 2017.

Our Response

Comments from the Director partially addressed the recommendation. Comments from the Director addressed the specifics of the recommendation for contract SPMYM2-15-C-0007. However, we disagree that the Director, Defense Logistics Agency Acquisition’s approval of a domestic nonavailability determination on January 18, 2017, for contract SPE1C1-15-M-2729 retroactively eliminated the potential Antideficiency Act violation. The Director approved the nonavailability determination more than a year after contracting personnel procured the noncompliant footwear and more than a year after the footwear was delivered and the contract closed. The nonavailability determination completed after the procurement did not eliminate the preliminary review for a potential Antideficiency Act violation.

We further disagree that the Comptroller General decisions are applicable to the procurement. The Comptroller General decisions provided in the Director’s response involve bid protest decisions pertaining to challenges to a procurement

award and did not pertain to matters of contract administration. Moreover, the Director's response did not cite to or provide DoD policy regarding applicability of "retroactive" non-availability determinations and instead relied upon Comptroller General which does not provide precedent for the DoD or set binding legal opinions or legal interpretation upon the DoD. We request the Director, Defense Logistics Agency Finance, initiate a preliminary review in accordance with DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, to determine whether reportable violations of the Antideficiency Act occurred on contract SPE1C1-15-M-2729. Additionally, we request the Director, Defense Logistics Agency Finance, provide us with DoD policy on "retroactive" nonavailability determinations.

Finding B

DLA Personnel Did Not Consistently Comply With the Buy American Act

Contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond complied with the Buy American Act for 23 of the 35 contracts reviewed, valued at \$2.4 million. DLA Maritime Puget Sound contracting personnel complied with all 21 contracts reviewed, valued at \$1.1 million. DLA contracting personnel took appropriate steps before awarding these contracts to ensure the procured items complied with the Buy American Act requirements. However, for 12 contracts, valued at \$1.8 million, DLA contracting personnel did not consistently comply with the Buy American Act. Specifically:

- DLA Troop Support Philadelphia contracting personnel did not include the DFARS clause implementing the Buy American Act in 11 contracts because contracting personnel relied on the contract writing system to include the implementing clause or because of an administrative error.
- A DLA Aviation Richmond contracting officer did not include the required DFARS Buy American Act clause in one contract because of an administrative error.

In addition, DLA Aviation Richmond contracting personnel purchased non-U.S.-manufactured items on one contract because they erroneously awarded a small business set-aside contract to an ineligible foreign manufacturer.

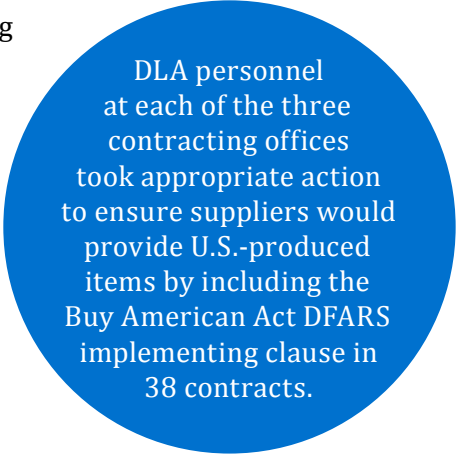
As a result, DLA personnel had limited assurance that items purchased on 12 contracts complied with the Buy American Act, and suppliers may have provided nondomestically-produced items. DLA personnel corrected some of the deficiencies identified during the audit.

DLA Personnel Complied With the Buy American Act on 44 Contracts

DLA contracting personnel from each of the three contracting offices complied with the Buy American Act for 44 of the 56 contracts reviewed, valued at \$3.5 million.⁴⁴ Contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond complied with the Buy American Act for 23 of the 35 contracts reviewed, valued at \$2.4 million, and DLA Maritime Puget Sound contracting personnel

⁴⁴ We did not review contracts at DLA Aviation Philadelphia for compliance with the Buy American Act.

complied with the Act for all 21 contracts reviewed, valued at \$1.1 million. DLA personnel at each of the three contracting offices took appropriate action to ensure suppliers would provide U.S.-produced items by including the Buy American Act DFARS implementing clause in 38 contracts. DLA Troop Support Philadelphia and DLA Maritime Puget Sound contracting personnel awarded five contracts for foreign-made items and appropriately applied exceptions to the domestic-sourcing requirement.⁴⁵ In addition, in all but 2 of the 38 contracts, DLA contracting personnel included the Buy American Act supplemental clause which is required to be used in conjunction with DFARS clause 252.225-7001, “Buy American Act and Balance of Payments Program.”⁴⁶



DLA personnel at each of the three contracting offices took appropriate action to ensure suppliers would provide U.S.-produced items by including the Buy American Act DFARS implementing clause in 38 contracts.

DLA contracting personnel took additional actions on 37 of the 44 contracts to help ensure suppliers could provide compliant items. For example, contracting personnel obtained information on the place of performance or place of manufacture by including provisions in the solicitation requesting this information from the supplier; DLA Aviation Richmond contracting personnel required suppliers to certify that domestic-end-products were offered when submitting quotes through the DLA Internet Bid Board System; and DLA Maritime Puget Sound contracting personnel documented the manufacturer name and country of origin information in the contract file.

DLA Contracting Personnel Did Not Consistently Ensure Compliance with the Buy American Act on 12 Contracts

DLA contracting personnel did not consistently comply with the Buy American Act for 12 of the 56 contracts, valued at \$1.8 million.⁴⁷ Contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond did not include the required Buy American Act implementing clause in 12 contracts. The Buy American Act is implemented through DFARS and requires contracting officers to include DFARS clause 252.225-7001 in the contracts.⁴⁸ Contracting officers should include the required clause because it explicitly notifies the contractor to provide goods that meet the domestic-content requirements specified in the Buy American Act.

⁴⁵ DFARS Part 225, “Foreign Acquisition,” Subpart 225.1101, “Acquisition of Supplies,” does not require a Buy American Act implementing clause in cases where an exception applies.

⁴⁶ DFARS clause 252.225-7002, “Qualifying Country Sources as Subcontractors.”

⁴⁷ Obligations for these 12 contracts totaled \$1.2 million in FPDS-NG, as of March 31, 2016.

⁴⁸ DFARS Part 225, “Foreign Acquisition,” Subpart 225.1, “Buy American-Supplies.”

Contracting Personnel at DLA Troop Support Philadelphia Omitted the Buy American and Balance of Payments DFARS Clause When Required

Contracting personnel at DLA Troop Support Philadelphia omitted DFARS clause 252.225-7001 from 11 of the 18 contracts reviewed, valued at \$1.6 million.⁴⁹ Contracting personnel stated that they relied on the contract writing system to either automatically include the clause in three contracts or to incorporate the terms and clauses stated in the solicitation by reference. However, to include the DFARS implementing clause in seven contracts, DLA Troop Support contracting personnel stated they had to either manually enter the clause or select DFARS 252.225-7001 as an optional clause in the contract writing system. In addition, DLA Troop Support Philadelphia contracting personnel stated that they had to manually include a link between the solicitation and contract in the contract writing system.

The contracting officer for contract SPE1C1-15-M-2038 stated that the buyer was aware that the implementing clause must be manually entered and believed the omission was an administrative error caused from the time constraints of the urgently needed procurement. However, without including DFARS clause 252.225-7001 in the solicitation or contract, the contractor is not explicitly informed or required to provide domestic products. As a result, unless an exception applies to the Buy American Act provisions, the Government is at risk of purchasing and accepting nondomestic items. DLA Troop Support Philadelphia contracting personnel issued the contracts in Table 6 without the required DFARS implementing clause.

Table 6. DLA Troop Support Philadelphia Contracting Personnel Omitted the Required Buy American Act DFARS Clause

Contract Number	Contract Omission
SPE300-15-D-S641 and SPE3S1-16-M-0004	Contract did not include the implementing clause or incorporate the solicitation by reference. The solicitation did not include DFARS clause 252.225-7001.
SPE1C1-15-M-1376, SPE1C1-15-M-1392, SPE1C1-15-M-1952, SPE1C1-15-M-2038, SPE1C1-15-M-2348, SPE1C1-16-M-0525, and SPE1C1-16-M-0526	DLA contracting personnel informally solicited the requirement and the contract did not include DFARS clause 252.225-7001.
SPE300-15-D-S644 and SPE300-16-D-S660	Contract incorporated solicitation by reference; however, neither the contract nor the solicitation included DFARS clause 252.225-7001.

⁴⁹ We did not assess whether DLA Troop Support Philadelphia contracting personnel included implementing clauses in 1 of the 19 contracts reviewed because an exception, in accordance with DFARS Part 225, "Foreign Acquisition," Subpart 225.11, "Solicitation Provisions and Contract Clauses," 225.1101, "Acquisition of Supplies," applied to each covered item.

DLA Troop Support Philadelphia Personnel Relied on Knowledge of the Industry and Past Relationships With Suppliers

DLA Troop Support Philadelphia contracting officers did not consider the Buy American Act during market research for 11 contracts and stated that they relied on past experience with the vendors or the contractors' adherence to stricter sourcing restrictions to determine compliance.

DLA Troop Support Philadelphia contracting officers did not consider the Buy American Act during market research for 11 contracts and stated that they relied on past experience with the vendors or the contractors' adherence to stricter sourcing restrictions to determine compliance. While the FAR and DFARS do not specifically require contracting personnel to consider compliance with the Buy American Act during market research, DLA personnel may conduct market research appropriate to the circumstances to identify and notify potential suppliers of domestic-sourcing requirements.⁵⁰ The FAR states that market research should consider the requirements of any laws and regulations unique to the item being acquired and that one of the reasons for conducting market research is to determine whether sources capable of satisfying the agency's needs exist.

While the contracting officers did not consider the requirements of the Buy American Act during market research, DLA Troop Support Philadelphia officials explained that personnel involved in the acquisitions knew the industry and were familiar with the limited pool of suppliers for a particular market or end item. In addition, the officials explained that suppliers report any instances of noncompliance and work with the Government to remediate the noncompliance to avoid jeopardizing future award opportunities.

For example, DLA Troop Support Philadelphia contracting personnel awarded contracts SPE300-15-D-S641, SPE300-15-D-S644, and SPE300-16-D-S660 for fresh fruit and vegetables with a combined not-to-exceed value of \$450,000. The contracting officers explained that contractors were typically not interested in the procurements because of the small volume and geographic dispersion between customers. As a result, they relied on past market research and assistance from another DLA Field Representative to identify potential suppliers. Although the contracts did not include the DFARS implementing clause, the contracting officers included language in each contract to indicate the non-DoD customer required fully domestic products and explained that end users were fully aware of the requirement and inspected deliveries for compliance.

⁵⁰ FAR Part 10, "Market Research" and DFARS Part 225, "Foreign Acquisition," Subpart 225.1, "Buy American-Supplies," respectively.

For the 11 contracts, we are not recommending that the Commander, DLA Troop Support modify them to include the correct DFARS implementing clause 252.225-7001 because the purchased items were delivered and performance of the contracts was complete. However, the Commander, DLA Troop Support, should determine whether items noncompliant with the Buy American Act were delivered on contracts SPE1C1-15-M-1376, SPE1C1-15-M-1952, SPE1C1-15-M-2348, SPE1C1-15-M-2038, SPE3S1-16-M-0004, SPE300-16-D-S660, SPE300-15-D-S641, SPE300-15-D-S644, SPE1C1-16-M-0525, SPE1C1-16-M-0526, and SPE1C1-15-M-1392 and, when appropriate, obtain replacement items that comply with the Act. In addition, the Commander should amend standard operating procedures and internal processes to improve compliance with the Buy American Act to ensure that the implementing clause is included in the contract.

Corrective Action Taken by DLA Troop Support Philadelphia

As a result of our audit, the Director of Procurement Process Support issued a “Contracting Broadcast News” memorandum in October 2016 to remind the acquisition workforce of the importance of linking the solicitation and award documents. Furthermore, DLA Troop Support Philadelphia personnel held a mandatory acquisition forum in September 2016 to remind acquisition officials about the Buy American Act requirements.

A DLA Aviation Richmond Contracting Officer Omitted the Required DFARS Clause

A contracting officer at DLA Aviation Richmond did not ensure compliance with the Buy American Act when he purchased portable toolboxes under contract SPE4A6-16-D-5298, valued at \$150,000, because he omitted DFARS clause 252.225-7001 from the contract. The contracting officer, because of an administrative error, explained that he might have inadvertently deselected or bypassed the clause when building the award in the contract writing system. The DLA Aviation Richmond contracting officer requested the supplier to identify the actual manufacturer of the item it offered in its quote, but explained that he did not make any additional efforts to help ensure compliance because the contract was for a sole-source item that DLA had previously purchased.

The Commander, DLA Aviation, should determine whether items noncompliant with the Buy American Act were delivered on contract SPE4A6-16-D-5298 and, if appropriate, obtain replacement items that comply with the Act.

Corrective Action Taken by DLA Aviation Richmond

As a result of our audit, DLA Aviation Richmond personnel took corrective action and modified the contract to include the implementing clause in June 2016. In addition, DLA Aviation Richmond policy officials issued a June 2016 newsletter and the Office of Counsel presented an October 2016 training seminar to remind the acquisition workforce about the Buy American Act.

DLA Aviation Richmond Personnel Erroneously Awarded a Small Business Set-Aside Contract to an Ineligible Foreign Contractor

DLA Aviation Richmond contracting personnel erroneously awarded a small business set-aside contract for non-U.S.-manufactured items to an ineligible foreign manufacturer. On August 5, 2015, DLA Aviation contracting personnel issued a request-for-quote on the Defense Logistics Agency Internet Bid Board System to procure the jacks as a total small business set-aside. FAR Part 19, "Small Business Programs," limits the award of set-aside contracts to "business entities with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor." Contracting personnel included FAR clause 52.219-6, "Notice of Total Small Business Set-Aside," in the request for quote. FAR 52.219-6 states that offers are solicited only from small business concerns and offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected. Furthermore, any award resulting from this solicitation will be made to a small business concern.

Five vendors that were eligible for set-aside awards provided quotes and one was suggested for award. One additional vendor from Turkey (a qualifying country) also submitted a quote that was the lowest offer.⁵¹ The quote noted that the vendor intended to manufacture the items in Turkey.

The Turkish offeror, however, was not a small business and was therefore ineligible to receive a small business set-aside contract award. According to FAR 52.219-6, "a small business concern submitting an offer in its own name shall furnish...only end items manufactured or produced by small business concerns in the United States or its outlying areas."

Turkey is considered a qualifying country and under DFARS 225.872-1, the DoD has determined it is inconsistent with the public interest to apply restrictions of the Buy American statute or the Balance of Payments Program to the acquisition

⁵¹ DFARS 225.103 allows for the procurement of foreign made items from qualifying countries identified in DFARS 225.8 "Other International Agreements and Coordination."

of qualifying country end products from qualifying countries. However, the small business set-aside clause restriction placed offerors on notice that only domestic product could be offered. Furthermore, DFARS 225.872-3 directs contracting personnel to not consider an offer of a qualifying country end product if the solicitation is identified for the exclusive participation of small business concerns.

Accordingly, DLA Aviation Richmond contracting personnel were not to consider an offer for a qualifying country end product because the solicitation identified the exclusive participation of only small business concerns.⁵² Additionally, the Defense Logistics Agency Internet Bid Board System identified the Turkish vendor as being ineligible for a set-aside award. However, DLA contracting personnel stated that the contracting officer did not notice the solicitation was for a small business set-aside and erroneously awarded a \$9,100 contract (SPE4A4-15-V-J076) to the lowest bidder, the Turkish firm.⁵³ As a result, DLA contracting personnel purchased non-domestically-produced goods that were not in compliance with the FAR Part 19 and the small business set-aside clause.

The Commander, DLA Aviation Richmond should require contracting and technical personnel to receive training that incorporates the Buy American Act and Small Business Program requirements when soliciting and awarding an acquisition as a small business set-aside.

DLA Personnel Complied With Requirements When Purchasing Foreign-Made Items for Five Contracts

DLA contracting personnel complied with Buy American Act exception requirements when awarding five contracts for nondomestic items. Under certain circumstances, DFARS 225.103, "Exceptions," provides for exceptions to the Buy American Act and specifies when additional documentation and approval requirements apply to public interest (qualifying country) and non-availability exceptions.⁵⁴ See Table 7 for exempted contracts containing foreign-made items.

⁵² DFARS 225.872-1 "General," and DFARS 225.872-3 "Solicitation procedures."

⁵³ Contract SPE4A4-15-V-J076 was closed on March 10, 2017.

⁵⁴ DFARS Part 225, "Foreign Acquisition," Subpart 225.1, "Buy American-Supplies," 225.103, "Exceptions," provides for the public interest exception for certain countries listed in DFARS Part 225, "Foreign Acquisition," Subpart 225.8, "Other International Agreements and Coordination," 225.872, "Contracting with qualifying country sources." DFARS Part 252, "Solicitations Provision and Contract Clauses," Foreign Acquisition," Subpart 251.1, "Instructions for Using Provisions and Clauses," 252.225-7001, "Buy American Act and Balance of Payments Program," defines a "qualifying country" as a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum of agreement complies, where applicable, with the requirements of section 36 of the Arms Export Control Act (22 U.S.C. 2776) and with 10 U.S.C. § 2457.

Table 7. Contracting Personnel Properly Awarded Contracts for Foreign Items Under Exceptions that Apply to the Buy American Act

Contract Number	Exception	Additional Exception Requirements	Buy American Act Compliance
DLA Troop Support Philadelphia			
SPE1C1-16-D-5003	DFARS 225.103 (b)(i) ¹	No	Yes
DLA Maritime Puget Sound			
SPMYM2-15-D-0008	DFARS 225.103 (b)(i) ¹	No	Yes
SPMYM2-15-D-0017	DFARS 225.103 (b)(i) ¹	No	Yes
SPMYM2-16-D-0002	DFARS 225.103 (b)(i) ¹	No	Yes
SPMYM2-16-M-0875	DFARS 225.103 (a)(i)(A) ²	No	Yes

¹ Determination of domestic nonavailability.

² Qualifying country sources.

For each of the five contracts, DLA contracting personnel were not required to prepare additional documentation and obtain approval to support the exceptions taken to the Buy American Act under DFARS 225.103 and generally documented procurement decisions in the contract file to support the use of the exception taken. In one instance, a DLA Troop Support Philadelphia contracting officer did not document the decisions in the file, but officials provided sufficient explanation during the audit to support her use of the exception and their determination that the additional requirements did not apply.

Conclusion

Contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond complied with the Buy American Act for 23 of the 35 contracts reviewed and DLA Maritime Puget Sound contracting personnel complied with all 21 contracts reviewed. Personnel at all three contracting offices complied with Buy American Act exception requirements when awarding contracts for nondomestic items. However, contracting personnel could improve compliance with the Buy American Act. For the remaining 12 contracts, contracting personnel at DLA Troop Support Philadelphia and DLA Aviation Richmond omitted the DFARS implementing clause and therefore may have received noncompliant items. In addition, contracting personnel at DLA Aviation Richmond erroneously purchased non-U.S.-manufactured items from a qualifying country when the requirement was a small business set-aside.

Recommendations, Management Comments, and Our Response

Recommendation B.1

We recommend the Commander, Defense Logistics Agency Troop Support:

- a. **Determine whether items noncompliant with the Buy American Act were delivered on contracts SPE1C1-15-M-1376, SPE1C1-15-M-1952, SPE1C1-15-M-2348, SPE1C1-15-M-2038, SPE3S1-16-M-0004, SPE300-16-D-S660, SPE300-15-D-S641, SPE300-15-D-S644, SPE1C1-16-M-0525, SPE1C1-16-M-0526, and SPE1C1-15-M-1392, and when appropriate, obtain replacement items that comply with the Act.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency Troop Support, agreed, stating that only compliant material was supplied under contracts SPE1C1-15-M-1376, SPE1C1-15-M-1952, SPE1C1-15-M-2348, SPE1C1-15-M-2038, SPE1C1-16-M-0525, SPE1C1-16-M-0526, and SPE1C1-15-M-1392.

For contract SPE3S1-16-M- 0004, non-domestic product were not supplied.

Perishable food ordered on contracts SPE300-16-D-S660, SPE300-15-D-S641, and SPE300-15-D-S644 have been consumed, paid for, and the contracts are no longer in effect. All contracts for produce items were Buy American Act compliant.

Our Response

Comments from the Director addressed all specifics of the recommendation.

Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation showing that the contracts are closed.

- b. **Amend standard operating procedures and internal processes to improve compliance with the Buy American Act to ensure the Defense Federal Acquisition Regulation Supplement clause implementing the Buy American Act is included in the contract.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency Troop Support, agreed, stating that Defense Logistics Agency Troop Support, held a mandatory acquisition forum in September 2016 to reinforce the Buy American Act requirements. Defense Logistics Agency Troop Support Office of Counsel will provide commodity-specific Buy American Act

training as part of Subsistence University by July 1, 2017. In addition, Defense Logistics Agency Acquisition will update their contract writing system to automatically include the Buy American Act DFARS clauses by November 30, 2017.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation showing that the training was provided and that the changes were made to the contract writing system.

Recommendation B.2

We recommend that Commander, Defense Logistics Agency Aviation:

- a. Determine whether items noncompliant with the Buy American Act were delivered on contract SPE4A6-16-D-5298 and, if appropriate, obtain replacement items that comply with the Act.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Commander, Defense Logistics Agency Aviation, agreed and stated that the Defense Logistics Agency Aviation, modified the contract to include the implementing clause in June 2016. Defense Logistics Agency Aviation personnel are screening all on hand inventory to determine whether the material is compliant. The review will be completed by June 30, 2017.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation showing the inventory only includes compliant material.

- b. Require contracting and technical personnel to receive training that incorporates the Buy American Act and Small Business Program requirements when soliciting and awarding an acquisition as a small business set-aside.**

Defense Logistics Agency Comments

The Director, Defense Logistics Agency Acquisition, responding for the Defense Logistics Aviation, agreed, stating that Defense Logistics Agency Aviation acquisition policy officials issued a June 2016 newsletter and the Office of General Counsel presented a training seminar in October 2016 to remind the acquisition

workforce about Buy American Act requirements. In addition, the Director sent an e-mail to agency senior leaders on July 30, 2016, informing them that all Defense Logistics Agency acquisition coded personnel should take market research training within 120 days and refresher training every 3 years to better support the Small Business Programs.

Our Response

Comments from the Director addressed all specifics of the recommendation. Therefore, the recommendation is resolved but will remain open. We will close this recommendation after DLA provides documentation to verify the Buy American Act and market research training was conducted.

Appendix A

Scope and Methodology

We conducted this performance audit from April 2016 through June 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our scope was limited to contracts issued by DLA with FSG codes of 51, 52, 83, 84, and 89 from October 1, 2014, through March 31, 2016, to determine whether DLA personnel complied with the Berry Amendment and Buy American Act when they purchased covered items such as food, clothing, tents, textiles, and hand or measuring tools. With certain exceptions, these funds are not available for the procurement of non-U.S.-made items. We did not review classified contracts.

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

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”
- 41 U.S.C. § 8302, “American materials required for public use”
- Public Law 113-76, “Consolidated Appropriations Act, 2014”
- FAR Part 4, “Administrative Matters”
- FAR Part 10, “Market Research”
- FAR Part 25, “Foreign Acquisitions”

- FAR 52.225-2, “Buy American Act Certificate”
- DFARS Part 225, “Foreign Acquisition”
- DFARS 252.225-7001, “Buy American Act and Balance of Payments Program”
- DFARS 252.225-7012, “Preference for Certain Domestic Commodities”
- DFARS 252.225-7015, “Restriction on Acquisition of Hand or Measuring Tools”

To obtain command policy and guidance related to the audit objective, we interviewed contracting and oversight officials from the following locations.

- DLA Troop Support Philadelphia, Pennsylvania
- DLA Aviation Richmond, Virginia
- DLA Maritime Puget Sound, Washington
- DLA Aviation Philadelphia, Pennsylvania

We interviewed DLA personnel to discuss procedures that were completed when they awarded Berry Amendment and Buy American Act contracts. We obtained copies of contract documentation issued by DLA personnel including:

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

At DLA Aviation Richmond, we interviewed technical specialists, who validate a requesting Service’s need, and post-award acquisition specialists, who administer a contract’s post-award process, to determine what roles the officials have in determining compliance with the domestic-sourcing restrictions. We also interviewed item-accepting personnel at DLA Maritime Puget Sound to determine what acceptance procedures were conducted when the goods were received. We physically inspected a nonstatistical sample of the items delivered on 2 of 3 contracts for indications of compliance with the Berry Amendment and on 2 of 21 contracts for indications of compliance with the Buy American Act.

Universe and Sample Size Selection

We used FPDS-NG to identify contracts issued by DLA personnel. We limited the queries to actions covered by the Berry Amendment and Buy American Act issued on contracts awarded from October 1, 2014, through March 31, 2016, coded with a “product or service code” beginning with 51, 52, 83, 84, or 89. We limited our site selection to locations that awarded Berry Amendment contracts with a total base and all options value totaling more than \$4 million. We selected sites that awarded the most contracts subject to the Berry Amendment and Buy American Act and provided the most varied mix of FSGs to review. Specifically, we selected four DLA Components to visit.

- DLA Troop Support Philadelphia
- DLA Aviation Richmond
- DLA Maritime Puget Sound
- DLA Aviation Philadelphia

We selected a nonstatistical sample of contracts from those awarded by each of the four Components subject to the Berry Amendment and Buy American Act. We did not review contracts at DLA Aviation Philadelphia for compliance with the Buy American Act because contracting personnel only made one small purchase. We selected Berry Amendment contracts and Buy American Act contracts based on different FSG groups, a mix of different contract dollar values in different contract amount categories, a range of different vendors, and FPDS-NG codes depicting non-domestic manufacture designations.

We identified 166 Berry Amendment contracts, with an obligated value of \$641.9 million, and 2,216 Buy American Act contracts, with an obligated value of \$58.5 million.⁵⁵ We initially selected 93 contracts to review; however, we excluded 5 contracts during the fieldwork of the audit. Contracting personnel at DLA Aviation Richmond canceled two contracts and contracting personnel at DLA Troop Support Philadelphia canceled one contract, inadvertently destroyed the file for one contract, and explained that the remaining contract was actually an administrative catalog to an existing contract awarded outside the scope of our review. Our final review included 32 Berry Amendment contracts and 56 Buy American Act contracts totaling \$383.3 million and \$3.7 million in obligations from October 1, 2014, to March 31, 2016, as reported in FPDS-NG on April 22, 2016. We did not review classified contracts or contracts covered by the Buy American Act in which the intended use was outside the United States. Unless otherwise noted, dollar

⁵⁵ The numbers reported are limited to contracts with action obligations in FPDS-NG that exceeded the micro-purchase threshold or the simplified acquisition threshold amounts during the time period of our review.

values depicted in the report are base award contract values and include the maximum dollar amount DLA contracting personnel 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 DLA Troop Support Philadelphia, DLA Aviation Richmond, DLA Maritime Puget Sound, DLA Aviation Philadelphia, or other DLA-issued contracts.

Use of Computer-Processed Data

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

Use of Technical Assistance

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

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and DoD OIG issued five reports discussing the award of contracts for items that are subject to Berry Amendment and Buy American Act review. Unrestricted GAO reports can be accessed at www.gao.gov. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>.

GAO

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

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

Report No. GAO-11-682R, "Military Uniforms: Issues Related to the Supply of Flame Resistant Fibers for the Production of Military Uniforms," June 30, 2011

At the time of the report, a foreign company was the only source used for fire resistant rayon fiber to support the manufacturing of fire resistant uniforms for the DoD. However, the Department had taken a number of steps to identify alternative fire resistant blends.

DoD OIG

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

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

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

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

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

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

Appendix B

Berry Amendment Contracts Reviewed

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Berry Amendment Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
DLA Troop Support Philadelphia						
1	SPE1C1-16-C-0007	\$15,291,717	Temperate weather boots	No	No	Yes
2	SPE1C1-16-C-0008	6,614,150	Temperate weather boots	No	No	Yes
3	SPE1C1-15-D-1008	6,771,718 ¹	Field jackets	No	Yes ²	— ⁹
4	SPE1C1-15-D-1077	22,099,000 ¹	Field jackets	Yes ³	Yes ²	Yes
5	SPE1C1-15-D-1057	22,845,900 ¹	Field jackets	Yes	Yes ²	— ⁹
6	SPE1C1-15-D-1032	3,754,875 ¹	Tropical cloth	No	Yes ²	Yes
7	SPE1C1-15-D-1012	40,000,000 ¹	Flame resistant utility coveralls	Yes	Yes ⁴	Yes
8	SPE1C1-15-C-0015	7,797,000	Advanced combat helmets	Yes ³	No	Yes
9	SPE1C1-15-M-2734	4,156,000	Winter blankets	N/A ^{3, 5, 6}	Yes ⁴	Yes
10	SPE1C1-15-M-2729	2,002,350	Personal dignity kits	Yes ^{3, 6, 7}	Yes ⁴	Yes

Please see the final page of Appendix B for the Table notes.

Berry Amendment Contracts Reviewed (cont'd)

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Berry Amendment Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
11	SPE1C1-15-C-0017	27,634,900	Children's clothing kits	N/A ^{3, 5, 6}	Yes ⁴	Yes
12	SPE1C1-16-C-0012	92,737,640	Enhanced Small Arms Protective Inserts	Yes	No	Yes
13	SPE1C1-15-D-N006	5,126,400 ¹	Patrol caps	Yes	No	Yes
14	SPE300-15-D-4008	50,422,296 ¹	Full line food distribution	Yes ³	No	— ⁹
15	SPE1C1-15-D-N005	33,032,707 ¹	Joint Service Lightweight Integrated Suit Technology coats and trousers	N/A ^{3, 4, 5}	No	Yes
16	SPE300-15-D-3130	201,000,000 ¹	Full line food and beverage distribution	No ³	Yes ⁴	— ⁹
17	SPE300-15-D-3129	141,000,000 ¹	Full line food and beverage distribution	No ³	Yes ⁴	Yes
18	SPE1C1-16-D-1023	5,798,558 ¹	Temperate weather boots	Yes	No	Yes
19	SPE1C1-15-D-1023	9,089,063 ¹	Flame resistant combat boots for hot weather	No	No	Yes
20	SPE1C1-15-D-1010	9,161,250 ¹	Parkas	Yes	Yes ⁴	Yes
21	SPE1C1-15-D-1011	8,701,000 ¹	Parkas	Yes	Yes ⁴	— ⁹
22	SPE4A6-15-D-0284	954,046 ¹	Bushing and bearing removal and installation kits	No	No	Yes

Please see the final page of Appendix B for the Table notes.

Berry Amendment Contracts Reviewed (cont'd)

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Berry Amendment Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
DLA Aviation Richmond						
23	SPE4A6-15-D-0236	198,254 ¹	Aircraft maintenance toolkits	No	No	Yes
24	SPE4A6-15-D-0262	624,012 ¹	Electric disk sanders	No	No	Yes
25	SPE4A6-16-D-0042	232,916 ¹	Removal installer sets	No	No	Yes
26	SPE4A6-15-D-0152	39,312 ¹	Hydraulic hand jacks	No	No	— ⁹
27	SPE4A6-15-D-0155	98,000 ¹	Tool hose assemblies	No	No	Yes
28	SPE4A6-15-C-0211	239,460	Aircraft maintenance toolkits	No	No	Yes
DLA Maritime Puget Sound						
29	SPMYM2-15-D-0014	99,625 ¹	Sandblaster hoods and booties	Yes	Yes	Yes
30	SPMYM2-15-D-0019	157,500 ¹	Stockinette hoods	Yes	No	— ⁹
31	SPMYM2-15-C-0007	470,106 ¹	Safety footwear	Yes ^{3, 7}	Yes	Yes
DLA Aviation Philadelphia						
32	SPRPA1-15-C-Z034	234,659	Aircraft toolkits	Yes	No	— ⁹
	Total	\$718,384,414⁸				

¹ The base award value depicted in the table represents the maximum dollar amount DLA contracting personnel could obligate under a contract with undefined ordering quantities.

² Market research survey included a statement to inform potential vendors that the Berry Amendment applied.

³ Purchased foreign items or items containing foreign components that were exempt from the Berry Amendment.

⁴ During market research, DLA contracting personnel requested specific information to assess potential vendors' ability to comply with the Berry Amendment.

⁵ An implementing clause was not required because a Berry Amendment exception applied to every covered item on the contract.

⁶ DLA contracting personnel did not prepare or include the required Berry Amendment exception language in the FBO award notice.

⁷ Purchased foreign items or items containing nondomestic components without the proper support or approval that may result in a potential Antideficiency Act violation.

⁸ Totals may not equal the actual sum because contract base award values are rounded.

⁹ DLA requested and did not receive, or did not request and did not receive, additional information in response to the solicitation to help assess compliance.

Appendix C

Buy American Act Contracts Reviewed

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Buy American Act Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
DLA Troop Support Philadelphia						
1	SPE1C1-15-M-2038	\$149,585	Butyl gloves	No	No	Yes
2	SPE300-15-D-S647	150,000 ¹	Fresh fruits and vegetables	Yes	No ²	— ³
3	SPE1C1-15-M-2639	149,160	Subassembly for impact resistant cloth helmets	Yes	No	Yes
4	SPE1C1-15-M-2348	149,625	Safety boots	No	No	— ³
5	SPE1C1-15-D-5002	149,945 ¹	Helmet liners	Yes	No	Yes
6	SPE8EH-15-M-0581	149,948	Pulaski tools	Yes	Yes	— ³
7	SPE1C1-15-M-0456	146,750	Drinking water bags	Yes	No	Yes
8	SPE1C1-15-M-0236	147,000	Army sharpshooter badges	Yes	No	Yes
9	SPE1C1-16-M-0525	149,855	Women's temperate weather boots	No	No ²	— ³
10	SPE1C1-16-D-5003	150,000 ¹	Heat protective gloves	N/A ⁴	No	Yes
11	SPE1C1-16-M-0526	149,855	Men's temperate weather boots	No	No ²	— ³
12	SPE300-15-D-S641	150,000 ¹	Fresh fruits and vegetables	No	No	— ³

Please see the final page of Appendix C for the Table notes.

Buy American Act Contracts Reviewed (cont'd)

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Buy American Act Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
13	SPE1C1-15-M-0640	146,754	Flagstaff stands	Yes	No	— ³
14	SPE300-16-D-5016	150,000 ¹	Fresh fruits and vegetables	No	No	— ³
15	SPE300-15-D-S644	150,000 ¹	Fresh fruits and vegetables	No	No	— ³
16	SPE3S1-16-M-0004	140,000	Emergency drinking water	No	No ²	— ³
17	SPE1C1-15-M-1392	149,827	Safety boots	No	No ²	— ³
18	SPE1C1-15-M-1376	149,625	Safety boots	No	No ²	— ³
19	SPE1C1-15-M-1952	149,625	Safety boots	No	No ²	— ³
DLA Aviation Richmond						
20	SPE4A6-15-M-B990	70,237	Mechanical jack screws	Yes	No	Yes ⁵
21	SPE4A6-15-M-8664	87,500	Portable tool boxes	Yes	No	Yes ⁵
22	SPE4A4-15-V-2747	134,850	Hand jack screws	Yes	No	Yes ⁵
23	SPE4A6-16-D-5197	150,000 ¹	Socket wrench faces	Yes	No	Yes
24	SPE4A6-15-D-5263	150,000 ¹	Socket wrench handle bars	Yes	No ²	Yes
25	SPE4A6-15-V-4282	87,549	Aircraft toolkits	Yes	No ²	Yes ⁵
26	SPE4A6-15-V-2226	76,934	Transmission toolkits	Yes	No ²	Yes ⁵
27	SPE4A6-15-V-G137	81,311	Manifold assemblies	Yes	No ²	Yes ⁵

Please see the final page of Appendix C for the Table notes.

Buy American Act Contracts Reviewed (cont'd)

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Buy American Act Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
28	SPE4A6-15-D-5300	150,000 ¹	Safing wrench assemblies	Yes	No ²	Yes
29	SPE4A6-16-D-5437	150,000 ¹	Drive pin punches	Yes	No	— ³
30	SPE4A6-15-M-C666	17,763	Installers	Yes	No	Yes ⁵
31	SPE4A7-15-M-5922	71,121	Parachute deployment bags	Yes	No	Yes ⁵
32	SPE4A6-16-D-5298	150,000 ¹	Portable tool boxes	No	No	Yes
33	SPE4A4-15-V-J076	9,100	Leveling—support jacks	Yes	No	Yes ⁵
34	SPE4A4-15-V-J376	9,600	Tube cutters	Yes	No	Yes ⁵
35	SPE4A4-15-V-J920	12,000	Piston B reamer sets	Yes	No	Yes ⁵
36	SPMYM2-15-M-1038	91,471	Multiple size hex link ratcheting; torque wrenches; stack sockets	Yes	No	Yes
37	SPMYM2-15-M-3259	68,983	Fire retardant trackrunner cofferdam materials	Yes	Yes	Yes
38	SPMYM2-15-M-3606	36,528	Crimping tool	Yes	Yes	Yes
39	SPMYM2-16-M-0875	23,000	Needle scalers	N/A	No	— ³

Please see the final page of Appendix C for the Table notes.

Buy American Act Contracts Reviewed (cont'd)

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Buy American Act Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
DLA Maritime Puget Sound						
40	SPMYM2-16-M-1083	34,363	Precision milling equipment	Yes	No	Yes
41	SPMYM2-16-M-0570	43,410	Hardhats	Yes	No	Yes
42	SPMYM2-15-M-2521	116,875	Hydraulic cutting tools	Yes	Yes	Yes
43	SPMYM2-15-M-2525	97,005	Fire retardant trackrunner cofferdam materials	Yes	Yes	Yes
44	SPMYM2-15-M-1904	66,750	Saw assemblies	Yes	Yes	Yes
45	SPMYM2-15-M-1002	41,600	Filtration system and filter kits	Yes	Yes	Yes
46	SPMYM2-15-M-1988	40,667	Hardhats	Yes	Yes	Yes
47	SPMYM2-15-M-0410	25,245	Air fed-hoods	Yes	Yes	Yes
48	SPMYM2-15-D-0017	33,943	Cut resistant gloves	N/A ⁴	Yes	— ³
49	SPMYM2-15-M-3145	32,336	Reciprocating saw blades	Yes	Yes	— ³
50	SPMYM2-15-M-3583	25,900	Protective suits	Yes	No	— ³
51	SPMYM2-16-D-0002	19,341	Level 3 cut resistant gloves	N/A ⁴	Yes	Yes
52	SPMYM2-15-M-3053	124,410	Chain hoist tester	Yes	Yes	Yes
53	SPMYM2-15-M-3238	80,534	Laminated cloth	Yes	Yes	— ³

Please see the final page of Appendix C for the Table notes.

Buy American Act Contracts Reviewed (cont'd)

	Contract Number	Base Contract Award Value	Item Description	Implementing Clause Included in Contract	Buy American Act Considered During Market Research	Requested and Received Additional Information in Response to the Solicitation to Help Assess Compliance
54	SPMYM2-15-M-3245	31,920	Plain weave glass cloth	Yes	Yes	Yes
55	SPMYM2-16-M-0346	33,750	Laminated cloth	Yes	Yes	— ³
56	SPMYM2-15-D-0008	33,750	Cut resistant gloves	N/A ⁴	No	Yes
	Total	\$5,338,300⁶				

¹ The base award value is the maximum dollar amount DLA contracting personnel could obligate under an indefinite order type contract.

² DLA contracting personnel stated that they relied on past experience with a supplier or their knowledge on the industry instead.

³ DLA requested and did not receive, or did not request and did not receive, additional information in response to the solicitation to help assess compliance.

⁴ An implementing clause was not required because the foreign items purchased were exempt from the Buy American Act.

⁵ Suppliers had to certify that domestic products were offered when submitting quotes through the DLA Internet Bid Board System.

⁶ Totals may not equal the actual sum because contract base award values are rounded.

Management Comments

Defense Logistics Agency Comments



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

JUN 05 2017

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Response to DoD IG Draft Report "Defense Logistics Agency Did Not Consistently Comply with the Berry Amendment and the Buy American Act" (Project No. D2016-D000CG-0140.000)

Attached is the DLA's response to the subject Draft Report. We appreciate the opportunity to review and comment on the finding and recommendations. The point of contact for this audit is [REDACTED] or email: [REDACTED]


MATTHEW R. BEEBE
Director, DLA Acquisition

Attachment:
As stated

Defense Logistics Agency Comments (cont'd)

For Recommendation A.1 the DoD IG recommends the Commander, Defense Logistics Agency Troop Support:

Recommendation A.1.a: Determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE1C1-16-C-0007, SPE1C1-16-C-0008, SPE1C1-15-D-1023, SPE300-15-D-3130, SPE300-15-D-3129, SPE1C1-15-D-1032, and SPE1C1-15-D-1008 and, when appropriate, obtain replacement items that comply with the Amendment.

DLA's response to Recommendation A.1.a: Concur. Only Berry Amendment compliant material was supplied under contracts SPE1C1-16-C-0007, SPE1C1-16-C-0008, SPE1C1-15-D-1023, SPE1C1-15-D-1032, and SPE1C1-15-D-1008. Subsistence contracts SPE300-15-D-3130 and SPE300-15-D-3129 were modified on September 7, 2016 to include the Berry Amendment clause. Items shipped on the contracts prior to this date were Berry Amendment compliant and have been consumed and paid for.

Recommendation A.1.b: Amend standard operating procedures and internal processes to improve compliance with the Berry Amendment, ensuring the following actions are taken.

1. Contracting personnel include the required Defense Federal Acquisition Regulation Supplement clause in the contract to implement the Berry Amendment.
2. Contracting personnel are knowledgeable on when to manually post award notices to the Federal Business Opportunities webpage.
3. Contracting personnel assigned to work in areas subject to the Berry Amendment are sufficiently aware of the Amendment and its restrictions before contracting for covered items.

DLA's response to Recommendation A.1.b.1: Concur. DLA Troop Support has already taken corrective action and modified all required contracts to either include the DFARS implementing clause or incorporate the solicitation terms by reference. DLA Troop Support, Director of Supplier Operations, issued guidance on January 18, 2017, requiring the inclusion of all applicable Berry Amendment clauses in solicitations with an award value over \$150,000. In addition, DLA Acquisition will update our contract writing system to automatically include the Berry Amendment DFARS clauses by November 30, 2017.

DLA's response to Recommendation A.1.b.2 & 3: Concur. DLA Troop Support, Director of Procurement Process Support issued a "Contracting Broadcast News" memorandum in October 2016 to remind the acquisition workforce of the importance of linking the solicitation and award documents. The Executive Director for Troop Support Contracting and Acquisition Management released a memorandum on April 13, 2017 requiring completion of the Defense Acquisition University on line course CLC 125, Berry Amendment, by employees assigned to GS-1101, GS-1102 and GS-1105 positions, no later than July 1, 2017. DLA Troop Support Office of Counsel will provide commodity-specific Berry Amendment training as part of Subsistence University by July 1, 2017.

Recommendation A.1.c: Post a required notice on the Federal Business Opportunities website, as required by DFARS 205.301, "General," for contracts SPE1C1-15-M-2734, SPE1C1-15-M-2729,

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Defense Logistics Agency Comments (cont'd)

and SPE1C1-15-C-0017 to include the required language on the applicable Berry Amendment exception.

DLA's response to Recommendation A.1.c: Concur. The required notice was posted to the Federal Business Opportunities website on May 22, 2017.

For Recommendation A.2 the DoD IG recommends the Commander, Defense Logistics Agency Aviation: determine whether items noncompliant with the Berry Amendment were delivered on contracts SPE4A6-15-C-0211, SPE4A6-15-D-0152, SPE4A6-15-D-0155, SPE4A6-15-D-0236, SPE4A6-15-D-0262, SPE4A6-15-D-0284, and SPE4A6-16-D-0042 and, when appropriate, obtain replacement items that comply with the Amendment.

DLA's response to Recommendation A.2: Concur. DLA Aviation modified the contracts to include the Berry Amendment DFARS clause in June 2016. DLA Aviation is screening all on hand inventory in accordance with recommendation A.2. to determine if the material is Berry compliant. The review will be completed by June 30, 2017.

For Recommendation A.3 the DoD IG recommends the Commander, Defense Logistics Agency, Land and Maritime:

Recommendation A.3.a: Initiate a review to determine whether items noncompliant with the Berry Amendment were ordered or received on contract SPMYM2-15-C-0007, and, when appropriate, remove noncompliant items and obtain replacements that comply with the Amendment.

DLA's response to Recommendation A.3.a: Concur. DLA Maritime Puget Sound has completed the recommended actions. Shortly after initial discussions with the DoD IG, DLA Maritime Puget Sound directed the contractor to stop supplying the potentially noncompliant boot under contract SPMYM2-15-C-0007. DLA Maritime Puget Sound then formally commenced an investigation to determine whether noncompliant boots were ordered and supplied under the contract. The preliminary investigation concluded that noncompliant boots were ordered and supplied under the contract. The Contracting Officer issued a modification to the contract on May 17, 2017, that excludes the noncompliant items from being ordered.

Recommendation A.3.b: Ensure staff are sufficiently aware of the Berry Amendment and its exceptions permitting the purchase of foreign items before contracting for covered items.

DLA's response to Recommendation A.3.b: Concur. DLA Maritime Puget Sound acquisition personnel received additional Berry Amendment training in March 2017. In addition to the local training DLA Acquisition will review contracts for required Berry Amendment and Buy American Act Clauses during the Agency Management Reviews to determine if additional action is required.

For Recommendation A.4 the DoD IG recommends the Director, Defense Logistics Agency Finance:

Recommendation A.4.a: Initiate a preliminary review in accordance with DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, to determine whether reportable

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Defense Logistics Agency Comments (cont'd)

violations of the Antideficiency Act occurred on contract SPE1C1-15-M-2729 and contract SPMYM2-15-C-0007.

DLA's response to Recommendation A.4.a: Partially Concur. For contract SPE1C1-15-M-2729, the Director of DLA approved a domestic nonavailability determination for the footwear on January 18, 2017. The determination applied retroactively to contract SPE1C1-15-M-2729 and a preliminary review is not required (see Dash Engineering, Inc.; Engineered Fabrics Corporation, B-246304, B-246304.8, B-246304.9, 1993 WL 158281, 93-1 CPD P 363 (Comp.Gen.)). A preliminary review was initiated on March 3, 2017, for contract SPMYM2-15-C-0007.

Recommendation A.4.b: Complete the preliminary review as required by DoD 7000.14-R, "DoD Financial Management Regulation," volume 14, chapter 3, and provide results to the DoD Office of Inspector General. If violations of the Antideficiency Act occurred, determine which officials are responsible and recommend corrective actions.

DLA's response to Recommendation A.4.b: Concur. The preliminary review for contract SPMYM2-15-C-0007 will be completed by June 30, 2017.

For Recommendation B.1 the DoD IG recommends the Commander, Defense Logistics Agency Troop Support:

Recommendation B.1.a: Determine whether items noncompliant with the Buy American Act were delivered on contracts SPE1C1-15-M-1376, SPE1C1-15-M-1952, SPE1C1-15-M-2348, SPE1C1-15-M-2038, SPE3S1-16-M-0004, SPE300-16-D-S660, SPE300-15-D-S641, SPE300-15-D-S644, SPE1C1-16-M-0525, SPE1C1-16-M-0526, and SPE1C1-15-M-1392, and when appropriate, obtain replacement items that comply with the Act.

DLA's response to Recommendation B.1.a: Concur. Only compliant material was supplied under contracts SPE1C1-15-M-1376, SPE1C1-15-M-1952, SPE1C1-15-M-2348, SPE1C1-15-M-2038, SPE1C1-16-M-0525, SPE1C1-16-M-0526, and SPE1C1-15-M-1392. For contract SPE3S1-16-M-0004 no non-domestic product was supplied under this rations water contract, which required USDA inspection. Contracts SPE300-16-D-S660, SPE300-15-D-S641, and SPE300-15-D-S644 are for perishable fresh fruits and vegetables. These items have been consumed, paid for and the contracts are no longer in effect. All contracts for produce items were Buy American Act Compliant. Only domestic product was made available to the school and reservation customers in Montana, and was purchased from a variety of farmers and produce distributors.

Recommendation B.1.b: Amend standard operating procedures and internal processes to improve compliance with the Buy American Act to ensure the Defense Federal Acquisition Regulation Supplement clause implementing the Buy American Act is included in the contract.

DLA's response to Recommendation B.1.b: Concur. DLA Troop Support held a mandatory acquisition forum in September 2016 to reinforce the Buy American Act requirements. DLA Troop Support Office of Counsel will provide commodity-specific Buy American Act training as part of Subsistence University by July 1, 2017. In addition, DLA Acquisition will update our contract

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Defense Logistics Agency Comments (cont'd)

writing system to automatically include the Buy American Act DFARS clauses by November 30, 2017.

For Recommendation B.2 the DoD IG recommends the Commander, Defense Logistics Agency Aviation:

Recommendation B.2.a: Determine whether items noncompliant with the Buy American Act were delivered on contract SPE4A6-16-D-5298 and, if appropriate, obtain replacement items that comply with the Act.

DLA's response to Recommendation B.2.a: Concur. DLA Aviation has taken corrective action and modified the contract to include the implementing clause in June 2016. DLA Aviation is screening all on hand inventory in accordance with recommendation B.2.a. to determine if the material is compliant. The review will be completed by June 30, 2017.

Recommendation B.2.b: Require contracting and technical personnel to receive training that incorporates the Buy American Act and Small Business Program requirements when soliciting and awarding an acquisition as a small business set-aside.

DLA's response to Recommendation B.2.b: Concur. DLA Aviation acquisition policy officials issued a June 2016 newsletter and the Office of Counsel presented an October 2016 training seminar to remind the acquisition workforce about Buy American Act requirements. Additionally, on July 30th 2016, I sent an email to senior leaders within the agency informing them that all DLA acquisition coded personnel are should take market research training within 120 days and refresher training is required every three years to better support our Small Business Programs.

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Acronyms and Abbreviations

DFARS	Defense Federal Acquisition Regulation Supplement
DLA	Defense Logistics Center
FAR	Federal Acquisition Regulation
FBO	Federal Business Opportunities
FPDS-NG	Federal Procurement Data System-Next Generation
FSG	Federal Supply Group
U.S.C.	United States Code

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