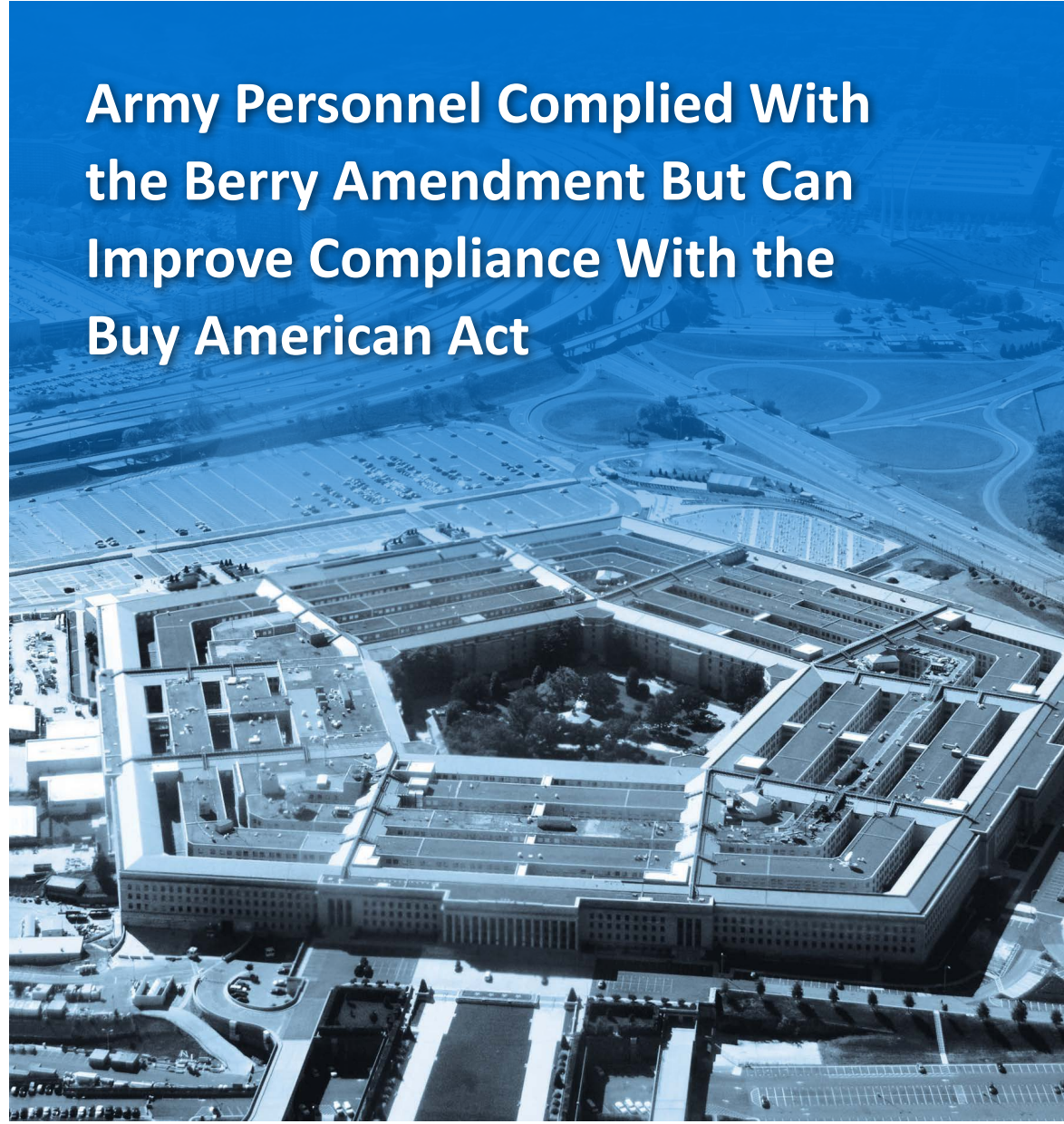




INSPECTOR GENERAL

U.S. Department of Defense

NOVEMBER 7, 2014



Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

Report Documentation Page

Form Approved
OMB No. 0704-0188

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1. REPORT DATE 07 NOV 2014	2. REPORT TYPE	3. DATES COVERED 00-00-2014 to 00-00-2014			
4. TITLE AND SUBTITLE Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act		5a. CONTRACT NUMBER			
		5b. GRANT NUMBER			
		5c. PROGRAM ELEMENT NUMBER			
6. AUTHOR(S)		5d. PROJECT NUMBER			
		5e. TASK NUMBER			
		5f. WORK UNIT NUMBER			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Department of Defense Inspector General, 4800 Mark Center Drive, Alexandria, VA, 22350-1500		8. PERFORMING ORGANIZATION REPORT NUMBER			
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)		10. SPONSOR/MONITOR'S ACRONYM(S)			
		11. SPONSOR/MONITOR'S REPORT NUMBER(S)			
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified	Same as Report (SAR)	46	

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Mission

Our mission is to provide independent, relevant, and timely oversight of the Department of Defense that supports the warfighter; promotes accountability, integrity, and efficiency; advises the Secretary of Defense and Congress; and informs the public.

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Our vision is to be a model oversight organization in the Federal Government by leading change, speaking truth, and promoting excellence—a diverse organization, working together as one professional team, recognized as leaders in our field.



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Results in Brief

Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act

November 7, 2014

Objective

Our audit objective was to determine whether Army 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. We performed this audit in response to Section 1601 of the National Defense Authorization Act for FY 2014. The act 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, the Berry Amendment.

Findings

Army Contracting Command (ACC) personnel at three locations substantially complied with the Berry Amendment for 29 of the 33 contracts reviewed, with an obligated value of about \$124.6 million. However, ACC contracting personnel did not include the Berry Amendment implementing clause within the basic contract for 4 of the 33 contracts, but took corrective actions to add the required clause.

ACC contracting personnel can improve compliance with the Buy American Act. For 50 Buy American Act contracts with an obligated value of about \$4.7 million, ACC contracting personnel:

Findings (cont'd)

- did not complete required component assessments for 23 contracts because for 16 contracts they did not differentiate between commercial and commercial off-the-shelf items and for 7 contracts because they relied upon contractor assertions not specific to the items under contract;
- omitted the Buy American Act implementing clause in 4 contracts; and
- issued a contract for goods from a non-qualifying country.

As a result, ACC contracting personnel could not demonstrate that all the procured items complied with domestic content requirement, and suppliers could have provided noncompliant items. Additionally, ACC contracting personnel may have committed an Antideficiency Act violation.

Recommendations

We recommend the Commanding General, Army Contracting Command, require contracting personnel receive training to distinguish between commercial, non-commercial, and commercial off-the-shelf items and how to perform component assessments required by the Buy American Act. Additionally, we recommend the Assistant Secretary of the Army, Financial Management and Comptroller, initiate a preliminary investigation of the potential Antideficiency Act violation for contract W911QY-13-P-0109.

Management Comments and Our Response

The Commanding General, Army Contracting Command and the Assistant Secretary of the Army, Financial Management and Comptroller, agreed with the recommendations and no further comments are required. Please see the recommendations table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Commanding General, Army Contracting Command-Headquarters		B.1.a, B.1.b
Assistant Secretary of the Army, Financial Management and Comptroller		B.2.a, B.2.b



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

November 7, 2014

MEMORANDUM FOR UNDERSECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Army Personnel Complied With the Berry Amendment But Can Improve Compliance
With the Buy American Act (Report No. DODIG-2015-026)

We are providing this report for your information and use. Of the 33 Berry Amendment contracts reviewed, valued at \$124.6 million and 50 Buy American Act contracts reviewed, valued at \$4.7 million, Army Contracting Command personnel omitted Berry Amendment and Buy American Act implementing clauses in 4 of 33 contracts and 4 of 50 contracts respectively, did not differentiate between commercial and commercial off-the-shelf products, and did not complete component assessments. In addition, Army Contracting Command personnel issued a contract for and received goods from a non-qualifying country resulting in a potential Antideficiency Act.

We considered management comments on a draft of this report when preparing the final report. DoD Directive 7650.3 requires that recommendations be resolved promptly. Comments from the Commanding General, Army Contracting Command and the Secretary of the Army, Financial Management and Comptroller, addressed all specifics of the recommendations, and we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct questions to Ms. Deborah Culp, Program Director, Contract Management and Payments, at (703) 604-9335 (DSN 664-9335).

A handwritten signature in cursive script, reading "Amy J. Frontz", is positioned above the typed name.

Amy J. Frontz
Principal Assistant Inspector General
for Auditing

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Introduction

Objective

Our audit objective was to determine whether Army 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 first in a series of reports on DoD contracting personnel's compliance with the Berry Amendment and Buy American Act. See Appendix A for the scope and methodology and prior coverage related to the objective.

Background

We performed this audit in response to Section 1601 of the National Defense Authorization Act for FY 2014. The DoD Inspector General is required to conduct periodic audits of contracting practices and policies related to procurement under section 2533a of title 10, United States Code (the Berry Amendment). After we announced an audit of DoD compliance with the Berry Amendment on August 13, 2013, we received inquiries from Congress to amend the audit objective to include a review of the Buy American Act. The Buy American Act was included, using the same Federal Supply Groups (FSG) as the Berry Amendment for contracts awarded during FY 2013.

The Berry Amendment

The Berry Amendment, Section 2533a, Title 10, United States Code (10 U.S.C. § 2355a), promotes the purchase of goods manufactured in the U.S. by directing how DoD can use funds to purchase items such as fabrics, food, and hand tools. The Amendment applies to end items and components¹ for purchases over the simplified acquisition threshold (\$150,000). The Berry Amendment directs that DoD personnel must ensure funds appropriated or otherwise available to DoD are not used to procure the following FSG items if the items were not grown, reprocessed, reused, or produced in the U.S.:

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

¹ According to the Defense Federal Acquisition Regulation Supplement Part 252, "Solicitation Provision and Contract Clauses," end items are those articles, materials and supplies acquired under contract for public use. Components are articles, materials or supplies incorporated directly into an end item.

Purchasing these items without complying with the Berry Amendment results in an Antideficiency Act violation because contracts are funded directly with appropriated funds or working capital funds, which are reimbursed by appropriated funds. These funds are not available for the procurement of foreign-made items. Defense Federal Acquisition Regulation Supplement (DFARS) 225.7002-1, “Restrictions,” implements the Berry Amendment.

The Buy American Act

The Buy American Act of 1933, 41 U.S.C. § 8301-8305, 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 U.S. be used in fulfilling Federal procurement and construction contracts. This is a Government-wide requirement and applies to contracts exceeding the \$3,000 micro-purchase threshold. The Buy American Act does not apply to services. The Federal Acquisition Regulation (FAR) Part 25, “Foreign Acquisition,” and the DFARS Part 225, “Foreign Acquisition,” implement the Buy American Act. The Act includes a two-part test to define a manufactured domestic end product: (1) the goods must be manufactured in the U.S., and (2) the cost of domestic components must exceed 50 percent of the cost of all of the components. Table 1 shows the differences between the Berry Amendment and the Buy American Act.

Table 1. Berry Amendment and Buy American Act Comparison

	Berry Amendment	Buy American Act
Applies to	DoD	Government-wide
Covered Items	Primarily Federal supply groups 51, 52, 83, 84, and 89	Specified in amendment
Thresholds	Greater than the simplified acquisition threshold (\$150,000)	Greater than micro-purchase threshold (\$3,000)
Domestic Content	100 percent	Must exceed 50 percent
Applicable DFARS clauses	252.225-7012, 252.225-7015	252.225-7001, 252.225-7002, 252.225-7035
Place of Manufacture	U.S.	U.S. ¹
Where item will be used	Anywhere	U.S. ²
Contractor certification	No	Yes

Source: DoD OIG

¹ The Buy American Act applies unless a waiver to compliance is granted or an exception to compliance applies.

² The Buy American Act does not apply to the purchase of items whose intended use is outside of the United States.

Contracts Reviewed

From queries performed in the Federal Procurement Data System-Next Generation (FPDS-NG), we identified 128 Berry Amendment contract actions valued at about \$185 million and 1,473 Buy American Act contract actions valued at about \$20 million. The Army issued the contracts from October 1, 2012, through September 30, 2013. We selected three Army sites to perform the review of Berry Amendment and Buy American Act contracts. The sites visited were: (1) Army Contracting Command-Aberdeen Proving Grounds at Natick Soldier Systems Center, Natick, Massachusetts (ACC-APG-Natick); (2) ACC-APG, Maryland (ACC-APG); and (3) ACC-Warren, Michigan (ACC-Warren). We reviewed a nonstatistical sample of 33 Berry Amendment contracts totaling about \$124.6 million and 50 Buy American Act contracts totaling about \$4.7 million for the three sites selected. Table 2 shows the number of Berry Amendment and Buy American Act contracts reviewed at each site in total and broken out by the corresponding FSG, while also noting the total obligated value of the contracts.

Table 2. Federal Supply Group Contracts Reviewed

	ACC-APG-Natick		ACC-APG		ACC-Warren	
	Berry Amendment	Buy American Act	Berry Amendment	Buy American Act	Berry Amendment	Buy American Act
Number of FSG contracts	20	36	7	7	6	7
51		1		2	5	5
52		3		1		1
83		7	2	1		1
84	20	20	5	3	1	
89		5				
Total Obligated Value (millions)	\$67.5	\$3.8	\$42.9	\$0.3	\$14.2	\$0.7

Allowance Program for Athletic Shoes

Recent media reports have questioned why DoD was not procuring Berry Amendment compliant athletic footwear for enlisted personnel. Athletic shoes are subject to the Berry Amendment and the Buy American Act. The Army, Navy, and Air Force provide a one-time allowance in the form of cash or voucher for

recruits to purchase athletic shoes while attending basic training.² The Secretary of Defense is authorized by 37 U.S.C. § 418, “Clothing allowance: enlisted members,” to prescribe the amount of allowance to be paid to enlisted personnel for equipment that is not otherwise provided. The allowance was used in part because no domestic contractor manufactured Berry Amendment compliant athletic shoes and because recruits’ individual physiology, running style, and individual comfort and fit made the allowance a reasonable option.

In April 2014, the Deputy Secretary of Defense directed the Services to investigate the medical impact of using DoD issued athletic shoes. Additionally, the Deputy Secretary of Defense stated the Services would continue the allowance program but should Berry Amendment-compliant shoes become available, personnel would be directed to buy shoes from base exchanges with options limited to only Berry compliant athletic shoes. We did not assess the allowance program to purchase athletic shoes because of the ongoing changes to the program.

Review of Internal Controls

DoD Instruction 5010.40, “Managers’ Internal Control Program Procedures,” May 30, 2013, 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. For the three ACC sites reviewed, internal controls over processes for issuing contracts in compliance with the Berry Amendment were effective as they applied to the audit objective. However, we identified weaknesses with ACC internal controls for issuing contracts in compliance with the Buy American Act. ACC personnel did not complete component assessments required by the Buy American Act to ensure compliant goods were delivered, did not include the Act implementing clauses when required, and purchased items from a non-qualifying country resulting in a potential Antideficiency Act violation. We will provide a copy of the report to the senior official(s) responsible for internal controls in the Army.

² The Marine Corps does not issue athletic shoes nor does it provide a cash allowance or voucher for purchase of athletic shoes.

Finding A

Army Contracting Command Personnel Complied with the Berry Amendment

Army Contracting Command personnel at three locations³ substantially complied with the Berry Amendment for 29 of the 33 contracts reviewed, with an obligated value of about \$124.6 million. Contracting personnel took appropriate actions before and after contract award to ensure procured items complied with Berry Amendment requirements.

However, ACC contracting personnel did not include the Berry Amendment implementing clauses within the basic contract for 4 of the 33 contracts. The contracting officer did not complete a sufficient review of two of the contracts before award. For the remaining two contracts, the contracting officer was working outside his functional area and was unfamiliar with the Berry Amendment. ACC contracting personnel modified two contracts to include the clause before product delivery, terminated one contract, and accepted delivery on one contract without modifying the contract to include the clause.

Overall, ACC contracting personnel were aware of Berry Amendment requirements and worked to ensure Army personnel procured Berry Amendment compliant items. But exclusion of the required clauses could have resulted in the Army receiving noncompliant items.

³ The three Army locations selected were ACC-APG-Natick; ACC-APG; and ACC-Warren.

Army Berry Amendment Contracts Reviewed

We reviewed 33 contracts with an obligated value of about \$124.6 million, issued by contracting personnel from ACC-APG-Natick; ACC-APG; and ACC-Warren for goods subject to the Berry Amendment. We reviewed Army contracting pre-award procedures that would allow contacting officers to qualify vendors according to contract requirements. We also reviewed post award quality assurance efforts to determine whether Government acceptors found the goods compliant with the Berry Amendment requirements. Aside from four deficiencies, three of which ACC contracting personnel addressed during the audit, ACC contracting personnel complied with Berry Amendment requirements. Table 3 identifies compliance of each element at the three ACC locations selected for review.

Table 3. Components of the Review of Berry Amendment Compliance

Compliance Check Completed	ACC-APG-Natick	ACC-APG	ACC-Warren	Total
Contract Pre-Award				
<ul style="list-style-type: none"> Market research completed appropriate to circumstance 	20/20	6/7	6/6	32/33
<ul style="list-style-type: none"> Implementing clauses included in the basic contract 	18/20	6/7	5/6	29/33
<ul style="list-style-type: none"> Reviewing the contractor’s certifications in the System for Award Management (SAM) 	20/20	7/7	5/6	32/33
Quality Assurance				
<ul style="list-style-type: none"> Receipt of certificates of conformance¹ 	13/20	4/6	1/6	18/32
<ul style="list-style-type: none"> Delivery of conforming goods 	20/20	6/6 ²	6/6	32/32

¹ Not all contracts were required to have certificates of conformance.

² Contract W911SR-13-C-0039 was terminated; therefore, items were not delivered and were excluded from the total.

Compliance During the Pre-Award Process

ACC contracting personnel properly determined potential suppliers were capable of complying with the Berry Amendment for 32 of 33 contracts. ACC contracting personnel performed appropriate market research, included the Berry Amendment contract clauses, and took steps to make sure that suppliers could provide domestically produced goods.

Market Research Results

ACC contracting personnel performed appropriate market research for 32 of 33 Berry Amendment contracts. The FAR and DFARS do not include market research requirements specific to Berry Amendment procurements. However, FAR 10.001, “Policy” requires the contracting officer conduct market research appropriate to the circumstances. ACC contracting personnel used various market research techniques based on the nature and size of the procurement.

- For 21 contracts, ACC contracting personnel used market research techniques that consisted mainly of contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements, reviewing market research results from recent or identical requirements, and by publishing formal requests for information in appropriate venues, among other market research techniques.

- For 11 contracts, ACC-APG-Natick contracting personnel procured items from the Federal Procurement List in accordance with FAR Part 8, “Priorities for Use of Mandatory Government Sources,” which states agencies must satisfy requirements for supplies and services from or through the sources and publications in descending order of priority. Procurements from the Federal Procurement List are competitive contracts and use of the mandatory sources is considered part of market research.
- For one contract, ACC-APG contracting personnel did not perform market research because the item procured was a new bulletproof vest not available in the marketplace according to previous market research.

ACC contracting personnel who made purchases in the five FSGs covered by the Berry Amendment also made routine purchases of non-Berry Amendment but similar type items, often from the same group of vendors. ACC contracting personnel relied on their acquired knowledge of the marketplace and products as well as the contractor’s reputation.

Inclusion of the Berry Amendment Implementing Clause

ACC contracting personnel properly included the Berry Amendment implementing clauses in 29 of the 33 contracts. The Berry Amendment is implemented through DFARS 225.7002, “Restrictions on food, clothing, fabrics, and hand or measuring tools,” and requires contracting officers to include the following clauses in contracts for covered items: DFARS 252.225-7012, “Preference for Certain Domestic Commodities,” or DFARS 252.225-7015, “Restriction on Acquisition of Hand or Measuring tools.” Although ACC contracting personnel did not include the clause for four contracts, they modified two contracts to include the clause, terminated the third contract before delivery, and purchased goods from a Berry compliant vendor for the fourth contract.

- **Contracts W911QY-13-F-0040 and W911QY-13-F-0041** – The ACC-APG-Natick contracting officer for contracts W911QY-13-F-0040 and W911QY-13-F-0041 did not include the required DFARS clause 252.225-7012 in the basic contract. He stated that the omissions were an administrative oversight. Both \$6 million contracts were for the procurement of sleeping bags. Eight months after contract award, the contracting officer modified the contracts to add the required DFARS clause before the sleeping bags were scheduled for delivery.

- **Contract W911SR-13-C-0039** – The ACC-APG contract specialist for contract W911SR-13-C-0039 did not include the required DFARS clause 252.225-7012 in the basic contract. The contract was awarded for the procurement of a shelter system for \$188,919 on April 22, 2013. However, the contracting officer terminated the contract on May 13, 2013, in accordance with FAR 52.212-4(I), “Termination for the Government’s Convenience,” after a company filed a protest. According to the contracting officer, procuring a shelter system was outside his area of expertise.
- **Contract W56HZV-13-D-0126** – An ACC-Warren contracting officer did not include DFARS 252.225-7012 in the contract for the purchase of tool kits because she was not sufficiently familiar with the Berry Amendment. The tool kits were mainly comprised of commercial off-the-shelf tools with individual National Stock Numbers. The tool kits were a contract line item that did not have assigned National Stock Numbers. The contracting officer stated because DFARS 204.7103, “Contract line items,” defines items at the contract line item level, she had no indication which clauses were applicable. The contracting officer could have assessed the underlying items to determine the applicability of the Berry Amendment.

We are not making a recommendation because of the small number of deficiencies at each of the three offices and because of corrective actions taken.

System for Award Management

ACC contracting personnel assessed contractors’ ability to comply with the Berry Amendment for 32 of 33 contracts by reviewing contractor certifications and place of intended performance in the System of Award Management (SAM). SAM

is the system created in July 2012 to consolidate information

The contracting officer must verify that the prospective contractor is registered in SAM before awarding a contract or agreement.

from the Central Contractor Registry, the Federal Agency Registration, the Online Representations and Certifications Application, and the Excluded Parties List System.⁴ FAR 4.11, “System for Award Management,” states prospective contractors must be registered in SAM before award of a contract agreement. Further, the FAR also states the contracting officer must verify that the prospective contractor is registered in SAM before awarding a contract or agreement.

In this central system, ACC contracting personnel, before awarding contracts, reviewed the profiles of each contractor to determine whether they had current representations and certificates, were not included in the Excluded Parties List

⁴ SAM was incorporated into the FAR on July 22, 2013. Before SAM, FAR 4.11, “Central Contractor Registration,” stated contractors must register in the Central Contractor Registry and contracting officers must verify that the prospective contractor was registered.

System, and place of manufacture. ACC contracting personnel stated they relied on SAM to assess whether the contractor could comply with the requirements.

The ACC-Warren contracting officer for contract W56HZV-13-C-0048 did not review the contractor's place of performance before awarding the contract. She stated she did not review the place of performance because the buyer did not include the printout in the documents package. Reviewing the place of performance provides the Government some assurance the contractor can comply with the Berry Amendment requirements. Even though the contracting officer did not review the place of performance, she included DFARS clause 252.225-7012 in the contract solicitation and in the basic contract. The ACC-Warren contracting officer stated the items delivered complied with contract requirements.

Actions Taken to Ensure Compliance During Contract Performance

ACC contracting personnel relied upon the Defense Contract Management Agency (DCMA) officials or product acceptors to help determine whether supplied goods complied with the Berry Amendment requirements. ACC contracting personnel delegated 26 of the 33 Berry Amendment contracts to DCMA for administration. We contacted quality assurance representatives and quality assurance specialists who demonstrated a working knowledge of the Berry Amendment requirements. DCMA personnel obtained certificates of conformance and determined whether the items complied with the requirements. ACC contracting personnel relied on Army personnel receiving and accepting the remaining 7 of 33 contracts to determine whether the delivered items were Berry Amendment compliant.

Contracts Delegated to DCMA

ACC contracting personnel delegated contract administration to DCMA for 26 of 33 Berry Amendment contracts. FAR 46.504, "Certificate of Conformance," states a certificate of conformance may be used in certain instances instead of source inspection at the discretion of the contracting officer. The contracting officer must include FAR clause 52.246-15 when determining that:

- certificates are in the Government's interest,
- small losses would be incurred in the event of a defect,
- supplies furnished will be acceptable, or
- defective items would be repaired or replaced without contest.

DCMA personnel obtained certificates of conformance for 18 of the 26 contracts they were assigned to administer.⁵ Each certificate contained a description of the goods, contract number, and a statement certifying conformance.

Army Acceptors Performed Limited Inspection of Supplies

ACC personnel retained administration for the remaining 7 of the 33 Berry contracts. According to FAR 46.103, “Contracting Office Responsibilities,” acceptance of supplies or services is the responsibility of the contracting officer. All seven contracts were for commercial items that required less oversight. FAR 12.208 “Contract Quality Assurance,” states contracts for commercial items must rely on contractors’ existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance. FAR 46.103 states that when contract administration is retained contracting offices are responsible for verifying that the contractor fulfills the contract quality requirements; and ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of supplies or services which do not meet contract requirements. Army personnel who accepted the goods typically reviewed quantity, kind, and condition of the goods. One acceptor stated he focused on obtaining the correct item and relied on the contracting officer to handle compliance with contracting matters.

Ensured Delivery of Compliant Goods

ACC contracting personnel stated that goods provided by suppliers complied with the Berry Amendment requirements for 32 contracts.⁶ ACC contracting personnel identified qualified vendors before contract award by performing market research, reviewing information in SAM, and including DFARS clause 252.225-7012 in the contract award. ACC contracting personnel relied on DCMA inspectors and Army personnel accepting goods to further ensure items were compliant.

Summary

ACC contracting personnel substantially complied with the Berry Amendment for the 33 contracts reviewed. At the three locations we visited, the implementing clause for four contracts was omitted. However, ACC contracting personnel were aware of the Berry Amendment requirements and the marketplace for goods subject to the Berry Amendment. Personnel conducted sufficient market research, qualified contractors, and generally included the Berry Amendment implementing clauses or modified contracts to include them. Contracting personnel took steps to ensure compliance by delegating oversight to DCMA quality inspectors.

⁵ Not all contracts were required to have certificates of conformance.

⁶ ACC-APG contracting personnel terminated contract W911SR-13-C-0039 before items were delivered.

Finding B

Army Contracting Command Personnel Can Improve Compliance with the Buy American Act

ACC contracting personnel can improve compliance with the Buy American Act. We reviewed 50 Buy American Act contracts for items in the same five FSG covered items⁷ by the Berry Amendment with an obligated value of about \$4.7 million. ACC contracting personnel:

- did not complete required component assessments for 23 contracts because for 16 contracts they did not differentiate between commercial and commercial off-the-shelf items, and for 7 contracts they relied upon contractor assertions not specific to the items under contract;
- omitted the Buy American Act implementing clause in four contracts because the effort was outside of the contracting officer's functional area for three contracts, and for one contract because the contracting officer did not adequately review the contract before award;
- issued a contract for goods from a non-qualifying country because the contracting officer did not qualify the contractor as a compliant source and personnel accepting the items were unfamiliar with procedures to verify conformance with the Buy American Act; and
- issued a contract for an excepted item without first obtaining proper approval. The contracting officer provided no explanation for why he did not obtain approval.

As a result, ACC contracting personnel could not demonstrate that the procured items complied with domestic content requirement and suppliers could have provided noncompliant items. Additionally, ACC-APG-Natick contracting personnel may have committed an Antideficiency Act violation.

⁷ Berry Amendment covered items include: FSG 51 (Hand tools), 52 (Measuring tools), 83 (Textiles, leather, furs, apparel, and shoes), 84 (Clothing, individual equipment and insignia), and 89 (Food) if the items were not grown, reprocessed, reused, or produced in the U.S.

Buy American Act Contracts Reviewed

We reviewed 50 contracts valued at \$4.7 million awarded by contracting personnel from ACC-APG-Natick, ACC-APG, and ACC-Warren for goods subject to the Buy American Act for the same five FSGs covered by the Berry Amendment. We reviewed pre-award procedures contracting personnel used to make sure suppliers could comply with the Buy American Act. We also reviewed ACC personnel’s post award quality assurance efforts to ensure suppliers provided Buy American Act compliant goods. Table 4 illustrates the results of our review of Army Buy American Act compliance by the ACC activity visited.

Table 4. Buy American Act Compliance

Compliance Check Completed	ACC-APG-Natick	ACC-APG	ACC-Warren	Total
Contract Pre-Award				
<ul style="list-style-type: none"> Market research completed appropriate to circumstance 	36/36	7/7	7/7	50/50
<ul style="list-style-type: none"> Complete Component Assessment¹ 	21/36	3/7	3/7	27/50
<ul style="list-style-type: none"> Reviewing the contractor’s certifications in the System for Award Management (SAM) 	35/36	7/7	7/7	49/50
<ul style="list-style-type: none"> Implementing clauses included in the basic contract 	35/36	6/7	5/7	46/50
Quality Assurance				
<ul style="list-style-type: none"> Commercial Item 	29/36	4/7	3/7	36/50
<ul style="list-style-type: none"> Delegated to DCMA 	7/36	1/7	7/7	15 ² /50

¹ See Appendix C for the breakout of commercial and non-commercial items.

² Seven of the 15 contracts delegated to DCMA were for commercial items.

Actions Taken to Ensure Compliance During the Pre-Award Process

ACC contracting personnel primarily ensured supplied goods complied with the Buy American Act during the contract pre-award process. ACC contracting personnel who made purchases in the five FSGs for items covered by the Berry Amendment, often made purchases of similar items from the same group of vendors that

were under the Berry Amendment threshold but above the Buy American Act threshold. ACC contracting personnel relied on their acquired knowledge of the marketplace, products, and the contractor's reputation. Contracting personnel completed market research to identify items available to meet requirements. After identifying suppliers, ACC contracting personnel ensured the contractor was capable of supplying compliant goods. However, contracting personnel did not always document required assessments for commercial items before contract award. Additionally, ACC contracting personnel inconsistently implemented the Buy American Act by not always including the appropriate DFARS clauses in the contract.

Market Research

ACC contracting personnel performed appropriate market research for the 50 Buy American Act contracts. FAR 10.001, "Policy," requires the contracting officer to conduct market research appropriate to the circumstances. Market research techniques varied based on the nature and size of the procurement but the extent of market research was appropriate for:

- 34 contracts, ACC contracting personnel conducted market research in accordance with FAR 10.002, "Procedures" appropriate to the circumstances. The market research for these contracts consisted mainly of contacting knowledgeable individuals in Government and industry about market capabilities to meet requirements, reviewing market research results from recent or identical requirements, and by publishing formal requests for information in appropriate venues, among other market research techniques.
- 16 contracts, ACC contracting personnel purchased items from either the Federal Procurement List or from a single source because of urgency or national security.

ACC contracting personnel stated they relied upon contractor assertions in SAM to determine the place of manufacture and to assess whether the contractor could comply with the requirements.

ACC Contracting Personnel Did Not Complete Component Assessments

ACC contracting personnel did not complete component assessments for 23 contracts. DFARS 252.225-7001(a) (3) (ii) (A) requires contracting officers to determine whether the cost of the end product and its components that are

Contracting personnel did not distinguish between commercial items that require an assessment and commercial off-the-shelf items that do not require an assessment.

mined, produced, or manufactured in the United States or qualifying country exceed 50 percent of the cost of all components. However, for 16 of the 36 contracts for commercial items reviewed, ACC contracting personnel did not distinguish between commercial items that require an assessment and commercial off-the-shelf items that do not require an assessment. In addition, for 7 of the 14 contracts for non-commercial items reviewed, ACC contracting personnel did not complete component assessments to determine compliance with the Buy American Act.

For 23 contracts, ACC contracting personnel did not assess the component content of supplied items and provided inadequate support that the contracted items complied with the Buy American Act. Failing to complete the component assessment lessens the assurance contracting personnel are purchasing Buy American Act compliant items. We are not recommending that ACC personnel retroactively complete component content assessments for the 23 contracts where delivery occurred. However, the Commander of Army Contracting Command should require contracting personnel to complete training that includes guidance on how to complete a component assessment when required by the Buy American Act and how to determine whether a given item is commercial or commercial off-the-shelf.

Assessments for Commercial Items

ACC contracting personnel did not complete component assessments for 16 contracts because ACC-APG-Natick personnel considered the contracted items commercial off-the-shelf. DFARS 252.225-7001(a) (3) (ii) (B) waives the component assessment for commercial off-the-shelf items. DFARS 252.225-7001(a) defines a commercial off-the-shelf item as a commercial item sold in substantial quantities in the commercial marketplace, and offered to the Government, in the same form and on the same terms as the commercial marketplace. However, contracting personnel did not always provide support for how they determined the items were commercial off-the-shelf.

For example, an ACC-APG-Natick contracting officer did not complete a component assessment for contract W911QY-13-P-0475 to determine whether the combat pants and shirts contained more than 50 percent domestic content. The ACC-APG-Natick contracting officer did not complete the component assessment

because he considered the items commercial off-the-shelf, but provided no support or determination the combat pants and shirts were commercial off-the-shelf items. DFARS 252.225-7001(a)(ii)(A) includes a two-part test to define a manufactured domestic end product: (1) the goods must be manufactured in the U.S., and (2) the cost of domestic components must exceed 50 percent of the cost of all of the components. However, it does not specify whether this assessment must be documented or when it must occur.

Assessments for Non-Commercial Items

ACC contracting personnel did not complete component assessments for seven contracts for non-commercial items. They instead relied upon contractor assertions in SAM that were not specific to the items under contract and did not complete a separate verification to satisfy the component assessment required by DFARS 252.225-7001(a) (3) (ii) (A). ACC contracting personnel reviewed contractors' certifications in SAM which included the following certification from FAR 52.212-3, "Offeror Representations and Certifications-Commercial Items," Buy American Act Certificate:

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-shelf (COTS) item" "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American Act-Supplies."

(2) Foreign End Products:

ACC contracting personnel's reliance on the contractor's assertion is limited in part because ACC provided no component assessment for the seven contracts as required by DFARS 252.225-7001(a)(ii)(A) and the certification in SAM is not specific to a single end item.

Buy American Act Implementing Clauses

ACC contracting personnel did not include the Buy American Act implementing clauses for 4 of the 50 contracts. The Buy American Act is implemented through DFARS 252.225-7001, "Buy American and Balance Payments Program," and requires contracting officers to include the clause or its alternate at DFARS 252.225-7002,

“Qualifying Country Sources as Subcontractors,” or DFARS 252.225-7035, “Buy American Act – Free Trade Agreements – Balance and Payments Certificate” in the contract. ACC contracting personnel did not include the Buy American Act implementing clause for three of the contracts because the procurements were outside of the contracting personnel’s area of expertise. ACC contracting personnel did not include the Buy American Act implementing clause in the fourth contract because the contracting officer did not conduct a sufficient contract review.

ACC contracting personnel working outside their functional area did not include the implementing clause in the following three contracts.

- **Contract W91CRB-13-P-0008** – An ACC-APG contracting officer did not include DFARS 252.225-7001 to implement the Buy American Act for the purchase of a security storage unit. The contracting officer attributed the exclusion of DFARS clause to the fact it was a non-routine purchase outside of his normal area of expertise, which was information technology.
- **Contract W56HZV-13-C-0234** – An ACC-Warren contracting officer did not include DFARS 252.225-7001 in the contract for the purchase of tool kits because she was not sufficiently familiar with the Buy American Act. The contracting officer stated she was working outside of her normal area and because the tool kits did not have assigned National Stock Numbers and DFARS 204.7103-1 defines items at the contract line item level, there was no indication which clauses were applicable, as the end item was not defined. The ACC-Warren contracting officer issued contract W56HZV-13-C-0234 to procure tool kits comprised mainly of commercial off-the-shelf items with National Stock Numbers and the contracting officer could have assessed the underlying items to determine the applicability of the Buy American Act.
- **Contract W56HZV-13-P-0306** – An ACC-Warren contracting officer did not include DFARS 252.225-7001 to implement the Buy American Act. The contracting officer issued contract W56HZV-13-P-0306 to procure spare parts for the M242 gun. The contracting officer stated the purchase was outside of his normal area and that the omission of the clause occurred in part because the contract type was changed because of a change in the dollar amount of the award and that in the process of changing contract types the clause was omitted.

In addition, an ACC-APG-Natick contracting officer completed an insufficient review before awarding the following contract.

Contract W911QY-13-P-0115 – An ACC-APG-Natick contracting officer did not include DFARS 252.225-7001 to implement the Buy American Act. Contract W911QY-13-P-0115 was issued for \$140,130 for Crewman Coveralls. The contracting officer stated DFARS 252.225-7001 was omitted due to an administrative oversight.

The Commander of Army Contracting Command should require contracting personnel receive training that includes instructions on the requirements to include the Buy American Act implementing clause.

Contract Awarded to a Vendor from a Non-Qualifying Country

An ACC-APG-Natick contracting officer improperly awarded contract W911QY-13-P-0109 on April 11, 2013, with a total value of \$3,900, for meal storage containers. The contracting officer reviewed the supplier's representations and certifications in SAM, but failed to note that the place of manufacture was Japan, a non-qualifying country.⁸

The contracting officer used appropriated funds to purchase goods that were not compliant with 10 U.S.C. 8302 (a) (1), "The Buy American Act." The Act allows only unmanufactured articles, materials, and supplies that have been mined or produced in the United States to be acquired for public use unless the department or independent establishment determines their acquisition to be inconsistent with public interest or the cost to be unreasonable.

In addition, the Antideficiency Act (31 U.S.C. 1341) states "an officer or employee of the United States Government or the District of Columbia may not—(A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation."

The ACC-APG-Natick contracting officer committed a potential Antideficiency Act violation by using appropriated funds to purchase goods that did not comply with the Buy American Act. The Assistant Secretary of the Army (Financial Management and Comptroller) should assess whether the contracting officer's purchase of goods from a non-qualifying country on contract W911QY-13-P-0109 resulted in a potential Antideficiency Act violation.

⁸ DFARS 252.225-7001, "Buy American and Balance of Payments Program" defines a "Qualifying country" as a country with a reciprocal defense procurement memorandum of understanding or international agreement with the United States in which both countries agree to remove barriers to purchases of supplies produced in the other country or services performed by sources of the other country, and the memorandum or 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.

Use of Exception to the Buy American Act Without Proper Approval At Time of Award

An ACC-APG-Natick contracting officer issued a contract for goods from a non-qualifying foreign country without the proper approval at the time of award to use an exception to the Buy American Act. The contracting officer issued contract W911QY-13-P-0390 on August 26, 2013, valued at \$31,700, for boots from Columbia, a non-qualifying country, using the exception located at DFARS 225.103, "Exceptions," which states:

(ii)(A) Normally, use the evaluation procedures in subpart 225.5, but consider recommending a public interest exception if the purposes of the Buy American statute are not served, or in order to meet a need set forth in 10 U.S.C. 2533. For example, a public interest exception may be appropriate -- ...

(2) To ensure access to advanced state-of-the-art commercial technology.

The contracting officer properly applied the use of the exception located at DFARS 225.103 (a)(ii)(A)(2). However, he did not obtain the proper level of approval before contract award because he approved the use of the exception, instead of having it approved by someone at a level above him. DFARS 225.103 also states:

(B) Except as provided in PGI 225.872-4, process a determination for public interest exception after consideration of the factors in 10 U.S.C. 2533

(1) At a level above the contracting officer for the acquisitions valued at or below the simplified acquisition threshold.

The contracting officer did not provide an explanation for his failure to obtain the necessary approval. In response to this audit, the contracting officer retroactively obtained approval for the use of the exception to the Buy American Act.

Actions Taken to Ensure Buy American Act Compliance During Contract Performance

ACC contracting personnel followed quality assurance procedures for commercial items or delegated responsibility to DCMA for all 50 Buy American Act contracts. ACC contracting personnel awarded 36 of the 50 Buy American Act contracts for commercial items, with the remaining 14 contracts being for non-commercial items. FAR 12.208, "Contract Quality Assurance," states, "Contracts for commercial items must rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptances unless

customary market practices for the commercial item being acquired include in-process inspection.”

ACC contracting personnel delegated 15 of the 50 Buy American Act contracts to DCMA for quality assurance, with 7 of the 15 contracts used for commercial items. DCMA personnel were not involved with contract administration for the remaining 35 contracts.

Conclusion

ACC contracting personnel did not consistently comply with the Buy American Act. An ACC-APG-Natick contracting officer committed a potential Antideficiency Act violation when he issued a contract and goods were accepted from a non-qualifying country. ACC contracting personnel omitted Buy American Act implementing clauses in 4 contracts and did not complete component assessments required by the Buy American Act for 23 contracts.

Recommendations, Management Comments, and Our Response

Recommendation B.1

We recommend the Commanding General, Army Contracting Command-Headquarters:

- a. Require contracting personnel receive training that incorporates the requirement to make clear distinctions between commercial and commercial off-the-shelf items and how to perform component assessments as required by the Buy American Act.**
- b. Require contracting personnel receive training that incorporates the requirements to include Buy American Act implementing clauses.**

Commanding General, Army Contracting Command Comments

The Deputy to the Commanding General, U.S. Army Contracting Command, responding for the Commanding General, Army Contracting Command, agreed with the findings and the recommendations, stating Army Contracting Command personnel would receive training on the distinction between commercial and commercial off-the-shelf items, as well as how to perform component assessments and the requirements to include the Buy American Act implementing clauses. In addition, Army Contracting Command will require contracting personnel to take Buy American Act training offered by the Defense Acquisition University. The training will be mandatory for all contracting personnel in FY 2015.

Our Response

Comments from the Deputy to the Commanding General, U.S. Army Contracting Command addressed all specifics of the recommendation. The proposed actions meet the intent of the recommendation, and no further comments are required.

Recommendation B.2

We recommend the Assistant Secretary of the Army (Financial Management and Comptroller):

- a. Initiate a preliminary investigation of the potential Antideficiency Act violations within 10 days to determine whether a violation occurred.**
- b. Complete the preliminary investigation in a timely manner (within 90 days) as required by the DoD Regulation 7000.14-R “DoD Financial Management Regulation,” and provide the results of the preliminary investigation to the Office of the Inspector General.**

Assistant Secretary of the Army, Financial Management and Comptroller Comments

The Deputy Assistant Secretary of the Army (Financial Operations) responding for the Assistant Secretary of the Army, Financial Management and Comptroller, agreed with the findings and the recommendations, stating if the DoDIG final report continues to identify a potential Antideficiency Act violation with the respect to the Buy American Act, the Assistant Secretary of the Army, Financial Management and Comptroller, will direct the U.S. Army Materiel Command to report a potential Antideficiency Act violation and initiate a preliminary investigation, in accordance with the DoD Financial Management Regulation. In addition, results of this investigation will be provided to the DoD Office of Inspector General.

Our Response

Comments from the Deputy Assistant Secretary of the Army (Financial Operations) addressed all specifics of the recommendation. This final report identifies a potential Antideficiency Act violation with respect to the Buy American Act. The proposed actions meet the intent of the recommendation, and no further comments are required.

Appendix A

Scope and Methodology

We conducted this performance audit from November 2013 through September 2014 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 the Army with Federal Supply Group (FSG) codes of 51, 52, 83, 84, and 89 during FY 2013 to determine whether Army personnel complied with the Berry Amendment and Buy American Act when they purchased covered items such as food, clothing, tents, textiles, and hand or measuring tools. We did not review classified contracts or contracts that had the incorrect FSG code, in the Federal Procurement Data System-Next Generation (FPDS-NG).

This is the first of a series of reports in response to Section 1601 of the National Defense Authorization Act for FY 2014, which required the DoD Inspector General to conduct periodic audits of contracting practices and policies related to procurements under section title 10 U.S.C. §2533a (the Berry Amendment). We announced this 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, DoD Office of Inspector General management decided we would issue separate reports for each Service and the Defense Logistics Agency.

Review of Documentation and Interviews

We evaluated documentation against applicable criteria including:

- Title 10 U.S.C. § 2533a, “Requirement to buy certain articles from American sources; exceptions”;
- Title 41 U.S.C. Chapter 83, “Buy American”;
- FAR part 10, “Market Research”;
- FAR part 25, “Foreign Acquisitions”;
- FAR 52.246-15, “Certificate of Conformance”;

- DFARS part 225, “Foreign Acquisition”;
- DFARS 252.225-7001, “Buy American and Balance of Payments Program”;
- DFARS 252.225-7012, “Preference for Certain Domestic Commodities”; and
- DFARS 252.225-7015, “Restrictions on Hand or Measuring Tools”.

We interviewed contracting and oversight officials at the Soldier Systems Center, Natick, Massachusetts, Aberdeen Proving Ground, Maryland, Army Contracting Command, Warren, Michigan, to obtain command policy and guidance related to the audit objective.

We interviewed Army Contracting Command contracting personnel at Natick, Aberdeen Proving Ground, and Warren to discuss the pre-award and post-award procedures that are completed when Berry Amendment and Buy American Act contracts are awarded. We were granted access to the Army’s Paperless Contract File database before each of the three site visits, so the documentation obtained during the site visits was minimal. Documentation that was downloaded from the Paperless Contract File database included the basic contract, market research report, commercial item determination, price reasonableness determination, and System for Award Management representations and certifications. We also interviewed item-accepting personnel at the Soldier Systems Center and Aberdeen Proving Ground to determine what acceptance procedures were conducted, when the goods were received at the bases. In addition, we interviewed acceptance and inspection personnel at numerous Defense Contract Management Agency (DCMA) locations, via telephone and e-mail, to determine the acceptance and inspection procedures that were completed for Berry Amendment and Buy American Act contracts in our sample, when DCMA performed administration. We interviewed officials at Program Executive Office Soldier, Fort Belvoir, Virginia, to obtain any policy or guidance regarding Program Executive Office Soldier’s involvement with the purchasing of athletic shoes.

Universe and Sample Information

We used the FPDS-NG to identify contracts issued by the Services and the Defense Logistics Agency. The queries were limited to actions covered by the Berry Amendment issued on contracts that were awarded during FY 2013 and coded with a “product or service code” that began with 51, 52, 83, 84, or 89 in FPDS-NG. We selected four DoD Components, specifically, the Army, Navy, Air Force, and the Defense Logistics Agency to identify specific audit locations. We selected three Army sites to visit: Army Contracting Command – Aberdeen Proving Ground –

Natick, Massachusetts; Army Contracting Command – Aberdeen Proving Ground, Maryland; and Army Contracting Command – Warren, Michigan. We selected the sites because they had the three largest total obligated amounts for contracts issued, issued the most contracts, and included procurements from the five Federal Supply Groups subject to the Berry Amendment.

We selected a nonstatistical sample of contracts from those awarded by each of the three sites subject to the Berry Amendment and Buy American Act. We selected Berry Amendment contracts and Buy American Act contracts based on different dollar amounts, products, and contract types. We did not review classified contracts or contracts with the incorrect Federal Supply Group code in FPDS-NG. Specifically, our review included 9 Buy American Act contracts whose value was close to the simplified acquisition threshold of \$150,000, which were selected to determine whether contracts valued above \$150,000 were being split to lower the contract value below \$150,000 to avoid Berry Amendment compliance. In addition, we selected contracts for a wide range of product types. We reviewed a total of 33 Berry Amendment contracts and 50 Buy American Act contracts with an obligated value of about \$124.6 million and \$4.7 million respectively. (See Table 2. Contracts Reviewed.)

Use of Computer-Processed Data

We did not rely on computer-processed data to produce the findings and conclusions of this report.

Use of Technical Assistance

We held discussions with personnel from the Department of Defense Office of Inspector General’s Quantitative Methods and Analysis Division. We determined that we would use FPDS-NG data to select the top three Army sites by total dollar value of contracts issued for the five FSG codes announced we would review, while also factoring in the number of contracts issued for the five FSG codes. Following the selection of the three sites, we determined that we would then use FPDS-NG data to select a nonstatistical sample of contracts. During our site visits, we worked with Army Contracting Command personnel at Natick, Aberdeen Proving Ground, and Warren to verify that the selected contracts met the scope limitations of our review and to identify additional contracts, if contracts in our sample were determined to be outside the scope of the audit. Our nonstatistical sample was limited to specific contracts, and our results should not be projected across other Army Contracting Command-issued contracts at Natick, Aberdeen Proving Ground, or Warren, or other Army-issued contracts.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) issued 2 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 over the Internet at <http://www.gao.gov>.

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

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

Appendix B

Berry Amendment Contracts Reviewed

	Contract Number	Market Research	Review of Contractor Certifications in the System for Award Management	Implementing Clause	Certificates of Conformance Received	Delivery of Conforming Goods
Army Contracting Command – Aberdeen Proving Ground – Natick						
1	W911QY-13-C-0114	√*	√	√	No	√
2	W911QY-13-C-0120	√	√	√	No	√
3	W911QY-13-D-0001	√	√	√	√	√
4	W911QY-13-D-0078	√	√	√	√	√
5	W911QY-13-F-0036	√	√	√	√	√
6	W911QY-13-F-0038	√	√	√	√	√
7	W911QY-13-F-0039	√	√	√	√	√
8	W911QY-13-F-0040	√	√	No	√	√
9	W911QY-13-F-0041	√	√	No	No	√
10	W911QY-13-F-0052	√	√	√	No	√
11	W911QY-13-F-0064	√	√	√	√	√
12	W911QY-13-F-0077	√	√	√	√	√
13	W911QY-13-F-0081	√	√	√	√	√
14	W911QY-13-F-0086	√	√	√	√	√
15	W911QY-13-F-0087	√	√	√	√	√
16	W911QY-13-F-0095	√	√	√	No	√
17	W911QY-13-F-0097	√	√	√	No	√

* (√) Denotes compliance.

Berry Amendment Contracts Reviewed (cont'd)

	Contract Number	Market Research	Review of Contractor Certifications in the System for Award Management	Implementing Clause	Certificates of Conformance Received	Delivery of Conforming Goods
18	W911QY-13-F-0107	√	√	√	No	√
19	W911QY-13-F-0150	√	√	√	√	√
20	W911QY-13-F-0151	√	√	√	√	√
Army Contracting Command – Aberdeen Proving Ground						
21	W911SR-13-C-0039	√	√	No	No	No
22	W91CRB-13-C-0003	√	√	√	√	√
23	W91CRB-13-C-0010	√	√	√	No	√
24	W91CRB-13-C-0045	√	√	√	No	√
25	W91CRB-13-D-0009	No	√	√	√	√
26	W91CRB-13-D-0010	√	√	√	√	√
27	W91CRB-13-D-0016	√	√	√	√	√
Army Contracting Command – Warren						
28	W56HZV-13-C-0048	√	No	√	No	√
29	W56HZV-13-C-0386	√	√	√	No	√
30	W56HZV-13-D-0060	√	√	√	No	√
31	W56HZV-13-D-0126	√	√	No	No	√
32	W56HZV-13-D-0146	√	√	√	√	√
33	W56HZV-13-D-0156	√	√	√	No	√

* (√) Denotes compliance.

Appendix C

Buy American Act Contracts Reviewed

	Contract Number	Commercial Item	Distinguished Between Commercial and Commercial Off-the-Shelf Item	Component Assessment for Non-commercial Item	Review of Contractor Certifications in the System for Award Management	Implementing Clause
Army Contracting Command – Aberdeen Proving Ground – Natick						
1	W911QY-13-A-0006	Yes	Yes	N/A	√ ¹	√
2	W911QY-13-A-0007	Yes	Yes	N/A	√	√
3	W911QY-13-A-0009	Yes	Yes	N/A	√	√
4	W911QY-13-A-0011	Yes	Yes	N/A	√	√
5	W911QY-13-A-0012	Yes	Yes	N/A	√	√
6	W911QY-13-C-0085	No	Yes	Yes	√	√
7	W911QY-13-F-0007	Yes	Yes	N/A	√	√
8	W911QY-13-F-0016	Yes	Yes	N/A	√	√
9	W911QY-13-F-0053	No	Yes	Yes	√	√
10	W911QY-13-F-0061	No	Yes	Yes	√	√
11	W911QY-13-F-0084	No	Yes	Yes	√	√
12	W911QY-13-F-0093	No	Yes	Yes	√	√
13	W911QY-13-F-0117	Yes	No	N/A	√	√
14	W911QY-13-F-0158	Yes	Yes	N/A	√	√
15	W911QY-13-P-0049	Yes	No	N/A	√	√
16	W911QY-13-P-0080	Yes	Yes	N/A	√	√

¹ (√) Denotes compliance.

Buy American Act Contracts Reviewed (cont'd)

	Contract Number	Commercial Item	Distinguished Between Commercial and Commercial Off-the-Shelf Item	Component Assessment for Non-commercial Item	Review of Contractor Certifications in the System for Award Management	Implementing Clause
17	W911QY-13-P-0084	Yes	No	N/A	√	√
18	W911QY-13-P-0087	Yes	Yes	N/A	√	√
19	W911QY-13-P-0109	Yes	Yes	N/A	No	√
20	W911QY-13-P-0113	Yes	No	N/A	√	√
21	W911QY-13-P-0115	Yes	Yes	N/A	√	No
22	W911QY-13-P-0134	Yes	Yes	N/A	√	√
23	W911QY-13-P-0146	Yes	Yes	N/A	√	√
24	W911QY-13-P-0174	Yes	Yes	N/A	√	√
25	W911QY-13-P-0238	Yes	No	N/A	√	√
26	W911QY-13-P-0240	Yes	No	N/A	√	√
27	W911QY-13-P-0241	Yes	No	N/A	√	√
28	W911QY-13-P-0243	Yes	No	N/A	√	√
29	W911QY-13-P-0279	Yes	Yes	N/A	√	√
30	W911QY-13-P-0288	Yes	No	N/A	√	√
31	W911QY-13-P-0308	Yes	No	N/A	√	√
32	W911QY-13-P-0331	Yes	No	N/A	√	√
33	W911QY-13-P-0397	No	Yes	No	√	√
34	W911QY-13-P-0402	No	Yes	No	√	√
35	W911QY-13-P-0414	Yes	No	N/A	√	√
36	W911QY-13-P-0475	Yes	No	N/A	√	√

¹ (√) Denotes compliance.

Buy American Act Contracts Reviewed (cont'd)

	Contract Number	Commercial Item	Distinguished Between Commercial and Commercial Off-the-Shelf Item	Component Assessment for Non-commercial Item	Review of Contractor Certifications in the System for Award Management	Implementing Clause
Army Contracting Command – Aberdeen Proving Ground						
37	W911SR-13-F-0002	Yes	No	N/A	√	√
38	W911SR-13-P-0002	No	Yes	No	√	√
39	W91CRB-13-C-0029	No	Yes	No	√	√
40	W91CRB-13-C-0052	No	Yes	Yes	√	√
41	W91CRB-13-D-0021	Yes	Yes	N/A	√	√
42	W91CRB-13-P-0008	Yes	Yes	N/A	√	No
43	W91CRB-13-P-0027	No	Yes	No	√	√
Army Contracting Command – Warren						
44	W56HZV-13-C-0112	No	Yes	No	√	√
45	W56HZV-13-C-0141	Yes	Yes	N/A	√	√
46	W56HZV-13-C-0179	No	Yes	No	√	√
47	W56HZV-13-C-0234	Yes	Yes	N/A	√	No
48	W56HZV-13-P-0075	Yes	No	N/A	√	√
49	W56HZV-13-P-0306	No	Yes	N/A ²	√	No
50	W56HZV-13-P-0579	Yes	No	N/A	√	√
Compliant		36	20	6	49	46
Non-compliant		14	16	7	1	4

¹ (√) Denotes compliance.

² Implementing clause omitted, component test was not required.

Management Comments

Department of the Army Comments



REPLY TO
ATTENTION OF

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

OCT 7 2014

SAFM-FO

MEMORANDUM THRU Auditor General, Department of the Army, 3101 Park Center Drive, Alexandria, Virginia 22302-1596

FOR Inspector General, Department of Defense, Contract Management and Payments, 4800 Mark Center Drive, Alexandria, Virginia 22350-1500


SUBJECT: Draft Report, Army Personnel Complied with the Berry Amendment but Can Improve Compliance with the Buy American Act (D2014-D000CG-0038.000)

1. We appreciate the opportunity to provide comments on the subject report. The audit asserts that Army Contracting Command (ACC) personnel did not consistently comply with the Buy American Act. An ACC contracting officer committed a potential Antideficiency Act (ADA) violation when he issued a contract and goods were accepted from a non-qualifying country. ACC contracting personnel omitted Buy American Act implementing clauses in four contracts and did not complete component assessments required by the Buy American Act for 23 contracts. With respect to Assistant Secretary of the Army (Financial Management and Comptroller), the audit makes the following recommendations:

- a. Initiate a preliminary investigation of the potential Antideficiency Act violations within ten days to determine whether a violation occurred.
- b. Complete the preliminary investigation in a timely manner and provide the results of the preliminary investigation to the Office of the Inspector General.

2. The Army concurs, subject to receipt of the final report. If the DoDIG final report continues to identify a potential ADA violation with respect to the Buy American Act, we will direct the U.S. Army Materiel Command to report a potential ADA violation and initiate a preliminary investigation in accordance with the DoDFMR. Results of this investigation will be provided to the DoD Office of Inspector General.

3. The Army point of contact for this report is [REDACTED] who can be reached at [REDACTED] email: [REDACTED]


Laura N. Jankovich
Deputy Assistant Secretary of the Army
(Financial Operations)

Department of the Army Comments (cont'd)



REPLY TO
ATTENTION OF:

AMSCC-IR

SEP 23 2014

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND
3334A WELLS ROAD
REDSTONE ARSENAL, AL 35898-5000

MEMORANDUM FOR [REDACTED] Director, Internal Review and Audit
Compliance Office, Headquarters, U.S. Army Materiel Command, 4400 Martin Road,
Redstone Arsenal, AL 35898-5340

SUBJECT: Inspector General, Department of Defense Audit Report: Army Personnel
Complied With the Berry Amendment But Can Improve Compliance With the Buy
American Act, (D2014-D000CG-0038.000)

1. Reference Audit Report, DODIG Draft Report "Army Personnel Complied With the Berry Amendment But Can Improve Compliance With the Buy American Act," (D2014-D000CG-0038.000).
2. The Army Contracting Command (ACC) provides the enclosed comments in response to the referenced document.
3. The ACC point of contact is [REDACTED], Internal Review and Audit Compliance Office, [REDACTED] or email:
[REDACTED]

Encl

Michael R Hutchison
MICHAEL R. HUTCHISON
Deputy to the Commanding General

Department of the Army Comments (cont'd)

Audit Report Title: Inspector General, U. S. Department of Defense, Army Personnel Complied with the Berry Amendment But Can Improve Compliance with the Buy American Act (Project No. D2014-D000CG-0038.000), September 2, 2014

For the Commanding General, U.S. Army Contracting Command

Recommendation B.1

The Inspector General, U.S. Department of Defense recommended the Commanding General, Army Contracting Command – Headquarters:

- a. Require contracting personnel receive training that incorporates the requirement make clear distinctions between commercial and commercial off-the-shelf items and how to perform component assessments as required by the Buy American Act.
- b. Require contracting personnel receive training that incorporates the requirements to include the required Buy American Act implementing clauses.

COMMAND COMMENTS

ACC Concurs. HQ ACC agrees with the recommendation and will initiate action to ensure the ACC contracting personnel receive training on the distinction between commercial and commercial off-the-shelf items, how to perform component assessments and the requirements to include the implementing clauses as required by the Buy American Act.

HQ ACC will require contracting personnel to take Buy American Act training offered by Defense Acquisition University (DAU), specifically the on-line Continuous Learning modules, Buy American Act (CLC 027) and Commercial Item Determination (CLC 020). The training will be mandatory for all contracting personnel in FY 2015.

Note: The DAU CLC 027 and CLC 020 course content currently does not provide instruction or provide guidance on how to perform component assessments. HQ ACC G1 will engage DAU on developing additional training or revising the current training course to include performing component assessments. Upon release, HQ ACC will require this training course for our contracting personnel.

There were two items identified in the draft report, which should change, as follows:

- (1) Reference page 23 – “We interviewed contracting and oversight officials at the Soldier Systems Center, Natick, Massachusetts, Aberdeen Proving Ground, Maryland,

Department of the Army Comments (cont'd)

Tank Automotive Command, Warren, Michigan". Replace Tank Automotive Command with Army Contracting Command-Warren.

(2) Reference pages 28-30 Appendix C. Buy American Act Contracts Reviewed; recommend adding "N/A" to the items under the column titled "Component Assessment for Non-commercial item" which are commercial. Although the third column designates whether or not it is a commercial item, adding in N/A rather than leaving the column blank makes it clearer that it is a commercial item and no assessment is required.

Department of the Army Comments (cont'd)



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING COMMAND - ABERDEEN PROVING GROUND
4401 BOOTHBY HILL AVENUE
ABERDEEN PROVING GROUND, MD 21005-3013

CCAP

11 September 2014

MEMORANDUM THRU [REDACTED], Army Contract Command Contracting
Operations, Management Assessment Division

FOR [REDACTED], Program Director, Contract Management and Payments, Department of
Defense Inspector General

SUBJECT: DoDIG Draft Report, Army Personnel Complied With the Berry Amendment But
Can Improve Compliance With the Buy American Act (Project No. D2014-D000CG-0038.000)

1. Army Contracting Command – Aberdeen Proving Ground (ACC-APG) comments on
recommendations within subject draft report are enclosed.
2. Point of contact is [REDACTED], CCAP-OPC, [REDACTED].

Encl


Bryon J. Young
Executive Director

Department of the Army Comments (cont'd)

ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG) RESPONSE TO DODIG DRAFT REPORT, PROJECT D2014-D000CG-0038.000

BACKGROUND

DoD Inspector General (DoDIG) conducted a review of contract actions to determine whether Army personnel complied with the Berry Amendment and the Buy American Act in response to Section 1601 of the National Defense Authorization Act for FY 2014. DoDIG found that Army personnel complied with the Berry Amendment, but can improve compliance with the Buy American Act.

DRAFT REPORT RECOMMENDATION B.1 FOR COMMANDING GENERAL, ARMY CONTRACTING COMMAND - HEADQUARTERS

- a. Require contracting personnel receive training that incorporates the requirement make clear distinctions between commercial and commercial off-the-shelf items and how to perform component assessments as required by the Buy American Act.
- b. Require contracting personnel receive training that incorporates the requirements to include the required Buy American Act implementing clauses.

ACC-APG COMMENTS AND ACTION TAKEN

ACC-APG concurs with the recommendation. Defense Acquisition University (DAU) offers an online course, CLC 027, titled Buy American Act. ACC-APG is researching whether this course includes the topics as listed in Recommendation B.1, and will complete this research not later than 30 September 2014. If this information is included in the DAU course, this course will be made mandatory for all contracting personnel in FY 2015. If this information is not included in the DAU course, ACC-APG will work with HQ ACC to determine from where this training should be obtained. When it has been determined from where the training should be obtained, the training will be made mandatory for all contracting personnel in FY 2015.

Acronyms and Abbreviations

ACC	Army Contracting Command
APG	Aberdeen Proving Ground
DCMA	Defense Contract Management Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
FSG	Federal Supply Group
SAM	System for Award Management
U.S.C.	United States Code

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U.S. DEPARTMENT OF DEFENSE

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

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