



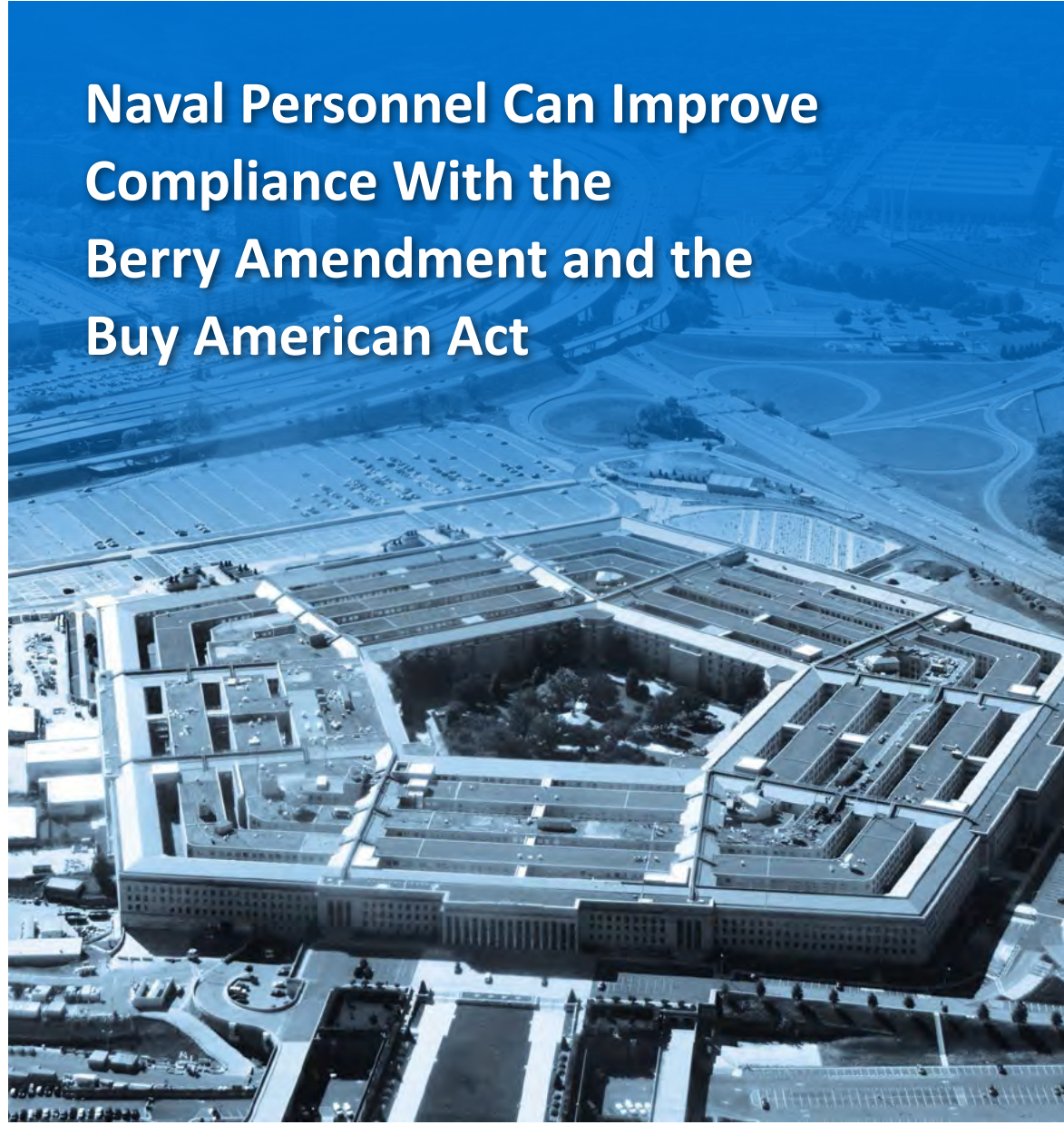
INSPECTOR GENERAL

U.S. Department of Defense

AUGUST 12, 2015



Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act



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Results in Brief

Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act

August 12, 2015

Objective

Our audit objective was to determine whether Naval 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. We reviewed a nonstatistical sample of 55 contracts valued at about \$74 million that were awarded during FY 2013 and FY 2014.

Findings

Naval contracting personnel did not consistently comply with the Berry Amendment for 11 of the 23 contracts reviewed. Contracting personnel did not assess whether suppliers could provide U.S.-produced items and omitted the Berry Amendment contract clause because they were not familiar with the Berry Amendment. Navy personnel allowed a contractor operating a logistics support program to sell non-U.S. made items because the contracting officer did not ensure the contractor was stocking items compliant with the Berry Amendment. Naval Sea Systems Command and Marine Corps Systems Command personnel complied with the Berry Amendment. As a result, Naval contracting personnel committed four potential Antideficiency Act violations.

Findings (cont'd)

Navy and Marine Corps contracting personnel did not ensure compliance with the Buy American Act for 12 of 32 contracts reviewed. Contracting personnel omitted required contract clauses or did not ensure items met domestic-content requirements, or both, because personnel were unfamiliar with the Buy American Act, relied on an inaccurate electronic clause matrix tool, made an administrative error, or treated a noncommercial item as a commercial-off-the-shelf item. As a result, suppliers may have provided non-U.S. made items. Naval Sea Systems Command–Headquarters, Naval Supply Systems Command Fleet Logistics Center–Norfolk and Marine Corps Systems Command contracting personnel generally complied with the Buy American Act.

Naval personnel corrected some of the deficiencies identified during the audit. Specifically, Naval personnel amended 7 contracts, removed any items that were not produced in the U.S. for those 7 contracts, required Berry Amendment and Buy American training, and updated standard operating procedures.

Recommendations

We recommend that Navy and Marine Corps officials modify noncompliant contracts to include the appropriate clauses and review potential Antideficiency violations.

Management Comments and Our Response

Naval Air Systems Command and Naval Supply Systems Command addressed all specifics of the recommendations. Comments from the Assistant Secretary of the Navy (Financial Management and Comptroller) partially addressed the specifics of the recommendation. Please see the Recommendations Table on the back of this page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
Assistant Secretary of the Navy (Financial Management and Comptroller)	A.2.a, A.2.b	
Chief of Contracting, Naval Air Warfare Center, Aircraft Division—Lakehurst		A.1., B.1.
Chief of Contracting, Naval Supply Systems Command Fleet Logistics Center—Norfolk		B.2.
Chief of Contracting, Marine Corps Systems Command—Quantico		B.3.



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

August 12, 2015

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,
TECHNOLOGY, AND LOGISTICS
NAVAL INSPECTOR GENERAL**

**SUBJECT: Naval Personnel Can Improve Compliance With the Berry Amendment and the
Buy American Act (Report No. DODIG-2015-161)**

We are providing this report for review and comment. For 11 of the 23 Berry Amendment contracts reviewed, valued at \$73 million, Naval contracting personnel did not assess whether suppliers could provide U.S.-produced items and omitted the Berry Amendment contract clause on nine contracts, did not ensure a contractor was stocking compliant items on one contract, and allowed a contractor to substitute non-U.S.-produced items on one contract. Naval Berry Amendment noncompliance resulted in four potential Antideficiency Act violations.

Naval contracting personnel did not ensure compliance with the Buy American Act for 12 of 32 contracts reviewed valued at \$1.5 million. Contracting personnel omitted required contract clauses or did not ensure items purchased met domestic-content requirements, or both. As a result, suppliers may have provided non-U.S. made items, and Navy contracting personnel could not demonstrate that purchased items complied with the domestic-content requirements. Naval personnel corrected some of the deficiencies identified during the audit.

This is the second of a series of reports 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 management comments on a draft of this report when preparing the final report. Comments from the Assistant Secretary of the Navy (Financial Management and Comptroller) partially partially addressed Recommendation A.2. DoD Instruction 7650.03 requires that recommendations be resolved promptly. We request additional comments to Recommendation A.2 by September 11, 2015.

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.

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

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

Michael J. Roark
Assistant Inspector General
Contract Management and
Payments Directorate

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Acronyms and Abbreviations



Introduction

Objective

Our audit objective was to determine whether Naval 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 second 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 the Berry Amendment.¹ 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.² We included the Buy American Act and used the same Federal Supply Groups (FSG) as the Berry Amendment for contracts awarded during FY 2013 and FY 2014.

The Berry Amendment

The Berry Amendment promotes the purchase of goods produced in the United States by directing how DoD can use funds to purchase items such as fabrics, food, and hand tools. The Amendment applies to end items and components³ for purchases over the simplified acquisition threshold of \$150,000.⁴ The Berry Amendment directs DoD personnel to ensure funds appropriated or otherwise available to DoD are not used to procure covered items from the following FSGs⁵ if the items were not grown, reprocessed, reused, or produced in the United States.

- FSG 51—hand tools;
- FSG 52—measuring tools;

¹ Enacted under Section 2533a, title 10, United States Code (10 U.S.C. § 2533a [2006]) and implemented by Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.7002-1, "Restrictions."

² Enacted 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."

³ According to DFARS clause 252.225-7001, "Buy American Act and Balance of Payments Program," 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.

⁴ Defense Procurement and Acquisition Policy officials confirmed total contract value not the value of covered items determines whether the Berry Amendment applies.

⁵ DFARS 225.7002-1(a) and (b) contain the full list of items covered by the Berry Amendment.

- FSG 83—textiles, leather and furs,⁶ apparel, and shoes;
- FSG 84—clothing, individual equipment and insignia; and
- FSG 89—subsistence (food).

If these items are purchased without complying with the Berry Amendment, it will result in a potential Antideficiency Act violation because contracts are funded directly with appropriated funds. With certain exceptions, these funds are not available for the procurement of non-U.S.-produced items.

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 and applies to contracts that exceed the \$3,000 micro-purchase (small purchase) threshold. Federal Acquisition Regulation Part 25, “Foreign Acquisition”, and Defense Federal Acquisition Regulation Supplement (DFARS) Part 252, “Foreign Acquisition,” include 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.⁷ Table 1 shows the differences between the Berry Amendment and the Buy American Act.

⁶ All items subject to the Berry Amendment are contained in the five FSGs. However, the FSGs contain some items that are not subject to the Berry Amendment such as leather and furs.

⁷ DFARS 225.101 modifies the FAR test to accommodate unique DoD acquisition provisions for “qualifying countries.”

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	Generally, most supplies—not only 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)
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 Production or Manufacture	United States	United States ²
Where item will be used	Anywhere	United States ³
Contractor certification	No	Yes

Source: DoD OIG

¹ Berry Amendment applies unless acquisitions are at or below the simplified acquisitions threshold, a Domestic Non-Availability Determination, or an exception to compliance applies. The exceptions are established in DFARS 225.7002-2.

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

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

Contracts Reviewed

We queried the Federal Procurement Data System–Next Generation (FPDS-NG) and identified 41 Berry Amendment contract actions valued at about \$99 million and 1,546 Buy American Act contract actions valued at about \$285 million. The Navy and Marine Corps issued the contracts from October 1, 2012, through September 30, 2014.

We selected four Navy and Marine Corps sites to perform the review of the Berry Amendment and Buy American Act contracts. We visited:

- Marine Corps Systems Command (MCSC), Quantico, Virginia;
- Naval Air Warfare Center Aircraft Division (NAWCAD), Lakehurst, New Jersey;
- Naval Sea Systems Command (NAVSEA-HQ), Washington, D.C.; and
- Naval Supply Systems Command Fleet Logistics Center (NAVSUP FLC), Norfolk, Virginia.

We reviewed a nonstatistical sample of 23 Berry Amendment contracts that totaled about \$73 million and 32 Buy American Act contracts that totaled about \$1.5 million. See Appendix B for Berry Amendment contracts reviewed and Appendix C for Buy American Act contracts reviewed. 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

	MCSC Quantico		NAWCAD Lakehurst		NAVSEA HQ Washington DC		NAVSUP FLC Norfolk	
FSG	Berry Amendment	Buy American Act	Berry Amendment	Buy American Act	Berry Amendment	Buy American Act	Berry Amendment	Buy American Act
51			9	8			1 ¹	2
52				1				
83	1		1	1			1	1
84	5	5			3	1	3 ¹	12
89				1				
Total Reviewed	6	5	10	11	3	1	4	15
Total Obligated Value (millions)	\$45.00	\$0.07	\$13.50	\$0.67	\$6.60	\$0.04	\$7.60	\$0.66

¹ One contract issued by NAVSUP FLC-Norfolk personnel purchased items in both Federal Supply Groups 51 and 84. Therefore, we reviewed four Berry Amendment contracts at NAVSUP FLC-Norfolk.

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. We identified weaknesses with Navy internal controls for awarding contracts in compliance with the Berry Amendment and Buy American Act. Navy personnel did not include Berry Amendment contract clauses when required, and purchased goods from foreign countries resulting in four potential Antideficiency Act violations. In addition, Navy personnel did not include Buy American Act contract clauses when required and did not ensure items met domestic-content requirements. We will provide a copy of the report to the senior officials responsible for internal controls in the Navy and Marine Corps.

Finding A

Naval Contracting Personnel Can Improve Compliance With the Berry Amendment

Naval contracting personnel did not consistently comply with the Berry Amendment for 11 of the 23 contracts reviewed. MCSC-Quantico and NAVSEA-HQ personnel complied with the Berry Amendment for all nine contracts reviewed, with an obligated value of \$52 million. However, NAWCAD-Lakehurst and NAVSUP FLC-Norfolk personnel did not comply with the Berry Amendment for 11 of the remaining 14 contracts,⁸ with an obligated value of \$21 million.

Specifically, for nine contracts, NAWCAD-Lakehurst contracting personnel did not assess whether suppliers could provide U.S.-produced items and omitted the Berry Amendment contract clause because they stated that they were not familiar with the Berry Amendment.

In addition, for two contracts, NAVSUP FLC-Norfolk contracting personnel:

- allowed a contractor operating a logistics support program to sell non-U.S.-produced hand and measuring tools covered by the Berry Amendment because the contracting officer did not ensure the contractor stocked items compliant with the Berry Amendment; and
- permitted the substitution of non-U.S. produced synthetic fabric on a contract because the contracting officer misinterpreted a DFARS exception to the Berry Amendment, which allows the substitution of incremental amounts of natural fiber.

As a result, NAWCAD-Lakehurst contracting personnel ordered and may have received items on two contracts that were not produced in the U.S. and committed two potential violations of the Antideficiency Act. NAVSUP FLC-Norfolk contracting personnel ordered and received items on two contracts that did not meet domestic-content requirements, which resulted in two potential Antideficiency Act violations. Naval personnel corrected some of the deficiencies identified during the audit.

⁸ NAVSUP FLC-Norfolk personnel complied with the Berry Amendment on two contracts and NAWCAD-Lakehurst complied with the Berry Amendment on one contract.

MCSC-Quantico and NAVSEA-HQ Personnel Complied With the Berry Amendment

MCSC-Quantico and NAVSEA-HQ personnel complied with the Berry Amendment by including the Berry Amendment contract clause in both solicitations and contracts for all nine contracts, with an obligated value of \$52 million. MCSC-Quantico and NAVSEA-HQ personnel took appropriate action to ensure suppliers could provide U.S.-produced items. However, NAVSUP-Norfolk and NAWCAD-Lakehurst personnel complied with the Berry Amendment for only 3 of 14 remaining contracts reviewed. NAVSUP-Norfolk and NAWCAD-Lakehurst personnel need to improve Berry Amendment compliance.

NAWCAD-Lakehurst and NAVSUP-Norfolk Personnel Did Not Consistently Ensure Compliance With the Berry Amendment

Naval contracting personnel did not consistently comply with the Berry Amendment for 11 of the 23 contracts reviewed. NAWCAD-Lakehurst personnel did not assess whether suppliers could provide U.S.-produced items and omitted Berry Amendment contract clauses from nine contracts. For the remaining two contracts, NAVSUP-Norfolk personnel conducted insufficient oversight that resulted in the Navy purchasing and receiving non-U.S.-produced items.

NAWCAD-Lakehurst Personnel Were Unaware of the Berry Amendment Requirements

NAWCAD-Lakehurst contracting personnel did not take action to ensure they procured domestically produced goods because they stated that they were unaware of the Berry Amendment.

NAWCAD-Lakehurst contracting personnel did not take action to ensure they procured domestically produced goods because they stated that they were unaware of the Berry Amendment. For the nine contracts reviewed, valued at about \$10.5 million, they did not assess whether suppliers could provide U.S.-produced items and omitted Berry Amendment contract clauses from nine of the contracts.

Multiple NAWCAD-Lakehurst contracting officers stated that before our audit, they were not aware of the Berry Amendment. NAWCAD-Lakehurst personnel who routinely purchased items covered by domestic source restrictions, such as the Berry Amendment, did not receive specialized training. A NAWCAD-Lakehurst contracting officer stated that personnel sometimes used previous contracts as an example when they purchased similar items. However, this was only

effective if the contracting officer on the previous contract was aware of the Berry Amendment and included the required clauses. A Contracting Division Head stated both reviewers and signers of contract actions were unfamiliar with the Berry Amendment and approved contracts without the required clauses.

The Office of Defense Procurement and Acquisition Policy identified⁹ market research and inclusion of Berry Amendment contract clauses in the solicitation as best practices to both identify and notify vendors of the requirement to purchase items produced domestically. If the clauses were included, potential suppliers would have been informed that the contracts had a domestic-content requirement.¹⁰ NAWCAD-Lakehurst personnel stated they verified information in the System for Award Management (SAM), such as business size, to determine whether potential suppliers were responsible sources and whether the supplier was an excluded party. However, they did not determine whether the supplier could comply with the Berry Amendment and where the supplier's products were produced.

NAWCAD-Lakehurst Personnel Ordered and Received Items That Were Not Produced in the United States

For four contracts, NAWCAD-Lakehurst contracting personnel did not determine whether suppliers could provide U.S.-produced items, omitted contract clauses, and ordered and received items that were not produced in the United States.

- **Contract N68335-14-C-0089.** A NAWCAD-Lakehurst contracting officer did not assess the contractor's proposal for compliance with the Berry Amendment when she purchased \$299,360 of hand and measuring tools. The contracting officer omitted the Berry Amendment contract clause and explained she thought the clause was not required because the contractor was a U.S. based manufacturer. She did not identify 1,298 non-U.S. produced tools, valued at \$19,431, although the contractor's proposal specifically stated the place of production was outside of the U.S.
- **Contract N68335-14-C-0188.** A NAWCAD-Lakehurst contracting officer did not assess the contractor's proposal for compliance with the Berry Amendment when she purchased \$6,857,380 of aircraft parts and hand and measuring tools. The contracting officer ordered \$109,012 of hand and measuring tools that were not produced in the U.S. The contracting officer explained she was not familiar with the Berry Amendment.

⁹ Defense Acquisition University Continuing Learning Module 125 (2007).

¹⁰ The Berry Amendment is implemented through DFARS 225.7002, "Restrictions on food, clothing, fabrics, and hand or measuring tools," which requires contracting officers to include the following clauses in contracts exceeding the simplified acquisition threshold unless an exception applies: DFARS 252.225-7012, "Preference for Certain Domestic Commodities," or DFARS 252.225-7015, "Restriction on Acquisition of Hand or Measuring tools."

- **Contract N68335-14-P-0482.** A NAWCAD-Lakehurst contracting officer did not identify 477 non-U.S.-produced tools valued at \$7,524.11 when she purchased \$674,774 of hand and measuring tools. The contracting officer did not identify the non-U.S.-produced tools because she was not familiar with the Berry Amendment.
- **Contract N68335-14-C-0390.** A NAWCAD-Lakehurst contracting officer did not assess the contractor's proposal for compliance with the Berry Amendment when she purchased \$174,573 of hand and measuring tools. She omitted the Berry Amendment contract clause and did not identify \$11,109.29 of non-U.S.-produced hand and measuring tools in the contractor's proposal that were delivered to NAWCAD-Lakehurst in November 2014. The contracting officer stated she was unfamiliar with the Berry Amendment and explained the requiring activity personnel conducted market research and the contracting officer reviewed the contractor's certifications in SAM to determine whether the contractor was on the excluded party list. Figure 1 is a photo of a wrench that was not manufactured in the United States that was delivered on contract N68335-14-C-0390.



As a result of our audit, NAWCAD-Lakehurst contracting personnel amended the four contracts to include the Berry Amendment clause and removed items that were not produced in the United States. Therefore, we are not making any recommendations related to these four contracts.

NAWCAD-Lakehurst May Have Received Items That Were Not Produced in the United States

For five contracts, NAWCAD-Lakehurst contracting personnel did not determine whether sources could comply with domestic-content requirements, omitted Berry Amendment contract clauses, and may have received non-U.S.-produced

items. As a result of our audit, NAWCAD-Lakehurst contracting personnel amended three contracts to include the Berry Amendment clause and received certifications from a vendor and two Defense Contract Management Agency Quality Assurance Representatives stating all goods delivered complied with the Berry Amendment. We discuss the three amended contracts below.

- **Contract N68335-14-C-0136.** A NAWCAD-Lakehurst contracting officer included the Berry Amendment contract clause for textiles instead of the Berry Amendment clause for hand and measuring tools when she purchased \$629,059 of tools. She stated that before the audit, she was not familiar with the Berry Amendment.
- **Contract N68335-14-C-0135.** A NAWCAD-Lakehurst contracting officer did not include the Berry Amendment contract clause in the basic contract when she purchased \$323,478 of tools. She stated that before the audit, she was not familiar with the Berry Amendment.
- **Contract N68335-13-C-0228.** A NAWCAD-Lakehurst contracting officer did not include the Berry Amendment contract clause in the basic contract when he purchased \$1,276,394 of aircraft parts and tools. The contracting officer stated the clause was omitted because he was not familiar with the Berry Amendment.

For two contracts, NAWCAD-Lakehurst contracting personnel did not take action to correct the contracts during our audit. The Chief of Contracting, Naval Air Warfare Center, Aircraft Division–Lakehurst should modify contract N68335-13-C-0164 to include the Berry Amendment contract clause and determine whether noncompliant items have been delivered on contracts N68335-13-C-0164 and N68335-13-C-0186 and when appropriate, obtain replacement items that are compliant with the Berry Amendment.

- **Contract N68335-13-C-0164.** A NAWCAD-Lakehurst contracting officer did not include the Berry Amendment contract clause in the basic contract when she purchased \$544,954 of aircraft parts and tools. She stated that before the audit, she was not familiar with the Berry Amendment.
- **Contract N68335-13-C-0186.** A NAWCAD-Lakehurst contracting officer omitted the Berry Amendment contract clause and did not assess the contractor’s proposal for compliance when he purchased \$212,825 of tool kits. He stated he omitted the clause because he was unfamiliar with the Berry Amendment. In addition, the contracting officer did not assess the contractor’s proposal, which included non-U.S.-produced items.

Corrective Actions Taken by NAWCAD-Lakehurst

NAWCAD-Lakehurst personnel took corrective actions to address the deficiencies that we identified. They added the Berry Amendment contract clause and removed items that were not produced in the United States. In addition, NAWCAD-Lakehurst personnel amended standard operating procedures and internal processes to improve compliance with the Berry Amendment. NAWCAD-Lakehurst personnel are now required to complete Berry Amendment training. We believe actions taken by NAWCAD-Lakehurst personnel will improve future compliance with the Berry Amendment. We are not making a recommendation on seven of the nine contracts with deficiencies because of corrective actions taken.

NAVSUP FLC-Norfolk Did Not Provide Adequate Contract Oversight

NAVSUP FLC-Norfolk personnel did not provide adequate contract oversight on two contracts. Contracting personnel also misinterpreted the DFARS and improperly allowed the supplier to provide noncompliant items. As a result, the Navy procured noncompliant goods and potentially violated the Antideficiency Act.

NAVSUP FLC-Norfolk Contractor Stocked Non-U.S.-Produced Items for Resale

NAVSUP FLC-Norfolk personnel improperly allowed a contractor operating the SERVMART, a logistics support contract, to sell non-U.S.-produced hand and measuring tools because the contracting officer did not ensure the contractor was stocking items compliant with the Berry Amendment. SERVMART is a contractor-operated facility that sells items (such as office supplies, textiles, and hand tools) to Navy personnel who resupply ships while docked in Norfolk, Virginia.

NAVSUP FLC-Norfolk contracting personnel issued contract N00189-13-D-0001, with an obligated valued of \$6.3 million, to operate the SERVMART facility and included the Berry Amendment clause in the contract. The Berry Amendment applicability is based on the total contract value, not the value of the Berry Amendment covered items or components purchased by the contract¹¹. Additionally, while most of the purchases to supply the facility were below the \$150,000 threshold set by the Berry Amendment, when combined the dollar value of Berry Amendment items exceeded the threshold. Figure 2 illustrates a non-U.S.-produced hand tool that was for sale at SERVMART in November 2014.

¹¹ Defense Procurement and Acquisition Policy personnel confirmed that applicability of the Berry Amendment is based on total contract value and not the value of individual Berry items on a contract.



Figure 2. Pipe Wrench for Sale at SERVMART in Norfolk, Virginia
Source: DoD OIG

After our visit to NAVSUP FLC-Norfolk in November 2014, the contracting officer issued a letter to the SERVMART contractor requesting they inspect all inventory and remove all non-compliant items and replace them with Berry Amendment compliant items. Additionally, the contracting officer updated the contract administration plan to include routine assessments of stocked items to ensure compliance with the Berry Amendment.

NAVSUP FLC-Norfolk Allowed the Substitution of Non-U.S.-Sourced Fabric

A NAVSUP FLC-Norfolk contracting officer violated the Berry Amendment by improperly allowing a supplier to substitute synthetic microfibers for natural fibers in armored vests. A NAVSUP FLC-Norfolk contracting officer issued contract N00189-13-P-1264 for \$184,101 to purchase armored vests. The contract specialist allowed the supplier to substitute a non-U.S.-sourced microfiber to change the color of the vest from black to blue. The contracting officer allowed the substitution based on her interpretation of DFARS 225.7002-2(J), which allowed acquisition of incidental amounts of non-U.S.-produced cotton, other natural fibers, and wool as long as the substitution was under the simplified acquisition threshold and not more than 10 percent of the total price of the end product. However, microfiber is a synthetic fiber and not a natural fiber, which was not covered by the exception. As a result, by adding \$2,984 of non-U.S.-produced microfiber to the contract, the contracting officer violated the Berry Amendment and created a potential Antideficiency Act violation.

Navy Personnel Committed Potential Antideficiency Act Violations

We identified four contracts where NAWCAD-Lakehurst and NAVSUP FLC-Norfolk contracting personnel used funds to purchase goods that were not compliant with the Berry Amendment. The Amendment requires the Department of Defense

purchase certain end items, components, and materials that are wholly of U.S. origin unless the Secretary of Defense or military department determines that satisfactory quality and sufficient quantity are unavailable at market prices or if an exception applies.

In addition, the Antideficiency Act (31 U.S.C. § 1341) states:

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

A violation of the Berry Amendment may result in an Antideficiency Act violation because the Berry Amendment is a statutory prohibition on the use of DoD funds.¹² NAWCAD-Lakehurst and

NAVSUP
FLC-Norfolk
personnel
ordered and received
items on contracts
N00189-13-D-0001 and
N00189-13-P-1264 that
violated the Berry
Amendment.

NAVSUP FLC-Norfolk personnel committed four potential Antideficiency Act violations. NAWCAD-Lakehurst personnel may have ordered and received non-U.S.-produced items on contracts N68335-14-C-0186 and N68335-13-C-0164 without including the Berry Amendment clauses. NAVSUP FLC-Norfolk personnel ordered and received items on contracts N00189-13-D-0001 and N00189-13-P-1264 that violated the Berry Amendment.

DoD Regulation 7000.14-R, “Financial Management Regulation,” volume 14, chapter 3, “Preliminary Reviews of Potential Violations,” requires the Assistant Secretary of the Navy (Financial Management and Comptroller) to evaluate whether a potential Antideficiency Act violation identified in an audit report has occurred and initiate a preliminary review when warranted.

The Assistant Secretary of the Navy (Financial Management and Comptroller) should initiate a preliminary review of these potential Antideficiency Act violations.

¹² 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.”

Conclusion

NAWCAD-Lakehurst and NAVSUP FLC-Norfolk contracting personnel did not comply with the Berry Amendment because they were unfamiliar with its requirements. Following our site visit and subsequent discussions with NAWCAD-Lakehurst personnel, corrective actions were taken to address all but two of the deficiencies identified. As a result, NAWCAD-Lakehurst omitted the Berry Amendment contract clause from nine contracts and may have ordered items that were not produced in the United States on two contracts. In addition, NAVSUP FLC-Norfolk contracting personnel inappropriately purchased items from non-U.S. sources and committed two potential Antideficiency Act violations. NAVSEA-HQ and MCSC-Quantico personnel complied with the Berry Amendment.

Management Comments on the Finding and Our Response

Although not required to comment, the Commander, Naval Air Systems Command, provided the following comments on the finding.

Naval Air Systems Command Comments

The Commander, Naval Air Systems Command, partially agreed, stating the area of nonconcurrence is "...NAWCAD-Lakehurst contracting personnel ordered and may have received items on two contracts that were not produced in the U.S. and committed two potential violations of the Antideficiency Act." The Commander stated that NAWCAD-Lakehurst personnel verified all products procured under contracts N68335-13-C-0186 and N68335-13-C-0164 originated in the United States and provided support to the DoDIG auditor on April 21, 2015, and April 28, 2015, respectively.

Additionally, the Commander stated that NAWCAD-Lakehurst implemented mandatory training on the Berry Amendment (CLC 125) as a corrective action to the finding. Also, an additional internal review was implemented in the pre-procurement stage to certify the consideration of the Berry Amendment.

Our Response

We acknowledge the receipt of emails that show NAWCAD-Lakehurst verified only products in the United States were provided under the two contracts, and mandatory training on Berry Amendment was implemented. However, NAWCAD-Lakehurst provided this information after the agreed upon deadline of April 17, 2015, during the exit conference held with Navy management on April 9, 2015. We believe the corrective actions implemented by NAWCAD-Lakehurst will improve future compliance with the Berry Amendment.

Recommendations, Management Comments, and Our Response

Recommendation A.1

We recommend Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst modify contract N68335-13-0164 to include the Berry Amendment contract clause and identify whether items in violation of the Berry Amendment were purchased on contracts N68335-13-C-0164 and N68335-13-C-0186, and take corrective actions as appropriate.

Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst Comments

The Commander, Naval Air Systems Command, responding for the Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst, partially agreed, stating that the Defense Contract Management Agency closed contract N6885-13-C-0164; therefore, they cannot issue a modification. Furthermore, he stated that NAWCAD-Lakehurst has verified products originating in the United States were provided under contracts N68335-13-C-0164 and N68335-13-C-0186.

Our Response

Comments from the Commander addressed all specifics of the recommendation, and no further comments are required.

Recommendation A.2

We recommend that the Assistant Secretary of the Navy (Financial Management and Comptroller) to:

- 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 as a result of any items purchased on contracts N00189-13-D-0001, N00189-13-P-1264, N68335-13-C-0164 and N68335-13-C-0186 in violation of the Berry Amendment.**
- b. Complete the preliminary review as required by Regulation and provide the results to the DoD Office of Inspector General. If an Antideficiency Act violation has occurred, determine which officials are responsible and recommend corrective actions.**

Assistant Secretary of the Navy (Financial Management and Comptroller) Comments

The Commander, Naval Air Systems Command, responding for the Assistant Secretary of the Navy (Financial Management and Comptroller) did not agree or disagree. The Commander stated that it has been verified the products under contracts N68335-13-C-0164 and N68335-13-C-0186 originated in the United States. Additionally, the Commander stated the Naval Air Systems Command did not believe any further review was warranted and that no Antideficiency Act violation occurred because they verified the use of no appropriated funds were used to procure non-U.S. made products.

Assistant Secretary of the Navy (Research Development, and Acquisition) Comments

Although not required to comment, the Acting Executive Director, Assistant Secretary of the Navy, (Research Development, and Acquisition) provided a July 2, 2015, memorandum from the Director, Budget Policy and Procedures Division, Assistant Secretary of the Navy (Financial Management and Comptroller). The memorandum requested the Comptroller, Naval Air Systems Command, and the Comptroller, Naval Supply Systems Command, to correct the contracts and provide evidence that the Berry Amendment clauses were added and provide certifications from the vendor and the Defense Contract Management Agency Quality Assurance Representative that all goods delivered complied with the Berry Amendment. To the extent that these actions were not attainable, the Comptrollers were directed to initiate a preliminary Antideficiency Act review.

Our Response

The Commander, Naval Air Systems Command, partially addressed the recommendation. The actions taken for contracts N68335-13-C-0164 and N68335-13-C-0186 met the intent of the recommendation; however, the Commander, Naval Supply Systems Command, did not address contracts N00189-13-D-0001 and N00189-13-P-1264 and specifically did not address whether reportable violations of the Antideficiency Act occurred as a result of any items purchased on these contracts. We request the Assistant Secretary provide comments to the final report that respond to Recommendation A.2 with respect to contracts N00189-13-D-0001 and N00189-13-P-1264.

Finding B

Naval Personnel Did Not Ensure Compliance with the Buy American Act

Naval contracting personnel complied with the Buy American Act for 20 of the 32 contracts reviewed with an obligated value of about \$1.5 million. However, for 12¹³ of the 32 contracts, NAWCAD-Lakehurst, NAVSUP FLC-Norfolk, and MCSC-Quantico contracting personnel omitted required Buy American Act contract clauses and did not ensure items purchased on three contracts met domestic-content requirements. Specifically;

- NAWCAD-Lakehurst contracting personnel omitted Buy American Act implementing clauses on seven contracts because contracting personnel stated they were unfamiliar with the Buy American Act or made an administrative error;
- NAVSUP FLC-Norfolk contracting personnel omitted the Buy American Act clauses on two contracts because contracting personnel relied on an inaccurate electronic clause matrix tool and did not complete sufficient review of two contracts before award; and
- MCSC-Quantico contracting personnel omitted the clause on one contract because they stated they made an administrative error.

NAWCAD-Lakehurst and NAVSUP FLC-Norfolk contracting personnel did not ensure items purchased on three contracts met domestic-content requirements because they were unaware of the Buy American Act or purchased commercial items using commercial-off-the-shelf procedures. As a result, suppliers may have provided nondomestically-produced items, and Naval personnel had limited assurance that purchased items complied with the Buy American Act. NAWCAD-Lakehurst personnel took some corrective actions during the audit.

¹³ Contract N68335-14-P-0085 had two deficiencies. NAWCAD-Lakehurst contracting personnel omitted the Buy American Act clause and did not ensure items met domestic-content requirements.

NAVSEA-HQ, NAVSUP FLC-Norfolk and MCSC-Quantico Generally Complied With the Buy American Act

NAVSEA-HQ, NAVSUP FLC-Norfolk, and MCSC-Quantico contracting personnel generally complied with the Buy American Act for 17 of 21 contracts reviewed by including the Buy American Act DFARS implementing clause. Contracting personnel made efforts to ensure suppliers could provide U.S.-made items. However, NAWCAD-Lakehurst contracting personnel complied with only 3 of 11 Buy American Act contracts reviewed.

Naval Contracting Personnel Did Not Consistently Ensure Compliance With the Buy American Act

Naval contracting personnel did not consistently ensure compliance with the Buy American Act for 12 of the 32 contracts reviewed with an obligated value of about \$562,254 from a nonstatistical sample. NAWCAD-Lakehurst, NAVSUP FLC-Norfolk, and MCSC-Quantico contracting personnel omitted the Buy American Act from ten contracts and did not ensure items purchased on three contracts were domestic-end products compliant with the Buy American Act.

Buy American Act Implementing Clause

The Buy American Act is implemented through the DFARS¹⁴ and requires contracting officers to include the applicable clause¹⁵ in the contract. Inclusion of the proper clause is important because it explicitly notifies the contractor to provide goods that meet the domestic-content requirements specified in the Buy American Act.

NAWCAD-Lakehurst Personnel Were Unaware of Requirement

NAWCAD-Lakehurst contracting personnel did not include the clauses in 7 of the 11 contracts reviewed because they stated they were unaware of the Buy American Act or the need to purchase domestically-manufactured items.¹⁶ NAWCAD-Lakehurst contracting personnel issued the contracts in Table 3 without the proper clause.

NAWCAD-Lakehurst contracting personnel did not include the clauses in 7 of the 11 contracts reviewed because they stated they were unaware of the Buy American Act or the need to purchase domestically-manufactured items.

¹⁴ DFARS Subpart 225.1.

¹⁵ For example, DFARS clause 252.225-7001, "Buy American and Balance Payments Program, and DFARS clause 252.225-7002, "Qualifying Country Sources as Subcontractors" or DFARS clause 252.225-7035, "Buy American Act – Free Trade Agreements – Balance and Payments Certificate."

¹⁶ NAWCAD-Lakehurst contracting personnel included the incorrect Buy American Act Federal Acquisition Regulation clause in contracts N68335-13-P-0351, N68335-14-P-0286 and N68335-13-P-0328; however, NAWCAD-Lakehurst officials implemented training to direct contracting officers to use the correct DFARS clause.

Table 3. NAWCAD-Lakehurst Contract Awarded Without the Buy American Act Clause

Contract Number	Base Value	Item	Included Buy American Act Clause
N68335-14-P-0085	\$ 41,568	Coated and uncoated webbing	No
N68335-14-P-0320	\$ 85,756	Tools	No
N68335-14-P-0117	\$ 57,620	Tube bender kit	No
N68335-14-P-0002	\$ 5,015	Spring water	No
N68335-14-P-0266	\$ 51,001	Tool kit	No
N68335-14-P-0428	\$ 52,351	Sine plate and block	No
N68335-13-P-0225	\$ 83,260	Mat Bags	No

As a result of our audit, NAWCAD-Lakehurst personnel took corrective action and amended standard operating procedures and internal processes to improve compliance with the Buy American Act. Additionally, NAWCAD-Lakehurst personnel are now required to complete Buy American Act training. However, the Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst should determine whether noncompliant items were delivered on contracts N68335-14-P-0085; N68335-14-P-0320; N68335-14-P-0117; N68335-14-P-0002; N68335-14-P-0266; N68335-14-P-0428; and N68335-13-P-0225 and when appropriate, obtain replacement items that are compliant with the Buy American Act.

NAVSUP FLC-Norfolk and MCSC-Quantico Erroneously Omitted Clause

NAVSUP FLC-Norfolk and MCSC-Quantico contracting personnel did not include the Buy American Act implementing clauses in 3 of 21 contracts because for 2 contracts, NAVSUP FLC-Norfolk contracting personnel relied on an in-house developed clause matrix aid that had flawed logic and sometimes provided incorrect decisions. NAVSUP FLC-Norfolk contracting personnel should not have relied on the in-house developed clause matrix aid but instead should have verified required clauses were included. In addition, an MCSC-Quantico contracting officer omitted the Buy American Act clause on one contract because of an administrative error.

- **Contracts N00189-13-P-0760 and N00189-14-P-1036.**

NAVSUP FLC-Norfolk contracting officers did not include the clause at DFARS 252.225-7001 to implement the Buy American Act for the purchase of high-gloss black shoes. The total obligated value for both contracts were \$54,325 and \$71,299 respectively.

- **Contract M67854-14-P-1016.** A MCSC-Quantico contracting officer did not include the clause at DFARS 252.225-7001 to implement the Buy American Act for the purchase of badges with an obligated value of \$12,150. The contracting officer stated the clause was omitted because of an administrative oversight.

The Chief of Contracting, NAVSUP FLC-Norfolk should determine whether noncompliant items were delivered on contracts N00189-13-P-0760 and N00189-14-P-1036 and when appropriate, obtain replacement items that are compliant with the Buy American Act. We are not making a recommendation to modify contracts N00189-13-P-0760 and N00189-14-P-1036 because the purchased items were delivered.

The Chief of Contracting, MCSC-Quantico should amend contract M67854-14-P-1016 to include the Buy American Act contract clause and determine whether noncompliant items have been delivered and when appropriate, obtain replacement items that are compliant with the Buy American Act.

Naval Contracting Personnel Did Not Ensure Items Met Domestic-Content Requirements

NAWCAD-Lakehurst and NAVSUP FLC-Norfolk contracting personnel did not ensure items purchased on three contracts met domestic-content requirements. Contracting officers are restricted from purchasing nondomestically-produced items. Specifically, DFARS Supplement 225.101, "Buy American-Supplies," implements the Buy American statute and restricts the purchase of supplies that are not domestic end products. For DoD, the following two-part test in DFARS 225.101 determines whether a manufactured end product is a domestic end product: (1) The end product is manufactured in the United States; and (2) The cost of its U.S. and qualifying country components exceeds 50 percent of the cost of all its components. This test is applied to end products only and not to individual components. In accordance with 41 U.S.C. §1907, the component test of the Buy American statute has been waived for acquisitions of commercial-off-the-shelf (COTS) items.¹⁷

Neither the Federal Acquisition Regulation nor DFARS specify whether the test to identify a domestic end product must be documented, who must complete the assessment, or when it must occur. The Federal Acquisition Regulation waives the assessment for COTS items. Naval contracting officers determined that 19 of the 32 contracts reviewed were COTS. NAWCAD-Lakehurst and NAVSUP FLC-Norfolk contracting personnel could not demonstrate that purchased items on three contracts complied with the two-part test.

¹⁷ DFARS clause 252.225-7001 (a) defines COTS 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.

NAVSUP FLC-Norfolk and NAWCAD-Lakehurst contracting personnel had no assurance items they purchased complied with the Buy American Act for three contracts:

- **Contracts N68335-14-P-0085 and N68335-13-P-0328.**
NAWCAD-Lakehurst contracting personnel did not review contractor certifications for Buy American Act compliance in SAM when they issued a \$41,568 contract for webbing and a \$23,880 contract to purchase support equipment tools because they were unaware of the Federal Acquisition Regulation requirements to assess domestic content.
- **Contract N00189-14-P-0990.** NAVSUP FLC-Norfolk contracting personnel did not ensure compliance with the Buy American Act on a \$24,029 contract to purchase Armor Chest and Back Plates, Side Armor Plates and High Cut Helmets because the contracting officer incorrectly determined the items were COTS. Federal Acquisition Regulation 25.101 (a)(2) waives the component test for COTS items. DFARS 252.225-7001 (a) defines a COTS 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. The items procured did not meet this definition because they were not available to the public but only to members of the military or law enforcement.

The Chief of Contracting, Naval Air Warfare Center, Aircraft Division–Lakehurst should assess contracts N68335-14-P-0085 and N68335-13-P-0328 to ensure all items delivered were compliant with the Buy American Act.

The Chief of Contracting, NAVSUP FLC–Norfolk should assess contract N00189-14-P-0990 to ensure all items delivered were compliant with the Buy American Act.

Omissions of Clauses and Limited Domestic-Content Assurance Could Result in Antideficiency Act Violations

Naval contracting personnel omitted contract clauses and did not ensure procured items met domestic-content requirements for 12 contracts. Purchasing items using DoD appropriations without using required contract clauses and assuring the purchases comply with the Buy American Act may result in potential Antideficiency Act violations because expenditures may not comply with an annual statutory restriction that appropriated funds may only be expended in compliance with the Buy American Act.

Department of Defense annual appropriations acts contain a recurring restriction on the use of appropriated funds in violation of the Buy American Act. For example, the Consolidated Appropriations Act, 2014, Public Law 113-76, states in section 8035(a):

None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act. For purposes of this subsection, the term “Buy American Act” means chapter 83 of title 41, United States Code. ^[18]

Conclusion

NAVSUP FLC-Norfolk, NAWCAD-Lakehurst, and MCSC-Quantico personnel can improve compliance with the Buy American Act. Naval contracting personnel omitted Buy American Act implementing clauses for ten contracts and had limited assurance on three contracts that goods procured were compliant with the Buy American Act. NAVSEA-HQ contracting personnel complied with the Buy American Act. NAWCAD-Lakehurst personnel took some corrective actions during the audit by completing Buy American training and amending standard operating procedures and internal processes to improve compliance with the Buy American Act.

Management Comments on the Finding and Our Response

Although not required to comment, the Commander, Naval Air Systems Command, provided the following comments on the finding.

Naval Air Systems Command Comments

The Commander, Naval Air Systems Command, partially agreed, stating that he disagreed with “NAWCAD-Lakehurst...contracting personnel did not ensure items purchased...met domestic-content requirements because they were unaware of the Buy American Act or purchased commercial items using commercial-off-the-shelf procedures” for contracts N68335-14-P-0085 and N68335-14-P-0328. The Commander stated that NAWCAD-Lakehurst personnel verified only U.S. products were delivered for both purchase orders. In addition, NAWCAD-Lakehurst would not modify the purchase orders to include the appropriate Buy American Act clause because deliveries were complete.

¹⁸ DoD annual appropriations acts for fiscal years 2012, 2013 and 2015 contain an identical provision.

The Commander further stated that Lakehurst implemented mandatory training on the Buy American Act, and, as of June 26, 2015, 93 percent of the department had completed the training. NAWCAD-Lakehurst now requires contract specialists to affirmatively certify consideration of the Buy American Act, Trade Agreements, and Balance of Payments when formulating the acquisition strategy.

Our Response

We acknowledge the receipt of emails that show NAWCAD-Lakehurst verified only products in the United States were provided under the two contracts, and mandatory training on the Buy American Act was implemented. However, NAWCAD-Lakehurst provided this information after the agreed upon deadline of April 17, 2015, during the exit conference held with Navy management on April 9, 2015. The corrective actions implemented at NAWCAD-Lakehurst should improve future compliance with the Buy American Act.

Recommendations, Management Comments, and Our Response

Recommendation B.1

We recommend the Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst, determine whether the items purchased on contracts N68335-14-P-0320; N68335-13-P-0225; N68335-14-P-0117; N68335-14-P-0428; N68335-14-P-0266; N68335-14-P-0085; N68335-14-P-0002; and N68335-13P-0328; complied with the domestic-content required by the Buy American Act, and take corrective action as appropriate.

Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst Comments

The Commander, Naval Air Systems Command, responding for the Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst, agreed, stating that NAWCAD-Lakehurst verified that only U.S. products were delivered under the purchase orders N68335-14-P-0085; N68335-14-P-0117; N68335-14-P-0002; N68335-14-P-0428; N68335-14-P-0225; and N68335-13-P-0328. Additionally, the Commander stated that for contract N68335-14-P-0320, one tool kit contained a Chinese origin component and the contractor was currently in the process of replacing that part with a U.S. origin item. For contract N68335-14-P-0266, the contractor confirmed that more than 51 percent of components within the tool kit were U.S. manufactured and in compliance with the Buy American Act. Finally, the Commander stated that Naval Air Warfare Center, Aircraft Division-Lakehurst, verified no Antideficiency Act violation occurred because products complied with the Buy American Act.

Our Response

Comments from the Commander addressed all specifics of the recommendation, and no further comments are required.

Recommendation B.2

We recommend the Chief of Contracting, Naval Supply Systems Command Fleet Logistics Center–Norfolk determine whether the items purchased in contracts N00189-14-P-1036, N00189-13-P-0760, and N00189-14-P-0990, complied with the domestic-content required by the Buy American Act and take corrective action as appropriate.

Chief of Contracting, Naval Supply Systems Command Fleet Logistics Center-Norfolk Comments

The Commander, Naval Supply Systems Command, responding for the Chief of Contracting, Naval Supply Systems Command Fleet Logistics Center–Norfolk, agreed, stating the contracting officer determined the items purchased for all three contracts complied with the requirements of the Buy American Act. The Commander further stated that the black oxford shoes procured under contracts N00189-13-P-0760 and N00189-14-P-1036 were commercial-off-the-shelf items and were made in the United States according to the Bates on-line catalogue.

The Commander stated that the contracting officer confirmed with the contractor that the armor, and armor chest and back plate, side armor plates, and high cut helmets procured under contract N00189-14-P-0990 were made in the United States. The contracting officer further noted that the solicitation included Defense Federal Acquisition Regulation Supplement clauses 252.225-7000 and 252.225-7001. The Commander stated that based on the contractor's failure to specifically certify otherwise, it was reasonable to conclude that the items provided complied with the Buy American Act. In addition, the Naval Supply Systems Command Fleet Logistics Center-Norfolk Contracting Department will conduct Buy American Act training for personnel by July 30, 2015.

Our Response

Comments from the Commander addressed all specifics of the recommendation, and no further comments are required.

Recommendation B.3

We recommend Chief of Contracting, Marine Corps Systems Command–Quantico modify contract M67854-14-P-1016 to include the Buy American Act contract clause and ensure delivered items complied with the domestic-content required by the Buy American Act and take corrective action as appropriate.

Chief of Contracting, Marine Corps Systems Command–Quantico

The Deputy Commander, Resource Management, Marine Corps Systems Command Quantico, Responding for the Chief of Contracting, Marine Corps Systems Command–Quantico agreed, stating that contract M67854-14-P-1016 was modified to add Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.225-7001, “Buy American and Balance of Payments Program” on June 26, 2015. The Deputy Commander further stated that the contracting officer confirmed all components and end items procured under the contract were manufactured and sourced within the United States.

Our Response

Comments from the Deputy Commander addressed all specifics of the recommendation, and no further comments are required.

Appendix A

Scope and Methodology

We conducted this performance audit from September 2014 through June 2015 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 Navy and Marine Corps with Federal Supply Group (FSG) codes of 51, 52, 83, 84, and 89 during FY 2013 and FY 2014 to determine whether Naval 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 second 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 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, 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:

- 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”
- Federal Acquisition Regulation part 10, “Market Research”
- Federal Acquisition Regulation part 25, “Foreign Acquisitions”

- Federal Acquisition Regulation 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 and policy guidance related to the audit objective, we interviewed contracting and oversight officials from:

- Marine Corps Systems Command, Quantico, Virginia;
- Naval Air Warfare Center Aircraft Division, Lakehurst, New Jersey;
- Naval Supply Systems Command Fleet Logistics Center, Norfolk, Virginia; and
- Naval Sea Systems Command, Washington, D.C.

We interviewed Navy and Marine Corps personnel to discuss procedures that were completed when they awarded Berry Amendment and Buy American Act contracts. We obtained copies of contracts issued by Navy and Marine Corps personnel that included, such as:

- purchase requests;
- market research;
- synopsis and solicitation information;
- award memorandums;
- basic contracts;
- representations and certifications reports;
- price reasonableness determinations; and
- modifications to issued contracts.

We reviewed a nonstatistical sample of delivered items on our sample contracts at Naval Air Warfare Center Aircraft Division–Lakehurst and verified that Navy personnel had ordered and received noncompliant items.

Universe and Sample Information

We used the FPDS-NG to identify contracts issued by Navy and Marine Corps personnel. We limited the queries to actions covered by the Berry Amendment and Buy American Act issued on contracts that were awarded during FY 2013 and FY 2014 and coded with a “product or service code” that began with 51, 52, 83, 84, or 89 in FPDS-NG.

We selected four Naval sites to visit:

- Marine Corps Systems Command-Quantico;
- Naval Air Warfare Center Aircraft Division-Lakehurst;
- Naval Supply Systems Command Fleet Logistics Center-Norfolk; and
- Naval Sea Systems Command-Headquarters.

We selected the sites because they had the 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 four 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 covered by the Buy American Act in which the intended use was outside the United States. In addition, we selected 23 Berry Amendment contracts and 32 Buy American Act contracts with an obligated value of about \$73 million and \$1.5 million respectively¹⁹. (See Table 2. Contracts Reviewed.)

Our nonstatistical sample was limited to specific contracts, and our results should not be projected across other contracts issued by Marine Corps Systems Command-Quantico; Naval Air Warfare Center Aircraft Division-Lakehurst; Naval Supply Systems Command Fleet Logistics Center-Norfolk; Naval Sea Systems Command-Headquarters or other Navy-issued contracts.

Use of Computer-Processed Data

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

Use of Technical Assistance

We held discussions with personnel from the Department of Defense Office of Inspector General's Quantitative Methods and Analysis Division to develop the nonstatistical plan.

¹⁹ Federal Procurement Data System - Next Generation obligated values from October 1, 2012, through September 30, 2014.

Prior Coverage

During the last 5 years, the Government Accountability Office (GAO) and DoD Inspector General issued three 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 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

DoD Office of the Inspector General

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

Appendix B

Berry Amendment Contracts Reviewed

	Contract Number	Obligated Contract Value	Item Description	Implementing Clause	Potential Antideficiency	Corrective Action Taken
Marine Corps Systems Command–Quantico						
1	M67854-14-D-1010	\$13,225,559	Enhanced Fire Resistant Combat Ensemble	Yes	No	None Required
2	M67854-13-D-5034	12,669,546	Artic shelter system	Yes	No	None Required
3	M67854-14-D-1028	10,064,565	Cold weather gloves	Yes	No	None Required
4	M67854-14-D-1052	5,999,986	Rugged all terrain boot	Yes	No	None Required
5	M67854-13-D-1006	3,109,032	Medical assault pack and sustainment bag	Yes	No	None Required
6	M67854-13-C-1076	281,982	Inclement Weather Combat Shirt	Yes	No	None Required
Naval Air Warfare Center Aircraft Division–Lakehurst						
7	N68335-14-C-0188	6,857,381	Aircraft parts, hand and measuring tools	No	No ¹	The contracting officer added the Berry Amendment clause to the contract and all items that were not produced in the U.S. were removed.
8	N68335-13-C-0397	3,018,091	Deployment kits	Yes	No	None Required
9	N68335-13-C-0228 ²	741,427	Hand and measuring tools	No	No	The contracting officer added the Berry Amendment clause to the contract and confirmed all items were produced in the U.S.
10	N68335-14-P-0482	674,774	Hand and measuring tools	No	No ¹	The contracting officer added the Berry Amendment clause to the contract and all items that were not produced in the U.S. were removed.

Berry Amendment Contracts Reviewed (cont'd)

	Contract Number	Obligated Contract Value	Item Description	Implementing Clause	Potential Antideficiency	Corrective Action Taken
Naval Air Warfare Center Aircraft Division–Lakehurst (continued)						
11	N68335-14-C-0136	629,059	Hand and measuring tools	No	No ²	The contracting officer added the Berry Amendment clause to the contract and confirmed all items were produced in the U.S.
12	N68335-13-C-0164	544,954	Hand and measuring tools	No	Yes ²	No action taken
13	N68335-14-C-0135 ²	323,478	Hand and measuring tools	No	No	The contracting officer added the Berry Amendment clause to the contract and confirmed all items were produced in the U.S.
14	N68335-14-C-0089	299,360	Toolboxes	No	No ¹	The contracting officer added the Berry Amendment clause to the contract and all items that were not produced in the U.S. were removed.
15	N68335-13-C-0186	212,825	Tool kit	No	Yes	The contracting officer added the Berry Amendment clause to the contract but items that were not produced in the U.S. may have been delivered.
16	N68335-14-C-0390	174,574	Hand and measuring tools	No	No ³	The contracting officer added the Berry Amendment clause to the contract and all items that were not produced in the U.S. were replaced.

Berry Amendment Contracts Reviewed (cont'd)

	Contract Number	Obligated Contract Value	Item Description	Implementing Clause	Potential Antideficiency	Corrective Action Taken
Naval Supply Systems Command Fleet Logistics Center–Norfolk						
17	N00189-13-D-0001	6,381,556	Supplies through SERVIMART Retail Store	Yes	Yes ³	The contracting officer updated the contract administration plan to include periodic reviews of Berry Amendment compliance and issued a letter to the contractor emphasizing Berry Amendment compliance.
18	N00189-13-D-Z047	941,473	Tents	Yes	No	None Required
19	N00189-14-D-0028	81,527	Parade Dress Coat and Trouser	Yes	No	None Required
20	N00189-13-P-1264	184,101	Body Armor	Yes	Yes ³	No action taken
Naval Sea Systems Command–Washington, D.C.						
21	N00024-13-D-6307	3,382,051	Body Armor	Yes	No	None Required
22	N00024-13-D-6308	1,687,314	Body Armor	Yes	No	None Required
23	N00024-13-D-6309	1,519,991	Body Armor	Yes	No	None Required
	Total	\$73,004,607				

¹ Contracting personnel ordered foreign sourced items.

² Contracting officer did not include the Berry Amendment clause, goods delivered may not meet domestic source requirement.

³ The auditors physically identified noncompliant items while visiting the installation.

Appendix C

Buy American Act Contracts Reviewed

	Contract Number	Contract Value	Item Description	Implementing Clause	Domestic Content Assurance
Marine Corps Systems Command–Quantico					
1	M67854-14-P-1016	\$12,150	Insignia-Badges	No	N/A
2	M67854-14-P-1042	15,000	Female Enlisted Dress Blue Coats	Yes	Yes
3	M67854-14-P-1045	9,900	Female Officer Dress Blue Coats	Yes	Yes
4	M67854-13-P-1078	15,004	Boots	Yes	N/A
5	M67854-13-P-1079	15,480	Boots	Yes	N/A
Naval Air Warfare Center Aircraft Division–Lakehurst					
6	N68335-14-P-0497	139,528	Mobile Tool Cabinet	Yes	N/A
7	N68335-13-P-0351	95,335	Tools	Yes*	N/A
8	N68335-14-P-0320	85,756	Tools	No	N/A
9	N68335-13-P-0225	83,260	Mat Mags	No	N/A
10	N68335-14-P-0117	57,620	Tube Bender Kits	No	N/A
11	N68335-14-P-0428	52,351	Sine Plate and Block	No	N/A
12	N68335-14-P-0266	51,001	Tool Kit	No	N/A
13	N68335-14-P-0085	41,568	Coated/Uncoated Webbing	No	No
14	N68335-14-P-0286	39,320	Equipment and Tools	Yes*	N/A
15	N68335-14-P-0002	5,015	Spring Water	No	N/A
16	N68335-13-P-0328	23,880	Parts and Hand Tools	Yes*	No

* Included the incorrect Buy American Act Federal Acquisition Regulation clause at 52.225-1.

Buy American Act Contracts Reviewed (cont'd)

	Contract Number	Contract Value	Item Description	Implementing Clause	Domestic Content Assurance
Naval Supply Systems Command Fleet Logistics Center-Norfolk					
17	N00189-14-P-1699	\$29,925	Badges	Yes	Yes
18	N00189-14-P-1053	29,519	Name Plates	Yes	Yes
19	N00189-14-P-0661	36,665	Badges	Yes	Yes
20	N00189-14-P-0702	26,435	Badges	Yes	Yes
21	N00189-14-P-1724	22,141	Tool Kit	Yes	N/A
22	N00189-14-P-1036	71,299	High Gloss Shoes	No	N/A
23	N00189-14-P-1041	63,996	Repair Tool Kit	Yes	N/A
24	N00189-13-P-0307	114,313	Mess Hall Uniforms	Yes	N/A
25	N00189-13-P-0493	64,417	Rain Jackets	Yes	N/A
26	N00189-13-P-0760	54,325	High Gloss Shoes	No	N/A
27	N00189-14-P-0912	55,275	Gloves and Other Items	Yes	N/A
28	N00189-14-P-1429	24,449	Flags	Yes	N/A
29	N00189-13-P-0966	22,880	Top Coats, USAF Honor Guard	Yes	N/A
30	N00189-14-P-1172	25,280	Name Tags	Yes	Yes
31	N00189-14-P-0990	24,029	Armor Chest and Back Plates	Yes	No
Naval Sea Systems Command—Washington, D.C.					
32	N00024-14-D-6306	43,591	Vest Plates	Yes	N/A
	Total	\$1,445,080			

Management Comments

Department of the Navy Comments



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

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Navy Response to Department of Defense Inspector Draft Report
dated June 17, 2015 (Project No. D2014-D000CG-0228.000) - Naval
Personnel Can Improve Compliance with the Berry Amendment and the Buy
American Act

Navy responses to the findings and recommendations in the subject report are
consolidated in the attached.

My point of contact for this action is [REDACTED]. She can be reached at

[REDACTED]. [REDACTED].

A handwritten signature in black ink, reading "John F. Couture".

John F. Couture
CAPT, SC, USN
Executive Director (Acting)
DASN (AP)

Attachment:
As stated

Department of the Navy Comments (cont'd)

Navy Response to Department of Defense Inspector General Draft Report dated June 17, 2015 (Project No. D2014-D000CG-0228.000) - Naval Personnel Can Improve Compliance with the Berry Amendment and the Buy American Act

Consolidated Navy Responses to Findings and Recommendations

Department of the Navy Comments (cont'd)



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(FINANCIAL MANAGEMENT AND COMPTROLLER)
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

JUL -2 2015

**MEMORANDUM FOR COMPTROLLER, NAVAL SUPPLY SYSTEMS COMMAND
COMPTROLLER, NAVAL AIR SYSTEMS COMMAND**

**SUBJ: ISSUANCE OF DoDIG DRAFT REPORT "NAVAL PERSONNEL CAN
IMPROVE COMPLIANCE WITH THE BERRY AMENDMENT AND THE
BUY AMERICAN ACT"**

- Ref:** (a) Draft Department of Defense Inspector General (DoDIG) Report, Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act, Project No. D2014-D000CG-0028.000 of 17 June 2015
(b) Department of Defense (DoD) Financial Management Regulation (DoD 7000.14-R) Vol. 14

By reference (a), the Department of Defense Office of Inspector General issued a draft audit report which identified four (4) potential Anti-deficiency Act (ADA) violations that may have occurred because Naval Supply Systems Command (NAVSUP) Fleet Logistics Center (FLC) Norfolk and Naval Air Warfare Center Division (NAWCAD) Lakehurst Office contracting personnel did not comply with the Berry Amendment, section 2533b of title 10, United States Code (U.S.C.), because they were unfamiliar with its requirements. A violation of the Berry Amendment may result in an ADA violation because the Berry Amendment is a statutory prohibition on the use of DoD funds.

Berry Amendment restrictions are implemented by DoD Federal Acquisition Regulation Supplement (DFARS) Part 252. The solicitations provisions and contract clauses cited in Part 252 of the DFARS set forth the requirement to buy certain articles from American sources established under section 2533a of title 10, U.S.C. for DoD solicitations (Invitations for Bids or Requests for Proposals) and DoD contracts. Unless a specific exception in law applies, the products, components, or materials listed in the DFARS table must be grown, reprocessed, reused, or produced in the United States if they are purchased with funds made available to the DoD.

The DoDIG found for contracts N68355-13-C-0164 and N68355-C-0186, NAWCAD-Lakehurst contracting personnel could not determine whether sources complied with domestic content requirements, contained Berry Amendment contracts, or confirm that non-U.S.-produced items may have been received. The DoDIG also found that for contract N00189-13-P-1264, NAVSUP FLC Norfolk contracting personnel substituted non-United States (U.S.)-sourced microfibers for natural fibers in armored

Department of the Navy Comments (cont'd)

SUBJ: ISSUANCE OF DoDIG DRAFT REPORT "NAVAL PERSONNEL CAN IMPROVE COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT"

vests. The DoDIG found this substitution resulted in a violation of section 2533b of title 10, U.S.C.

You are requested to correct the contracts and provide evidence that the Berry Amendment clauses were added and provide certifications from the vendor and Defense Contract Management Agency Quality Assurance Representatives that all goods delivered complied with the Berry Amendment. To the extent that these actions are not attainable, you must initiate a preliminary ADA review for the findings identified in reference (a) in accordance with the procedures outlined in reference (b).

The Office of Budget, Budget Policy and Procedures Division (FMB5) should be notified no later than 17 July 2015 as to the status of the above tasking. Questions should be addressed to [REDACTED], FMB-52, at [REDACTED].



Gaye L. Evans
Director
Budget Policy and Procedures Division
Office of Budget

Department of the Navy Comments (cont'd)



DEPARTMENT OF THE NAVY
NAVAL AIR SYSTEMS COMMAND
RADM WILLIAM A. MOFFETT BUILDING
47123 BUSE ROAD, BLDG 2272
PATUXENT RIVER, MARYLAND, 20670-1547

7510
Ser AIR-00G4A/084
16 Jul 15

From: Commander, Naval Air Systems Command
To: Assistant Secretary of the Navy (Financial Management and Comptroller)
Subj: DODIG DRAFT AUDIT REPORT, "NAVAL PERSONNEL CAN IMPROVE COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT" (DRAFT REPORT D2014-D000CG-0228.000)
Ref: (a) DoDIG Draft Audit Report (D2014-D000CG-0228.000)
Encl: (1) Naval Air Systems Command Response to Subject Draft Report
1. Per reference (a), enclosure (1) provides NAVAIR response to subject draft report.
2. Please refer questions to [REDACTED] at [REDACTED] or [REDACTED] at [REDACTED].

A handwritten signature in black ink, appearing to read "B. A. Shevchuk".

B. A. SHEVCHUK
Inspector General

Copy to:
AIR-2.0

Department of the Navy Comments (cont'd)

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT ON "NAVAL PERSONNEL CAN IMPROVE
COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT",
D2014-D000CG-0228.000, DATED 17 JUNE 2015

Finding A: Naval Contracting Personnel Can Improve Compliance with the Berry Amendment

Naval contracting personnel did not consistently comply with the Berry Amendment for 11 of the 23 contracts reviewed. MCSC-Quantico and NAVSEA-HQ personnel complied with the Berry Amendment for all nine contracts reviewed, with an obligated value of \$52 million. However, NAWCAD-Lakehurst and NAVSUP FLC-Norfolk personnel did not comply with the Berry Amendment for 11 of the remaining 14 contracts, with an obligated value of \$21 million. (See report page 5 for complete Finding.)

NAVAIR Response: Partially concur. The area of non-concurrence is "...NAWCAD-Lakehurst contracting personnel ordered and may have received items on two contracts that were not produced in the U.S. and committed two potential violations of the Antideficiency Act." The Naval Air Warfare Center, Aircraft Division – Lakehurst has verified that only products originating in the United States have been provided under N68335-13-C-0164 (provided via email to the DoDIG Program Director, Contract Management and Payments from the NAWCAD-Lakehurst Audit Liaison on 28 April 2015) and N68335-13-C-0186 (provided via email to the DoDIG auditor by the NAWCAD-Lakehurst Procuring Contracting Officer (PCO) on 21 April 2015).

As a corrective action to the Finding that the Berry Amendment was not consistently applied, NAWCAD – Lakehurst has implemented mandatory training on Berry Amendment (CLC 125) and as of 26 June 2015, 93% of the department has completed the training. An additional internal review has also been implemented in the pre-procurement planning stage, where specialists must affirmatively certify consideration of the Berry Amendment in formulating the acquisition strategy and indicate whether or not it is applicable to the procurement. This internal Standard Operating Procedure was provided via email to the DoDIG Program Director, Contract Management and Payments by the NAWCAD-Lakehurst audit Liaison on 14 April 2015.

Recommendation A.1: Recommend Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst modify contract N68335-13-0164 to include the Berry Amendment contract clause and identify whether items in violation of the Berry Amendment were purchased on contracts N68335-13-C-0164 and N68335-13-C-0186, and take corrective actions as appropriate.

NAVAIR Response: Partially concur. Contract N68335-13-C-0164 has already been closed by DCMA through the MOCAS system as of 3 December 2014 therefore, a contract modification cannot be issued. However, it has been verified that only products originating in the United States have been provided under N68335-13-C-0164 (provided via email to the DoDIG Program Director, Contract Management and Payments by the NAWCAD-Lakehurst audit liaison on 28 April 2015) and N68335-13-C-0186 (provided via email to the DoDIG auditor by the NAWCAD-Lakehurst PCO on 21 April 2015).

Department of the Navy Comments (cont'd)

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT ON "NAVAL PERSONNEL CAN IMPROVE
COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT",
D2014-D000CG-0228.000, DATED 17 JUNE 2015

Recommendation A.2: Recommend that the Assistant Secretary of the Navy (Financial Management and Comptroller)

- 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 as a result of any items purchased on contracts N00189-13-D-0001, N00189-13-P-1264, N68335-13-C-0164 and N68335-13-C-0186 in violation of the Berry Amendment.
- b. Complete the preliminary review as required by Regulations and provide the results to the DoD Office of Inspector General. If an Antideficiency Act violation has occurred, determine whether officials are responsible and recommend corrective actions.

NAVAIR Response: It has been verified that only products originating in the United States have been provided under N68335-13-C-0164 (provided via email to the DoDIG Program Manager, Contract Management and Payments by the NAWCAD-Lakehurst audit liaison on 28 April 2015) and N68335-13-C-0186 (provided via email to the DoDIG auditor by the NAWCAD-Lakehurst PCO on 21 April 2015) and therefore NAVAIR does not believe any further review is warranted. We believe that no Antideficiency Act violation occurred because no appropriated funds were used to procure non-US made product since we verified that the products provided under these contracts were all US made.

Finding B: Naval Personnel Did Not Ensure Compliance with the Buy American Act

Naval contracting personnel complied with the Buy American Act for 20 of the 32 contracts reviewed with an obligated value of about \$1.5 million. However, for 12 of the 32 contracts, NAWCAD-Lakehurst, NAVSUP FLC-Norfolk, and MCSC-Quantico contracting personnel omitted the required Buy American Act contract clauses and did not ensure items purchased on three contracts met domestic-content requirements. (See report page 14 for complete Finding.)

NAVAIR Response: Partially concur. The area of non-concurrence is that "NAWCAD-Lakehurst...contracting personnel did not ensure items purchased... met domestic-content requirements because they were unaware of the Buy American Act or purchased commercial items using commercial off-the-shelf procedures". Specifically, N68335-14-P-0085 and N68335-13-P-0328 were cited. NAWCAD-Lakehurst has verified that only US products were delivered for the two cited purchase orders.

NAWCAD Lakehurst is not modifying the purchase orders to include the appropriate Buy American Act clause because deliveries are complete and we confirmed that all products conformed to the Buy American Act in that at least 51% of the components were made in the US.

Department of the Navy Comments (cont'd)

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT ON "NAVAL PERSONNEL CAN IMPROVE
COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT",
D2014-D000CG-0228.000, DATED 17 JUNE 2015

As a corrective action to the finding that the Buy American Act was not consistently applied, NAWCAD – Lakehurst has implemented mandatory training on Buy American (CLC 027, optionally FAC 016) and, as of 26 June 2015, 93% of the department has completed the training. An additional internal review has also been implemented in the pre-procurement planning stage, where specialists must affirmatively certify consideration of the Buy American Act, Trade Agreements, and Balance of Payments in formulating the acquisition strategy and indicate which is applicable to the procurement. This internal Standard Operating Procedure was provided via email to the DoDIG Program Manager, Contract Management and Payments by the NAWCAD-Lakehurst Audit Liaison on 14 April 2015.

Recommendation B.1: Recommend Chief of Contracting, Naval Air Warfare Center, Aircraft Division-Lakehurst determine whether the items purchased on contracts N68335-14-P-0320, N68335-13-P-0225, N68335-14-P-0117, N68335-14-P-0428, N68335-14-P-0266, N68335-14-P-0085, N68335-14-P-0002, and N68335-13P-0328, complied with the domestic-content required by the Buy American Act and take corrective action as appropriate.

NAVAIR Response: Concur. The Naval Air Warfare Center, Aircraft Division – Lakehurst has verified that only US products have been delivered under the following purchase orders: N68335-14-P-0085; N68335-14-P-0117; N68335-14-P-0002; N68335-14-P-0428; N68335-13-P-0225 and N68335-13-P-0328.

Specifically, N68335-14-P-0320 was a purchase order placed with ISDC Holdings (Snap-On Tools) for \$85,755.76. The order contained 35 Contract Line Items (CLINs), each one for a specific configuration Tool Box for the E-2D Tool Control Program. The purchase order was competed under the reverse auction tool, FEDBID, utilizing a brand name justification. All of the CLIN Tool Boxes were assembled in the United States for delivery. We examined the components of the tool kits based on the received quote, and determined that 34 of the 35 kits contained US domestic/Qualifying Country components well in excess of 51%. One Tool Box, comprised of three components at a total value of \$119.93, was found to contain a Chinese origin component totaling \$83.92. ISDC Holdings is now in the process of replacing that particular part with a US origin item (Hand Held Lubricating Gun) to ensure Buy American compliance for this purchase order.

Similarly, N68335-14-P-0266 was a purchase order placed with Jensen Equipment Company, for a single line item – General Tool Kit, to be used in the Mobile Tool Room for the Voyage Repair Team. Again, the tool kit was advertised and competed under the reverse auction tool, FEDBID, for a specific configuration set of tools. The CLIN tool kit was assembled in the United States for delivery. Notwithstanding that the kit was assembled in the US, the company was asked to confirm compliance with the Buy American Act. Jeanne Gossen of Jensen Equipment Co. provided an email confirmation that more than 51% of the components within the tool kit are of US manufacture and therefore, the tool kit is in compliance with the Buy American Act.

Based on the above, NAWCAD-Lakehurst believes that no Antideficiency Act violation occurred because we verified that the products provided under these contracts were in

Department of the Navy Comments (cont'd)

NAVAL AIR SYSTEMS COMMAND RESPONSE TO
DODIG DRAFT AUDIT REPORT ON "NAVAL PERSONNEL CAN IMPROVE
COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT",
D2014-D000CG-0228.000, DATED 17 JUNE 2015

compliance with the Buy American Act. In the case of the tool kit with the Chinese component, as that part is being exchanged for a US made part, there is no Antideficiency Act violation because, as corrected, appropriated funds were used only for products in compliance with the Buy American Act.

General Comments: None.

Classification Review: The report appears to be appropriately marked.

Department of the Navy Comments (cont'd)



DEPARTMENT OF THE NAVY

NAVAL SUPPLY SYSTEMS COMMAND

5450 CARLISLE PIKE

PO BOX 2050

MECHANICSBURG PA 17055-0791

IN REPLY REFER TO

7510

Ser NOIG/037

JUL 09 2015

From: Commander, Naval Supply Systems Command
To: Assistant Secretary of the Navy (Financial Management and Comptroller)

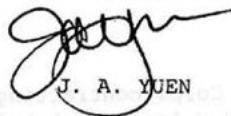
Subj: DODIG DRAFT AUDIT REPORT, "NAVAL PERSONNEL CAN IMPROVE COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT" (D2014-0228)

Ref: (a) DoDIG Draft Audit Report (D2014-0228)

Encl: (1) NAVSUP comments to DoDIG Draft Audit Report, "Naval Personnel Can Improve Compliance With the Berry Amendment and the Buy American Act" (D2014-0228)

1. Per reference (a), enclosure (1) provides our comments on Recommendation B.2.

2. For any questions, please contact my Chief of Staff, [REDACTED], at [REDACTED], DSN 430, or e-mail [REDACTED].


J. A. YUEN

Copy to:
NAVINGEN

Department of the Navy Comments (cont'd)

NAVSUP COMMENTS TO DODIG DRAFT AUDIT REPORT, "NAVAL PERSONNEL CAN IMPROVE COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT" (Project No. D2014-D000CG-0228.000)

DODIG AUDIT SUMMARY OF FINDINGS:

Berry Amendment:

Naval contracting personnel did not consistently comply with the Berry Amendment for 11 of the 23 contracts reviewed. Contracting personnel did not assess whether suppliers could provide U.S.-produced items and omitted the Berry Amendment contract clause because they were not familiar with the Berry Amendment. Navy personnel allowed a contractor operating a logistics support program to sell non-U.S. made items because the contracting officer did not ensure the contractor was stocking items compliant with the Berry Amendment. Naval Sea Systems Command and Marine Corps Systems Command personnel complied with the Berry Amendment. As a result, Naval Air Warfare Center Aircraft Division- Lakehurst and Naval Supply Systems Command Fleet Logistics Center-Norfolk contracting personnel committed four potential Antideficiency Act (ADA) violations when they ordered and received items on two contracts and may have received noncompliant items on two additional contracts that were not produced in the U.S. or did not meet domestic-content requirements.

Buy American Act:

Navy and Marine Corps contracting personnel did not ensure compliance with the Buy American Act for 12 of 32 contracts reviewed. Contracting personnel omitted required contract clauses or did not ensure items met domestic-content requirements, or both, because personnel were unfamiliar with the Buy American Act, relied on an inaccurate electronic clause matrix tool, made an administrative error, or treated a noncommercial item as a commercial-off-the-shelf item. As a result, suppliers may have provided non-U.S. made items, and Naval contracting personnel could not demonstrate that purchased items complied with the domestic-content requirements. Naval Sea Systems Command-Headquarters, Naval Supply Systems Command Fleet Logistics Center-Norfolk, and Marine Corps Systems Command contracting personnel generally complied with the Buy American Act.

Enclosure (1)

Department of the Navy Comments (cont'd)

Recommendation B.2: We recommend Chief of Contracting, Naval Supply Systems Command Fleet Logistics Center-Norfolk determine whether the items purchased in contracts N00189-14-P-1036, N00189-13-P-0760, and N00189-14-P-0990, complied with the domestic-content required by the Buy American Act and take corrective action as appropriate.

NAVSUP Comments: Concur. The Contracting Officer has determined that the items purchased complied with the requirements of the Buy American Act. Contracts N00189-13-P-0760 and N00189-14-P-1036 were for various sizes of Bates brand high gloss black oxford shoes models #E00941 and #E00942. According to the Bates on-line catalogue for these items, these shoes, which are Commercial-Off-The-Shelf (COTS) items, are made in the United States. Thus, the acquisition of these shoes complied with the Buy American Act.

Contract N00189-14-P-0990 was for armor chest and back plate, side armor plates and high cut helmets in various sizes. The Contracting Officer has confirmed with the contractor, Atlantic Diving Supply, Inc., that the items provided are made in the United States. The Contracting Officer further notes the solicitation included DFARS clauses 252.225-7000 and 252.225.7001 and a review of the contractor's quote reveals that the contractor did not indicate any qualifying country end products, or other foreign end products, including 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 the clause's definition of "domestic end product".

As such and based on its failure to specifically certify otherwise, it is reasonable to conclude that the items provided comply with the Buy American Act.

The Contracting Department will conduct Buy American Act training for its personnel by 30 July 2015.

Enclosure (1)

Department of the Navy Comments (cont'd)



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
7500
DMCS-A
7 Jul 15

From: Head, Audit Coordination, Office of the Director,
Marine Corps Staff

To: Program Director, Contract Management and Payments,
Office of the Inspector General, U.S. Department
of Defense

Subj: U.S. MARINE CORPS RESPONSE TO DODIG DRAFT AUDIT REPORT
PROJECT NO. D2014-D000CG-0228.000, NAVAL PERSONNEL CAN
IMPROVE COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY
AMERICAN ACT, JUNE 17, 2015

Ref: (a) DoD Instruction 7650.03
(b) DoDIG Memo of June 17, 2015

Encl: (1) Commander, Marine Corps Systems Command responses

1. Official responses required by the references are provided
at the enclosure.
2. Based on corrective actions completed that implemented
recommendation no. B.3., the Marine Corps requests DODIG close
the recommendation.
3. For questions regarding the U.S. Marine Corps response to
the DODIG draft audit report, please contact me at
[REDACTED] or phone [REDACTED], [REDACTED], or
[REDACTED]


C. K. DOVE

Copy to:
NAVINGEN (N11)
DC, I&L (LB)
CMDR, MCSC

Department of the Navy Comments (cont'd)



UNITED STATES MARINE CORPS
MARINE CORPS SYSTEMS COMMAND
2200 LESTER ST
QUANTICO, VIRGINIA 22134-6050

IN REPLY REFER TO
7501.2
DCRM
JUL 02, 2015

From: Commander
To: Director, Marine Corps Staff

Subj: COMMENTS REQUESTED TO THE DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL DRAFT REPORT NAVAL PERSONNEL CAN IMPROVE COMPLIANCE WITH THE BERRY AMENDMENT AND THE BUY AMERICAN ACT PROJECT D2014 D000CG 0228

Ref: Draft Report D2014-D000CG-0228,000

Encl: United States Marine Corps Comments to the DoD, OIG Recommendations

1. Marine Corps Systems Command has reviewed the subject draft report and concurs with recommendation B.3.
2. In accordance with the enclosure, recommended action was completed on 26 June 2015.
3. The point of contact for this matter is [REDACTED], Marine Corps Systems Command Audit Liaison, at [REDACTED] or email [REDACTED].

Michelle Cresswell

MICHELLE CRESSWELL
Deputy Commander
Resource Management

Copy to:
AC CONTRACTS

Department of the Navy Comments (cont'd)

DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL (DOD, OIG)
DRAFT REPORT DATED 17 JUN 2015
PROJECT # D2014-D000CG-0228.000

"NAVAL PERSONNEL CAN IMPROVE COMPLIANCE WITH THE BERRY
AMENDMENT AND THE BUY AMERICAN ACT"

UNITED STATES MARINE CORPS COMMENTS
TO THE DOD, OIG RECOMMENDATION

RECOMMENDATION B.3: DOD, OIG recommends Chief of Contracting, Marine Corps Systems Command–Quantico modify contract M67854-14-P-1016 to include the Buy American Act contract clause and ensure delivered items comply with the domestic-content required by the Buy American Act and take corrective action as appropriate.

USMC RESPONSE:

The Marine Corps Systems Command concurs with this recommendation. Contract No. M67854-14-P-1016 was modified to incorporate Defense Federal Acquisition Regulation Supplement (DFARS) Clause 252.225-7001, "Buy American and Balance of Payments Program" on 26 June 2015. The cognizant Contracting Officer has confirmed that all component and end items being procured under this contract are manufactured and sourced in their entirety within the United States.

ADDITIONAL TECHNICAL COMMENTS:

Enclosure

Acronyms and Abbreviations

COTS	Commercial-Off-The-Shelf
DFARS	Defense Federal Acquisition Regulation Supplement
FPDS-NG	Federal Procurement Data System—Next Generation
FSG	Federal Supply Group
MCSC-Quantico	Marine Corps Systems Command-Quantico
NAVSEA-HQ	Naval Sea Systems Command-Headquarters
NAVSUP-FLC	Naval Supply Systems Command—Fleet Logistics Center
NAWCAD	Naval Air Warfare Center Aircraft Division
SAM	System for Award Management
U.S.C.	United States Code



Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

The Whistleblower Protection Enhancement Act of 2012 requires the Inspector General to designate a Whistleblower Protection Ombudsman to educate agency employees about prohibitions on retaliation, and rights and remedies against retaliation for protected disclosures. The designated ombudsman is the DoD Hotline Director. For more information on your rights and remedies against retaliation, visit www.dodig.mil/programs/whistleblower.

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

Congressional Liaison

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Media Contact

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