DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330

Office Of The Assistant Secretary

CONTRACT POLICY MEMO 01-C-01

MEMORANDUM FOR ALMAJCOM-FOA-DRU (CONTRACTING) 3 MAY 2001

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

SUBJECT: Interim Revision of AFFARS 5325.7002

As directed by the attached memorandum from the Deputy Secretary of Defense (Atch 2), the Secretary of the Air Force shall make all non-availability determinations for Air Force acquisitions in accordance with DFARS 225.7002-2(a) (commonly referred to as "Berry Amendment" restrictions). Any such determination executed on or after 1 May 2001 that is not made by the Secretary is without effect. Accordingly, AFFARS 5325.7002 is revised to remove the authorization for HCAs to approve determinations for specialty metals. An interim change is attached (Atch 1).

We are developing implementing guidance for presenting alternatives and obtaining a requiring activity certification. In the interim, if you have any situation where you need to propose the execution of a non-availability determination under 225.7002-2(a), you may consult with Mr. J.P. McCusker, SAF/AQCP, DSN 425-7031 (e-mail: mccusker@pentagon.af.mil) about developing alternatives for your situation. This Contracting Policy Memorandum will remain in effect until incorporated into the AFFARS.

TIMOTHY A. BEYLAND
Associate Deputy Assistant
Secretary (Contracting)
Assistant Secretary (Acquisition)

Attachments:
1. Interim AFFARS Revision
2. DEPSECDEF Memo, 1 May, 2001

5325.7002 Restrictions on food, clothing, fabrics, specialty metals, and hand or measuring tools.

5325.7002-2 Exceptions.

(a) These determinations are referenced in DFARS Clauses 252.225-7012(b)(1), 252.225.7014(c)(1), and 252.225.7014 Alt I (c)(1). Only the Secretary of the Air Force, without delegation, may make determinations under this paragraph. The contracting officer must prepare a request for a determination and submit it through command channels to SAF/AQCK for processing. As a guide, use the format and information requirements for a non-availability determination in 5325.102-90 (adjusted to address the restrictions of 225.7002-1). Before a request for a determination can be submitted, the contracting officer must try to develop acquisition alternatives that meet the restrictions and do not require a determination under the Berry Amendment. SAF/AQC can assist in developing alternatives for a proposed determination. If such alternatives are not acceptable to meet the requirement, the reasons must be documented and certified by the requiring activity in writing.

THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1000

MAY 1 2001

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION, TECHNOLOGY AND LOGISTICS
SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: The Berry Amendment

The Berry Amendment (10 U.S.C. 2241, note) provides in part that, "No part of any appropriation or other funds available to the Department of Defense, except for purchases for amounts not greater than the simplified acquisition threshold covered by section 2304(g) of Title 10 United States Code, shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber of yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand measuring tools, not grown, reprocessed, reused or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations."

Effective immediately, your authority to make determinations in accordance with the Berry Amendment may not be redelegated. Any existing redelegations are hereby rescinded. Furthermore, prior to making any determination to waive the requirements of the Berry Amendment, you must present the requiring activity with alternatives that would not require a waiver under the Berry Amendment. Only after the requiring activity certifies, with specificity, in writing why such alternatives are unacceptable and you agree, may you make the necessary Berry Amendment determinations.

Paul Wolfowitz