DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office Of The Assistant Secretary

25 MAR 03

MEMORANDUM FOR ALMAJCOM/FOA/DRU (CONTRACTING)

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

SUBJECT: Domestic Source Restrictions Compliance

I want to stress the importance of continued emphasis on compliance with domestic source restrictions, and in particular the distinct requirements of the Berry Amendment (10 U.S.C. 2533a) and the Buy American Act (41 U.S.C. 10a-10d).

The Berry Amendment places stringent domestic source restrictions on designated items – 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; wool; any item of individual equipment; specialty metals; and hand or measuring tools. These restrictions are implemented at Defense Federal Acquisition Regulation Supplement 225.7002 and apply to acquisitions greater than the simplified acquisition threshold. In general, the items must be grown, reprocessed, reused, produced, or melted (specialty metals) in the United States. It is important to note that the restrictions of the Berry Amendment apply to both end products and components, and that only the Secretary of the Air Force can approve waiver requests. There has been ongoing Congressional interest in potential Berry Amendment violations, heightening the sensitivity within both the Air Force and contractor procurement communities on minimizing the potential for inadvertent violations. The attachment provides suggested actions that will assist you in this area.

The Buy American Act, implemented at Federal Acquisition Regulation 25.1, restricts the purchase of supplies that are not domestic end products when they are for use in the United States. It applies to acquisitions that exceed the micro-purchase threshold. For manufactured end products, the Buy American Act uses a two-part test to define a domestic end product: the article must be manufactured in the United States; and the cost of domestic components must exceed 50 percent of the cost of all the components.

We are currently developing a training module to assist you with the complexities and nuances associated with the implementation and corresponding exceptions to these areas. The estimated completion date for this training material is 31 March 2003. In the interim, please take any steps necessary to ensure that our contracting community is fully informed on this matter. My staff stands ready to assist you. Please contact Mr. Dave Powell, SAF/AQCP, (703) 588-7062, DSN 425-7062 should you require any assistance.

CHARLIE E. WILLIAMS, JR.
Deputy Assistant Secretary (Contracting)
Assistant Secretary (Acquisition)

SUGGESTED ACTIONS TO MINIMIZE BERRY AMENDMENT VIOLATIONS

- **Full Text Clause Inclusion**: The Berry Amendment is implemented primarily by DFARS clause 252.225-7012. DFARS clauses 252.225-7014 and 252.225-7015 are used to implement the Berry Amendment for specialty metals and hand or measuring tools respectively. There is no distinct contractor certification required. This fact, coupled with the statutory background of the clause and the frequent confusion with the Buy American Act, makes these clauses ideal candidates for full-text inclusion in the solicitation.

- **Pre-Proposal Conference**: When acquiring a Berry Amendment covered item, the domestic source restrictions required should be specifically identified to potential offerors at any pre-proposal conference. This not only will stress the requirements, it provides an open forum to address and correct any contractor misunderstandings (e.g., different than the Buy American Act) prior to proposal preparation.

- **Preaward Surveys**: The requirements of the Berry Amendment may require a vendor to oversee procurement practices at multiple lower-tier subcontractor levels, as well as to segregate material and/or inventory to ensure only complying products are delivered to the Government. This process may not be a standard industry practice, particularly when acquiring commercial items. Therefore, when acquiring an item subject to the restrictions of the Berry Amendment and a preaward survey is requested in accordance with FAR 9.106, buying activities should consider requesting the survey confirm the contractor's ability to trace the origin of materials incorporated into the end item being procured.

- **Negotiation Discussion Point**: When a negotiated procurement occurs for a Berry covered item, the restrictions should be a mandatory discussion point with the offeror. Offerors can be asked to provide written confirmation of their understanding of the requirements in their final proposal revision or other submitted documentation.

- **Federal Supply Schedules**: Because the restrictions of the Berry Amendment only apply to the DoD, items on Federal Supply Schedules (FSS) do not necessarily comply with the restrictions. DoD ordering activities are responsible for ensuring that any order placed against an FSS for a Berry covered item that exceeds the simplified acquisition threshold is in compliance. Vendor acknowledgement of their products compliance with the Berry Amendment should be added to the order file.

Attachment