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ACQUISITION, TECHNOLOGY AND LOGISTICS

September 21, 2006

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS COMMAND (ATTN: ACQUISITION EXECUTIVE)
ASSISTANT SECRETARY OF THE ARMY (ACQUISITION, LOGISTICS AND TECHNOLOGY)
ASSISTANT SECRETARY OF THE NAVY (RESEARCH, DEVELOPMENT AND ACQUISITION)
ASSISTANT SECRETARY OF THE AIR FORCE (ACQUISITION)
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Implementation Guidance for Pre-Award Berry Amendment Compliance

On August 18, 2006, I issued a memorandum which stressed the importance of addressing contractor compliance with the specialty metals restriction of the Berry Amendment (10 U.S.C. 2533a) prior to award of contracts in order to ensure compliance with the Berry Amendment.

This memorandum stated that when a contracting officer is aware of prior non-compliances by a contractor, the contracting officer should specifically inquire and obtain verification from the contractor that compliant hardware will be delivered. We recognize, however, that a contractor may not always be able to identify suppliers prior to award, making this verification difficult.

In such cases, if the potential contractor states his intent without condition to deliver compliant equipment, the contracting officer should document that statement in the post-negotiation business clearance and he/she may rely upon the contractor's statement. If during contract performance a contractor discovers that an item from one of its suppliers is not compliant, the contracting officer will require the contractor to provide a corrective action plan and to conduct market research and supply documentation necessary to support a domestic non-availability determination in accordance with DFARS 225.7002-2(b).

If a domestic non-availability determination (DNAD) that would cover the item is in process, the contracting officer may award a contract which includes Defense Federal Acquisition Regulation Supplement (DFARS) 252.225-7014. If the DNAD is not approved, the contractor is required to deliver compliant items.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy