Berry Amendment

Perspectives from DCMA

10 USC 2533a, as amended

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• 100% domestic for covered textiles, fibers & fabrics – very few exceptions
  – Incidental incorporation of cotton, natural fibers, or wool NTE 10% and $100K
  – Narrow exception for fiber & yarn in synthetic fabric – but not the fabric
  – FAR 25.104 items must not be available from any domestic source.
  – Contracting officer to ensure appropriate determination or documentation is in the file and the clause is omitted.
• If Contracting Officer believes Contractor may be in violation –
  – Notify legal counsel
  – Verify Berry Amendment applies
  – Suspend acceptance under FAR 46.407
  – Ensure payments are suspended
  – Require Contractor replacement
  – Consider substitute domestic items
  – If justified, prepare waiver request
• Acceptance of parachute & air delivery items pending DNAD resolution.
  – Interim process to accept parachutes and air delivery materiel in reliance on an in-process DNAD, pending long term solution.
  – At a minimum, an equitable adjustment of contract price if the noncompliance is not corrected or exempted within 12 months.
  – ACO must notify DCMA Counsel and obtain coordination prior to authorizing acceptance in reliance on in-process DNAD.
DCMA June 12, 2008 Policy

• DNAD for multiple items not approved.
  – DCMA ACOs will request delegations from PCOs to disposition conditional acceptances through price reductions.
  – Price reduction will be burdened cost of lowest level noncompliant component in the item (e.g. fiber, yarn, or fabric).
  – Prime Contractors provide an estimate with adequate supporting information.
  – DCMA ACOs obtain DCMA Counsel coordination on disposition actions.
– DCMA Specialty Metals policy under Berry Amendment (pre-Nov 2006) allowed conditional acceptance and withhold.
– Since parachutes remain under Berry Amendment, a similar acceptance method may be used when so authorized by the PCO.
– Prior to requesting PCO authorization, DCMA ACOs must consult with Office of Counsel on the feasibility of using that approach.