

# ***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.

- 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.