



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

17 MAR 2003

Honorable Donald A. Manzullo
Chairman, Committee on Small Business
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing in *reply* to your recent letter to the Honorable Edward C. "Pete" Aldridge, Jr., Under Secretary of Defense (Acquisition, Technology and Logistics), asking for copies of waivers of the "Berry Amendment" executed in the last five years by the Under Secretary, Military Departments, and Defense Agencies. These documents are enclosed for your information. I have asked responsible offices to continue searching their records for waivers. The results may lead to a supplemental package in the near term. If so, I will advise you accordingly.

In the period of interest: The Secretary of the Army **approved** one waiver, and Army staff plans to ask the Secretary to extend the period of that waiver in the foreseeable future. The Department of the Navy officials approved four waivers. The Department of the Air Force officials approved two waivers. The Defense Logistics Agency (DLA) arranged for at least 44 waivers: seven for surgical and medical items; 21 for clothing and textile items (one of which is an in-process draft as marked); and 16 for subsistence items. The Under Secretary of Defense (Acquisition, Technology and Logistics) approved nine of the DLA waivers. Regarding the waivers for subsistence items, DLA provided a copy of the waivers associated with active contracts. The enclosed 16 waivers for subsistence items are representative of the types of subsistence items that required waivers during the preceding five years. Therefore, DLA did not provide copies of waivers on their closed contracts.

Since May 1, 2001, any waiver of the Berry Amendment was approved only by the Secretary of the Military Department concerned or the Under Secretary of Defense (Acquisition, Technology and Logistics) for Defense Agencies. These actions are consistent with the enclosed memorandum of May 1, 2001, by the Deputy Secretary of Defense.



I trust this information is responsive to your request.

Sincerely,

A handwritten signature in black ink, appearing to read "Deidre A. Lee". The signature is fluid and cursive, with the first name being the most prominent.

Deidre A. Lee
Director, Defense Procurement and
Acquisition Policy

Enclosures:

As stated

cc:

Honorable Nydia M. Velázquez
Ranking Member



THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, O. 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 or 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