



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DEFENSE AGENCY AND DOD FIELD ACTIVITY DIRECTORS

SUBJECT: Improving Compliance with Buy American Laws

Since 2014, the Department of Defense (DoD) Office of Inspector General (IG) has conducted six audits on DoD's compliance with the Buy American Act and/or the Berry Amendment. In each of these audit reports, the DoDIG identified contracts where the applicable terms should have been included in contracts; where compliance with the law and regulations were neither applied, nor exclusion of such mandates were properly justified; or where potential Anti-Deficiency Act violations may have occurred. In addition, on April 18, 2017, the President signed Executive Order 13788, Buy American and Hire American, requiring agencies to "scrupulously monitor, enforce, and comply with Buy American Laws." Further, recurring civil and criminal fraud convictions related to non-compliance with Buy American laws highlight the need to be vigilant in oversight and enforcement strategies in this area.

Although the audit reports focus on detailed examples of non-compliance, and this office supports those findings, overall there continues to be many examples of the great work done by the acquisition workforce related to compliance with Buy American laws. A recent report to Congress noted the Department obligated over 96 percent of the funds to domestic U.S. sources in prime contracts. This shows not only a commitment to uphold law and regulation, but also a commitment to help strengthen the domestic industrial base during a difficult period supporting COVID-19 mission requirements.

While these mandated statutes are effectively applied overall, additional actions can be taken to build on efforts to ensure improved compliance. Therefore, I ask for your support in continuing to reinforce the training needs of the acquisition workforce and clause logic functions of contract writing systems. This will ensure that the right contract terms are properly used in solicitations and contracts. If acquisition workforce members require additional critical training in this area, consider requiring the addition of Defense Acquisition University's continuous learning modules CLC 027 - Buy American Statute and CLC 125 - Berry Amendment.

Please ensure widest distribution of this guidance. My point of contact for this memo is Mr. Jeff Grover, who can be reached at jeffey.c.grover.civ@mail.mil or 703-380-9783. Thank you.

Kim Herrington
Acting Principal Director,
Defense Pricing and Contracting