

Berry Amendment Compliance Policy

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Policy Owner: Legal, Contracts and Compliance

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1.0 Purpose

The purpose of this Policy is to provide a process for identifying the applicability of, and ensuring compliance with, the Berry Amendment requirements for government contracts and establishing a system for ensuring domestic sourcing of applicable components and materials.

2.0 Scope

This Policy applies to all HDT Supply Chain, Engineering, and Contracts Administration employees. Supply Chain leadership shall establish a system for maintaining Country of Origin (COO) status for all applicable components and materials. Contracts and Compliance Managers shall identify Berry Amendment applicability on each government contract or subcontract.

3.0 References

Reference Number	Description
HDTP000006	Records Management and Retention Policy

4.0 Definitions

Contracting Officer (CO) – means a U.S. government employee with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Contractor – An individual or organization who enters into a contract with the United States (any department or agency) to perform a specific job, supply labor and materials, or for the sale of products and services.

5.0 Procedures

5.1 Regulation Background

The Berry Amendment (10 U.S.C. 2533a) prohibits the Department of Defense (DoD) from using funds appropriated or otherwise available to DoD to buy food, clothing, fabrics, fibers, yarns, tents and hand tools or measuring tools that are not grown, reprocessed, reused, or produced in the U.S.

Sales covered by the Berry Amendment include foreign military sale transactions and any covered items the DoD procures on behalf of another agency. For example, if a DoD buyer makes a purchase from a commercial General Services Administration (GSA) Schedule of food, clothing, fabrics, fibers, yarns, tents, hand tools or measuring tools the item procured must also comply with the Berry Amendment restrictions. Berry Amendment rules apply even if the DoD-funded purchase is not a DoD-awarded contract. The Berry Amendment follows the funds – if DoD funds are sent to another federal agency, the Berry Amendment still applies.

The Berry Amendment applies to both end items and components. The domestic requirement flows down through all the tiers of suppliers; e.g., it does not stop with what the prime contractor manufactures or assembles. The prime contractor is responsible for verifying the source of all materials and components from subcontractors.

5.2 Regulation Implementation

Berry Amendment - Fabrics and Tents. The Berry Amendment includes “[t]ents and the structural components of tents.” The “structural component of a tent” is further defined in the regulation to mean “a component that contributes to the form and stability of the tent (e.g., poles, frames, flooring, guy ropes, pegs)”. Note that other fabric-based items outside of this list must comply with the Berry Amendment, including zippers, Velcro closures, etc. Equipment such as heating, cooling, and lighting are specifically exempted from the definition.

Where the Contracting Officer flows down the Berry Amendment restrictions in DFARS Section 252.225-7012, the Contractor is required to deliver only such items, either as end products or components, “that have been grown, reprocessed, reused, or produced in the United States.” This means that the material must not only be sourced from U.S. suppliers, distributors, and vendors, it means that the material must originate from the United States. For example, covered components or material sourced from abroad by a U.S. reseller and then resold to a U.S. manufacturer are not compliant.

5.3 Applicability

All of the following must be true for the Berry Amendment to apply:

- The total value of the prime contract must be over the simplified acquisition threshold (SAT) (currently \$250,000). If the prime contract value exceeds the SAT, then the Berry Amendment applies to any subcontracts issued thereunder, regardless of the subcontract’s value.
- The item supplied must be food, clothing, fabrics, fibers, yarns, textiles or tents (including structural components of tents) under contracts performed in the US and overseas.
- The procurement must be funded by DoD.

5.4 Exceptions

Common exceptions to the Berry Amendment include the following:

- Acquisitions outside the US in support of combat operations
- Acquisitions of food, or hand or measuring tools in support of contingency operations or which are being procured on the basis of unusual and compelling urgency
- Components of a finished product containing natural fibers (cotton, wool) of foreign origin are exempt provided the value of the fibers does not constitute more than 10% of the total price of the end product and the value of the fibers does not exceed the SAT.

- If the DoD official concerned with the purchases determines that items grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. In such case, the authorized DoD official will issue a domestic non-availability determination. A list of domestically non-available items can be found in FAR 25.104(a).

5.5 Compliance Test

Once you determine the Berry Amendment is applicable to the subject procurement, and no exception applies, ask yourself the following:

- Is the fabric/tent/fiber/textile grown, reprocessed, reused or produced entirely in the US (regardless of whether purchased as end items, components, or materials)?

6.0 Responsibilities

Contracts and Compliance Manager(s):

- Determine if the Berry Amendment fabric restriction applies to any DoD contract or subcontract via flowdown referenced by DFARS 252.225-7012. If not, Contracts/Compliance Managers must be cognizant that the Berry fabric restriction may still apply if the acquisition used DoD funding for a tent or some other covered end item, and the value is over the SAT (currently \$250,000).
- After verifying with Supply Chain the country of origin of the end product or component that is covered by the Berry Amendment, provide Berry Amendment compliance certification when requested by the CO.
- **Newly Developed Products:** Contracts Managers are to be included in communications with all appropriate parties, including at a minimum Supply Chain and Engineering to ensure Berry Amendment compliance of newly developed products.

Supply Chain:

- Ensure that only domestically sourced tent fabric and the structural components of tents are procured by obtaining certificates of Berry Amendment compliance from each supplier.
- Ensure the sourcing and procurement of only domestically sourced raw fabric by obtaining certificates of Berry Amendment compliance from each supplier.
- **Newly Developed Products; Change of Suppliers; Change of Components:** Supply Chain leadership shall inform Contracts Managers of the status of any newly developed product, or any change in supplier or supplied components of tents or fabric filters to ensure the continued compliance with the Berry Amendment.
- Establish and maintain a current Country of Origin (COO) list for ALL components subject to the Berry Amendment. Such COO status is customarily established by requesting a certificate of Berry Amendment compliance or separately requesting the COO from each supplier or vendor.
- Request COO information from vendors of all newly supplied parts or components.
- Request annual Berry Amendment certifications or updates to COO information from each vendor.
- Inform the Director(s) of Manufacturing and Contracts Managers of the Berry Amendment compliance status of materials and components, as requested.

Director(s) of Engineering:

- Receive reports from Supply Chain of the Berry Amendment compliance status of all fabrics, tent materials and structural components of tents.
- Work with Supply Chain and the Contracts and Compliance Manager to identify Berry Amendment compliant materials that satisfy engineering requirements.

7.0 Records

Records shall be maintained as follows:

Record	Custodian	Media	Minimum Retention Period
Federal Government Contracts/ Subcontracts	Contracts/Compliance	Electronic	Current + 10 years after termination and/or final payment (whichever comes later) unless a longer period is specified in a contract clause
Component List with Country of Origin	Supply Chain	Electronic	7 Years

8.0 Revision History

Date	Version	Description	Responsible Person
10/15/2016	1.0	Original	Contracts and Compliance
May 2021	2.0	Revision	Mike Thomas

9.0 Approvals

	Version	Date	Name	Title	PDM Signature
Written by	1.0	10/05/2016	Rick Dunay	Contracts and Compliance Manager	
Approved by	1.0	10/15/2016	Rita Thomas	Senior Vice President and General Counsel	
Written by	2.0	May 2021	Mike Thomas	Corporate Counsel	
Approved by	2.0	May 2021	Rita Thomas	Senior Vice President and General Counsel	