

A *udit*



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COMPLIANCE WITH PROCUREMENT LAWS
IN PURCHASING FREE WEIGHTS AND OTHER
STRENGTH BUILDING EQUIPMENT

Report No. D-2001-028

December 27, 2000

Office of the Inspector General
Department of Defense

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Acronyms

AFB	Air Force Base
DCADS	Defense Contract Action Data System
DFARS	Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
FSC	Federal Supply Class
FSS	Federal Supply Schedule
GSA	General Services Administration



INSPECTOR GENERAL
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December 27, 2000

MEMORANDUM FOR GENERAL COUNSEL, DEPARTMENT OF DEFENSE
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Audit Report on the Compliance with Procurement Laws in Purchasing
Free Weights and Other Strength Building Equipment
(Report No. D-2001-028)

We are providing this final report for review and comment. This report was required by section 819 of Public Law 106-65, "National Defense Authorization Act for FY 2000." We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. We disagree with the Army and Air Force positions on the recommendation. We request that the General Counsel establish the DoD position regarding the applicability of the Antideficiency Act to violations of the Buy American Act by January 31, 2001, and, as appropriate, that the Army and Air Force provide additional comments on the recommendation by March 1, 2001, based on the DoD position on the legal issue.

We appreciate the courtesies extended to the audit staff. Questions on this audit should be directed to Mr. Garold E. Stephenson, at (703) 604-9332 (DSN 664-9332) (gstephenson@dodig.osd.mil) or Mr. Eric B. Edwards, at (703) 604-9219 (DSN 664-9219) (eedwards@dodig.osd.mil). See Appendix D for the report distribution. Audit team members are listed on the inside back cover.

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Office of the Inspector General, DoD

Report No. D-2001-028

(Project No. D1999CH-0090)

December 27, 2000

Compliance with Procurement Laws in Purchasing Free Weights and Other Strength Building Equipment

Executive Summary

Introduction. This report addresses the contracting practices military organizations used to procure free weights and other strength building equipment for use at Defense installations in the U.S. (including its territories and possessions). We conducted the audit in response to section 819 of Public Law 106-65, "National Defense Authorization Act for FY 2000." Section 819 of Public Law 106-65 requires the Inspector General, DoD, to conduct an audit of procurements of free weights and other strength building equipment during the period April 1, 1998, through March 31, 2000.

Objectives. The overall audit objective was to determine whether contracting officers complied with the Buy American Act and other procurement laws and regulations when procuring free weights and other strength building equipment. We also reviewed the adequacy of the management control program as it related to the primary audit objective.

Results. DoD organizations procured free weights and other strength building equipment using procurement methods that generally complied with the Buy American Act and other laws and regulations. Of 90 procurements reviewed, with a total value of about \$1.8 million, only 2 procurements and 1 equipment exchange, totaling \$53,131, did not comply with the Buy American Act. The three exceptions resulted in the acquisition of free weights produced in China, and potential violations of the Antideficiency Act. The noncomplying procurements, which ranged in individual values from \$16,714 to \$19,508, occurred at one Army location and two Air Force locations.

Summary of Recommendations. We recommend that the General Counsel, DoD, establish the DoD position regarding the applicability of the Antideficiency Act to violations of the Buy American Act. We also recommend that the Assistant Secretary of the Army and the Assistant Secretary of the Air Force (Financial Management and Comptroller) initiate investigations of potential Antideficiency Act and Buy American Act violations. The Assistant Secretaries should also provide a copy of the preliminary review reports and the final formal investigation to the Inspector General, DoD.

Management Comments. The Deputy Assistant Secretary of the Army (Financial Operations) and the Deputy Assistant Secretary of the Air Force (Financial Management) did not concur with the recommendation to initiate investigations of potential violations of potential Antideficiency Act and Buy American Act violations. The Army stated that although violations of the Buy American Act may have occurred, the General Counsel of the Army determined, during its review of Inspector General, DoD, Report No. 99-023, "Procurement of Military Clothing and Related Items by

Military Organizations,” October 29, 1999, that Buy American Act violations do not give rise to Antideficiency Act violations. Therefore, the Army would not initiate investigations of the potential violations.

The Air Force stated that it also conducted a legal review of the October 1999 Inspector General, DoD, audit report and concluded that Buy American Act restrictions, which ordinarily apply to the purchase of these commercial items, were effectively waived under authority granted by Congress in the Federal Acquisition Streamlining Act, 41 United States Code §430(a), in Defense Federal Acquisition Regulation Supplement 212.503. As a result, the purchase of free weights by a Wright Patterson Air Force Base contracting officer was excepted from domestic content restrictions, and appropriated funds used to procure foreign-made weights were not obligated or expended in violation of statutory limitations. The Air Force also stated that the acquisition of free weights at Langley Air Force Base, through an exchange of equipment, did not violate the Antideficiency Act.

Audit Response. We do not agree with the Army and Air Force positions. We added the recommendation to the General Counsel, DoD, to establish the DoD position regarding the applicability of the Antideficiency Act to violations of the Buy American Act, because neither the Army nor the Air Force requested an interpretation.

Additional Comments Required. We request that the General Counsel, DoD, provide the DoD position by January 31, 2001, and that the Army and Air Force provide comments by March 1, 2001. A discussion of the management comments is in the Finding section of the report, and the complete text is in the Management Comments section.

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Background

National Defense Authorization Act for FY 2000. We conducted the audit in response to Section 819 of Public Law 106-65, “National Defense Authorization Bill for Fiscal Year 2000,” that requires the Inspector General, DoD, conduct an audit of military organizations to determine whether contracting officers complied with the Buy American Act in procuring free weights and other strength building equipment from April 1, 1998, to March 31, 2000.

The Buy American Act. The Buy American Act, enacted March 3, 1933, restricts foreign access to United States Government procurements by giving preference to domestically produced or manufactured products. The act states in part:

Notwithstanding any other provision of law, and unless the head of the Federal Agency concerned shall determine it to be inconsistent with the public interest, or the cost to be unreasonable, only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, shall be acquired for public use.

The Federal Acquisition Regulation (FAR), part 25, “Foreign Acquisition,” and Defense Federal Acquisition Regulation Supplement (DFARS) part 225, “Foreign Acquisition,” contain policies and procedures for implementing the Buy American Act and other laws and regulations pertaining to the acquisition of supplies, services, construction materials, and construction. In general, the FAR requires that only domestic end products be acquired for government use in the United States on procurements that exceed a \$2,500 purchase ceiling. DoD has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payments Program to acquisitions of certain supplies that are produced in the 17 foreign countries where memorandums of understanding or other international agreements exist. Individual acquisitions from four other countries may, on a purchase-by-purchase basis, be exempted from the Buy American Act and the Balance of Payments Program. The 21 qualifying countries are identified in DFARS 225.872, “Contracting with Qualifying Country Sources.” To comply with the Buy American Act, when procuring from nonqualifying countries, contracting officers must add 50 percent to the price of end-products when evaluating offers with nonqualifying end-products against domestic end-products.

Contract Provisions. The DFARS cites several references for incorporating Buy American Act provisions into contracts.

- DFARS 213.507, “Provisions and Clauses,” lists FAR 52.225-3, “Buy American Act-Supplies,” as a usable applicable clause in purchase orders and blanket purchase agreements.

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- DFARS 225.109, “Solicitation Provisions and Contract Clauses,” requires the use of DFARS 252.225-7001, “Buy American Act and Balance of Payments Program,” instead of FAR 52.225-3.
 - DFARS 225.109(a) and (d), 225.105, “Evaluating Offers,” and 225.102(b)(i), “Policy,” require that contracting officers making procurements in accordance with the Buy American Act must include the following clauses:
 - DFARS 252.225-7000, “Buy American Act - Balance of Payments Program Certificate,” in solicitations for contracts where supplies are required. DFARS 252.225-7000 requires offerors to certify each end product, as domestic, qualifying country, or nonqualifying country.
 - DFARS 252.225-7001, “Buy American Act and Balance of Payments Program,” in solicitations and contracts where supplies are required. This clause implements the Buy American Act except for end products which are qualifying country end products.

Procurements of Free Weights and Other Strength Building Equipment by Military Organizations. The Defense Contract Action Data System (DCADS) showed that between April 1, 1998, and March 31, 2000, 124 military organizations awarded 333 contract actions valued at about \$19.5 million for recreational and athletic equipment (Federal Supply Classes 7810 and 7830). We reviewed 182 contract actions over \$25,000 and determined that 55 actions pertained to free weights and other strength building equipment at 27 military organizations. We identified 35 actions and 1 equipment exchange, values ranging between \$2,500 and \$25,000, for free weights and other strength building equipment at 6 military organizations. We identified the purchases of free weights and other strength building equipment between \$2,500 and \$25,000, which were not contained in the DCADS, by contacting the military organizations. The 90 contract actions for free weights and other strength building equipment reviewed are listed in Appendix B.

Objectives

The primary objective was to determine whether contracting officers complied with the Buy American Act and other procurement laws and regulations. See Appendix A for a discussion of the audit scope and methodology and a review of the management control program.

Compliance with Procurement Laws in Purchasing Free Weights and Other Strength Building Equipment

DoD organizations generally complied with the Buy American Act and other procurement laws and regulations in obtaining free weights and other strength building equipment. Of 90 procurements reviewed, valued at about \$1.83 million, only 2 procurements and 1 equipment exchange valued at \$53,131, did not comply with the Buy American Act. The three actions resulted in potential violations of the Antideficiency Act. The noncomplying procurements, which ranged in individual values from \$16,714 to \$19,508, occurred at one Army location and two Air Force locations. Two of the three organizations ordered the free weights from Federal Supply Schedule contractors and were provided free weights that were produced in China, a nonqualifying country. The third organization exchanged excess gym equipment for free weights valued at \$16,909 that were produced in China.

Equipment Definitions and Suppliers

Free Weights. Free weights are dumbbells, barbells, curl bars, and weight plates that are placed on crossbars and are designed to be lifted for strength training or athletic competition.

Strength Building Equipment. Strength building equipment includes, but is not limited to, abdominal, torso, back extension, and leg press machines. Strength building equipment does not include aerobic or cardiovascular equipment such as treadmills, bicycles, steppers, and cross trainers.

Manufacturers of Free Weights and Other Strength Building Equipment. Table 1 lists the eight primary manufacturers of strength building equipment sold in the United States. Only one company, Ivanko, manufactures its equipment in China. Some of the strength building equipment being offered for sale by several manufacturers has component parts that were manufactured in China. However, the total value of those component parts was less than 50 percent of the total value of the equipment. According to DFARS 252.225-7001(2)(ii), an end product is considered manufactured in the U.S. if the cost of all its component parts that are manufactured in the U.S. exceeds 50 percent of the total cost of all the component parts of the equipment.

Table 1. Primary Manufacturers of Fitness Equipment

<u>Company</u>	<u>U.S. Manufacturer</u>	<u>Equipment Types</u>
Body Masters Sports Industries	Yes	Strength
Cybox International, Inc.	Yes	Free weights/strength
Hammer Strength	Yes	Free weights/strength
Icarian Fitness Equipment	Yes	Free weights/strength
Ivanko	No	Free weights
Life Fitness	Yes	Strength/other
Nautilus International, Inc.	Yes	Strength/other
York Barbell	Yes	Free weights

Role of the General Services Administration and the Federal Supply Schedule. The primary procurement source for free weights and other strength building equipment by the military is the General Services Administration (GSA) Federal Supply Schedule (FSS). Section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq.), authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services. GSA uses the FSS to supply millions of commercial items ranging from paper to automobiles. Excluding Ivanko, GSA has FSS contracts with each of the manufacturers of fitness equipment listed in Table 1.

Procurements Subject to the Buy American Act. We identified 90 procurements that were subject to the Buy American Act (See Appendix B). Eighty-seven of the procurements complied with the Buy American Act. Two procurements and one equipment exchange, each valued between \$2,500 and \$25,000, did not comply with the Buy American Act because the free weights acquired were manufactured in China, a nonqualifying country.

Contracting officials for the two procurements that did not comply with the Buy American Act were familiar with the Act and the guidance in the FAR and DFARS, but did not include DFARS clauses in the orders, and did not determine where the weights were manufactured. They believed that because the free weights were purchased through delivery orders under a FSS contract, GSA was responsible for including the applicable provisions and clauses.

Contracting officials at the organization where the exchange occurred were unaware that the exchange had taken place. The two procurements and the exchange are shown in Table 2.

Table 2. Procurements That Did Not Comply With the Buy American Act		
<u>Organization</u>	<u>Contract Number</u>	<u>Value</u>
Fort Sam Houston, San Antonio, Texas	DADA10-98-F-1217	\$16,714
Langley Air Force Base, Hampton, Virginia	N/A*	16,909
Wright-Patterson Air Force Base, Dayton, Ohio	F33601-99-F-A946	19,508
Total		\$53,131
* No contract exists. The Langley AFB Fitness Center acquired free weights that were manufactured in China by trading in obsolete gym equipment.		

Fort Sam Houston, San Antonio, Texas. Contracting personnel at Fort Sam Houston, using GSA FSS contract GS07F9211G, issued purchase order DADA10-98-F-1217 on September 26, 1998, to Cybex International for free weights. Four items were ordered--dumbbells and olympic plates--at a price of \$16,714. The FSS identifies the authorized styles and prices of dumbbells and olympic plates for purchase, but rubberized weights were listed without reference to where they were manufactured. The items delivered by Cybex were manufactured in China by Ivanko. The purchase of free weights made in China occurred because the contracting officer selected rubberized weights and authorized the purchase without determining where the free weights were manufactured.

Langley Air Force Base, Hampton, Virginia. Officials at the Langley AFB Fitness Center acquired Ivanko weights by exchanging obsolete gym equipment manufactured in China and valued at \$16,909. The exchange was subject to the Buy American Act because it was consistent with 41 U.S.C. 10a, which covers equipment "acquired for public use." Fitness Center officials did not contact the Langley AFB contracting office prior to exchanging the equipment.

Wright-Patterson Air Force Base, Dayton, Ohio. Contracting personnel at Wright-Patterson AFB, using GSA FSS contract GS07F9211G, issued purchase order F33601-99-F-A946 on January 5, 2000, to procure free weights from Cybex International. The order was for seven free weight items with a total price of \$19,508. The order did not comply with the Buy American Act because the items were manufactured in China.

Free Weights Provided by Cybex International, Inc. The free weights provided by Cybex to the fitness centers at Fort Sam Houston and Wright-Patterson AFB were labeled “Made in China” and manufactured for Cybex by Ivanko. A GSA representative responsible for the Federal Supply Class (FSC) that includes free weights stated that, as of January 2000, according to Cybex officials, Cybex ceased supplying Ivanko free weights in January 2000. Cybex now contracts with GP Industries to supply free weights. With the exception of only a few specialty items, GP Industries’ free weights were manufactured in the U.S.

Potential Antideficiency Act Violations

The noncompliance with the Buy American Act on three contracts may have resulted in potential violations of the Antideficiency Act (31 U.S.C. 1341 [a][1][A]). These potential violations occurred because Public Law 105-262, Section 8053(a) and Public Law 105-56, Section 8059(a), the Department of Defense Appropriation Acts for FYs 1999 and 1998, respectively, were applicable to the procurements that did not comply with the Buy American Act. The laws state in part: “None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with Buy American Act”

The Antideficiency Act states in part: (a)(1) An officer or employee of the United States Government . . . may not- - (A) make or authorize an expenditure or obligation exceeding an amount available in an appropriation or fund for the expenditure or obligation;

The Department of Defense Financial Management Regulation (DoD 7000.14R), volume 14, “Administrative Control of Funds and Antideficiency Act Violations,” states in part: “. . . violations of 31 U.S.C. 1341 (a)(1)(A) may occur when statutory limitations on the purpose for which an appropriation or fund may be used are violated.”

DoD Directive 7200.1, “Administrative Control of Appropriations,” May 4, 1995, regulates fund control for all DoD Components. The directive requires DoD components to establish positive control and maintain adequate systems of accounting for appropriations and other available funds. The directive further requires the heads of the DoD Components to investigate and report on apparent and potential Antideficiency Act violations.

Conclusion

DoD organizations generally procured free weights and other strength building equipment that complied with the Buy American Act and other procurement laws and regulations. However, the Army and Air Force should investigate the procurements listed in Table 2 of this report, for potential Antideficiency Act violations arising from using funds to procure free weights that did not comply with the Buy American Act. If any violations of the Antideficiency Act occurred, the Army and Air Force should comply with reporting requirements in DoD

Directive 7200.1, "Administrative Control of Appropriations," May 4, 1995, and the DoD Financial Management Regulation (DoD 7000.14R), volume 14, "Administrative Control of Funds and Antideficiency Act Violations," August 1995.

Recommendations, Management Comments, and Audit Response

1. We recommend that the General Counsel, DoD, establish the DoD position regarding the applicability of the Antideficiency Act to violations of the Buy American Act.

2. If the DoD position is that the Antideficiency Act is applicable to Buy American Act violations, we recommend that the Assistant Secretary of the Army and the Assistant Secretary of the Air Force (Financial Management and Comptroller) initiate investigations of the procurements of free weights that do not comply with the Buy American Act. If any violations of the Antideficiency Act occurred, comply with the reporting requirements in DoD Financial Management Regulation (DoD 7000.14R), volume 14, "Administrative Control of Funds and Antideficiency Act violations." The Assistant Secretaries should also provide a copy of preliminary review reports and the final formal investigation reports to the Inspector General, DoD.

Management Comments. The Army and Air Force nonconcurred. The Army stated that although violations of the Buy American Act may have occurred, the General Counsel of the Army determined, during Inspector General, DoD, Audit Report No. 99-023, "Procurement of Military Clothing and Related Items by Military Organizations," October 29, 2000, that Buy American Act violations do not give rise to Antideficiency Act violations. Therefore, the Army would not initiate investigations of the potential violations.

The Air Force stated that it also conducted a legal review of a prior Inspector General, DoD, audit report and concluded that Buy American Act restrictions that ordinarily apply to the purchase of these commercial items were effectively waived under authority granted by Congress in the Federal Acquisition Streamlining Act, 41 U.S.C. §430(a), in Defense Federal Acquisition Regulation Supplement 212.503. As a result, the purchase of free weights by a Wright Patterson Air Force Base contracting officer was excepted from domestic content restrictions, and appropriated funds used to procure foreign-made weights were not obligated or expended in violation of statutory limitations. Accordingly, the contracting officer did not violate the Antideficiency Act. The Air Force also concluded that the acquisition of free weights at Langley Air Force Base, through an exchange of equipment, did not result in an obligation or expenditure of appropriated funds. As a result, the Air Force also determined that the Antideficiency Act was not violated by this transaction.

Audit Response. We do not agree with the Army and Air Force positions. Neither the Army nor the Air Force requested interpretation from the General Counsel, DoD. We added an additional recommendation to the General Counsel to establish the DoD position regarding the applicability of the Antideficiency Act to violations of the Buy American Act. We request that the Army and Air Force provide additional comments on the recommendation, as appropriate, based on the DoD position.

Appendix A. Audit Process

Scope

The National Defense Authorization Act for FY 2000 requires an audit of FYs 1998 and 1999 procurements of free weights and strength building equipment at military installations. We conducted the audit to determine the extent to which the installations procured free weights and other strength building equipment in violation of the Buy American Act.

General Accounting Office High-Risk Area. The General Accounting Office has identified several high-risk areas in the Department of Defense. This report provides coverage of the Defense Contract Management high-risk area.

Methodology

We reviewed the Buy American Act, the FAR, and the DFARS implementing guidance. We used those documents as criteria for determining whether contracting officers complied with the Buy American Act when they procured free weights and strength building equipment. We reviewed the contracts for FYs 1998 and 1999 procurements of free weights and other strength building equipment. We interviewed contractors and reviewed contractor catalogues to determine where the items procured were manufactured. We discussed with contracting officers the process for procuring free weights and other strength building equipment and for ensuring compliance with the Buy American Act.

Use of Computer-Processed Data. To achieve the audit objective, we relied on computer-processed data from the Defense Contract Action Data System to identify contract actions over \$25,000. We assessed the reliability of the data in the system concerning the identification of contract numbers, award dates, and dollar amounts of the transactions. We determined that the contract numbers and dollar amounts in the database generally agreed with the identification and dollar amounts on the contract documents. We did not find errors that would preclude use of computer processed data to meet the audit objectives or that would change the conclusion in the report.

Contract Actions for Recreational and Athletic Equipment. The Defense Contract Action Data System showed that 124 military organizations executed 333 contract actions valued at \$25,000 or more for items in Federal Supply Class (FSC) 7810 and 7830 from April 1, 1998, to March 31, 2000. The total value of the 333 contracts was \$19,500,848. The types of recreation and athletic equipment covered by two FSCs included:

- FSC 7810 – Recreational and Athletic Equipment. Includes athletic and sporting equipment.
- FSC 7830 – Recreational and Gymnastic Equipment. Includes recreational and gymnastic equipment.

There was a wide range of equipment procured under both FSCs. The types of items procured under both FSCs included fitness equipment such as aerobic and cardiovascular equipment, free weights or other strength building equipment, playground equipment, sports and game equipment (basketball, volleyball, etc.), fishing equipment, and boats.

Contract Actions for Free Weights and Strength Building Equipment. Of the 333 contract actions we determined that 55 contract actions were for free weights and other strength building equipment subject to the Buy American Act. The remaining 278 contract actions were either for items other than the free weights and strength building equipment, or were contract actions by overseas offices and not subject to the Buy American Act. We identified an additional 35 contract actions, valued between \$2,500 and \$25,000, that were not included in the DCADS, including one equipment exchange by contacting purchasing offices and fitness centers at Military organizations.

Audit Type, Dates, and Standards. We conducted this program audit from August 1999 through March 2000 in accordance with auditing standards issued by the Comptroller General of the United States, as implemented by the Inspector General, DoD. Accordingly, we included a review of management controls considered necessary. We relied on computer-processed data to support our finding.

Contacts During the Audit. We visited or contacted contractors, DoD purchasing offices, fitness centers, the GSA, and contractors supplying recreational and athletic equipment to DoD. Further details are available on request.

Management Control Program Review

DoD Directive 5010.38, "Management Control (MC) Program," August 26, 1996, and DoD Instruction 5010.40, "Management Control (MC) Program Procedures," August 28, 1996, require DoD organizations to implement a comprehensive system of management controls that provides reasonable assurance that programs are operating as intended to evaluate the adequacy of the controls.

Scope of the Review of the Management Control Program. We reviewed the adequacy of the management controls over procuring free weights and other strength building equipment at 23 DoD contracting offices. Specifically, we examined management controls over compliance with the Buy American Act when procuring free weights and other strength building equipment. Because we did not identify a material weakness, we did not assess management's self-evaluation.

Adequacy of Management Controls. The management controls were adequate as they applied to the overall objective.

Prior Coverage

There have been no prior audits of compliance with the Buy American Act when procuring free weights and other strength building equipment during the past 5 years.

Appendix B. Compliance with Procurement Laws in Purchasing Free Weights and Other Strength Building Equipment

	Installation	GSA No.	Contract No.	Free Weights	Strength Equipment	Contract Value
Army	Fort Belvoir	GS07F9211G	SP4700-99-F-0551		\$ 45,600	\$ 45,600
	Fort Benning	GS07F9211G	DABT10-00-F-0026	\$ 6,417	46,084	66,642
	Fort Bliss		DABT51-98-F-0343		33,976	33,976
	Fort Bragg	GS07F9380G	DAKF40-98-F-0290		67,064	103,389
		GS07F9380G	DAKF40-98-F-0758		63,460	142,912
		GS07F9648G	DAKF40-99-F-0146		56,550	59,107
	Fort Carson	GS07F9211G	DAKF06-99-F-0103		52,368	52,368
		GS07F9014G	DAKF06-99-F-0170		5,991	6,986
	Fort Riley	GS07F9211G	DAKF19-99-F-0110	2,480	17,340	34,902
	Fort Sam Houston	GS07F9211G	DADA10-98-F-1179		26,960	30,480
		GS07F9211G	DADA10-98-F-1216		37,800	42,156
		GS07F9211G	DADA10-98-F-1217	16,714		16,714
	Fort Sill	GS07F9211G	DABT39-99-F-0105	5,980	56,265	72,476
	Fort Stewart	GS07F9394G	DAKF10-98-F-0126		27,460	44,747
			DAKF10-98-P-0265	2,875	1,250	10,025
			DAKF10-98-P-0281		1,200	4,023
	Red River Army Depot	GS07F9240G	DAAC79-98-F-0066	612	6,400	33,923
	USPFO for Arkansas	GS07F9648G	DAHA03-99-F-0018		28,529	31,382
	USPFO for Mississippi	GS07F9211G	DAHA22-98-F-0126		26,848	47,070
	USPFO for Oregon	GS07F9211G	DAHA35-98-F-F447		28,456	41,972
GS07F9380G		DAHA35-99-F-A403		3,872	27,702	
Navy	FISC – Jacksonville		N68836-98-M-3069		32,256	35,000
			N00244-99-F-D645		19,964	23,357
	FISC - San Diego	GS07F9315G	N00244-99-F-D645		10,396	23,359
			N00244-99-M-4064		12,505	25,905
	Naval Support Activity Memphis	GS07F9380G	N00639-98-F-A050	14,020	21,630	84,426
		GS07F9211G	N00639-98-F-A055		26,336	27,638
	GS07F9380G	N00639-98-F-A064		22,984	46,966	

Installation	GSA No.	Contract No.	Free Weights	Strength Equipment	Contract Value
	GS07F9211G	N00639-98-F-A136	4,364	38,736	81,777
	GS07F9211G	N00639-98-F-A145	5,052	416	14,022
	GS07F9380G	N00639-98-F-A146		79,792	145,606
	GS07F9211G	N00639-99-F-0001		16,848	24,369
	GS07F9211G	N00639-99-F-A025		20,480	20,480
	GS07F9380G	N00639-99-F-A058		4,342	88,590
	GS07F9380G	N00639-99-F-A059		6,513	117,357
	GS07F9339G	N00639-99-F-A060	621		2,875
	GS07F9380G	N00639-99-F-A063		2,171	78,148
	GS07F9648G	N00639-99-F-A066		3,165	8,448
	GS07F9380G	N00639-99-F-A067	21,300	33,908	124,878
	GS07F9394G	N00639-99-F-A069		11,672	14,904
	GS07F9339G	N00639-99-F-A073	5,148		6,073
	GS07F9380G	N00639-99-F-A074		40,148	40,148
	GS07F9648G	N00639-99-F-A078		4,119	10,641
	GS07F9016G	N00639-99-F-A081	3,251	743	6,011
	GS07F9339G	N00639-99-F-A089	855		17,606
	GS07F9298G	N00639-99-F-A094	479		3,940
	GS07F9380G	N00639-99-F-A095		27,321	421,501
	GS07F9339G	N00639-99-F-A096	1,584		3,674
	GS07F9648G	N00639-99-F-A106		3,897	6,310
	GS07F9339G	N00639-99-F-A109	1,210		19,459
	GS07F9648G	N00639-99-F-A110		6,550	13,550
	GS07F9239G	N00639-99-F-A121		473	10,645
	GS07F9211G	N00639-99-F-A122		18,717	19,167
	GS07F9380G	N00639-99-F-A123		2,171	41,083
	GS07F9339G	N00639-99-F-A128	2,110		18,817
	GS07F9380G	NAFMEM-98-F-0035		11,110	11,310
	GS07F9211G	NAFMEM-98-F-0036		552	552
	GS07F9380G	NAFMEM-98-F-0039		22,321	23,321
	GS07F9211G	N00639-00-F-A016		37,674	37,674
	GS07F9211G	N000639-99-F-A199	5,800	2,652	8,452

Installation	GSA No.	Contract No.	Free Weights	Strength Equipment	Contract Value	
U.S. Naval Station – Norfolk	GS07F9380G	N00189-98-F-A924	5,025	20,090	30,515	
	GS07F9380G	N00189-98-F-B010	1,435	12,182	25,949	
	GS07F9380G	N00189-98-F-B090		10,500	76,537	
	GS07F9380G	N00189-99-F-A193		1,772	33,146	
	GS07F9239G	N00189-99-F-A393		42,975	42,975	
	GS07F9648G	N00189-99-F-A429		29,585	33,490	
Air Force	Columbus AFB	GS07F9211G	F22608-00-F-0018	356	45,184	49,334
	Davis-Monthan AFB	GS07F9648G	F02601-98-F-0032		25,320	29,234
		GS07F9380G	F02601-98-F-A058		33,633	33,633
	Dyess AFB	GS07F9211G	F41652-98-F-A068		30,400	30,400
	Edwards AFB	GS07F9211G	F04700-99-F-7342		47,590	47,590
	Hickam AFB	GS07F9211G	F64605-99-F-A101	210	49,650	50,901
	Hill AFB	GS07F9380G	F42650-98-F-A010		60,114	144,681
	Kelly AFB		F41650-99-M-5006		4,392	4,392
	Lackland AFB	GS07F9315G	F41636-98-F-0406		2,576	2,576
		GS07F9315G	F41636-98-F-0474		30,744	30,744
	Langley AFB	*	*	16,909		16,909
	Luke AFB	GS07F9380G	F02604-99-F-A019		2,100	24,298
		GS07F9315G	F02604-99-F-A059		4,472	5,048
			F02604-99-P-0019		6,686	6,760
			F02604-99-P-0096	180	855	4,655
	Maxwell AFB	GS07F9211G	F01600-99-F-A135	7,541	49,722	97,944
	Offutt AFB	GS07F9211G	F25600-99-F-A100		39,253	39,253
	Sheppard AFB	GS07F9315G	F41612-98-F-A069		70,085	88,545
	*	GS07F9648G	F41612-98-F-A263		23,673	25,203
	Travis AFB	GS07F9380G	F04626-98-F-A293		21,555	29,193

* Action represents exchange of equipment. No contract existed.

Installation		GSA No.	Contract No.	Free Weights	Strength Equipment	Contract Value
Wright Patterson AFB		GS07F9648G	F33601-98-F-A075		33,252	33,252
		GS07F9211G	F33601-99-F-A946	19,508		38,806
		GS07F9211G	F33601-99-F-A638		11,610	29,805
Marine Corps	Marine Corps Headquarters	GS07F9380G	M00027-98-F-0091		56,767	70,374
Total				\$152,036	\$1,942,772	\$3,832,733

Appendix C. Qualifying Countries Listed in DFARS 225.872

The Buy American Act and Balance of Payments Program does not apply to the acquisition of Defense equipment that is mined, produced, or manufactured in any of the qualify countries listed below.

Qualifying Countries

Australia	Belgium
Canada	Denmark
Egypt	Federal Republic of Germany
France	Greece
Israel	Italy
Luxembourg	Netherlands
Norway	Portugal
Spain	Turkey
United Kingdom of Britain and Northern Ireland	

The acquisition of products manufactured in the following qualifying countries may be exempted from the Buy American Act and Balance of Payment Program on a purchase-by-purchase basis.

Qualifying Countries

Austria
Finland
Sweden
Switzerland

Appendix D. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition, Technology, and Logistics
Deputy Under Secretary of Defense (Acquisition Reform)
Director, Defense Procurement
Under Secretary of Defense (Comptroller/Chief Financial Officer)

Department of the Army

Auditor General, Department of the Army
Assistant Secretary of the Army (Financial Management and Comptroller)

Department of the Navy

Naval Inspector General

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on Government Management, Information and Technology,
Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice,
Committee on Government Reform and Oversight
House Committee on National Security

Department of the Army Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
FINANCIAL MANAGEMENT AND COMPTROLLER
109 ARMY PENTAGON
WASHINGTON DC 20310-0109

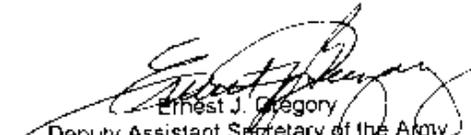
November 16, 2000

MEMORANDUM FOR THE CONTRACT MANAGEMENT DIRECTORATE,
OFFICE OF THE ASSISTANT INSPECTOR
GENERAL FOR AUDITING, DEPARTMENT OF
DEFENSE, 400 ARMY NAVY DRIVE (ROOM 801)
ARLINGTON, VA 22202-2284

SUBJECT: Draft Audit Report, Compliance with the Buy American Act and Other
Procurement Laws for Purchases of Free Weights and Other
Strength Building Equipment, Project No. D1999CH-0090

We have reviewed the above subject draft report and provide our
comments at the enclosure.

Point of contact is Peter Langevin who can be reached at (703) 695-9423;
email: langepb@hqda.army.mil.


Ernest J. Gregory
Deputy Assistant Secretary of the Army
(Financial Operations)

Enclosure

**DRAFT OF A
PROPOSED AUDIT REPORT**

**Compliance with the Buy American and Other Procurement Laws for
Purchases of Free Weights and Other Strength Building Equipment**

Project No. D1999CH-0090

September 15, 2000

RECOMMENDATION

We recommend that the Assistant Secretary of the Army and the Assistant Secretary of the Air Force (Financial Management and Comptroller) initiate investigations of the Potential Antideficiency Act violations arising from the procurements of free weights that do not comply with the Buy American Act, and if any violations of the Antideficiency Act occurred, comply with the reporting requirement in DoD Financial Management Regulation (DoD 7000.14R), volume 14, "Administrative Control of Funds and Antideficiency Act violations." The Assistant Secretaries should also provide a copy of preliminary review reports and the final formal investigation reports to the Inspector General, DoD.

Army Comments: **Nonconcur.** DoDIG Audit Report No. 99-023, "Procurement of Military Clothing and Related Items by Military Organizations," dated October 29, 2000, recommended the Army initiate an investigation into a potential Antideficiency Act violation because Command did not comply with the Buy American Act. The investigating officer's preliminary report and subsequent review of the report by the Army's Office of General Counsel (OGC), determined there were no potential Antideficiency Act violations. The OGC opined that although violations of the Buy American Act may have occurred, such violations do not give rise to a violation of the Antideficiency Act. In this draft report, DoDIG is recommending an investigation be initiated into a potential Antideficiency Violation because the installation did not comply with the Buy American Act. We nonconcur because the Army's OGC has already determined that Buy American Act violations do not give rise to Antideficiency Act violations.

Department of the Air Force Comments



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Assistant Secretary

06 NOV 2000

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING
OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE

FROM: SAE/MP
1130 Air Force Pentagon
Washington DC 20330-1130

SUBJECT: DoD(IG) Draft Report, "Compliance with the Buy American Act and Other
Procurement Laws for Purchases of Free Weights and Other Strength Building
Equipment," (Project No. D1999CH-0090)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force
(Financial Management and Comptroller) provide Air Force comments on the subject report.

The Air Force Associate General Counsel (Fiscal, Ethics, & Civilian Personnel)
(SAF/GCA) reviewed the subject draft report (See Attachment). SAF/GCA agreed that the
military procurement of free weights and other exercise equipment are subject to the Buy
American Act. However, the legal review concluded that Buy American Act restrictions that
ordinarily apply to the purchase of these commercial items were effectively waived under
authority granted by Congress in the Federal Acquisition Streamlining Act (FASA), 41 U.S.C.
§430(a), in DFARS 212.503. As a result, the purchase of free weights by a Wright Patterson Air
Force Base contracting officer was exempted from domestic content restrictions, and appropriated
funds used to procure foreign-made weights were not obligated or expended in violation of
statutory limitations. Accordingly, under the laws and regulations in force at the time, the
contracting officer did not violate the Antideficiency Act.

SAF/GCA also concluded that the acquisition of free weights at Langley Air Force Base,
through an exchange of equipment, did not result in an obligation or expenditure of appropriated
funds. Therefore, the Antideficiency Act is inapplicable to this transaction.

Air Force action is considered complete. My point of contact for Antideficiency Act
matters is Mr. Dave Sapp, 697-6052.


JOHN J. NEIHERY
Deputy Assistant Secretary
Financial Operations
(Financial Management)

Attachment:
SAF/GCA Memo, 13 Oct 2000

Freedom Through Aerospace Power



Office Of The General Counsel

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

13 October 2000

MEMORANDUM FOR SAF/FMPF

FROM: SAF/GCA

SUBJECT: DoD(IG) Audit Report on Compliance with the Buy American Act and other Procurement Laws for Purchases of Free Weights and other Strength Building Equipment by U.S. Military Organizations (Project D1999CH-0090)

As you know, Section 819 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65) required the Department of Defense Inspector General to determine the extent to which purchases of free weights and other exercise equipment, for use at defense installations in the United States, complied with the Buy American Act, 41 U.S.C. §10a, et seq. The DoD Inspector General has provided a draft audit report to you for comment and a statement of corrective action taken. The report identifies one procurement (Wright Patterson AFB, OH) and one equipment exchange (Langley AFB, VA) by USAF officials that resulted in acquisition of free weights made in China. You asked for our comments and recommendations concerning the subject report. We agree that military procurement of free weights and other exercise equipment are subject to the Buy American Act. However, for reasons stated below, we conclude that Buy American Act restrictions that ordinarily apply to the purchase of these commercial items were effectively waived under authority granted by Congress in the Federal Acquisition Streamlining Act (FASA), 41 U.S.C. §430(a), in DFARS 212.503.

Although the purchase of free weights by a Wright Patterson AFB contracting officer was subject to the Buy American Act, Congress passed FASA in 1994 to authorize executive agencies to make certain provisions of law inapplicable to purchases of commercial items¹. The Act states that its waiver provisions do not apply to any provision of law that (1) provides for criminal or civil penalties; or (2) specifically refers to FASA and provides that, notwithstanding FASA, it shall be applicable to contracts for the procurement of commercial items. Congress did insert such a proviso in the Berry Amendment, 10 U.S.C. §2241 (Note), an Act which also addresses procurement of domestic products, proving Congress was aware of the authority provided under FASA to waive the provisions of law.

The Defense Acquisition Regulation Council implemented 41 U.S.C. §430(a) in the DoD FAR Supplement. DFARS 212.503(a) states "The following laws are not applicable to contracts for the acquisition of commercial items: (x) Domestic Content Restrictions in the National Defense Appropriations Acts for Fiscal Years 1996 and Subsequent Years." The Department of

¹ DFARS 2.101 defines "commercial item" as any item, other than real property, that is of a type customarily used for nongovernmental purposes and that has been sold or offered for sale to the general public. The free weights that are relevant to this discussion meet that definition.

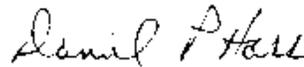
Defense Appropriations Acts for Fiscal Years 1996 (§8077), 1997 (§8062), 1998 (§8059), 1999 (§8053), and 2000 (§8053) all contain the following language:

None of the funds appropriated in this Act may be expended by an entity of the Department of Defense unless the entity, in expending the funds, complies with the Buy American Act.

Neither the Buy American Act nor the domestic content restriction in the National Defense Appropriations Acts for fiscal year 1996 and subsequent years provides for criminal or civil penalties, or specifically refers to FASA and provides that, notwithstanding FASA, domestic content restrictions shall be applicable to contracts for the procurement of commercial items. As a result, the procurement of free weights in FY 2000 identified in the DoD Inspector General audit report was excepted from these domestic content restrictions, and appropriated funds used to procure foreign-made free weights were not obligated or expended in violation of statutory limitations. Accordingly, under the laws and regulations in force at the time of this purchase, the contracting officer did not violate the Antideficiency Act.

The acquisition of free weights at Langley AFB through an exchange of equipment did not result in an obligation or expenditure of appropriated funds. Therefore, the Antideficiency Act is inapplicable to this transaction. Even if this transaction had resulted in an obligation or expenditure of appropriated funds, the analysis in the preceding paragraphs would apply, and the transaction would not have violated the Antideficiency Act.

We recommend that you concur with the findings of the report as they relate to acquisitions by Air Force installations but nonconcur that these acquisitions resulted in potential violations of the Antideficiency Act, 31 U.S.C. §1341(a)(1)(A). Accordingly, no corrective action is required.



Daniel P. Hass
Associate General Counsel
(Fiscal, Ethics & Civilian Personnel)

Audit Team Members

The Contract Management Directorate, Office of the Assistant Inspector General for Auditing, DoD, produced this report. Personnel of the Office of the Inspector, DoD, who contributed to the report are listed below.

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