



# Military Uniform Procurement: Questions and Answers

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## Summary

Military uniforms are procured through the Defense Logistics Agency (DLA), an agency of the Department of Defense (DOD). DLA is DOD's largest combat support agency, providing worldwide logistics support for the United States military services, civilian agencies, and foreign countries. With headquarters in Fort Belvoir, VA, DLA operates three supply centers: DLA Aviation, DLA Land and Maritime, and DLA Troop Support. Military uniforms are procured through DLA Troop Support in Philadelphia, PA.

DLA Troop Support is responsible for procuring nearly all of the food, clothing, and medical supplies used by the military, including about 90% of the construction material used by troops in the field, and repair parts for aircraft, combat vehicles, and other weapons system platforms. According to DLA Troop Support's website, "Each year, DLA Troop Support supplies and manages over \$13.4 billion worth of food, clothing and textiles, pharmaceuticals, medical supplies, and construction and equipment supplies in support of America's warfighters worldwide and their eligible dependents." Within DLA Troop Support, the Clothing and Textile (C&T) Directorate supplies more than 8,000 different items ranging from uniforms to footwear and equipment. According to DLA Troop Support, in FY2012, C&T sales of clothing, textiles, and equipment to military personnel worldwide surpassed \$1.9 billion.

Legislative initiatives that affect the procurement of military uniforms were enacted in several bills, among them: Section 822 of P.L. 112-81, the NDAA for FY2012; Section 821 of P.L. 111-383, the Ike Skelton NDAA for FY2011; and Section 352 of P.L. 111-84, the NDAA for FY2010.

Section 352 of P.L. 113-66 requires all military services to use a joint combat camouflage uniform, while Section 839 of H.R. 1060, the proposed House-version of the NDAA for FY2014, would have, if enacted, required that the initial military footwear issued to enlisted military personnel conform to the provisions of the Berry Amendment, 10 U.S.C. 2533a.

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**D**LA Troop Support's Clothing and Textile Directorate (C&T) supplies more than 8,000 different items ranging from uniforms and body armor to tents and canteens. Many C&T products, such as uniforms, are unique to the military. The Directorate collaborates with military service customers and private vendors to design and test uniforms. C&T also identifies, tests, and approves commercial items for military use, including sweatshirts, gloves, and blankets, and supplies special purpose clothing, wet weather clothing, chemical suits, and field packs.<sup>1</sup>

## **Under What Controlling Legal Authority Are Military Uniforms Procured?**

DOD offers the following guidance on the management of military uniform procurement:

- Section 850 of the National Defense Authorization Act for Fiscal Year 1998 (P.L. 105-85) requires that any notice of agency requirements or notice of an agency solicitation for contracts be provided through a single, government-wide point of entry. The Federal Business Opportunities (FedBizOpps)<sup>2</sup> site is the electronic, government-wide entry point for information on all federal government contracts over \$25,000;<sup>3</sup>
- DOD Instruction 4160.1-R, DOD Supply Chain: Materiel Management Regulation, which describes the process of materiel management within the DOD supply chain system;<sup>4</sup> and
- DOD Instruction 4140.63, Management of DOD Clothing and Textiles (Class II),<sup>5</sup> which outlines the authority, policy, and responsibilities for the management of the DOD clothing and textiles, and directs the establishment of the Joint Clothing and Textiles Governance Board.<sup>6</sup>

In addition, military uniforms are procured in accordance with the provisions of the Federal Acquisition Regulation (FAR), DLA's own internal regulations, the Berry Amendment, and the Buy American Act (BAA).<sup>7</sup> The Berry Amendment (Title 10 U.S.C. 2533a), which dates from the eve of World War II, was established for a narrowly defined purpose: to ensure that U.S. troops wore military uniforms wholly produced in the United States and that U.S. troops were fed food products wholly produced in the United States.

There are exceptions to the Berry Amendment that waive the domestic source restrictions. One such exception allows DOD to purchase specialty metals and chemical warfare protective

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<sup>1</sup><http://www.troopsupport.dla.mil/>.

<sup>2</sup> <https://www.fbo.gov>.

<sup>3</sup> <http://www.troopsupport.dla.mil/vendor/index.asp>.

<sup>4</sup> U.S. Department of Defense. Office of the Undersecretary of Defense for Logistics and Materiel Readiness. DOD 4140.1-R, May 23, 2003. Accessed online at <http://www.dtic.mil/whs/directives/corres/pdf/414001r.pdf>.

<sup>5</sup> Class II is the clothing and textile supply chain.

<sup>6</sup> U.S. Department of Defense. Office of the Undersecretary for Acquisition, Technology, and Logistics. DOD 4140.63, August 5, 2008, p. 1. Accessed online at <http://www.dtic.mil/whs/directives/corres/pdf/414063p.pdf>.

<sup>7</sup> The Buy American Act (41 U.S.C. 10a through 10d, as amended) is the principal domestic preference statute governing most procurement by the federal government. It restricts foreign access to U.S. government procurement by giving preference to domestically produced, manufactured, or home-grown products. For further discussion of the Buy American Act, refer to CRS Report 97-765, *The Buy American Act: Requiring Government Procurements to Come from Domestic Sources*, by John R. Luckey.

clothing from countries where the United States has entered into reciprocal procurement memoranda of understanding (MOUs).<sup>8</sup>

A Deputy of Secretary of Defense's memorandum of May 1, 2001, stated that the Under Secretary of Defense for Acquisition, Technology, and Logistics and the Secretaries of the military services have the authority to determine that certain items under the Berry Amendment are not available domestically in quantities or qualities that meet military requirements.<sup>9</sup> Such decisions are called "domestic nonavailability determinations" or DNADs. This authority may not be re-delegated. Use of DNADs requires an analysis of the alternatives and certification of the process.<sup>10</sup>

## **How Are Military Uniforms Procured?**

Military uniforms are generally procured through competitive contracts. C&T maintains access to a variety of supplies and uniform-related products. C&T specialists may also procure textiles and materials directly from the textile industry, and then provide textiles and materials to the contractors. The materials may be used to manufacture additional uniforms and related products, often achieving higher quality and substantial savings over purchased, finished generic products.

According to a GAO report on DOD's ground combat uniforms, DLA managed eight uniforms for the military services as of 2010.<sup>11</sup>

## **How Do Vendors Sell Military Uniforms to the Federal Government?**

Vendors and customers may review current solicitations in FedBizOpps, the online source for all federal government procurement opportunities. DLA has established an automated system to provide contractors with the ability to conduct detailed searches for solicitations and contract awards.<sup>12</sup> DLA Troop Support's Clothing & Textiles supply chain has established a 24-hour, 7-day-a-week Customer Contact Center as the point for all customer inquiries.<sup>13</sup> Prospective bidders should obtain specifications prior to submitting an offer.

According to DFARS Parts 204, 212, and 252, contractors must first register in the Central Contractor Registration (CCR) prior to the administration of contract awards, basic ordering agreements, or blanket purchase agreements, unless the award results from a solicitation issued on or before June 1, 1998.<sup>14</sup>

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<sup>8</sup> For further discussion of the Berry Amendment, refer to CRS Report RL31236, *The Berry Amendment: Requiring Defense Procurement to Come from Domestic Sources*, by Valerie Bailey Grasso.

<sup>9</sup> See *Federal Register*, Volume 70, Number 142, Tuesday, July 26, 2005. Accessed online at <http://www.gpo.gov/fdsys/pkg/FR-2005-07-26/html/05-14623.htm>.

<sup>10</sup> For a discussion of frequently-asked questions about the application of the Berry Amendment, see Defense Procurement and Acquisition Policy's website, at [http://www.acq.osd.mil/dpap/cpic/ic/berry\\_amendment\\_faq.html](http://www.acq.osd.mil/dpap/cpic/ic/berry_amendment_faq.html)

<sup>11</sup> U.S. Government Accountability Office. Warfighter Support: Observations on DOD Ground Combat Uniforms, GAO-10-669R, May 28, 2010, p. 3. Accessed online at <http://www.gao.gov/new.items/d10669r.pdf>.

<sup>12</sup> Customers may reach the FedBizOpps Help Desk at 1-877-472-3779, or access the website at <https://www.fbo.gov>.

<sup>13</sup> C&T can be reached at 1-877-DLA-CALL (1-877-352-2255).

<sup>14</sup> See <http://farsite.hill.af.mil>.

DLA has stated on its website that price is not always the sole determination in contract awards, as described here.

Many of our acquisitions (most notably our negotiated acquisitions) involve a review of a contractor's technical capability; corporate experience; quality; past performance and surge capability (as well as price). This methodology is used because it makes good business sense and ensures reliable contractors with proven performance records will deliver quality products at the lowest possible costs. This concept, known as Best Value, is defined as any competitive negotiated acquisition where the contracting officer uses discriminating factors, in addition to price, in the evaluation of proposals and award of a contract. Within DLA Troop Support, this would encompass virtually all our awards with the exception of low price, technically acceptable source selection and sealed bidding.<sup>15</sup>

## **Legislative Initiatives Passed that Affect Military Uniform Procurement**

### **Section 352 of P.L. 113-66, the NDAA for FY2014**

Section 352 of 113-66, the NDAA for FY2014, requires all military services to adopt and field a joint combat camouflage uniform by October 1, 2018.<sup>16</sup> The provision appears below.

#### **Section 352. Revised Policy on Ground Combat and Camouflage Utility Uniforms**

(a) Establishment of Policy- It is the policy of the United States that the Secretary of Defense shall eliminate the development and fielding of Armed Force-specific combat and camouflage utility uniforms and families of uniforms in order to adopt and field a common combat and camouflage utility uniform or family of uniforms for specific combat environments to be used by all members of the Armed Forces.

(b) Prohibition- Except as provided in subsection (c), after the date of the enactment of this Act, the Secretary of a military department may not adopt any new camouflage pattern design or uniform fabric for any combat or camouflage utility uniform or family of uniforms for use by an Armed Force, unless—

(1) the new design or fabric is a combat or camouflage utility uniform or family of uniforms that will be adopted by all Armed Forces;

(2) the Secretary adopts a uniform already in use by another Armed Force; or

(3) the Secretary of Defense grants an exception based on unique circumstances or operational requirements.

(c) Exceptions- Nothing in subsection (b) shall be construed as—

(1) prohibiting the development of combat and camouflage utility uniforms and families of uniforms for use by personnel assigned to or operating in support of the unified combatant command for special operations forces described in section 167 of title 10, United States Code;

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<sup>15</sup> DLA Troop Support, Vendor Information. Accessed online at <http://www.troopsupport.dla.mil/vendor/index.asp>.

<sup>16</sup> P.L. 113-66 (H.R. 3304) was signed into law on December 26, 2013.

(2) prohibiting engineering modifications to existing uniforms that improve the performance of combat and camouflage utility uniforms, including power harnessing or generating textiles, fire resistant fabrics, and anti-vector, anti-microbial, and anti-bacterial treatments;

(3) prohibiting the Secretary of a military department from fielding ancillary uniform items, including headwear, footwear, body armor, and any other such items as determined by the Secretary;

(4) prohibiting the Secretary of a military department from issuing vehicle crew uniforms;

(5) prohibiting cosmetic service-specific uniform modifications to include insignia, pocket orientation, closure devices, inserts, and undergarments; or

(6) prohibiting the continued fielding or use of pre-existing service-specific or operation-specific combat uniforms as long as the uniforms continue to meet operational requirements.

(d) Registration required- The Secretary of a military department shall formally register with the Joint Clothing and Textiles Governance Board all uniforms in use by an Armed Force under the jurisdiction of the Secretary and all such uniforms planned for use by such an Armed Force.

(e) Limitation on Restriction- The Secretary of a military department may not prevent the Secretary of another military department from authorizing the use of any combat or camouflage utility uniform or family of uniforms.

(f) Guidance Required-

(1) IN GENERAL- Not later than 60 days after the date of the enactment of this Act, the Secretary of Defense shall issue guidance to implement this section.

(2) CONTENT- At a minimum, the guidance required by paragraph (1) shall require the Secretary of each of the military departments—

(A) in cooperation with the commanders of the combatant commands, including the unified combatant command for special operations forces, to establish, by not later than 180 days after the date of the enactment of this Act, joint criteria for combat and camouflage utility uniforms and families of uniforms, which shall be included in all new requirements documents for such uniforms;

(B) to continually work together to assess and develop new technologies that could be incorporated into future combat and camouflage utility uniforms and families of uniforms to improve war fighter survivability;

(C) to ensure that new combat and camouflage utility uniforms and families of uniforms meet the geographic and operational requirements of the commanders of the combatant commands; and

(D) to ensure that all new combat and camouflage utility uniforms and families of uniforms achieve interoperability with all components of individual war fighter systems, including body armor, organizational clothing and individual equipment, and other individual protective systems.

(g) Repeal of Policy- Section 352 of the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84, 123 Stat. 2262; 10 U.S.C. 771 note) is repealed.

## **Section 352 of P.L. 111-84, the NDAA for FY2010**

Section 352 of P.L. 111-84, the NDAA for FY2010, contained several provisions of importance to the procurement of military uniforms.<sup>17</sup>

- Section 352 (a) established the U.S. policy on ground combat and camouflage uniforms;
- Section 352(b) required the Comptroller General to perform an assessment of the current military uniforms in use and report to Congress;
- Section 352(c) required the Comptroller General to perform an assessment of military ground combat uniforms and camouflage utility uniforms and submit a report to within 180 days of the bills enactment; and
- Section 352(d) required the military service heads to develop joint requirements for camouflage uniforms.<sup>18</sup>

In the report to Congress, GAO made the following observations, as described here.<sup>19</sup>

Although the Army, Air Force, and Marine Corps stated that they have established certain requirements for combat clothing, performance standards were mixed and not specific to the combat environment. The effectiveness of the camouflage was not one of the operational criteria used to measure performance.

Military service officials stated that the ground combat uniforms, protective gear, and body armor were interoperable; however, there were no criteria to regularly test the interoperability and thus officials were reliant on feedback from the users to gauge interoperability.

Production and procurement costs for ground combat uniforms account for about 95% of the costs of ground combat uniforms.

GAO reports that DOD officials stated that “... supporting a variety of uniforms in any combat theater of operations does not place additional logistics requirements on the distribution system; rather, the additional logistical requirements are primarily found in storage costs in the United States.”<sup>20</sup>

Military service officials reported that it is unlikely that the services would choose to wear the same ground camouflage uniform because the uniform is a service-specific measure of pride, individuality and uniqueness. Reportedly, the Marine Corps System Command officials stated that Title 10 United States Code (U.S.C.) 771 prohibits a member of one military service from wearing the uniform or a distinctive part of the uniform belonging to a different military service.<sup>21</sup>

Officials from the military services and the U.S. Central Command reportedly do not collect data that would permit an assessment of the risks associated with wearing

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<sup>17</sup> P.L. 111-84, the NDAA for FY2010, was signed into law on October 28, 2009.

<sup>18</sup>The joint criteria was to consider the findings and recommendations of the GAO report, and was to ensure that any new technologies, advanced materials, and other advances in ground combat uniform design would be shared between the military services, and would not be precluded from being adapted for use by any military service due to any military-service unique proprietary arrangements.

<sup>19</sup> U.S. Government Accountability Office. Warfighter Support: Observations on DOD Ground Combat Uniforms, GAO-10-669R, May 28, 2010. Accessed online at <http://www.gao.gov/new.items/d10669r.pdf>.

<sup>20</sup> Summary of Findings, GAO-10-669R, page 10.

<sup>21</sup> !0 U.S.C. 771 can be accessed online at <http://uscode.house.gov/download/pls/10C45.txt>.

different uniforms during combat operations. Maintaining flexibility in determining uniform selection is important and based on operational needs.<sup>22</sup>

GAO revisited the military uniform issue in 2012 to determine the extent to which DOD had issued guidance to provide a consistent decision process to ensure that new camouflage uniforms met operational requirements; also, to determine the extent to which the military services have used a joint approach to develop appropriate criteria, ensure equivalent protection and management uniform costs. GAO concluded that DOD had not met the statutory requirement to develop joint criteria, nor had the services sought opportunities to reduce clothing costs and collaborate on uniform inventory costs.<sup>23</sup>

## **Legislative Initiatives Proposed on Military Uniform Procurement**

### **Section 839 of H.R. 1960, the House-Passed NDAA for FY2014**

#### **Section 839. Compliance with Domestic Source Requirements for Footwear Furnished to Enlisted Members of the Armed Forces upon their initial entry into the Armed Forces.**

Section 839 of P.L. 113-66 would have required that the initial military footwear issued to enlisted military personnel be procured in accordance with the provisions of the Berry Amendment, 10 U.S.C. 2533a. The provision appears below.<sup>24</sup>

(a) Requirement- Section 418 of title 37, United States Code, is amended by adding at the end the following new subsection:

(d)(1) In the case of athletic footwear needed by members of the Army, Navy, Air Force, or Marine Corps upon their initial entry into the armed forces, the Secretary of Defense shall furnish such footwear directly to the members instead of providing a cash allowance to the members for the purchase of such footwear.

(2) In procuring athletic footwear to comply with paragraph (1), the Secretary of Defense shall comply with the requirements of section 2533a of title 10, without regard to the applicability of any simplified acquisition threshold under chapter 137 of title 10 (or any other provision of law).

(3) This subsection does not prohibit the provision of a cash allowance to a member described in paragraph (1) for the purchase of athletic footwear if such footwear—

(A) is medically required to meet unique physiological needs of the member; and

(B) cannot be met with athletic footwear that complies with the requirements of this subsection.<sup>?</sup>

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<sup>22</sup> U.S. Government Accountability Office. Warfighter Support: Observations on DOD Ground Combat Uniforms, GAO-10-669R, May 28, 2010. Accessed online at <http://www.gao.gov/new.items/d10669r.pdf>.

<sup>23</sup> U.S. Government Accountability Office. DOD Should Improve Development of Camouflage Uniforms and Enhance Collaboration among the Services. GAO-12-707, September 28, 2012. Accessed online at <http://www.gao.gov/assets/650/648951.pdf>.

<sup>24</sup> For a discussion of the Berry Amendment, see CRS Report RL31236, *The Berry Amendment: Requiring Defense Procurement to Come from Domestic Sources*, by Valerie Bailey Grasso.

(b) Certification- The amendment made by subsection (a) shall not take effect until the Secretary of Defense certifies that there are at least two sources that can provide athletic footwear to the Department of Defense that is 100 percent compliant with section 2533a of title 10, United States Code.

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