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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 212, 246, and 252

[Docket No. 2015-0038]

RIN 0750-AI58

Defense Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Electronic Parts—Further Implementation (DFARS Case 2014-D005)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to further implement a requirement of the National Defense Authorization Act for Fiscal Year 2012, as modified by a section of the National Defense Authorization Act for Fiscal Year 2015, that addresses required sources of electronic parts for defense contractors and subcontractors.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60**

days after date of publication in the FEDERAL REGISTER], to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2014-D005, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2014-D005" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D005." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D005" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2014-D005 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to further implement section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81), as modified by section 817 of the NDAA for FY 2015 (Pub. L. 113-291). On May 6, 2014, DoD published a final rule under DFARS Case 2012-D055, entitled "Detection and Avoidance of Counterfeit Electronic Parts" (78 FR 26092). That final rule constituted the initial partial implementation of section 818.

After publication of the final rule under FAR Case 2012-D055, DoD published on May 9, 2014, a notice of a public meeting, which was held on June 16, 2014, to address further implementation of detections and avoidance of counterfeit electronic parts. There were 79 registered attendees and eight presenters at the public meeting, as well as robust discussion. Some of the issues raised at the public meeting are addressed in this proposed rule, such as—

- Removal of embedded software or firmware from the definition of "electronic part";
- Clarification of traceability expectations; and
- Additional guidance on determination of risk.

II. Discussion and Analysis

The rule proposes amendments to DFARS 246.870 and a new clause at DFARS 252.246-70XX, Sources of Electronic Parts, to further implement paragraph (c)(3) of section 818 of the NDAA for FY 2012, as modified by section 817 of the NDAA for FY 2015, which requires DoD to issue regulations establishing requirements that DoD and DoD contractors and subcontractors, except in limited circumstances, shall acquire electronic parts from trusted suppliers in order to further address the avoidance of counterfeit electronic parts.

Because of the complexities relating to use of trusted suppliers by DoD and the requirement of section 818, paragraph (c)(3)(C), to establish qualification requirements consistent with 10 U.S.C. 2319, those aspects of section 818 will be addressed in a separate DFARS Case 2015-D020, DoD Use of Trusted Suppliers for Electronic Parts.

This proposed rule addresses requirements for DoD contractors and subcontractors at all tiers, as set forth in paragraphs (c)(3)(A), (B), and (D). Although some paragraphs of section 818 only apply to contractors subject to the Cost Accounting Standards (CAS), paragraph (c)(3) applies to all DoD contractors and subcontractors, when obtaining electronic parts to be provided to DoD under a DoD contract.

DoD proposes to include the new clause at DFARS 252.246-70XX, Sources of Electronic Parts, as prescribed at 246.870-3(b), whenever procuring—

- (1) Electronic parts;
- (2) End items, components, parts, or assemblies containing electronic parts; or
- (3) Services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

Unlike the clause at 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, this new clause is not limited to contractors subject to CAS and will apply to small business set-asides, since paragraph (c)(3) of section 818 applies to all DoD-contractors and subcontractors at all tiers that are providing electronic parts or assemblies containing electronic parts. Therefore, the clause includes flowdown to subcontracts, including subcontracts for commercial items.

DoD does not propose to expand the requirements of DFARS 252.246-7007, or the associated clause DFARS 252.244-7001, Contractor Purchasing System Administration, Alternate I, to non-CAS covered prime contractors, because paragraph (e)(1) of section 818 specifically applies the requirements for a system for avoidance and detection of counterfeit parts to “covered

contractors." However, the DFARS flows down the system requirements to subcontractors regardless of CAS coverage.

The clause DFARS 252.246-70XX includes new proposed definitions of "authorized dealer" and "trusted supplier."

- DoD notes that "authorized dealer" does not equate to "authorized reseller." An authorized reseller is not bound to obtain parts from the original manufacturer. The reseller can obtain parts from an authorized dealer, an aftermarket manufacturer, or independent distributor, for example. An "authorized dealer," however, has a contractual arrangement with the original manufacturer or current design activity, including an authorized aftermarket manufacturer, to buy, stock, repackage, sell, and distribute its product lines.

- The term "trusted supplier" includes not only the original manufacturer, an authorized dealer for the part, or a supplier that obtains the part exclusively from the original component manufacturer of the part or an authorized dealer, but also includes a supplier that a contractor or subcontractor has identified as a trustworthy supplier, using DoD-adopted counterfeit prevention industry standards and processes, including testing, in accordance with section 818(c)(3)(A)(iii) and (D) of the NDAA for FY 2012, as modified by section 817 of the NDAA for FY 2015.

In addition to the requirements to acquire electronic components from trusted suppliers, contractors and subcontractors that are not

the original manufacturer are required to have a risk-based system to trace electronic parts from the original manufacturer to product acceptance by the Government. If such traceability is not feasible for a particular part, the contractor system must provide for the consideration of an alternative part or utilization of tests and inspections in order to avoid counterfeit electronic parts. If it is not possible to obtain an electronic part from a trusted supplier, the contractor is required to notify the contracting officer. The contractor is then responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards, of electronic parts obtained from sources other than a trusted supplier.

The rule also proposes a definition in DFARS 202.101 of "original manufacturer" to include the "contract electronics manufacturer," the "original component manufacturer," or the "original equipment manufacturer," which are also defined. The term "contract electronics manufacturer" includes manufacturers that produce goods, using electronic parts, for other companies on a contract basis under the label or brand of the other organizations, or fabricate an electronic part under a contract with, or with the express written authority of, the original component manufacturer, based on the original components manufacturer's designs.

In addition, the rule proposes to delete the sentence "The term 'electronic part' includes any embedded software or firmware" from the definition of "electronic part." Although electronic parts may include embedded software or firmware, the requirements of this rule are more applicable to hardware. Further industry standards are still under development to address testing of embedded software or firmware in electronic parts.

There are conforming changes to DFARS clause 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, in the definitions and processes for traceability.

This rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, "Improving Regulation and Regulatory Review." DoD's full plan and updates can be accessed at: <http://www.regulations.gov/#!docketDetail;D=DOD-2011-OS-0036>.

III. Determinations of Applicability

DoD intends to apply the requirements of section 818(c)(3) to contracts at or below the simplified acquisition threshold (SAT) and contracts for the acquisition of commercial items, including commercial-off-the-shelf (COTS) items.

A. Applicability to Contracts at or below the SAT

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of

law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

DoD intends to determine that it is in the best interest of the Federal Government to apply the rule to contracts at or below the SAT, because a substantial percentage of electronic parts are valued below the SAT. An exception for contracts at or below the SAT would severely decrease the intended effect of the statute and increase the risk of receiving counterfeit parts, which may present a significant mission, security, or safety hazard.

B. Applicability to Contracts for the Acquisition of Commercial Items, including COTS items.

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. 41 U.S.C. 1906 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial

item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Likewise, 41 U.S.C. governs the applicability of laws to COTS items, with the Administrator for Federal Procurement Policy the decision authority to determine that it is in the best interest of the Government to apply a provision of law to acquisitions of COTS items in the FAR. The Director, DPAP, is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

Since electronic parts are generally COTS items, and studies have shown that a large proportion of proven counterfeit parts were purchased as commercial items, including COTS items, DoD intends to determine that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial items, including COTS items, as defined at FAR 2.101. An exception for contracts for the acquisition of commercial items, including COTS items, would severely decrease the intended effect of the statute and increase the risk of receiving counterfeit parts, which may present a significant mission, security, or safety hazard.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD expects that this proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601, et seq. Therefore, an initial regulatory flexibility analysis has been prepared and is summarized as follows:

This proposed rule further implements section 818 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81), as modified by section 817 of the NDAA for FY 2015.

The objective of this rule is to avoid acquisition of counterfeit electronic parts by requiring DoD contractors and subcontractors, except in limited circumstances, to buy

electronic parts from trusted suppliers, in accordance with section 818(c)(3) of the NDAA for FY 2012.

Based on Federal Procurement Data System data for FY 2013 and 2014, DoD estimates that this rule will apply to approximately 33,000 small entities that have DoD prime contracts or subcontracts for electronic parts; end items, components, parts, or assemblies containing electronic parts; or services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

In addition to the requirements to acquire electronic components from trusted suppliers, contractors and subcontractors that are not the original manufacturer or authorized dealer are required have a risk-based process to trace electronic parts from the original manufacturer to product acceptance by the Government. If that is not feasible, the Contractor shall have a process to complete an evaluation that includes consideration of alternative parts or utilization of tests and inspections commensurate with the risk. If it is not possible to obtain an electronic part from a trusted supplier, the contractor is required to notify the contracting officer. The contractor is responsible for inspection, testing, and authentication, in accordance with existing applicable industry standards, of electronic parts obtained from sources other than a trusted supplier. Notifying the contracting officer if it is not

possible to obtain an electronic part from a trusted supplier would probably involve a mid-level of executive involvement.

No relevant Federal rules duplicate, overlap, or conflict with the proposed rule.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD was unable to identify any significant alternatives that would reduce the economic impact on small entities and still fulfill the requirements of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2014-D005), in correspondence.

VI. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). Accordingly, DoD has submitted a request for approval of a new information collection requirement concerning "Detection and

Avoidance of Counterfeit Electronic Parts—Further Implementation” to the Office of Management and Budget.

A. Public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

Respondents: 1,000.

Responses per respondent: 1.

Total annual responses: 1,000.

Preparation hours per response: 1 hour

Total response burden hours: 1,000.

B. Request for Comments Regarding Paperwork Burden.

Written comments and recommendations on the proposed information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail Jasmeet_K._Seehra@omb.eop.gov, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received up to 60 days after the date of this notice, but comments to OMB will be

most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Amy G. Williams, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060, or e-mail osd.dfars@mail.mil.

Include DFARS Case 2014-D005 in the subject line of the message.

List of Subjects in 48 CFR Parts 202, 212, 246, and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 202, 212, 246, and 252 are proposed to be amended as follows:

1. The authority citation for parts 202, 212, 246, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 202—DEFINITIONS OF WORDS AND TERMS

2. Amend section 202.101 by—

a. Adding, in alphabetical order, the definitions for “Contract electronics manufacturer,” “Original component manufacturer,” “Original equipment manufacturer,” and “Original manufacturer”; and

b. Revising the definition of “Electronic part”.

The additions and revision read as follows:

202.101 Definitions.

* * * * *

Contract electronics manufacturer means an organization that—

(1) Produces goods, using electronic parts, for other companies on a contract basis under the label or brand name of the other organization; or

(2) Fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.

* * * * *

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

* * * * *

Original component manufacturer means an organization that designs and/or engineers a part and is pursuing, or has obtained, the intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the contract electronics manufacturer, the original component manufacturer, or the original equipment manufacturer.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 212.301 by adding paragraph (f)(xviii)(C) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xviii) * * *

(C) Use the clause at 252.246-70XX, Sources of Electronic Parts, as prescribed in 246.870-3(b), to comply with section 818(c)(3) of Pub. L. 112-81, as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291).

* * * * *

PART 246—QUALITY ASSURANCE

4. Revise section 246.870 heading to read as follows:

246.870 Contractor counterfeit electronic part detection and avoidance.

246.870-1 [Redesignated as 246.870-0]

5. Redesignate section 246.870-1 as 246.870-0.

6. In newly redesignated section 246.870-0, revise paragraph (a) to read as follows:

246.870-0 Scope.

* * * * *

(a) Partially implements section 818(c) and (e) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291); and

* * * * *

7. Add section 246.870-1 to read as follows:

246.870-1 Definitions.

As used in this section—

Authorized dealer means a supplier with a contractual arrangement with the original manufacturer or current design activity, including an authorized aftermarket manufacturer, to buy, stock, re-package, sell, and distribute its product lines.

Trusted supplier means—

(1) The original manufacturer of a part;

(2) An authorized dealer for the part;

(3) A supplier that obtains the part exclusively from the original component manufacturer of the part or an authorized dealer; or

(4) A supplier that a contractor or subcontractor has identified as a trustworthy supplier, using DoD-adopted counterfeit prevention industry standards and processes, including testing (see <https://assist.dla.mil>).

8. Amend section 246.870-2 by—

a. Redesignating paragraphs (a) and (b) as paragraphs (b) (1) and (2), respectively;

b. In newly redesignated paragraph (b) (1), removing the paragraph heading and adding a comma after the second use of “electronic parts”;

c. In the newly redesignated paragraph (b) (2), further redesignating paragraphs (1) through (12) as paragraphs (b) (2) (i) through (xii), respectively;

d. Adding paragraph (a);

- e. Adding a paragraph (b) heading;
- f. In newly redesignated paragraph (b) (2) introductory text, removing "see 252.246-7007" and adding "see the clause at 252.246-7007" in its place; and
- g. In newly redesignated paragraph (b) (2) (v), adding the phrase ", or use of other trusted suppliers, as identified by the contractor (see paragraph (a) (1) (ii) of this section)" at the end of the sentence, before the period.

The additions read as follows:

246.870-2 Policy.

(a) Sources of electronic parts. (1) Except as provided in paragraph (a) (2) of this section, the Government requires contractors and subcontractors at all tiers, to-

(i) Obtain electronic parts that are in production or currently available in stock from-

(A) The original manufacturers of the parts;

(B) Their authorized dealers; or

(C) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;

(ii) Obtain electronic parts that are not in production, or not currently available from stock, from suppliers identified by the contractor or subcontractor as trusted suppliers, provided that-

(A) The contractor uses established counterfeit prevention industry standards and processes, including testing, for identifying such trusted suppliers;

(B) The contractor or subcontractor assumes responsibility for the authenticity of parts provided by such suppliers (see 231.205-71); and

(C) The selection of such trusted suppliers is subject to review and audit by appropriate Department of Defense officials.

(iii) If authorized to purchase electronic parts from the Federal Supply Schedule, contractors and subcontractors are still required to comply with the requirements of paragraph (a)(1) or (2) of this section, as applicable.

(2) If electronic parts are not available from trusted suppliers, the Government requires contractors and subcontractors to comply with the notification, inspection, testing, and authentication requirements of paragraph (c) of the clause at 252.246-70XX, Sources of Electronic Parts.

(b) Contractor counterfeit electronic part detection and avoidance system.* * *

* * * * *

9. Amend section 246.870-3 by—

a. Redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (2), respectively;

- b. In the newly redesignated paragraph (a) (1), further redesignating paragraphs (1) through (3) as paragraphs (a) (1) (i) through (iii), respectively;
- c. In newly redesignated paragraph (a) (1), removing "paragraph (b)" and adding "paragraph (a) (2)" in its place;
- d. In newly redesignated paragraph (a) (1) (iii), removing "Services where" and adding "Services, if" in its place;
- e. In newly redesignated paragraph (a) (2), removing "set-aside" and adding "set aside" in its place; and
- f. Adding paragraph (b).

The addition reads as follows:

246.870-3 Contract clause.

* * * * *

(b) Use the clause at 252.246-70XX, Sources of Electronic Parts, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when procuring—

(1) Electronic parts;

(2) End items, components, parts, or assemblies containing electronic parts; or

(3) Services, if the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. Amend section 252.246-7007 by-
 - a. In the introductory text, removing "246.870-3" and adding "246.870-3(a)" in its place;
 - b. Removing the clause date "(MAY 2014)" and adding "(DATE)" in its place;
 - c. In paragraph (a)-
 - i. Adding, in alphabetical order, the definitions of "Authorized dealer," "Contract electronics manufacturer," "Original component manufacturer," "Original equipment manufacturer," "Original manufacturer," and "Trusted supplier"; and
 - ii. Revising the definition of "Electronic part"; and
 - d. Revising paragraphs (c) (4) and (5).

The additions and revisions read as follows:

252.246-7007 Contractor Counterfeit Electronic Part Detection and Avoidance System.

* * * * *

(a) * * *

Authorized dealer means a supplier with a contractual arrangement with the original manufacturer or current design activity, including an authorized aftermarket manufacturer, to buy, stock, re-package, sell, and distribute its product lines.

Contract electronics manufacturer means an organization that-

- (1) Produces goods, using electronic parts, for other companies on a contract basis under the label or brand name of the other

organization; or

(2) Fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

* * * * *

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

* * * * *

Original component manufacturer means an organization that designs and/or engineers a part and is pursuing, or has obtained, the intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the contract electronics manufacturer, the original component manufacturer, or the original equipment manufacturer.

* * * * *

Trusted supplier means—

- (1) The original manufacturer of a part;
- (2) An authorized dealer for the part;

(3) A supplier that obtains the part exclusively from the original component manufacturer of the part or an authorized dealer; or

(4) A supplier that a contractor or subcontractor has identified as a trustworthy supplier, using DoD-adopted counterfeit prevention industry standards and processes, including testing (see <https://assist.dla.mil>).

* * * * *

(c) * * *

(4) Processes to-

(i) Enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic parts are supplied as discrete electronic parts or are contained in assemblies; and

(ii) If the Contractor cannot establish this traceability from the original manufacturer for a specific part, complete an evaluation that includes consideration of alternative parts or utilization of tests and inspections commensurate with the risk (see paragraph (c) (2) of this clause).

(5) Use of trusted suppliers in accordance with the clause at 252.246-70XX, Sources of Electronic Parts.

* * * * *

11. Add section 252.246-70XX to read as follows:

252.246-70XX Sources of Electronic Parts.

As prescribed in 246.870-3(b), use the following clause:

SOURCES OF ELECTRONIC PARTS (DATE)

(a) Definitions. As used in this clause—

Authorized dealer means a supplier with express written authority of a contractual arrangement with the original manufacturer or current design activity, including an authorized aftermarket manufacturer, to buy, stock, re-package, sell, and distribute its product lines.

Contract electronics manufacturer means an organization that—

(1) Produces goods, using electronic parts, for other companies on a contract basis under the label or brand name of the other organization; or

(2) Fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer's designs, formulas, and/or specifications.

Electronic part means an integrated circuit, a discrete electronic component (including, but not limited to, a transistor, capacitor, resistor, or diode), or a circuit assembly (section 818(f)(2) of Pub. L. 112-81).

Original component manufacturer means an organization that designs and/or engineers a part and is pursuing, or has obtained, the intellectual property rights to that part.

Original equipment manufacturer means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

Original manufacturer means the contract electronics manufacturer, the original component manufacturer, or the original equipment manufacturer.

Trusted supplier means—

(1) The original manufacturer of a part;

(2) An authorized dealer for the part;

(3) A supplier that obtains the part exclusively from the original component manufacturer of the part or an authorized dealer; or

(4) A supplier that a contractor or subcontractor has identified as a trustworthy supplier, using DoD-adopted counterfeit prevention industry standards and processes, including testing (see <https://assist.dla.mil>).

(b) Trusted suppliers. In accordance with section 818(c)(3) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81), as amended by section 817 of the National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113-291), except as provided in paragraph (d) of this clause, the Contractor shall—

(1) Obtain electronic parts that are in production or currently available in stock from—

(i) The original manufacturers of the parts;

(ii) Their authorized dealers; or

(iii) Suppliers that obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers; and

(2) Obtain electronic parts that are not in production, or not currently available in stock, from suppliers identified by the Contractor as trusted suppliers, provided that—

(i) The Contractor uses established counterfeit prevention industry standards and processes, including testing, for identifying such trusted suppliers;

(ii) The Contractor assumes responsibility for the authenticity of parts provided by such suppliers (see DFARS 231.205-71); and

(iii) The Contractor's selection of such trusted suppliers is subject to review and audit by appropriate Department of Defense officials.

(c) Traceability. If the Contractor is not the original manufacturer of, or authorized dealer for, an electronic part, the Contractor shall have risk-based processes (taking into consideration the consequences of failure of an electronic part) that—

(1) Enable tracking of electronic parts from the original manufacturer to product acceptance by the Government, whether the electronic part is supplied as a discrete electronic part or is contained in an assembly; and

(2) If the Contractor cannot establish this traceability from the original manufacturer for a specific part, complete an evaluation that includes consideration of alternative parts or utilization of tests and inspections commensurate with the risk. Determination of risk shall be based on the assessed probability of receiving a counterfeit electronic part; the probability that the inspection or test selected will detect a counterfeit electronic part; and the potential negative consequences of a counterfeit electronic part being installed (e.g., human safety, mission success) where such consequences are made known to the Contractor.

(d) (1) Non-trusted suppliers. If it is not possible to obtain an electronic part from a trusted supplier, as described in paragraph (b) of this clause, the Contractor shall notify the Contracting Officer. If an entire lot of assemblies require an obsolete component, the Contractor may submit one notification for the entire lot, providing identification of the assemblies containing the parts (e.g., serial numbers).

(2) The Contractor is responsible for inspection, testing, and authentication, in accordance with existing applicable

industry standards, of electronic parts obtained from sources other than those described in paragraph (b) of this clause.

(e) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts.

(End of clause)

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