



AIA Counterfeit Parts Testimony Detection and Avoidance of Counterfeit Electronic Parts DFARs Case 2012-D055

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Mary Jane Mitchell
Assistant Vice President, Acquisition Policy
Aerospace Industries Association

703-358-1065
maryjane.mitchell@aia-aerospace.org



DFARS Case 2012-D055: Detection & Avoidance of Counterfeit Electronic Parts

Our Message Today:

- Extend comment deadline and continue dialogue between DOD and Industry

Why:

- Create a holistic, implementable strategy to address counterfeit parts
 - Clarify definitions, scope, and business rules
 - Coordinate and harmonize with other rule sets being considered, including HASC FY14 NDAA language
 - Consider industry experience, best practices, and standards

- What is a “trusted supplier” as set forth in the statute?
- How does this rule fit in with the three unpublished rules further implementing the statute?
- How will the use of GIDEP be implemented?
- How will contractors obtain approval as a “legally authorized source”?
- How will Counterfeit Parts Detection and Avoidance be managed and measured as part of the Purchasing System?
- Will it be the Contracting Officer who determines whether a part is counterfeit?

- Will a CO's determination of a counterfeit part be a final decision such to the disputes clause?
- How will contractors recover costs if an initially identified counterfeit part or suspect counterfeit part is determined not to be counterfeit?

- Ensure consistent definition of the issue, the implementation framework, and the anticipated result
- Continue the dialogue while all facets of the issue are being explored
- Ensure existing and proposed policy guidance are in sync
 - Specific reference or issue (DoDI 4140.67) expands unfairly beyond the statute to all parts, not just electronic
 - Extends definition of counterfeit to include non-conforming material...well beyond statutory requirements

- **Ensure existing and proposed policy guidance are in sync (cont'd):**
 - Expansion of safe harbor provisions where (per HASC FY14 NDAA language):
 - trusted sources are used or
 - obsolete parts are being acquired

Difficult to implement & govern due to undefined concepts

Examples:

- Trusted Source
- Suspect Counterfeit Part
- Counterfeit Part/Electronic Part
- Legally Authorized Source

Risk Implications--

- Holds compliance risk at the prime contractor level
- Difficult, if not impossible, compliance flow-down throughout the supply chain (complicated further by Small Business Exemption)

Risk Implications (cont'd)--

- Inappropriate risk nexus--Finding a counterfeit part in an item delivered to the DoD should not be a basis for determining that the contractor's purchasing System is noncompliant or deficient
- Risk of inappropriate withholds
- Extends industry Purchasing Systems beyond scope of purchasing processes and fails to acknowledge or incentivize responsible corrective action

Key Areas of Concern for Industry

Clarify the Definitions, Scope & Business Rules

Will increase costs to both DOD and Industry

- Affects business systems and cost accounting throughout the supply chain
- Remedial Costs Unallowable Except for GFE
- Address obsolescence considerations through a shared risk mitigation approach

Significant work already on-going to mitigate counterfeit parts. Need to:

- Adopt risk based approaches contractors are already using today
- Align with Industry Standards
- Separate Detection and Avoidance System implementation and compliance from Purchasing System Reviews

- Extend comment deadline for 12 months
- Continue the dialogue between DOD and Industry
- Work together on developing mutually acceptable solutions

AIA committed to facilitating the dialogue