

Proposed DFAR Comments

DFARS Case 2012-D055

TTI, Inc.
Authorized Distributor
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TTI, Inc.

- Authorized Distributor
 - Connectors, Resistors & Capacitors (IP&E)
- HQ in Fort Worth, Texas
- Founded in 1971
- Today: 100+ offices and 2,700 employees
- Mil/Aero Sales of 210M to 2900 customers
- 18% of North American sales
- Average price < .05 each

TTI, Inc. Industry Involvement: CF

- **SAE committee G-19D**
 - SAE standard for independent distributors (brokers), AS6081
- **Electronic Component Industry Association (ECIA)**
 - Produced straw document for SAE G-19AD
- **Co-Chair SAE G-19AD Committee**
 - SAE standard for authorized distribution, AS6496
- **Symposiums / Seminars**
 - DMSMS – Orlando, November, 2012
 - SAE Counterfeit Parts Avoidance Seminar in Phoenix, AZ
 - SMTA/CALCE
 - (Surface-Mount Technology Association / Center for Applied Life Cycle Engineering University of Maryland) Anti Counterfeit Symposium

Proposed Changes

1. Use the definition adopted by the multiple committees of SAE.
2. Failing that,
 - a. Expand “legally authorized source”.
 - b. Eliminate the second bullet.
 - c. Include characterization of proper authority to amend product.
3. Define “Trusted Supplier”.
4. Remove the CAS limitation.
5. Amend the flowdown requirement to except the OCM and their authorized distributor.

Definition of Counterfeit

(202.101; 244.305-1, 252.244-7001, 246.870-3, 252.246-70xx,et. Al)

- ***As currently proposed:***
- ***Counterfeit part*** means—
- *An unauthorized copy or substitute part that has been identified, marked, and/or altered by a source other than the part's legally authorized source and has been misrepresented to be from a legally authorized source;*
- *An item misrepresented to be an authorized item of the legally authorized source; or*
- *A new, used, outdated, or expired item from a legally authorized source that is misrepresented by any source to the end-user as meeting the performance requirements for the intended use*

Recommendation:

Definition of Counterfeit

- Use Counterfeit definition from the SAE committees
 - OCM's authorized distributors
 - Independent distributors
 - Government agencies
 - Prime contractors
 - Accrediting Bodies
- Appears in standards AS5553A, AS6081 & AS6496 (draft)
- Accepted by the hundreds of participants in the development of these standards
- Reinforces spirit of Section 818, Element (c) (3) (d) (i)
 - Use *trusted suppliers* that comply with established industry standards.

Proposed Definition

- **COUNTERFEIT PART**

A fraudulent part that has been confirmed to be a copy, imitation, or substitute that has been represented, identified, or marked as genuine, and/or altered by a source without legal right with intent to mislead, deceive, or defraud.

- Address: “Used sold as new” as **fraudulent**.

Alternatively: Amend definition of Legally Authorized Source in 1st Bullet

- *An unauthorized copy or substitute part that has been identified, marked, and/or altered by a source other than the part's **legally authorized source** and has been misrepresented to be from a legally authorized source;*

1st Bullet: Amend

Legally Authorized Source Definition

- *Legally authorized source* means the current design activity or the original manufacturer or a supplier authorized by the current design activity or the original manufacturer to produce an item.
- The term “legally authorized source” must be expanded to include the authorized distributor.
- *Legally authorized source* means the current design activity or the original manufacturer or a supplier authorized by the current design activity or the original manufacturer to produce or distribute an item.

Definition: 2nd Bullet

- *An item misrepresented to be an authorized item of the legally authorized source; or*
- Unclear how it is different from 1st bullet
- Encompasses situations whereby a simple supplier error could be classified as counterfeit.
 - Consequences of improper reports of counterfeit
 - Reputation Damage
 - Onerous Workload to
- **Recommendation: Remove from the definition**

Definition: 3rd Bullet

- *A new, used, outdated, or expired item from a legally authorized source that is misrepresented by any source to the end-user as meeting the performance requirements for the intended use*
- “Any source” includes legally authorized source that has the right to remark, re-label and reconfigure their device to meet performance specifications.
- Abrogates the rights of the category c distributor (Mil-STD-790), the authorized aftermarket manufacturer and and the original component manufacturer.

Definition: 3rd Bullet

- Recommend: Add the characterization of contractual authority to the source.
- Proposed 3rd bullet:
 - A new, used, outdated, or expired item that has been represented, identified, or marked as genuine, and/or altered by a source without legal right as meeting the performance requirements for the intended use.

Trusted Supplier

(246.870-2, 252.246-70xx, et. Al)

- One of the industry's most anticipated elements of the forthcoming DFAR's
- This element is missing from the proposed regulation.
- **Recommendation: Define "Trusted Supplier"**

Applicable to CAS only

- **Application only to contracts subject to Cost Accounting Standards (CAS), not to “small entities” Element IV Regulatory Flexibility Act. (231.205-71, 244.305-1, 252.246-70xx, et. Al)**
- Most sales of counterfeits are under the limits
- Many contracts issued by the DoD through the DLA directly or other contracting agencies are under these thresholds.
- **Recommend: Remove this exception**

Flow Down to Subcontractors

(246.870-2, 252.244-7001, et. Al)

- To the distributor with authorization from them manufacturer or to the OCM themselves is unnecessary and burdensome.
- Results in:
 - Hundreds of man-hours in the supply chain to mitigate a risk that is not there.
 - Significant extra cost to the supplier and the government.
- **Recommendation: Amend the language to except the manufacturer themselves or their authorized distributor**

Summary of Proposed Changes

1. Use the definition adopted by the multiple committees of SAE.
2. Failing that,
 - a. Expand “legally authorized source”.
 - b. Eliminate the second bullet.
 - c. Include characterization of proper authority to amend product.
3. Define “Trusted Supplier”.
4. Remove the CAS loophole.
5. Amend the flowdown requirement to except the OCM and their authorized distributor.

Thank You

- TTI thanks you for the opportunity to provide input on these proposed DFAR's in response to Section 818 of the NDAA 2012 and Section 838 of the NDAA 2013. We hope you consider them favorably.

Addendum

- **AUTHORIZED DISTRIBUTION:** Transactions conducted by an Manufacturer-Authorized Distributor distributing product within the terms of a Distribution Agreement. Franchised Distribution is considered synonymous with Authorized Distribution.
- **DISTRIBUTION AGREEMENT:** Specific contract between the Manufacturer and the Organization. Contractual terms include, but are not limited to, distribution region, distribution products or lines, and warranty flow down from the manufacturer. These agreements often include failure analysis support, return privileges and product change notifications as well.