December 9, 2015

VIA Email and Federal E-Rulemaking Portal

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

RE: **DFARS Case 2014-D005**

Dear Sir or Madam:

On behalf of the Electronic Components Industry Association (ECIA), I am submitting these comments on the Proposed Rulemaking, DFARS Case 2014-D005.

ECIA is the voice of the authorized sellers of electronic components. The association's membership includes electronic component manufacturers and their authorized distributors and manufacturer field sales representatives. Founded in 2011 through the merger of the Electronic Components Association (ECA) and the National Electronic Distributors Association (NEDA), ECIA membership encompasses manufacturers of all types of electronic components (including semiconductor, passive, connector, and electro-mechanical parts) and authorized distributors accounting for over 90% of the authorized distribution sales in North America.

ECIA strongly believes that counterfeit parts constitute a significant threat to the health and safety of U.S. citizens. ECIA applauds the Department of Defense for its leadership role in recognizing and acknowledging the threat that counterfeit electronic components represent to the safety of the United States, its citizens and its armed forces. The purposed rule aligns with many of the past recommendations of ECIA and other industry associations and makes further progress in preventing the introduction of counterfeit electronic components into the defense supply chain.

The association strongly supports the proposal to remove the language "embedded software and firmware" from the definition of "electronic part." The introduction of "tainted" software and firmware into integrated circuits is a complex issue and is more appropriately addressed in a separate rule-making process.

ECIA commends DoD for its recognition that the risk of counterfeit electronic components is directly related to the sources used to acquire parts. The hierarchy set forth in the proposed rule is a good start, but needs further refinement and clarification as noted below.

The association's comments will focus on five specific areas:

1. Authorized dealer
2. Trusted supplier
3. Policy
4. Traceability
5. Flow down requirements

1. Authorized Dealer, 246.870-1. ECIA strongly opposes the introduction of the term "authorized dealer" because the term is not recognized or used anywhere in the electronic component industry, nor is the term currently used in any industry standard recognized or used by DoD. Its introduction would further complicate and confuse a jumbled industry lexicology. The well-established term used and recognized throughout the industry is "authorized distributor." ECIA recommends that the term "authorized dealer" be deleted and replaced with the term "authorized distributor."

Once this substitution is made, the definition adequately describes an authorized distributor except that the phrase "...distribute its product lines" should be changed to "...distribute parts set forth in the contractual arrangement." Not all distributors are authorized to sell the entire product line of a manufacturer. There are situations where a distributor may only be authorized to sell a particular part, product line or brand of a manufacturer.

The association also commends DoD for recognizing in the comments section of the proposed rule that there is a distinction between an authorized distributor (dealer) and an authorized reseller. DoD should further note that an authorized reseller is generally not recognized as authorized by the original manufacturer and consequently there is no warranty flow-through and manufacturer support.

2. Trusted Supplier, 246.870-1. The expansive, proposed definition of trusted supplier introduces significant challenges to a risk-based approach for the detection and avoidance of counterfeit electronic components. The proposed definition raises the following questions and issues:

a. There are several areas across DoD which use the word "trusted" and "trustworthy" in different contexts with different meanings and requirements. The introduction of a new category of trusted entities adds confusion, uncertainty and ambiguity in the supply chain.
b. "Trusted" and "trustworthy" do not equate to authenticity or performance. In a risk-based environment, purchasing from the original manufacturer or the manufacturer's authorized distributor is the least risky option to obtain genuine parts that meet the manufacturer's performance specifications. All other sources increase the risk of obtaining counterfeit parts and should not be considered prima facie trustworthy.

c. Parts obtained from sources other than the original manufacturer or an authorized distributor will generally not be verified as genuine by the original manufacturer. Consequently, the unauthorized suppliers included in the "trusted supplier" definition will be selling parts for which there is no positive verification of authenticity.

ECIA recommends:

a. that the definition of "trusted suppliers" be limited to original manufacturers and authorized distributors;
b. that a new definition be created that covers small and disadvantaged businesses and avoids using the terms "trusted" and "trustworthy;"
c. that purchases from sources other than the original manufacturer or authorized distributed be permitted only after it is documented that the part is not available from authorized sources.

3. Policy, 246.870-2. ECIA commends the DoD for its initial efforts to define levels of risk based on the source from which the government buys the electronic component. This risk-based hierarchy should mandate an exhaustive search of authorized sources (i.e., original manufacturer, authorized aftermarket manufacturer and authorized distributors) before seeking alternative sources. A search of a contractor's approved vendor list should not be considered an exhaustive search.

ECIA recommends that at a minimum, DoD should amend the proposed rule to require all contractors and subcontractors at all tiers to 1) purchase electronic parts from an original manufacturer, current design activity, an authorized aftermarket manufacturer, or authorized distributor; and 2) permit purchase of electronic parts from other "trusted suppliers" only after an exhaustive search proves that it is not possible to purchase the electronic parts from the original manufacturer, current design activity, an authorized aftermarket manufacturer, or authorized distributor. ECIA recommends that this requirement be mandatory with flow down to contractors and subcontractors at all levels.

The use of the phrase "...currently available in stock..." raises questions about parts that are in production but have lead times. Unless there is a demonstrated, immediate need for a part in production with a lead time, contractors should not have the option to seek the part from a source with a higher level of counterfeit risk.

The use of the phrase "...parts that are not in production..." also raises issues about obsolete parts that are not in production by the original manufacturer but may be produced on demand in a timely manner by authorized aftermarket manufacturers.

ECIA agrees with language set forth in 246.870-2(ii)(B) regarding contractor responsibility for the authenticity of parts obtained from sources other than the original manufacturer or authorized distributor. It should be noted that proving authenticity does not mean that the part will perform according to manufacturer specifications because the part may be used or may not have been properly packaged, stored or handled. Contractor's obtaining proof of authenticity will be

challenging because manufacturers will usually not verify authenticity for parts obtained from unauthorized sources,

4. Traceability

ECIA believes that traceability poses significant implementation and compliance problems:

- Traceability is available for parts obtained from authorized sources, but often ceases once a part escapes the authorized supply chain. Traceability is particularly challenging for parts sold by contract electronics manufacturers.
- Traceability does not necessarily prove that an electronic component is genuine or that the component has been properly packaged, stored or handled in accordance with the original component manufacturer's specifications.
- Traceability documents and technologies are subject to counterfeiting.
- Contractors and the government could have conflicting interpretations of what are acceptable testing and verification mechanisms/procedures.
- There will be increased costs associated with implementation and record-keeping, which could be significant for smaller businesses.
- Reliance upon entities other than original component manufacturer for verification raises concerns about security and the integrity and authenticity of the part.

5. Flow Down Requirements

The association generally supports the flow-down requirements to include all tiers and COTS parts. However, the rule is unclear as to whether the flow-down extends to suppliers of raw materials and minerals and to component manufacturers. Subjecting component manufacturers to flow down requirements would impose unnecessary costs and staff-hours without providing any benefit, while adding significant costs to the supply chain and end customer. It seems illogical to require an original component manufacturer to have procedures/processes in place to ensure that parts it makes are not counterfeit. ECIA recommends that the original manufacturer be excluded from contractor flow down requirements.

Summary

In summary, ECIA believes that the most effective method for avoiding counterfeit electronic parts is to purchase these parts from the original manufacturer and their authorized distributors, and authorized aftermarket distributors and manufacturers (i.e., "legally authorized sources"). Purchasing from any other source significantly increases the likelihood of acquiring counterfeit parts. Consequently, ECIA recommends, in keeping with its above recommendations, that the proposed DFARS be amended to reflect the "safe harbor" of buying from "legally authorized sources" and that the processes/procedures for detecting and avoiding counterfeit electronic parts only be used for acquisitions from unauthorized sources (i.e., sources other than "legally authorized sources").

ECIA welcomes the opportunity to provide additional information, comment and assistance to the Department of Defense in preserving the integrity of the electronic component supply chain. Please contact me at 678-393-9990.

Sincerely,

Robin B. Gray Jr.
Chief Operating Officer & General Counsel