



This document is scheduled to be published in the Federal Register on 05/16/2013 and available online at <http://federalregister.gov/a/2013-11400>, and on FDsys.gov

(Billing Code 5001-06-P)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 202, 231, 244, 246, and 252

RIN 0750-AH88

Defense Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Electronic Parts (DFARS Case 2012-D055)

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) in partial implementation of a section of the National Defense Authorization Act for Fiscal Year 2012, and a section of the National Defense Authorization Act for Fiscal Year 2013, relating to the detection and avoidance of counterfeit electronic parts.

DATES:

Comment Date: 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 2012-D055,

using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D055" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2012-D055." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2012-D055" on your attached document.
- o E-mail: dfars@osd.mil. Include DFARS Case 2012-D055 in the subject line of the message.
- o Fax: 571-372-6094.
- o Mail: Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 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. Meredith Murphy, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B855,

3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6098; facsimile 571-372-6101.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to partially implement section 818 (paragraphs (c) and (f)) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012 (Pub. L. 112-81, enacted December 31, 2011). Section 818 is entitled "Detection and Avoidance of Counterfeit Electronic Parts." Paragraph (c) of section 818 requires the issuance of DFARS regulations addressing contractor responsibilities for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts, the use of trusted suppliers, and requirements for contractors to report counterfeit electronic parts and suspect counterfeit electronic parts. Paragraph (f) of section 818 contains the definitions of "covered contractor" and "electronic part." Other aspects of section 818 are being implemented separately.

In addition, this proposed rule addresses the amendments to section 818 that were made by section 833, entitled "Contractor Responsibilities in Regulations Relating to Detection and Avoidance of Counterfeit Electronic Parts," of the NDAA for FY 2013 (Pub. L. 112-239, enacted January 2, 2013).

II. Discussion.

The intent of section 818 is to hold contractors responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts. Three specific areas were identified that required either modification or additions to DFARS in order to implement the requirements defined in section 818.

A. *Definitions.* Several definitions are proposed.

"Electronic part" is defined at paragraph (f) of section 818. Section 818(b)(1) requires definition of "counterfeit electronic part" and "suspect counterfeit electronic part." As recommended by Government Accountability Office (GAO) Report GAO-10-389, entitled "DoD Should Leverage Ongoing Initiatives in Developing Its Program to Mitigate Risk of Counterfeit Parts," to establish a clear and consistent definition of "counterfeit parts." DoD is proposing to add a definition of "legally authorized source" to the definition of "counterfeit part" as an important component of its program to mitigate risks posed by counterfeit parts. The new terms are proposed to be located at DFARS 202.101, Definitions, because they will apply to multiple parts of the regulations.

B. *Contractor responsibilities.*

Detection and avoidance of counterfeit electronic parts or suspect counterfeit electronic parts. New policy on counterfeit parts is proposed to be added to DFARS subpart 246.8, Contractor

Liability for Loss of or Damage to Property of the Government. The proposed new coverage includes a clause at DFARS 252.246-7007, Contractor Counterfeit Electronic Part Avoidance and Detection System. In addition, this rule proposes to add compliance (with the requirements for identifying, avoiding, and reporting counterfeit parts) to the existing requirements for the contractor's purchasing system. To that end, the rule proposes to modify the clause at DFARS 252.244-7001, Contractor Purchasing System Administration, to add system criteria for the contractor's purchasing system. It also proposes an alternate which adds systems criteria for a less comprehensive review of the contractor's purchasing system that targets review of those elements relating to the detection and avoidance of counterfeit electronic parts and suspect counterfeit electronic parts. The alternate is prescribed for use in solicitations and contracts that include the clause at 252.246-7007, but do not include the clause at FAR 52.244-2, Subcontracts.

(1) *Unallowability of costs of rework and corrective action.*

A new subsection, DFARS 231.205-71, proposes to prohibit contractors from claiming, as a reimbursable cost under DoD contracts, the cost of counterfeit electronic parts or suspect counterfeit electronic parts or the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts. However, section 833 of the NDAA for FY 2013

provides specific exceptions that would enable these costs to be reimbursed if (i) a contractor has a DoD-approved operational system to detect and avoid counterfeit parts; or the suspect counterfeit parts were provided as Government-furnished property; and (ii) the contractor has provided timely notice to the Government. These exceptions are included at DFARS 231.205-71(c) in the proposed rule.

(2) *Government role.* The Government's role in reviewing and monitoring the contractor's processes and procedures for detecting and avoiding counterfeit or suspect counterfeit electronic parts (see section 818(e)(2)(B)) is addressed as part of a contractor's purchasing system review (see proposed DFARS 244.303(b)).

III. 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.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to 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.*, because it applies only to contracts that are subject to the Cost Accounting Standards (CAS) (see section 818(f)).

Contracts with small entities are exempt from CAS. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is intended to partially implement section 818 of the National Defense Authorization Act for Fiscal Year 2012 and section 833 of the National Defense Authorization Act for Fiscal Year 2013. Section 818 is entitled "Detection and Avoidance of Counterfeit Electronic Parts;" it requires DoD-wide regulations concerning contractors' requirements to identify, avoid, and report counterfeit and suspect electronic counterfeit parts. Further, paragraph (a) of section 818 requires DoD to establish and issue relevant DoD-wide definitions. Section 833 provides exceptions to cost unallowability if contractors take specific steps.

The rule will not apply to small entities as prime contractors. The requirements will apply to contracts that are

subject to the Cost Accounting Standards (CAS) under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1 (other than educational institutions, Federally Funded Research and Development Centers operated by educational institutions, or University Associated Research Centers). Contracts and subcontracts with small entities are exempt from CAS requirements.

There is, however, the potential for an impact on small entities in the supply chain of a prime contractor with contracts subject to CAS. The impact should be negligible as long as the small entity is not supplying counterfeit electronic parts to the prime contractor.

The proposed rule would use the existing requirements for contractors' purchasing systems as the basis for the anti-counterfeiting compliance (see the clause at DFARS 252.244-7001, Contractor Purchasing System Administration).

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

The economic impact of this proposed rule on small entities has been minimized in the following ways:

(a) The proposed rule would use the existing requirements (and contract clause) for contractors' purchasing systems, rather than creating a separate, new system.

(b) The proposed rule would apply only to prime contractors that must comply with the Cost Accounting Standards, which excludes small entities without diminishing the ability of DoD to oversee compliance.

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 2012-D055), in correspondence.

V. 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; however, these changes to the DFARS, as they pertain to contractors' purchasing systems, will generally not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704-0253, entitled Purchasing Systems. The current information collection estimates that 90 respondents will submit one response annually, with 16 hours per response. We estimate that the additional information collection burden associated with the clause at

52.244-7001-Alternate, will be as much as five percent more than the existing burden. Therefore, the change to the current annual reporting burden for OMB Control Number 0704-0253 is estimated as follows:

Respondents: 5

Responses per respondent: 1

Total annual responses: 5

Preparation hours per response: 16

Total hours: 80

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. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060. Comments can be received from 30 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. Meredith Murphy, OUSD(AT&L)DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060, or e-mail dfars@osd.mil. Include DFARS Case 2012-D055 in the subject line of the message."

List of Subjects in 48 CFR Parts 202, 231, 244, 246, and 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR parts 202, 231, 244, 246, and 252 as follows:

1. The authority citation for parts 202, 231, 244, 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 adding, in alphabetical order, the following definitions to read as follows:

202.101 Definitions.

* * * * *

Counterfeit part means—

(1) 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;

(2) An item misrepresented to be an authorized item of the legally authorized source; or

(3) 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.

* * * * *

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).

* * * * *

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.

* * * * *

Suspect counterfeit part means a part for which visual inspection, testing, or other information provide reason to believe that a part may be a counterfeit part.

* * * * *

PART 231 - CONTRACT COST PRINCIPLES AND PROCEDURES

3. Add section 231.205-71 to read as follows:

231.205-71 Cost of remedy for use or inclusion of counterfeit electronic parts and suspect counterfeit electronic parts.

(a) Scope. This subsection implements the requirements of section 818(c)(2), National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81) and section 833, National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

(b) Contractors that are subject to the Cost Accounting Standards (CAS) under 41 U.S.C. Chapter 15, as implemented in regulations found at 48 CFR 9903.201-1 (see the FAR appendix),

and that supply electronic parts or products that include electronic parts under CAS-covered contracts are responsible for detecting and avoiding the use or inclusion of counterfeit electronic parts or suspect counterfeit electronic parts in such products and for any rework or corrective action that may be required to remedy the use or inclusion of such parts.

(c) The costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost of rework or corrective action that may be required to remedy the use or inclusion of such parts are expressly unallowable, unless—

(1) The contractor has an operational system to detect and avoid counterfeit parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303;

(2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101; and

(3) The covered contractor provides timely notice to the Government.

PART 244 - SUBCONTRACTING POLICIES AND PROCEDURES

4. Revise section 244.303 to read as follows:

244.303 Extent of review.

(a) Also review the adequacy of rationale documenting commercial item determinations to ensure compliance with the definition of "commercial item" in FAR 2.101.

(b) Also review the adequacy of the contractor's counterfeit electronic part avoidance and detection system under DFARS 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System.

5. Revise section 244.305-71 to read as follows:

244.305-71 Contract clause.

Use the Contractor Purchasing System Administration clause or its alternate as follows:

(a) Use the clause at [252.244-7001](#), Contractor Purchasing System Administration--Basic, in solicitations and contracts containing the clause at FAR 52.244-2, Subcontracts.

(b) Use the clause at [252.244-7001](#), Contractor Purchasing System Administration--Alternate I, in solicitations and contracts that contain the clause at 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System, but do not contain FAR 52.244-2, Subcontracts.

PART 246 - QUALITY ASSURANCE

6. The authority citation for part 246 is revised to read as follows:

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

7. Add section 246.870 through 246.870-3 to read as follows:

246.870 Contractors' counterfeit electronic part avoidance and detection systems.

246.870-1 Scope.

This section—

(a) Implements section 818(c) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112-81); and

(b) Prescribes policy and procedures for preventing counterfeit parts and suspect counterfeit parts from entering the supply chain when procuring electronic parts or end items, components, parts, or materials that contain electronic parts.

246.870-2 Policy.

(a) *General.* Contractors are required to establish and maintain an acceptable counterfeit electronic part avoidance and detection system. Failure to do so may result in disapproval of the purchasing system by the contracting officer and/or withholding of payments (see [252.244-7001](#)).

(b) *System criteria.* A contractor's counterfeit electronic part avoidance and detection system must address, at a minimum, the following areas:

(1) The training of personnel.

(2) The inspection and testing of electronic parts, including criteria for acceptance and rejection.

(3) Processes to abolish counterfeit parts proliferation.

(4) Mechanisms to enable traceability of parts to suppliers.

(5) Use and qualification of trusted suppliers.

(6) The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts.

(7) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit.

(8) The design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts.

(9) The flow down of counterfeit avoidance and detection requirements to subcontractors.

246.870-3 Contract clause.

Use the clause at 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System, in solicitations and contracts (other than in contracts with educational institutions, Federally Funded Research and Development Centers (FFRDCs), or University Associated Research Centers (UARCs) operated by educational institutions) when procuring electronic parts or an end item, component, part, or material containing electronic parts or services where the contractor will supply electronic components, parts, or materials as part of the service and the resulting contract will be subject to the Cost

Accounting standards under 41 U.S.C. chapter 15, as implemented in regulations found at 48 CFR 9903.201-1 (see the FAR Appendix).

PART 252 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Revise section 252.244-7001 to read as follows:

252.244-7001 Contractor purchasing system administration.

As prescribed in 244.305-71, use one of the following clauses.

Contractor Purchasing System Administration-Basic. For the specific use of the basic clause, see the prescription at 244.305-71(a).

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION-BASIC (DATE)

(a) *Definitions.* As used in this clause-

"Acceptable purchasing system" means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

"Purchasing system" means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

"Significant deficiency" means a shortcoming in the system that materially affects the ability of officials of the

Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's purchasing system shall—

(1) Have an adequate system description including policies, procedures, and purchasing practices that comply with the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS);

(2) Ensure that all applicable purchase orders and subcontracts contain all flowdown clauses, including terms and conditions and any other clauses needed to carry out the requirements of the prime contract;

(3) Maintain an organization plan that establishes clear lines of authority and responsibility;

(4) Ensure all purchase orders are based on authorized requisitions and include a complete and accurate history of purchase transactions to support vendor selected, price paid, and document the subcontract/purchase order files which are subject to Government review;

(5) Establish and maintain adequate documentation to provide a complete and accurate history of purchase transactions to support vendors selected and prices paid;

(6) Apply a consistent make-or-buy policy that is in the best interest of the Government;

(7) Use competitive sourcing to the maximum extent practicable, and ensure debarred or suspended contractors are properly excluded from contract award;

(8) Evaluate price, quality, delivery, technical capabilities, and financial capabilities of competing vendors to ensure fair and reasonable prices;

(9) Require management level justification and adequate cost or price analysis, as applicable, for any sole or single source award;

(10) Perform timely and adequate cost or price analysis and technical evaluation for each subcontractor and supplier proposal or quote to ensure fair and reasonable subcontract prices;

(11) Document negotiations in accordance with FAR 15.406-3;

(12) Seek, take, and document economically feasible purchase discounts, including cash discounts, trade discounts, quantity discounts, rebates, freight allowances, and company-wide volume discounts;

(13) Ensure proper type of contract selection and prohibit issuance of cost-plus-a-percentage-of-cost subcontracts;

(14) Maintain subcontract surveillance to ensure timely delivery of an acceptable product and procedures to notify the Government of potential subcontract problems that may impact delivery, quantity, or price;

(15) Document and justify reasons for subcontract changes that affect cost or price;

(16) Notify the Government of the award of all subcontracts that contain the FAR and DFARS flowdown clauses that allow for Government audit of those subcontracts, and ensure the performance of audits of those subcontracts;

(17) Enforce adequate policies on conflict of interest, gifts, and gratuities, including the requirements of 41 U.S.C. chapter 87, Kickbacks;

(18) Perform internal audits or management reviews, training, and maintain policies and procedures for the purchasing department to ensure the integrity of the purchasing system;

(19) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the

prime contract, including the requirements of 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System, if applicable;

(20) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System, if applicable;

(21) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are reasonably priced and from sources that meet contractor quality requirements, including the requirements of 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System, if applicable;

(22) Establish and maintain procedures to ensure performance of adequate price or cost analysis on purchasing actions;

(23) Establish and maintain procedures to ensure that proper types of subcontracts are selected, and that there are controls over subcontracting, including oversight and surveillance of subcontracted effort; and

(24) Establish and maintain procedures to timely notify the Contracting Officer, in writing, if-

(i) The Contractor changes the amount of subcontract effort after award such that it exceeds 70 percent of the total cost of the work to be performed under the contract, task order, or delivery order. The notification shall identify the revised cost of the subcontract effort and shall include verification that the Contractor will provide added value; or

(ii) Any subcontractor changes the amount of lower-tier subcontractor effort after award such that it exceeds 70 percent of the total cost of the work to be performed under its subcontract. The notification shall identify the revised cost of the subcontract effort and shall include verification that the subcontractor will provide added value as related to the work to be performed by the lower-tier subcontractor(s).

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial

determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

(i) Remaining significant deficiencies;

(ii) The adequacy of any proposed or completed corrective action; and

(iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

Contractor Purchasing System Administration—Alternate I. For the specific use of Alternate I, see the prescription at

244.305-71. Alternate I paragraph (c) does not include paragraphs (c)(1) through (c)(18) and (c)(22) through (c)(24) of the basic clause and paragraphs (c)(19) through (c)(21) of the basic clause are revised and renumbered in Alternate I.

CONTRACTOR PURCHASING SYSTEM ADMINISTRATION—ALTERNATE I (DATE)

(a) *Definitions.* As used in this clause—

Acceptable purchasing system means a purchasing system that complies with the system criteria in paragraph (c) of this clause.

Purchasing system means the Contractor's system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

Significant deficiency means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) *General.* The Contractor shall establish and maintain an acceptable purchasing system. Failure to maintain an acceptable purchasing system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's purchasing system shall—

(1) Establish and maintain policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flowdown clauses, as required by the FAR and DFARS, including terms and conditions required by the prime contract and any clauses required to carry out the requirements of the prime contract, including the requirements of 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System;

(2) Provide for an organizational and administrative structure that ensures effective and efficient procurement of required quality materials and parts at the best value from responsible and reliable sources, including the requirements of 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System; and

(3) Establish and maintain selection processes to ensure the most responsive and responsible sources for furnishing required quality parts and materials and to promote competitive sourcing among dependable suppliers so that purchases are from sources that meet contractor quality requirements, including the requirements of 252.246-70XX, Contractor Counterfeit Electronic Part Avoidance and Detection System.

(d) *Significant deficiencies.* (1) The Contracting Officer will provide notification of initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor's purchasing system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor's response and notify the Contractor, in writing, of the Contracting Officer's final determination concerning—

- (i) Remaining significant deficiencies;
- (ii) The adequacy of any proposed or completed corrective action; and
- (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer's final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an

acceptable corrective action plan showing milestones and actions to eliminate the deficiencies.

(f) *Withholding payments.* If the Contracting Officer makes a final determination to disapprove the Contractor's purchasing system, and the contract includes the clause at [252.242-7005](#), Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

(End of clause)

9. Amend subpart 252.2 by adding new section 252.246-70XX to read as follows:

252.246-70XX Contractor Counterfeit Electronic Part Avoidance and Detection System.

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

CONTRACTOR COUNTERFEIT ELECTRONIC PART AVOIDANCE AND DETECTION
SYSTEM (DATE)

(a) *Definitions.* As used in this clause—

Counterfeit part means—

(1) 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;

(2) An item misrepresented to be an authorized item of the legally authorized source; or

(3) 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.

Counterfeit electronic part avoidance and detection system means the Contractor's system or systems for eliminating counterfeit electronic parts from the supply chain.

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.

Suspect counterfeit part means a part for which visual inspection, testing, or other information provide reason to believe that a part may be a counterfeit part.

(b) *General.* The Contractor shall establish and maintain an acceptable counterfeit electronic part avoidance and detection system. Failure to maintain an acceptable counterfeit electronic part avoidance and detection system, as defined in this clause, may result in disapproval of the purchasing system by the Contracting Officer and/or withholding of payments.

(c) *System criteria.* The Contractor's counterfeit electronic part avoidance and detection system shall develop and implement policies and procedures that address—

(i) The training of personnel;

- (ii) The inspection and testing of electronic parts, including criteria for acceptance and rejection;
- (iii) Processes to abolish counterfeit parts proliferation;
- (iv) Mechanisms to enable traceability of parts to suppliers;
- (v) Use and qualification of trusted suppliers;
- (vi) The reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts;
- (vii) Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit;
- (viii) The design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts; and
- (ix) The flow down of counterfeit avoidance and detection requirements to subcontractors.

(d) Government review and evaluation of the Contractor's policies and procedures will be accomplished as part of the evaluation of the Contractor's purchasing system in accordance with 252.244-7001, Contractor Purchasing System Administration.

(End of clause)

[FR Doc. 2013-11400 Filed 05/15/2013 at 8:45 am; Publication

Date: 05/16/2013]