

2111 WILSON BOULEVARD, SUITE 400
ARLINGTON, VA 22201-3061
(703) 522-1820 • (703) 522-1885 FAX
WWW.NDIA.ORG

September 28, 2016

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

SUBJECT: NDIA Comments on DFARS Case 2016-D013, Proposed Rule, "Amendments Related to Sources of Electronic Parts," (August 2, 2016).

Dear Ms. Williams:

On behalf of the more than 1,600 member companies and the nearly 90,000 individual members that comprise the National Defense Industrial Association (NDIA), I offer the following comments on Defense Federal Acquisition Regulation Supplement (DFARS) Case 2016-D013, proposed rule on "Amendments Related to Counterfeit Electronic Parts":

- 1. The proposed approach would result in significant uncertainty for contractors, and possibly lead to cost increases and schedule delays.** Under the revised policy at DFARS 246.870-2, and the revised contract clause at DFARS 252.246-7008, the contractor's choice of an electronic parts supplier is subject to the "review, audit, and approval" of the contracting officer, however, there is no specificity on when the review and approval should occur. Additionally, both the revised policy and contract clause state clearly that the contractor can purchase electronic parts from the contractor's approved supplier "unless otherwise notified by DoD." As a result, a contracting officer is able to subjectively review and approve electronic parts suppliers anytime from contract award until closeout, creating significant uncertainty for contractors as they vet suppliers, purchase electronic parts, and perform on the contract. In the worst case scenario, a contracting officer could disapprove a supplier after the fact, requiring the contractor to quickly qualify another supplier or produce the electronic parts "in house", purchase additional quantities from the new supplier, and replace all electronic parts from the disapproved supplier in items already delivered to the government. This would likely cause significant cost increases and/or schedule delays.

2. **The proposed approach does not address the scenario in which contracting officers disagree on the approval of a supplier on different programs.** Prime contractors may utilize a supplier of electronic parts for several end items and contracts. However, the proposed rule is unclear as to the effect that a disapproval by a contracting officer for a supplier on one contract has on other contracts in which the contractor has used electronic parts from the disapproved supplier. Further, multiple prime contractors may purchase from the same electronic parts supplier. It is unclear what the effect would be across different primes and contracts for a disapproval of a common supplier on one contract. How would DoD mitigate conflicting determinations from contracting officers for the same supplier on different contracts for either the same, or a different prime contractor?

3. **The proposed rule should be revised so that Procuring Contracting Officers (PCOs) review and approve a contractor's electronic parts suppliers at the time of contract award to the maximum extent practicable, and their affirmative approval is binding across all contracts where that electronic parts supplier is utilized.** This approach would be far more practicable and efficient than having individual contracting officers review individual suppliers on a contract-by-contract basis at any time during performance of a contract. In order to facilitate the reviews, prime contractors would submit their list of electronic parts suppliers prior to contract performance. In the case that the contractor is reasonably unable to identify all of its suppliers at that time, the contractor should provide the PCO that information as soon as possible, and the PCO should be required to review and approve the suppliers as soon as possible, once identified. In addition to avoiding confusion and inconsistent interpretation across contracting officers and contracts, this approach would significantly reduce DoD's administrative burden.

I hope that these comments are helpful to you as you refine your thinking on this proposed approach. Feel free to contact me at jthomas@ndia.org or (703) 247-2598 if you have any questions.

Sincerely,



James Thomas
Assistant Vice President for Policy