

VIA Fax and US Mail

General Services Administration
Regulatory Secretariat (MVCB)
ATTN: Hada Flowers
1800 F Street, NW
Washington, DC 20405

RE: FAR Case 2013-002

Dear Sir or Madam:

On behalf of the Electronic Components Industry Association (ECIA), I am submitting these comments on the Proposed Rulemaking, FAR Case 2013-002.

ECIA is the voice of the authorized sellers of electronic components. The association's membership includes electronic component manufacturers and their authorized distributors and independent 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 Federal government for its leadership role in recognizing and acknowledging the threat that counterfeit electronic components represent to the safety of the United States and its citizens.

The association's comments will address three areas:

- 1) Expansion of coverage
- 2) Safe harbor
- 3) GIDEP

Expansion of Coverage. ECIA supports government's efforts to avoid the acquisition of counterfeit items and the proposed FAR amendments with regard to counterfeit items.

All of our comments should be construed to apply to the proposed FARs regarding nonconformance and not counterfeiting except that the association agrees with the proposed extension of coverage to businesses of all sizes and to commercial off-the-shelf items with regard to counterfeit items. However, ECIA is uncertain about the statutory authority for extending requirements to contractors, especially with respect to items that are not counterfeit.

ECIA is concerned about the proposed nonconformance reporting requirements. More clarity is needed as to what constitutes nonconformance, particularly with regard to electronic components. This expansion could result in a flood of nonconformance reports, given that contractors are more likely to err on the side of reporting (particularly with regard to the apparent civil liability "safe harbor" contained in 52.246-xx). One distributor member of the association noted that the company typically processes 25 to 30 failure analysis request per week for non-conforming parts, of which 90 to 95% are shown to be "no defect found," "electrical or mechanical overstress," and/or "customer induced damage." Another distributor reported receiving hundreds of receiving rejections per month and would be unable to process that volume of GIDEP reports, most of which were due to manufacturers sending the wrong part.

It should be noted that there is uncertainty about when the 60-day clock starts running for a contractor to report a nonconformance. Are nonconforming items to be reported immediately or only after failure analysis is performed by the manufacturer? If the report must be filed immediately, the one example noted above suggests 25 to 30 GIDEP reports being filed per week by one company.

Safe Harbor. The proposed amendment to Section 52.246-xx suggests that contractors (and subcontractors) would have a "safe harbor" from civil liability if the specified conditions are met. While ECIA supports this provision, it encourages contractors to err on the side of submitting GIDEP reports. It is far more cost effective to report a nonconformance than to conduct an investigation or failure analysis to determine: if it is a critical or major nonconformance, if the item supports a government contract; or if the nonconformance is genuine.

Absent safe harbor provisions for authorized supply chains, the government may find its access to authorized sellers limited. ECIA has received reports that electronic component manufacturers are considering the addition of language in their distribution agreements that restrict the sale of their products if the distributor knows that the items will be used in the performance of a United States government contract or subcontract which incorporates federal regulations expressly or by reference, including without limitation the Federal Acquisition Regulation (FAR), Defense Acquisition Regulation (DAR), Armed Services Procurement Regulations (ASPR), and Cost Accounting Standards (CAS).

GIDEP. Public comments were invited on the proposals regarding GIDEP reporting. ECIA recommends that GIDEP reporting be strictly limited to counterfeit items. The reasons are:

- Counterfeiting and nonconformance issues are two distinct problems that require different solutions.
- The reporting of nonconformance issues could result in a substantial increase in the number of reports and impose an administrative burden on the electronic component supply chain.
- The value of such reports could be both minimal and significant. Minimal value in the sense that contractors will still buy from reputable “brand” names regardless of GIDEP reports. GIDEP reports could also have significant, negative impact because contractors might use such reports to avoid buying from reputable sources in order to satisfy the “due diligence” screening requirement.
- Rather than risk a GIDEP report, some manufacturers may restrict sales of their products to the government.

ECIA also recommends that a procedure be developed for the prompt correction and removal of inaccurate and false GIDEP reports. Consideration should be given to penalties for knowingly filing false GIDEP reports.

ECIA welcomes the opportunity to provide additional information, comment and assistance to the General Services Administration, the Department of Defense and the National Aeronautics and Space Administration on matters regarding counterfeit electronic components.

Sincerely,

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