

## ***Update: Counterfeit Parts***

### **Aerospace & Defense Group Newsletter**

Recently, Government Security News published an alarming article under the headline, DARPA to look for hidden entrances in commercial IT devices. Given that DoD has placed considerable emphasis on Commercial Contracting, it is not surprising that DoD would have an interest in ensuring supply-chain security for commercial products as described in the GSN article; but the final sentence of the following paragraph, the fifth in the article, is shocking:

For the Department of Defense, said DARPA, the issue is even more of a concern as DoD personnel rely on equipment bought in large quantities and built with components manufactured all over the world. DoD's growing dependence on the global supply chain makes device, software and firmware security an imperative, said the agency. Backdoors, malicious software and other vulnerabilities unknown to the user could enable an adversary to use a device to accomplish a variety of harmful objectives, including the exfiltration of sensitive data and the sabotage of critical operations. Determining the security of every device DoD uses in a timely fashion is beyond current capabilities.

While the problem of counterfeit parts in weapons systems has been known for some time, it comes as something of a surprise that "[d]etermining the security of every device DoD uses in a timely fashion is beyond current capabilities." Consequently, DARPA has issued a solicitation for the *Vetting Commodity IT Software and Firmware* (VET) program, with a Proposers Day on December 12, 2012.

This revelation comes in the context of last year's FY2012 National Defense Authorization Act (DAA), which included an amendment added by Senators Levin and McCain specifically addressing weaknesses in the defense supply chain, and promoting adoption of aggressive counterfeit avoidance practices by DoD and the defense industry. That amendment shifts the burden of detection and avoidance of counterfeit parts to contractors. In doing so, it directed publication of new implementing regulations.

Although the DAA required publication of implementing regulations by September 26, 2012, the regulations are slow coming. In fact, as of the end of November 2012, "Open Case Reports" indicate the following pending proposals and related status:

#### **DFARS Case 2012-D055: Detection and Avoidance of Counterfeit Electronic Parts**

*Case Number:* 2012-D055

*Part Number:* 202, 231, 244

*Title:* (S) Detection and Avoidance of Counterfeit Electronic Parts

*Synopsis:* Implements portions of section 818 of NDAA for 2012 to

- (a) add definitions specific to counterfeit parts,
- (b) define contractors' responsibilities, and
- (c) clarify the Government's role.

*Status:* 08/31/2012 DARC Director tasked DARS staff to draft proposed DFARS rule.

Report due 10/03/2012.

Report due 10/31/2012. (1st ext.)

11/02/12 DARC received draft proposed DFARS rule. Will discuss draft proposed DFARS rule on 11/14/2012.

11/16/12 DARC will discuss again 11/20/2012.

11/20/2012 Case manager forwarded draft proposed rule to DAR editor. DAR editor reviewing.

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#### **DFARS Case 2012-D050: (S) Supply Chain Risk**

*Case Number:* 2012-D050

*Part Number:*

*Title:* (S) Supply Chain Risk

*Synopsis:* This interim DFARS rule implements section 806 of the NDAA of FY 2011 (Pub. L 111-383). Section 806 requires the evaluation of offerors' supply chain risks on information technology purchases relating to national security systems. Section 806 enables agencies to exclude sources that are identified as having a supply chain risk.

*Status:* 07/25/2012 DARC Director tasked Ad Hoc Cmte. to draft interim DFARS rule. Report Due 8/8/2012. Report Due 09/12/2012 (1st ext.)

Report Due 10/3/2012 (2nd ext.)

Report Due 11/14/2012 (3rd ext.)

Report Due 12/05/2012

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**DFARS Case 2012-Do42: Business Systems Compliance**

Status included with the 9 November "Open Cases Report":

*Case Number:* 2012-Do42

*Part Number:*

*Title:* Business Systems Compliance

*Synopsis:* Revise the business systems clauses to include contractor reporting and documentation requirements regarding the contractor's compliance with the DFARS business systems' criteria.

*Status:* 04/26/2012 DARC Director tasked the Business Systems Ad Hoc Cmte. to draft proposed DFARS rule. Report due 05/30/2012.

Report Due 10/3/2012 (6th ext.)

Report due 10/31/2012. (6th ext.)

11/02/12 Report Due 11/28/2012.

Report Due 12/12/2012.

**FAR Case 2012-024: Commercial and Government Entity Code**

Status included with the 9 November "Open Cases Report":

*Case Number:* 2012-024

*Part Number:* 12.3, 4.12, 4.17, 52.2

*Title:* Commercial and Government Entity Code

*Synopsis:* This case proposes the use of Commercial and Government Entity (CAGE) codes (NCAGE if foreign) for awards valued greater than the micropurchase threshold, and identification of the immediate corporate/organization parent and highest level corporate/organization parent during Central Contractor Registration (CCR). The goal is to provide for standardization across the Federal government, to facilitate data collection, and to support anti-counterfeiting efforts to uniquely identify vendors below the prime level.

*Status:* 08/31/2012 DARC Director tasked DARS staff to draft proposed DFARS rule.

DAR staff processing.

10/19/2012 Draft proposed FAR rule from FAR analyst to CAAC Legal. CAAC Legal reviewing.

11/13/2012 Draft proposed FAR rule from FAR analyst to OFPP. OFPP reviewing.

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**FAR Case 2012-032: Higher-Level Contract Quality Requirements**

Status included with the 9 November "Open Cases Report":

*Case Number:* 2012-032

*Part Number:* 46

*Title:* (S) Higher-Level Contract Quality Requirements

*Synopsis:* Revises part 46 to implement portion of section 818 of NDAA for FY2012 requirements to provide a defined higher-level quality standard specific to "critical application items."

*Status:* 08/30/2012 FAR principals opened case for staff level proposed FAR rule.

DAR staff processing.

10/15/2012 DARC Director tasked ad hoc team to draft proposed FAR rule. Report due 12/19/2012.

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**FAR Case 2013-002: (S) Expanded Reporting of Nonconforming Supplies**

Status included with the 9 November "Open Cases Report":

*Case Number:* 2013-002

*Part Number:*

*Title:* (S) Expanded Reporting of Nonconforming Supplies

*Synopsis:* Expands Government and contractor requirements for reporting of nonconforming supplies. Partial implementation of section 818 of the NDAA for FY 2012.

*Status:* 10/18/2012 DARC Director tasked Ad Hoc Team to draft proposed FAR rule. Report due 1/23/2013.

Thus, it will be well into the first quarter of CY 2013 before we see any final rule(s) on this. At least one thing is certain, however: If DoD does not currently possess the ability to determine the security of commercial devices, it is not at all clear how contractors can be expected to "turn on a dime" to develop and implement acquisition and quality systems as soon as the FAR and DFARS regulations "go live" in whatever form those finally take

It is also clear from the fines and penalties involved, that contractors will have to be increasingly aggressive in their compliance programs, increasing that expense even as current and projected austerity drives revenues in the wrong direction.

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