



National Aeronautics and  
Space Administration  
Washington, DC 20546-0001

# Procurement Notice

PN 20-08

September 28, 2020

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## NASA Federal Acquisition Regulation Supplement: Detection and Avoidance of Counterfeit Parts (NFS Case 2017-N010)

**PURPOSE:** To revise the NASA FAR Supplement (NFS) to implement procedures related to the detection and avoidance of counterfeit parts as set forth in the final rule published in the Federal Register at [85 FR 52924](#) on Thursday, August 27, 2020.

**BACKGROUND:** The final rule adds new text to the NFS to require covered contractors and subcontractors at all tiers to use electronic parts that are currently in production and purchased from the original manufacturers of the parts, their authorized dealers, or suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers. These changes implement section 823(c)(2)(B) of Pub. L. 115-10, the National Aeronautics and Space Administration Transition Authorization Act of 2017. NASA published a proposed rule in the Federal Register at [85 FR 663](#) on January 7, 2020. Comments were submitted on the published proposed rule, which have been addressed as part of the final rule.

**ACQUISITIONS AFFECTED BY CHANGES:** This requirement is applicable to all solicitations and contracts for the acquisition of electronic parts for use in a safety or mission critical application.

**ACTION REQUIRED:** Contracting officers shall follow the policy outlined in this PN, and for acquisitions with covered contractors as defined in section 1846.7001, use the clause at 1852.246-74, Contractor Counterfeit Electronic Part Detection and Avoidance, in solicitations and contracts, when procuring—

- (a) Electronic parts;
- (b) End items, components, parts, or assemblies containing electronic parts; or
- (c) Services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

**PROVISION AND CLAUSE CHANGES:** NFS clause at 1852.246-74 Contractor Counterfeit Electronic Part Detection and Avoidance (SEP 2020). A revised NFS Matrix is attached.


**PARTS AFFECTED:** Parts 1812, 1831, 1846, and 1852.

**PIC or PCD CHANGES:** None.

**TYPE OF RULE AND PUBLICATION DATE:** The PN was published as a final rule in the Federal Register at [85 FR 52924](#) on Thursday, August 27, 2020. The final rule is effective September 28, 2020.

**HEADQUARTERS CONTACT:** Dorice Kenely, Headquarters, Office of Procurement, Procurement Management and Policy Division; 202-358-0443, email: [dorice.m.kenely@nasa.gov](mailto:dorice.m.kenely@nasa.gov).

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for **Monica Y. Manning**  
Assistant Administrator for Procurement

Enclosures

**PART 1812—ACQUISITION OF COMMERCIAL ITEMS**

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**Subpart 1812.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**

**1812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

(f)(i) The following clauses are authorized for use in acquisitions of commercial items when required by the clause prescription:

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**[(T) 1852.246-74, Counterfeit Electronic Part Detection and Avoidance.]**

~~(F)~~ [U] 1852.247.71, Protection of the Florida Manatee.

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**PART 1831—CONTRACT COST PRINCIPLES AND PROCEDURES**

**SUBPART 1831.2 CONTRACTS WITH COMMERCIAL ORGANIZATIONS**

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**[1831.205-71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.]**

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**[1831.205-71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.**

**(a) *Scope.* This section implements the requirements of section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10).**

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

(1)(i) The covered contractor, as defined in section 1846.7001, has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303; and

(ii) The covered contractor, including subcontractors, notifies the applicable NASA contracting officer in writing in accordance with 1846.7002(c); or

(2) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.

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## PART 1846 – QUALITY ASSURANCE

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[Subpart 1846.70 COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE.

1846.7000 Scope of subpart.

1846.7001 Definitions.

1846.7002 Policy.

1846.7003 Contract clause.]

\* \* \* \* \*

[Subpart 1846.70 — Counterfeit Electronic Part Detection and Avoidance.

1846.7000 Scope of subpart.

This subpart implements section 823(c), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10).

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

**(b) Applies to electronic parts when their presence in the NASA supply chain poses a danger to United States government astronauts, crew, and other personnel and a risk to the agency overall.**

**(c) Contracting officers, in consultation with the requiring activity, are responsible for making a determination concerning the applicability of this section and the appropriate use of the prescribed contract clauses.**

#### **1846.7001 Definitions.**

**“Authentic part” means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.**

**“Authentication” means a process to verify that a part is not counterfeit or suspect counterfeit.**

**“Authorized aftermarket manufacturer” means an organization that fabricates an electronic part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.**

**“Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repack, sell, or distribute the part.**

**“Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.**

**“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified as trustworthy by a contractor or subcontractor as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.**

**“Covered contractor” means a contractor that supplies an electronic part, or a product that contains an electronic part, to NASA.**

**“Counterfeit electronic part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.**

**“Electronic part” means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application.**

**“Original component manufacturer” means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.**

**“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company’s brand**

name.

**“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.**

**“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.**

#### **1846.7002 Policy.**

**The government and its contractors and subcontractors at all tiers are required to obtain electronic parts as prescribed in this section, whether the electronic parts are procured as discrete items or contained in an assembly.**

**(a) The covered contractor and subcontractors at all tiers shall obtain electronic parts that are in production or currently available in stock from—**

**(1) The original manufacturers of the parts;**

**(2) Their authorized dealers; or**

**(3) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers.**

**(b) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (a) of this section, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—**

**(1) The covered contractor assumes responsibility for the authenticity of parts; and**

**(2) The covered contractor performs inspection, testing and authentication of parts; and**

**(3) The covered contractor obtains traceability information for the electronic parts (e.g., data code, lot code, serial number) and provides this information to the contracting officer upon request; and**

**(4) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.**

**(c) The covered contractor, including subcontractors, shall notify the applicable NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part.**

#### **1846.7003 Contract clause.**

**For acquisitions with covered contractors as defined in section 1846.7001, use the clause at 1852.246-74, Contractor Counterfeit Electronic Part Detection and Avoidance, in solicitations and contracts, when procuring—**

(a) Electronic parts;

(b) End items, components, parts, or assemblies containing electronic parts; or

(c) Services, if the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

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**PART 1852 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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**SUBPART 1852.2 TEXTS OF PROVISIONS AND CLAUSES**

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**[1852.246-74 Contractor Counterfeit Electronic Part Detection and Avoidance.]**

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**[1852.246-74 Contractor Counterfeit Electronic Part Detection and Avoidance.**

As prescribed in 1846.7003, use the following clause:

**CONTRACTOR COUNTERFEIT ELECTRONIC PART DETECTION AND AVOIDANCE.**

**(SEP 2020)**

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

“Authentic part” means a new and unmodified part produced by the original component manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer.

“Authentication” means a process to verify that a part is not counterfeit or suspect

counterfeit.

“Authorized aftermarket manufacturer” means an organization that fabricates a part under a contract with, or with the express written authority of, the original component manufacturer based on the original component manufacturer’s designs, formulas, and/or specifications.

“Authorized supplier” means a supplier, distributor, or an aftermarket manufacturer with a contractual arrangement with, or the express written authority of, the original manufacturer or current design activity to buy, stock, repackage, sell, or distribute the part.

“Contract manufacturer” means a company that produces goods under contract for another company under the label or brand name of that company.

“Contractor-approved supplier” means a supplier that does not have a contractual agreement with the original component manufacturer, but has been qualified by the contractor or subcontractor approved by the contractor or government as having met prescribed counterfeit electronic part detection and avoidance system criteria using established counterfeit prevention industry standards and processes.

“Counterfeit electronic part” means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified electronic part from the original manufacturer, or a source with the express written authority of the original manufacturer or current design activity, including an authorized aftermarket manufacturer. Unlawful or unauthorized substitution includes used electronic parts represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

“Electronic part” means a discrete electronic component, including a microcircuit, transistor, capacitor, resistor, or diode, that is intended for use in a safety or mission critical application (section 823 (d)(2) of Pub L. 115-10).

"Original component manufacturer" means an organization that designs and/or engineers a part and is entitled to any intellectual property rights to that part.

“Original equipment manufacturer” means a company that manufactures products that it has designed from purchased components and sells those products under the company's brand name.

“Original manufacturer” means the original component manufacturer, the original equipment manufacturer, or the contract manufacturer.

“Suspect counterfeit electronic part” means an electronic part for which credible evidence (including, but not limited to, visual inspection or testing) provides reasonable doubt that the electronic part is authentic.

(b) *Sources of Electronics Parts.*

In accordance with section 823(c)(3), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10), the covered contractor shall—

(1) Obtain electronic parts that are in production by the original manufacturer or an authorized aftermarket manufacturer or currently available in stock from—

- (i) The original manufacturers of the parts;
- (ii) Their authorized dealers; or



**(iii) Suppliers who obtain such parts exclusively from the original manufacturers of the parts or their authorized dealers;**

**(2) If electronic parts are not in production or currently available in stock from suppliers as stated in paragraph (b) of this clause, the covered contractor shall obtain electronic parts from NASA identified suppliers or contractor-approved suppliers for which—**

**and (i) The covered contractor assumes responsibility for the authenticity of parts;**

**and (ii) The covered contractor performs inspection, testing and authentication of parts; and**

**(iii) The covered contractor obtains traceability information for the electronic parts (e.g., data code, lot code, serial number) and provides this information to the contracting officer upon request; and**

**(iv) The selection of contractor-approved suppliers is subject to review and audit by the contracting officer.**

**(c) Notification.** The covered contractor, including subcontractors, shall notify the NASA contracting officer in writing not later than 30 calendar days after the date the covered contractor becomes aware, or has reason to suspect, that any end item, component, part or material contained in supplies purchased by NASA, or purchased by a covered contractor or subcontractor for delivery to, or on behalf of, NASA, contains a counterfeit electronic part or suspect counterfeit electronic part

**(d) *Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.*** In accordance with section 823(c)(2)(B), the NASA Transition Authorization Act of 2017 (Pub. L. 115-10), the costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

**(1) The covered contractor has a system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by NASA or the Department of Defense pursuant to 48 CFR 244.303; and**

**(2) The covered contractor, including a subcontractor, notifies the applicable NASA contracting officer in writing in accordance with paragraph (c) of this clause; or**

**(3) The counterfeit electronic parts or suspect counterfeit electronic parts were provided to the covered contractor as Government property in accordance with part 45 of the Federal Acquisition Regulation.**

**(e) *Subcontracts.*** The covered contractor shall insert this clause, including this paragraph (e), in subcontracts for-

**(1) Electronic parts;**

**(2) End items, components, parts, or assemblies containing electronic parts; or**

**(3) Services where the covered contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service, including subcontracts for commercial items that are for electronic parts or assemblies containing electronic parts, unless the subcontractor is the original manufacturer. The covered contractor shall not alter the clause**

**other than to identify appropriate parties.**

**(f) *Corrective Action.* In the event that the covered contractor supplies a counterfeit electronic part, suspect counterfeit electronic part or end item, component, or assembly containing a counterfeit electronic part to NASA, the covered contractor shall take such corrective actions as the Administrator considers necessary to remedy the use or inclusion of additional counterfeit electronic parts, suspect counterfeit electronic part or end items, components, or assemblies containing a counterfeit electronic part.**

**(End of clause)]**

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**1852.301 Provision and Clause Matrix.**

**NFS Clause Matrix**

Clause/ Provision Number	Title	Date	Prescribed In	P or C	UCF or FT	IBR or FT	Fill In or Sub	App Dev	FP SUP	CR SUP	FP R&D	CR R&D	CR FP SVC	CR FP CON	FP CON	CR CON	T&M LH	A&E	ID DEL	TRNSAP	CI
1852.246-74	Contractor Counterfeit Electronic Part Detection and Avoidance	(SEP 2020)	1846.7003	C	I	IBR			A	A	A	A	A	A	A	A	A	A	A	A	A