

DEFENSE CONTRACT MANAGEMENT AGENCY



**DCMA**

ACQUISITION INSIGHT  GLOBAL ENGAGEMENT

# **FAR / DFARS Requirements**

## **Counterfeit Risk Mitigation**

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**CQSDI – (Collaboration on Quality in the Space and Defense Industries)**

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**11 March, 2019**

ACQUISITION INSIGHT  GLOBAL ENGAGEMENT



- **Counterfeit Status**
- **OSD Sec 818 Implementation Plan**
- **DFARS 252.246-7007**
- **DFARS 252.246-7008**
- **DoD Policy**
- **DCMA Overview**
- **D2P Potential Initiative**

# Counterfeit Status

**May 6, 2014**

**DFARS Case 2012-D055 - Detection and Avoidance of Counterfeit Electronic Parts:** Established **DFARS 252.246-7007** requires a **CAS Covered** Contractor to have a **Counterfeit Electronic Detection and Avoidance System** based on twelve (12) System Criteria.

**April 26, 2013**

**DoDI 4140.67 DoD Counterfeit Prevention Policy** published. Established **DoD policy** to prevent the introduction of **counterfeit materiel** at any level of the DoD supply chain, including special requirements prescribed by FY12 NDAA SEC. 818.

**December 31, 2011**

The President signed into **Law**, FY12 National Defense Authorization Act (**NDAA**), **Section 818 "Detection and avoidance of counterfeit electronic parts"**.

**November 8, 2011**

**Senate Armed Services Committee** hearings exposed **millions of dollar in counterfeit electronic parts** in the military supply chain.

**August 30, 2016**

**DFARS 2016-D010 - Costs Related to Counterfeit Electronic Parts:** Establishes the allowability of costs for rework or corrective action that may be required to remedy the use or inclusion of counterfeit or suspect counterfeit parts under amends to **DFARS 231.205-71**.

**August 2, 2016**

**DFARS Case 2014-D005, Detection and Avoidance of Counterfeit Parts - Further Implementation:** Established **DFARS 252.246-7008 "Sources of Electronic Parts."** This rule requires DoD contractors and subcontractors, except in limited circumstances, to acquire electronic parts from **contractor-approved suppliers** in order to further address the avoidance of counterfeit electronic parts.



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# OSD Sec 818 Implementation Plan

## FAR and DFARS **issued** IAW NDAA 2012 SEC 818

Case #	Description	Status
DFARS 2012-D055	Detection and Avoidance of Counterfeit Electronic Parts	DFARS 252.246-7007 final rule <b>published 05/06/2014</b> <b>Effective upon publication.</b>
FAR 2012-032	Higher-Level Contract Quality Requirements	FAR 46.311 (a), 44.303 (k) final FAR rule <b>published 11/25/2014</b> <b>Effective 12/26/2014</b>
DFARS 2014-D005	Detection and Avoidance of Counterfeit Electronic Parts—Further Implementation	DFARS 252.246-7008 final rule <b>published 08/02/2016</b> <b>Effective upon publication</b>
DFARS 2016-D010	Costs Related to Counterfeit Electronic Parts	DFARS 231.205-71 final rule <b>published 08/30/2016</b> <b>Effective upon publication</b>
DFARS 2016-D013	Amendments Related to Sources of Electronic Parts	DFARS 252.246-7008 revisions <b>published 05/4/2018</b> <b>Effective upon publication</b>
DFARS 2017-D014	Use of Commercial or Non-Government Standards	Requires FAR 52.211–7 in DoD solicitations that include military or Government-unique specifications and standards. <b>published 02/15/2019. Effective upon publication.</b>

DAR – Defense Acquisition Regulation  
 DFARS – Defense Federal Acquisition Regulation Supplement  
 OIRA – Office of Information and Regulatory Affairs

FAR – Federal Acquisition Regulation  
 CAAC- Civilian Agency Acquisition Council  
 PDI - Program Development and Implementation





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# OSD Sec 818 Implementation Plan (as of 11FEB19)

## Pending FAR and DFARS Cases

Case #	Description	Status
FAR 2013-002	Reporting of Nonconforming Items to the Government-Industry Data Exchange Program	12/14/2018 OIRA returned draft final FAR rule. <b>FAR staff preparing to resend to OIRA.</b>
DFARS 2017-D010	Inapplicability of Certain Laws and Regulations to Commercial Items	10/31/2018 DARC Director tasked Staff Level Team to review public comments, draft final DFARS rule. <b>Report due 02/13/2019.</b>
FAR 2018-006	Provisions and Clauses for Commercial Items and Simplified Acquisitions	01/10/2018 DARC Director tasked ad hoc Team to draft proposed FAR rule. Combined with FAR Case 2015-004 and changed title. <b>Report due date extended to 01/30/2019.</b>
DFARS 2017-D021	Contractor Business Systems	01/11/2017 DARC Director tasked Ad Hoc Cmte. to draft proposed DFARS rule. <b>Report due 02/13/2019.</b>
DFARS 2019-D009	Use of Supplier Performance Risk System (SPRS) Assessments	01/09/2019 DARC Director tasked Ad Hoc Team to draft proposed DFARS rule. <b>Report due 02/20/2019.</b>

DARC – Defense Acquisition Regulation Council  
DFARS – Defense Federal Acquisition Regulation Supplement  
OIRA – Office of Information and Regulatory Affairs  
OFPP – Office of Federal Procurement Policy

FAR – Federal Acquisition Regulation  
CAAC- Civilian Agency Acquisition Council  
PDI - Program Development and Implementation





DEFENSE CONTRACT MANAGEMENT AGENCY

# OSD Sec 818 Implementation Plan

## Contractor Purchasing System Review (CPSR)

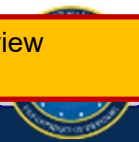
- The Contractor's counterfeit risk mitigation system is evaluated against the criteria of **DFARS 252.246-7007(C)**.  
**DFARS 252.246-7008** applies under DFARS 252.246-7007(c) 4 & 5
- IAW **DCMA INST-1205** "Counterfeit Mitigation" Technical Specialist completes and provides the CDAS Checklist results to the Administrative Contracting Officer (ACO) when requested or as risk change (when system deficiencies are of a concern)
- **DFARS 231.205-71** "Costs related to counterfeit electronic parts and suspect counterfeit electronic parts" are allowable under certain conditions, i.e. Must be CAS Covered, Must have an approved Counterfeit Electronic Parts Avoidance and Detection System, i.e. CDAS pursuant to DFARS 244.303

IAW **DoDI 4140.67** "DoD Counterfeit Prevention Policy" The DCMA CDAS Checklist is used to determine counterfeit risk mitigation system / process deficiencies on **ALL contracts**

ACO – Administrative Contracting Officer  
CAS – Cost Accounting System

TS – Technical Specialist  
CDAS – Counterfeit Detection and Avoidance System

CPSR – Contractor Purchasing System Review



- DFARS 252.246-7007 Contractor “**Counterfeit Electronic Part Detection and Avoidance System**” required in solicitations and contracts when procuring:
  - Electronic parts
  - End items, components, parts, or assemblies containing electronic parts
  - Services where the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts
- Applies to Contractors subject to **Cost Accounting Standards (CAS)**
- **Flowdown** is required to subcontractors at all levels
- DFARS 252.246-7008 is included under DFARS 252.246-7007(c) 4 & 5

## “Counterfeit Electronic Part Detection And Avoidance System” Criteria:

1. **Training** of personnel.
2. **Inspection and testing** of electronic parts, including criteria for acceptance and rejection.
3. **Processes to abolish** counterfeit parts proliferation.
4. **Risk-based processes** that enable **tracking of electronic parts from the original manufacturer to product acceptance by the Government**, ...IAW paragraph (c) of the clause at 252.246-7008
5. **Use of suppliers** IAW 252.246-7008.
6. **Reporting and quarantining** of counterfeit electronic parts and suspect counterfeit electronic parts.
7. **Methodologies to identify** suspect counterfeit electronic parts and to rapidly determine if a suspect counterfeit electronic part is, in fact, counterfeit.
8. **Design, operation, and maintenance of systems** to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts.
9. **Flow down** of counterfeit detection and avoidance requirements.
10. **Process for keeping continually informed** of current counterfeiting information and trends.
11. **Process for screening** the Government-Industry Data Exchange Program (**GIDEP**) reports and other credible sources of counterfeiting information.
12. **Control of obsolete** electronic parts.



## DCMA CONCERNS:

- Para. (4)....“enable tracking of electronic parts from the **original manufacturer to product acceptance** by the Government,...
- Para. (6)....“Reporting is required to the Contracting Officer and to the Government-Industry Data Exchange Program (**GIDEP**) **when the Contractor becomes aware of, or has reason to suspect** ....counterfeit electronic parts or suspect counterfeit electronic parts.”

# DFARS 252.246-7008

- **DFARS 252.246-7008 “Sources of Electronic Parts”** is required in all solicitations and contracts when procuring:
  - Electronic parts, end items, components, parts, or assemblies containing electronic parts or services. Included in solicitations and contracts for commercial items (i.e. COTS).
- **DFARS 252.246-7008**, is summarized as follows:
  - **CAT I - Para. (b)(1)**: Requires contractors to obtain electronic parts that are in production by the **original manufacturer (OM)** or an **Authorized Aftermarket Manufacturer** or currently available in stock from —
    - 1) the OM of the parts;
    - 2) their Authorized Suppliers; or
    - 3) Suppliers that obtain parts **exclusively** from the OM or their Authorized Suppliers.
  - **CAT II - Para. (b)(2): Contractor-Approved Suppliers**: If the part cannot be obtained CAT I, (obtain electronic parts that are not in production by the original manufacturer or an authorized aftermarket manufacturer), the contractor may identify contractor-approved suppliers.
    - The contractor’s selection of **contractor-approved suppliers** is subject to review and audit by the contracting officer. The contractor must use established counterfeit prevention **industry standards** and processes to identify and approve their contractor-approved suppliers.
  - **CAT III - Para. (b)(3): Other Than A Contractor-Approved Supplier**: If the contractor cannot obtain electronic parts from an OM or Authorized Aftermarket Manufacturer, due to **nonavailability** or the subcontractor **refuses to accept flowdown**, or the contractor cannot confirm the electronic part is new and has not been comingled, then the contractor may rely on **other than a contractor-approved supplier**.
    - Contractors and subcontractors are required to **notify the contracting officer** if it is not possible to obtain an electronic part from their contractor-approved supplier. Under Para. (b)(3)(ii)(B), the contractor is responsible for **inspection, testing, and authentication** of such electronic parts to be used in accordance with existing applicable industry standards.

## DCMA Concerns:

- **Comingling** *refurbished, reclaimed, or returned parts with **NEW** product*
- *“Counterfeit electronic parts and suspect counterfeit electronic parts shall not be returned ... (until) determined to be authentic”*
- **Authorized Distributors (AD)** have **“implied” traceability** to the OM – documentation may not be readily available
- **Original Equipment Manufacturer (OEM)** are **Exempt** under Para. (e)

## DoD Policy - not just for Electronics

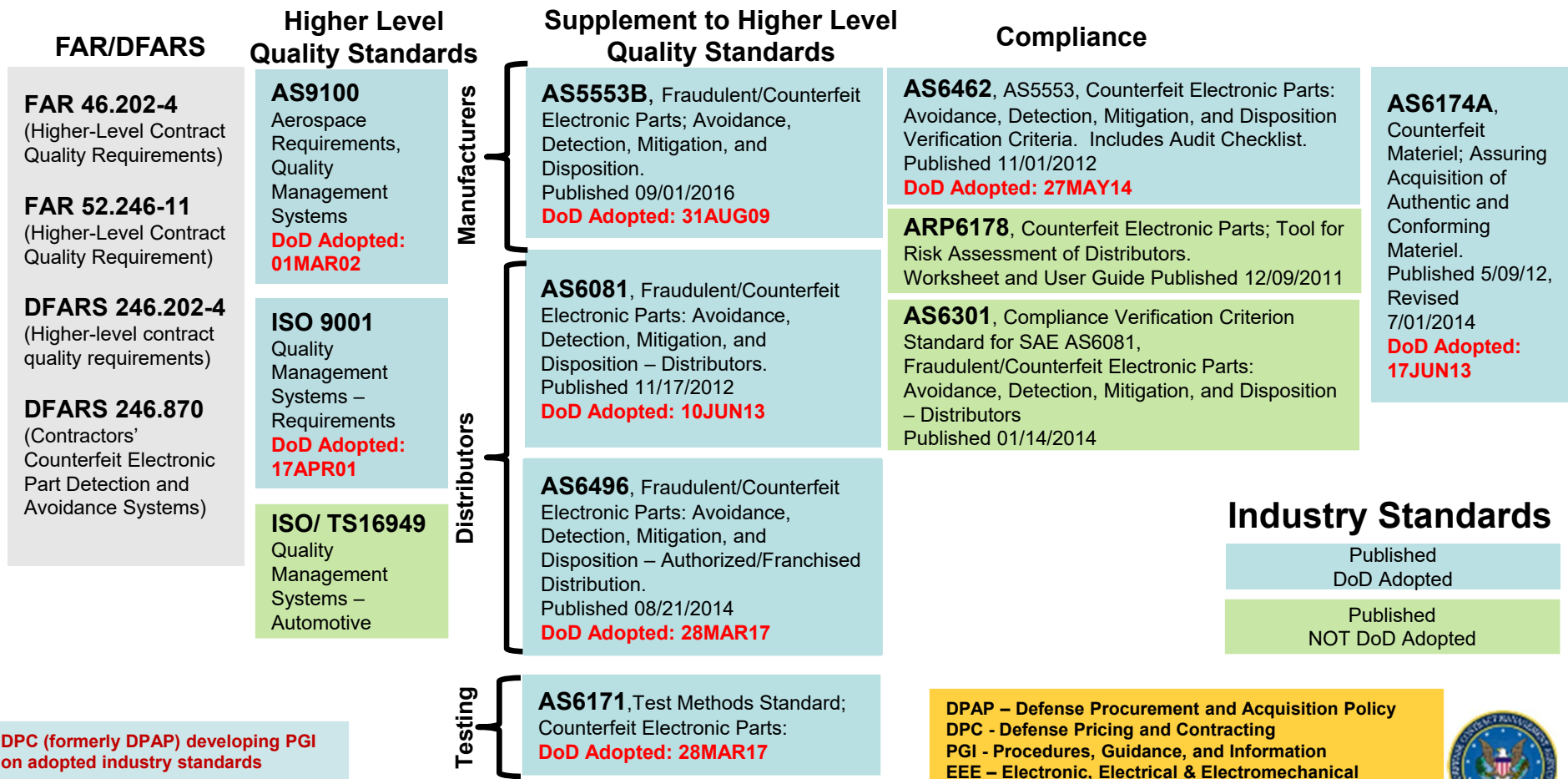
### DoDI 4140.67- DoD Counterfeit Prevention Policy - DoD personnel shall:

- **Not knowingly** procure counterfeit materiel
- **Employ a risk based approach** to reduce the frequency and consequence of counterfeit materiel by applying prevention, and strengthening oversight and surveillance of critical materiel
- **Document all occurrences** of suspect and confirmed counterfeit materiel in the appropriate reporting systems, including GIDEP
- **Make information about counterfeiting accessible** at all levels of the DoD supply chain as a method to prevent further counterfeiting
- **Notify DoD criminal investigative organizations and those who may be impacted** by suspect and confirmed counterfeit materiel at the earliest opportunity

## Counterfeit Regulatory Requirements/Standards

EEE

MATERIEL



DPC (formerly DPAP) developing PGI on adopted industry standards





# DCMA Overview

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## GCQA and Industry Standards Cross References

Government Contract Quality Assurance Surveillance	DFARS 252.246-7007 ( c ) System Criteria (DFARS 252.246-7008 required under Para. IV & V)		AS5553B	AS9100D	DCMA Counterfeit Checklist
	Training	(i)	Training of personnel	3.1.1	8.1.4
Receiving & Inspection	(ii)	Inspection and Testing of electronic parts	3.1.3.d. 3.1.7.g.	8.1.4 8.4.2.d 8.4.3.i	2
Nonconforming material / Reporting	(iii)	Processes to abolish counterfeit parts proliferation	3.1	8.1.4 8.4.3.k 8.7.1.d	3
Subcontract Management/ Purchase Order System	(iv)	Suppliers that have risk-based processes that enable traceability from acceptable sources of electronic parts, (IAW 252.246-7008 (c ), Sources of Electronic Parts)	3.1.4 3.1.5 3.1.7	8.1.4 8.5.2 8.1.4	4 4.a. 4.b
	(v)	Suppliers that obtain parts from the original manufacturer or an authorized aftermarket manufacturer and/or approved sources using inspection, testing, and authentication, (IAW 252.246-7008 Sources of Electronic Parts)	3.1.3		5 5.a 5.b 5.c 5.c.1
Nonconforming material / Reporting	(vi)	Reporting and quarantining of counterfeit electronic parts and suspect counterfeit electronic parts	3.1 3.1.7.c 3.1.8	8.1.4	6
Receiving & Inspection	(vii)	Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit	3.1.3.d 3.1.7.g	8.1.4	7
Subcontract Management/ Purchase Order System	(viii)	Design, operation, and maintenance of systems to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts	3.1 3.2	-----	8
	(ix)	Flow down of counterfeit avoidance and detection requirements to subcontractors	3.1.4	8.4.3.k	9
Training	(x)	Processes to keep informed on counterfeiting trends	3.1	-----	10
Subcontract Management/ Purchase Order System	(xi)	Process for screening GIDEP reports and other credible sources to avoid the purchase of counterfeit parts	3.1.3	-----	11
	(xii)	Control of obsolete electronic parts	3.1.2.b	8.1.4	12
<b>SUMMARY:</b>	<b>Does the Contractor have an acceptable (Risk-Based) operational system(s) to detect and avoid counterfeit parts and suspect counterfeit parts?</b>				



## Counterfeit Detection and Avoidance System (CDAS) Checklist

**BLUF: “Based on your review, does the Contractor have an acceptable (Risk-Based) operational system to detect and avoid counterfeit parts and suspect counterfeit parts?”**

- Non-compliance is handled through normal DCMA corrective action processes  
**(Counterfeit is a Subset of Nonconforming Material)**

- DCMA ensures contractors have the proper controls and inspection/quality management systems in place to mitigate counterfeit parts.

- Checklist is used by the Technical Specialist to determine if a contractor's counterfeit detection and avoidance systems and processes are in control

Does the Contractor execute risk-based policies and procedures that address, at a minimum, the following? <i>(This checklist applies to ALL contracts to determine counterfeit risk)</i>	
1.	Personnel training? <i>(Example: The Contractor has an anti-counterfeit training program.)</i>
2.	Inspection and testing of parts, including criteria for acceptance and rejection? <i>(Example: The Contractor uses established counterfeit prevention industry standards, i.e. ASS553, AS6174)</i>
3.	Abolish counterfeit parts proliferation? <i>(Example: The Contractor uses established counterfeit prevention industry standards...)</i>
4.	Risk-based tracking of part traceability from the original manufacturer to product acceptance by the Government, whether the parts are supplied as discrete parts or are contained in assemblies?
4.a.	Is the contractor responsible for inspection, testing, and authentication IAW existing applicable industry standards if traceability cannot be established from the original manufacturer?
4.b.	Does the Contractor maintain documentation of traceability, or the inspection, testing, and authentication required when traceability cannot be established in accordance with FAR subpart 4.7? and: - Does the contractor make such documentation available to the Government upon request?
5.	Does the contractor obtain parts from the original manufacturer or an authorized aftermarket manufacturer?
5a.	Does the contractor identify “contractor-approved suppliers” (when parts are not in production by, or are not currently available in stock from the original manufacturer or an authorized aftermarket manufacturer)?
5b.	Does the Contractor identify and approve their suppliers by ensuring established counterfeit prevention industry standards (including inspection, testing, and authentication) are utilized?
5c.	Does the contractor identify “other than a contractor-approved supplier” which includes notifying the CO in writing (due to part nonavailability from contractor approved sources or the subcontractor refuses to accept flowdown, or cannot confirm the part is new and has not been comingled)?
5c.1.	Does the Contractor use established counterfeit prevention industry standards (including inspection, testing, and authentication) to obtain the part?
6.	Reporting and quarantining counterfeit parts and suspect counterfeit parts?
7.	Methodologies to identify suspect counterfeit parts and to rapidly determine if a suspect counterfeit part is, in fact, counterfeit?
8.	Design, operation, and maintenance of systems to detect and avoid counterfeit and suspect counterfeit parts?
9.	Flow down of counterfeit detection and avoidance requirements to subcontractors at all levels in the supply chain that are responsible for buying or selling parts or assemblies, or for performing authentication testing?
10.	Continually informed of counterfeit information and trends?
11.	Screens GIDEP reports and other credible sources of counterfeiting information to avoid the purchase and/or use of counterfeit and suspect counterfeit parts?
12.	Control of obsolete parts in order to maximize the availability and use of authentic, originally designed, and qualified parts throughout the product's life cycle?
<b>SUMMARY:</b> Based on your review, does the Contractor have an acceptable (Risk-Based) operational system(s) to detect and avoid counterfeit parts and suspect counterfeit parts?	

**Executed for all suppliers with contracts containing FAR 52.246-11 or -2 clause**



## D2P Potential Initiative – 3<sup>RD</sup> Party Certification

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### 3<sup>RD</sup> Party Certification supports DCMA's – "Detection to Prevention" efforts:

- Develop partnership between DCMA and industry to leverage potential third-party Counterfeit Mitigation certification audit results in order to reduce duplicative DCMA oversight
- Leverage corrective action capability of 3<sup>rd</sup> party certification scheme
- Work with Prime contractors to assess supplier performance and risk to refocus DCMA LODs

DFARS 252.246-7007 and 252.246-7008 requires **"flow down"** at all levels of the DoD supply chain as necessary to establish and maintain an acceptable counterfeit detection and avoidance system.

Regardless of what is flowed down contractors must provide **"traceability"** back to the original manufacturer; Inspection and testing utilized when Traceability is unavailable

D2P - Detection to Prevention  
LOD – Letter of Delegation







### Potential 3rd Party Certification OPTIONS:

- MAY provide improved objective evidence for risk evaluation and surveillance planning.
- Supports consistent CFM efforts throughout the supply chain.
- Less Contractor Resources needed to support Government Audits.
- Facilitates cooperation and transparency throughout the supply chain.
- Leverage OASIS AS9100 REV “D” Certification via inclusion of processes to meet DFARS 252.246-7007, 7008 System Criteria as part of your Command Media.
- Other....



# Questions?

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