

WASHINGTON -- The Acquisition Reform Working Group, a body of major US non-governmental organizations, has issued a 33-page report outlining its stance on US Department of Defense acquisition policies.

Among the key sections is a list of the responsibilities defense contractors should bear to avoid supplying counterfeit components to government programs, including the extent of their liability when bad parts sneak through.

In the document, ARWG argues for changes to the government statutes covering liability when a counterfeit part is discovered. Industry was stunned when the initial proposal called for the supplier to be liable for the entire product, not just the bad part. The sector has since successfully lobbied for a change that ensure contractors are not held financially liable for repair or replacement costs attributable to a counterfeit or suspect counterfeit electronic part. But the ARWG insists their members have "no way to mitigate the risk of receiving counterfeit or suspect counterfeit electronic parts," and that government "should instead pursue and strengthen policies that seek to hold counterfeit parts makers at the source responsible."

"[L]iability should be targeted at those [that] 1) fail to implement avoidance and detections systems, 2) obtain counterfeit parts from an "untrusted" source without implementing additional detection strategies, or 3) fail to notify the government of counterfeits once they have knowledge and that broader safe harbors be erected to incentivize those that implement the necessary protections," ARWG said.

ARWG also seeks to limit warranties on components and to remove liability for incidental and consequential damages. In the event bad parts are found, the group also requests a financial cap, suggesting the total value of the contract with the prime contractor.

"A supplier under a \$10,000 contract arguably could face \$50,000,000 in retrofit costs," ARWG pointed out. "Moreover, where the supplier (at any tier) is a small business, limits on liability become crucial to the financial viability of the company. Full subcontractor liability would be impossible to enforce and could lead to the bankruptcy of a small business. A failure to institute broader safe harbors will inevitably limit the ability of DoD contractors to foster technical innovation and agility within their supply chains or with small businesses, or to support government contracting and subcontracting goals to grow US small business manufacturing

Wary of Liability, NGO Group Seeks Changes to DoD Acquisition Rules

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capabilities for the future."

[See the full document here.](#)