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46.000 Scope of part.

This part prescribes policies and procedures to ensure that *supplies* and services acquired under Government contract conform to the contract's quality and quantity requirements. Included are *inspection*, acceptance, *warranty*, and other measures associated with quality requirements.

Subpart 46.1 - General

46.101 Definitions.

As used in this part-

Acceptance means the act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified *supplies* tendered or approves specific services rendered as partial or complete performance of the contract.

Conditional acceptance means *acceptance* of *supplies* or services that do not conform to *contract quality requirements*, or are otherwise incomplete, that the contractor is required to correct or

otherwise complete by a specified date.

Contract quality requirements means the technical requirements in the contract relating to the quality of the product or service and those *contract clauses* prescribing *inspection*, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements.

"Counterfeit item" means an unlawful or unauthorized reproduction, substitution, or alteration that has been knowingly mismarked, misidentified, or otherwise misrepresented to be an authentic, unmodified item 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 items represented as new, or the false identification of grade, serial number, lot number, date code, or performance characteristics.

Critical item means an item, the failure of which is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the item; or is likely to prevent performance of a vital agency mission.

Critical nonconformance means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the *supplies* or services; or is likely to prevent performance of a vital agency mission.

Design activity means an organization, Government or contractor, that has responsibility for the design and configuration of an item, including the preparation or maintenance of design documents. *Design activity* could be the original organization, or an organization to which design responsibility has been transferred.

Government contract quality assurance means the various functions, including *inspection*, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

Major nonconformance means a nonconformance, other than critical, that is likely to result in failure of the *supplies* or services, or to materially reduce the usability of the *supplies* or services for their intended purpose.

Minor nonconformance means a nonconformance that is not likely to materially reduce the usability of the *supplies* or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the *supplies* or services.

Off-the-shelf item means an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale. The item *may* be commercial or produced to military or Federal specifications or description.

Patent defect means any defect which exists at the time of *acceptance* and is not a *latent defect*.

Subcontractor (see 44.101).

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

Testing means that element of *inspection* that determines the properties or elements, including functional operation of *supplies* or their *components*, by the application of established scientific principles and procedures.

46.102 Policy.

Agencies *shall* ensure that-

(a) Contracts include *inspection* and other quality requirements, including *warranty* clauses when appropriate, that are determined necessary to protect the Government's interest;

(b) *Supplies* or services (including *commercial services*) tendered by contractors meet contract requirements;

(c) *Government contract quality assurance* is conducted before *acceptance* (except as otherwise provided in this part), by or under the direction of Government personnel;

(d) No contract precludes the Government from performing *inspection*;

(e) Nonconforming *supplies* or services are rejected, except as otherwise provided in 46.407;

(f) Contracts for *commercial products* rely on a contractor's existing quality assurance system as a substitute for compliance with Government *inspection* and *testing* before tender for *acceptance* unless customary market practices for the *commercial product* being acquired permit in-process *inspection* (41 U.S.C. 3307). Any in-process *inspection* by the Government *shall* be conducted in a manner consistent with commercial practice; and

(g) The quality assurance and *acceptance* services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see 42.002 and subpart 42.2.

46.103 Contracting office responsibilities.

Contracting offices are responsible for-

(a) Receiving from the activity responsible for technical requirements any specifications for *inspection*, *testing*, and other *contract quality requirements* essential to ensure the integrity of the *supplies* or services (the activity responsible for technical requirements is responsible for prescribing *contract quality requirements*, such as *inspection* and *testing* requirements or, for service contracts, a quality assurance surveillance plan);

(b) Including in *solicitations* and contracts the appropriate requirements for the contractor's control of quality for the *supplies* or services to be acquired;

(c) Issuing any necessary instructions to the cognizant *contract administration office* and acting on recommendations submitted by that office (see 42.301 and 46.104(f));

(d) When contract administration is retained (see 42.201), verifying that the contractor fulfills the *contract quality requirements*; and

(e) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of *supplies* or services which do not meet contract requirements.

46.104 Contract administration office responsibilities.

When a contract is assigned for administration to the *contract administration office* cognizant of the contractor's plant, that office, unless specified otherwise, *shall*-

(a) Develop and apply efficient procedures for performing *Government contract quality assurance* actions under the contract in accordance with the written direction of the *contracting office*;

(b) Perform all actions necessary to verify whether the *supplies* or services conform to *contract quality requirements*;

(c) Maintain, as part of the performance records of the contract, suitable records reflecting-

(1) The nature of *Government contract quality assurance* actions, including, when appropriate, the number of observations made and the number and type of defects; and

(2) Decisions regarding the acceptability of the *products*, the processes, and the requirements, as well as action to correct defects.

(d) Implement any specific written instructions from the *contracting office*;

(e) Report to the *contracting office* any defects observed in design or technical requirements, including *contract quality requirements*; and

(f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 46.103(c)).

46.105 Contractor responsibilities.

(a) The contractor is responsible for carrying out its obligations under the contract by-

(1) Controlling the quality of *supplies* or services;

(2) Tendering to the Government for *acceptance* only those *supplies* or services that conform to contract requirements;

(3) Ensuring that vendors or suppliers of raw materials, parts, *components*, subassemblies, etc., have an acceptable quality control system; and

(4) Maintaining substantiating evidence, when required by the contract, that the *supplies* or services conform to *contract quality requirements*, and furnishing such information to the Government as required.

(b) The contractor *may* be required to provide and maintain an *inspection* system or program for the control of quality that is acceptable to the Government (see 46.202).

(c) The control of quality by the contractor *may* relate to, but is not limited to-

(1) Manufacturing processes, to ensure that the product is produced to, and meets, the contract's technical requirements;

(2) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;

(3) *Testing* and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to *inspection*;

(4) Reliability and maintainability assessment (life, endurance, and continued readiness);

(5) Fabrication and delivery of *products*, to ensure that only conforming *products* are tendered to the Government;

(6) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;

(7) Preservation, packaging, packing, and marking; and

(8) Procedures and processes for services to ensure that services meet contract performance requirements.

(d) The contractor is responsible for performing all *inspections* and test required by the contract except those specifically reserved for performance by the Government (see 46.201(c)).

Subpart 46.2 - Contract Quality Requirements

46.201 General.

(a) The *contracting officer shall* include in the *solicitation* and contract the appropriate quality requirements. The type and extent of contract quality requirements needed depends on the particular *acquisition* and *may* range from *inspection* at time of acceptance to a requirement for the contractor's implementation of a comprehensive program for controlling quality.

(b) As feasible, *solicitations* and contracts *may* provide for alternative, but substantially equivalent, *inspection* methods to obtain wide competition and low cost. The *contracting officer may* also authorize contractor-recommended alternatives when in the Government's interest and approved by the activity responsible for technical requirements.

(c) Although contracts generally make contractors responsible for performing *inspection* before tendering *supplies* to the Government, there are situations in which contracts will provide for specialized *inspections* to be performed solely by the Government. Among situations of this kind are-

(1) Tests that require use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories (*e.g.,* ballistic testing of ammunition, unusual environmental tests, and simulated service tests); and

(2) Contracts that require Government testing for *first article* approval (see subpart 9.3).

(d) Except as otherwise specified by the contract, required contractor testing *may* be performed in the contractor's or subcontractor's laboratory or testing facility, or in any other laboratory or testing facility acceptable to the Government.

46.202 Types of contract quality requirements.

Contract quality requirements fall into four general categories, depending on the extent of quality assurance needed by the Government for the *acquisition* involved.

46.202-1 Contracts for commercial products and commercial services.

When acquiring *commercial products* (see part 12), the Government *shall* rely on contractors' existing quality assurance systems as a substitute for Government *inspection* and testing before tender for acceptance unless customary market practices for the *commercial product* being acquired include in-process *inspection*. Any in-process *inspection* by the Government *shall* be conducted in a manner consistent with commercial practice. The Government *shall* rely on the contractor to accomplish all *inspection* and testing needed to ensure that *commercial services* acquired conform to contract requirements before they are tendered to the Government.

46.202-2 Government reliance on inspection by contractor.

(a) Except as specified in (b) of this section, the Government *shall* rely on the contractor to accomplish all *inspection* and testing needed to ensure that *supplies* or services acquired at or below the *simplified acquisition threshold* conform to contract quality requirements before they are tendered to the Government (see 46.301).

(b) The Government *shall* not rely on *inspection* by the contractor if the *contracting officer* determines that the Government has a need to test the *supplies* or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor’s internal work processes. In making the determination, the *contracting officer shall* consider-

(1) The nature of the *supplies* and services being purchased and their intended use;

(2) The potential losses in the event of defects;

(3) The likelihood of uncontested replacement or correction of defective work; and

(4) The cost of detailed Government *inspection*.

46.202-3 Standard inspection requirements.

(a) Standard *inspection* requirements are contained in the clauses prescribed in 46.302 through 46.308, and in the product and service specifications that are included in *solicitations* and contracts.

(b) The clauses referred to in (a) of this section-

(1) Require the contractor to provide and maintain an *inspection* system that is acceptable to the Government;

(2) Give the Government the right to make *inspections* and tests while work is in process; and

(3) Require the contractor to keep complete, and make available to the Government, records of its *inspection* work.

46.202-4 Higher-level contract quality requirements.

(a) Agencies *shall* establish procedures for determining when higher-level contract quality requirements are necessary, for determining the risk (both the likelihood and the impact) of nonconformance, and for advising the *contracting officer* about which higher-level standards *should* be applied and included in the *solicitation* and contract. Requiring compliance with higher-level quality standards is necessary in *solicitations* and contracts for complex or critical items (see 46.203)or when the technical requirements of the contract require-

(1) Control of such things as design, work operations, in-process controls, testing, and *inspection*; or

(2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(b) Examples of higher-level quality standards include overarching quality management system standards such as ISO 9001, ASQ/ANSI E4, ASME NQA-1, SAE AS9100, SAE AS9003, and ISO/TS 16949, and product or process specific quality standards such as SAE AS5553.

46.203 Criteria for use of contract quality requirements.

The extent of contract quality requirements, including contractor *inspection*, required under a contract *shall* usually be based upon the classification of the contract item (supply or service) as determined by its technical description, its complexity, and the criticality of its application.

(a) *Technical description.* Contract items *may* be technically classified as-

(1) Commercial (described in commercial catalogs, drawings, or industrial standards; see part 2); or

(2) Military-Federal (described in Government drawings and specifications).

(b) Complexity.

(1) Complex items have quality characteristics, not wholly visible in the end item, for which contractual conformance *must* be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items.

(2) Noncomplex items have quality characteristics for which simple measurement and test of the end item are sufficient to determine conformance to contract requirements.

(c) Criticality.

(1) A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. A critical item *may* be either peculiar, meaning it has only one application, or common, meaning it has multiple applications.

(2) A noncritical application is any other application. Noncritical items *may* also be either peculiar or common.

Subpart 46.3 - Contract Clauses

46.301 Contractor inspection requirements.

The *contracting officer shall* insert the clause at 52.246-1, Contractor *Inspection* Requirements, in *solicitations* and contracts for *supplies* or services when the contract amount is expected to be at or below the *simplified acquisition threshold* and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's *inspection* responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause *shall* not be used if the *contracting officer* has made the determination specified in 46.202-2(b).

46.302 Fixed-price supply contracts.

The *contracting officer shall* insert the clause at 52.246-2, *Inspection* of *Supplies*-Fixed-Price, in *solicitations* and contracts for *supplies*, or services that involve the furnishing of *supplies*, when a fixed-price contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer may* insert the clause in such *solicitations* and contracts when the contract amount is expected to be at or below the *simplified acquisition threshold* and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the *contracting officer shall* use the clause with its AlternateI. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the *contracting officer shall* use the clause with its AlternateII.

46.303 Cost-reimbursement supply contracts.

The *contracting officer shall* insert the clause at 52.246-3, *Inspection* of *Supplies*-Cost-Reimbursement, in *solicitations* and contracts for *supplies*, or services that involve the furnishing of *supplies*, when a cost-reimbursement contract is contemplated.

46.304 Fixed-price service contracts.

The *contracting officer shall* insert the clause at 52.246-4, *Inspection* of Services-Fixed-Price, in *solicitations* and contracts for services, or *supplies* that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer may* insert the clause in such *solicitations* and contracts when the contract amount is expected to be at or below the *simplified acquisition threshold* and inclusion is in the Government's interest.

46.305 Cost-reimbursement service contracts.

The *contracting officer shall* insert the clause at 52.246-5, *Inspection* of Services-Cost Reimbursement, in *solicitations* and contracts for services, or *supplies* that involve the furnishing of services, when a cost-reimbursement contract is contemplated.

46.306 Time-and-material and labor-hour contracts.

The *contracting officer shall* insert the clause at 52.246-6, *Inspection*-Time-and-Material and Labor-Hour, in *solicitations* and contracts when a time-and-material contract or a labor-hour contract is contemplated. If Government *inspection* and acceptance are to be performed at the contractor's plant, the *contracting officer shall* use the clause with its AlternateI.

46.307 Fixed-price research and development contracts.

(a) The *contracting officer shall* insert the clause at 52.246-7, *Inspection* of Research and Development-Fixed-Price, in *solicitations* and contracts for research and development when-

(1) The primary objective of the contract is the delivery of end items other than designs, drawings, or reports,

(2) A fixed-price contract is contemplated, and

(3) The contract amount is expected to exceed the *simplified acquisition threshold*; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.

(b) The *contracting officer may* insert the clause in such *solicitations* and contracts when the contract amount is expected to be at or below the *simplified acquisition threshold*, and its use is in the Government's interest.

46.308 Cost-reimbursement research and development contracts.

The *contracting officer shall* insert the clause at 52.246-8, *Inspection* of Research and Development-Cost-Reimbursement, in *solicitations* and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, and (b)a cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate. If it is contemplated that the contract will be on a no-fee basis, the *contracting officer shall* use the clause with its AlternateI.

46.309 Research and development contracts (short form).

The *contracting officer shall* insert the clause at 52.246-9, *Inspection* of Research and Development (Short Form), in *solicitations* and contracts for research and development when the clause prescribed in 46.307 or the clause prescribed in 46.308 is not used.

46.310 [Reserved]

46.311 Higher-level contract quality requirement.

(a) The *contracting officer shall* insert the clause at 52.246-11, Higher-Level Contract Quality Requirement, in *solicitations* and contracts when the inclusion of a higher-level contract quality requirement is necessary (see 46.202-4).

(b) For each higher-level quality standard, the *contracting officer shall* fill in the title, number, date, and tailoring (if any).

46.312 Construction contracts.

The *contracting officer shall* insert the clause at 52.246-12, *Inspection* of *Construction*, in *solicitations* and contracts for *construction* when a fixed-price contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer may* insert the clause in such *solicitations* and contracts when the contract amount is expected to be at or below the *simplified acquisition threshold*, and its use is in the Government's interest.

46.313 Contracts for dismantling, demolition, or removal of improvements.

The *contracting officer shall* insert the clause at 52.246-13, *Inspection*-Dismantling, Demolition, or Removal of Improvements, in *solicitations* and contracts for dismantling, demolition, or removal of improvements.

46.314 Transportation contracts.

The *contracting officer shall* insert the clause at 52.246-14, *Inspection* of Transportation, in *solicitations* and contracts for *freight* transportation services (including local drayage) by rail, motor (including bus), domestic *freight* forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The *contracting officer shall* not use the clause for the *acquisition* of transportation services by domestic or international air carriers or by international ocean carriers, or to *freight* services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C. 10721 or 1 3712. (See part 47, Transportation.)

46.315 Certificate of conformance.

The *contracting officer shall* insert the clause at 52.246-15, Certificate of Conformance, in *solicitations* and contracts for *supplies* or services when the conditions in 46.504 apply.

46.316 Responsibility for supplies.

The *contracting officer shall* insert the clause at 52.246-16, Responsibility for *Supplies*, in

solicitations and contracts for (a) *supplies*, (b) services involving the furnishing of *supplies*, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold*. The *contracting officer may* insert the clause in such *solicitations* and contracts when the contract amount is not expected to exceed the *simplified acquisition threshold* and inclusion of the clause is authorized under agency procedures.

46.317 Reporting Nonconforming Items.

(a) Except as provided in paragraph (b) of this section, the *contracting officer shall* insert the clause at 52.246-26, Reporting Nonconforming Items, in *solicitations* and contracts - as follows:

(1) For an *acquisition* by any agency, including the Department of Defense, of–

(i) Any items that are subject to higher-level quality standards in accordance with the clause at 52.246-11, Higher-Level Contract Quality Requirement;

(ii) Any items that the *contracting officer*, in consultation with the requiring activity determines to be critical items for which use of the clause is appropriate;

(2) In addition (as required by paragraph (c)(4) of section 818 of the *National Defense* Authorization Act for Fiscal Year 2012 (Pub. L. 112-81)), for an *acquisition* that exceeds the *simplified acquisition threshold* and is by, or for, the Department of Defense of electronic parts or end items, *components*, parts, or materials containing electronic parts, whether or not covered in paragraph (a)(1) of this section; or

(3) For the *acquisition* of services, if the contractor will furnish, as part of the service, any items that meet the criteria specified in paragraphs (a)(1) through (a)(2) of this section.

(b) The *contracting officer shall* not insert the clause at 52.246-26, Reporting Nonconforming Items, in *solicitations* and contracts when acquiring—

(1) *Commercial products* and *commercial services* using part 12 procedures; or

(2) Medical devices that are subject to the Food and Drug Administration reporting requirements at 21 CFR 803.

(c) If required by agency policy, the *contracting officer may* modify paragraph (b)(4) of the clause at 52.246-26, but only to change the responsibility for the contractor to submit reports to the agency rather than to Government-Industry Data Exchange Program (GIDEP), so that the agency instead of the contractor submits reports to GIDEP within the mandatory 60 days.

Subpart 46.4 - Government Contract Quality Assurance

46.401 General.

(a) Government contract quality assurance *shall* be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as *may* be necessary to determine that the *supplies* or services conform to contract requirements. Quality

assurance surveillance plans *should* be prepared in conjunction with the preparation of the statement of work. The plans *should* specify-

(1) All work requiring surveillance; and

(2) The method of surveillance.

(b) Each contract *shall* designate the place or places where the Government reserves the right to perform quality assurance.

(c) If the contract provides for performance of Government quality assurance at source, the place or places of performance *may* not be changed without the authorization of the *contracting officer*.

(d) If a contract provides for delivery and acceptance at destination and the Government inspects the *supplies* at a place other than destination, the *supplies shall* not ordinarily be reinspected at destination, but *should* be examined for quantity, damage in transit, and possible substitution or fraud.

(e) Government *inspection shall* be performed by or under the direction or supervision of Government personnel.

(f) Government *inspection shall* be documented on an *inspection* or *receiving report* form or commercial shipping document/packing list, under agency procedures (see subpart 46.6).

(g) Agencies *may* prescribe the use of *inspection* approval or disapproval stamps to identify and control *supplies* and material that have been inspected for conformance with contract quality requirements.

46.402 Government contract quality assurance at source.

Agencies *shall* perform contract quality assurance, including *inspection*, at source if-

(a) Performance at any other place would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and *shipment* of unacceptable *supplies*, or from the delay in making necessary corrections;

(c) Special required instruments, gauges, or facilities are available only at source;

(d) Performance at any other place would destroy or require the replacement of costly special packing and packaging;

(e) Government *inspection* during contract performance is essential; or

(f) It is determined for other reasons to be in the Government’s interest.

46.403 Government contract quality assurance at destination.

(a) Government contract quality assurance that can be performed at destination is normally limited to *inspection* of the *supplies* or services. *Inspection shall* be performed at destination under the

following circumstances-

(1) *Supplies* are purchased off-the-shelf and require no technical *inspection*;

(2) Necessary testing equipment is located only at destination;

(3) Perishable subsistence *supplies* purchased within the *United States*, except that those *supplies* destined for overseas *shipment* will normally be inspected for condition and quantity at points of embarkation;

(4) Brand name *products* purchased for authorized resale through commissaries or similar facilities (however, *supplies* destined for direct overseas *shipment may* be accepted by the *contracting officer* or an authorized representative on the basis of a tally sheet evidencing receipt of *shipment* signed by the port transportation officer or other designated official at the transshipment point);

(5) The *products* being purchased are processed under direct control of the National Institutes of Health or the Food and Drug Administration of the Department of Health and Human Services;

(6) The contract is for services performed at destination; or

(7) It is determined for other reasons to be in the Government's interest.

(b) Overseas *inspection* of *supplies* shipped from the *United States shall* not be required except in unusual circumstances, and then only when the *contracting officer* determines in advance that *inspection* can be performed or makes necessary arrangements for its performance.

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

(a) In determining the type and extent of Government contract quality assurance to be required for contracts at or below the *simplified acquisition threshold*, the *contracting officer shall* consider the criticality of application of the *supplies* or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-2).

(b) When the conditions in 46.202-2(b) apply, the following policies *shall* govern:

(1) Unless a special situation exists, the Government *shall* inspect contracts at or below the *simplified acquisition threshold* at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.

(2) Special situations *may* require more detailed quality assurance and the use of a standard *inspection* or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications.

(3) Detailed Government *inspection may* be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government *inspection may* be reduced to a periodic check of occasional purchases.

46.405 Subcontracts.

(a) Government contract quality assurance on subcontracted *supplies* or services *shall* be performed only when required in the Government's interest. The primary purpose is to assist the *contract administration office* cognizant of the prime contractor's plant in determining the conformance of subcontracted *supplies* or services with contract requirements or to satisfy one or more of the factors included in (b) of this section. It does not relieve the prime contractor of any responsibilities under the contract. When appropriate, the prime contractor *shall* be requested to arrange for timely Government access to the subcontractor facility.

(b) The Government *shall* perform quality assurance at the subcontract level when-

(1) The item is to be shipped from the subcontractor's plant to the using activity and *inspection* at source is required;

(2) The conditions for quality assurance at source are applicable (see 46.402);

(3) The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's plant, are to be performed by the Government; or

(4) It is otherwise required by the contract or determined to be in the Government's interest.

(c) *Supplies* or services for which certificates, records, reports, or similar evidence of quality are available at the prime contractor's plant *shall* not be inspected at the subcontractor's plant, except occasionally to verify this evidence or when required under (b) of this section.

(d) All oral and written statements and contract terms and conditions relating to Government quality assurance actions at the subcontract level *shall* be worded so as not to-

(1) Affect the contractual relationship between the prime contractor and the Government, or between the prime contractor and the subcontractor;

(2) Establish a contractual relationship between the Government and the subcontractor; or

(3) Constitute a waiver of the Government's right to accept or reject the *supplies* or services.

46.406 Foreign governments.

Government contract quality assurance performed for foreign governments or international agencies *shall* be administered according to the foreign policy and security objectives of the *United States*. Such support *shall* be furnished only when consistent with or required by legislation, executive orders, or agency policies concerning mutual international programs.

46.407 Nonconforming supplies or services.

(a) The *contracting officer should* reject *supplies* or services not conforming in all respects to contract requirements (see 46.102). In those instances where deviation from this policy is found to be in the Government's interest, such *supplies* or services *may* be accepted only as authorized in this section.

(b) The *contracting* officer ordinarily *must* give the contractor an opportunity to correct or replace nonconforming *supplies* or services when this can be accomplished within the required delivery schedule. Unless the contract specifies otherwise (as *may* be the case in some cost-reimbursement contracts), correction or replacement *must* be without additional cost to the Government. Paragraph (e)(2) of the clause at 52.246-2, *Inspection* of *Supplies*-Fixed-Price, reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.

(c)

(1) In situations not covered by paragraph (b) of this section, the *contracting* officer ordinarily *must* reject *supplies* or services when the nonconformance is critical or major or the *supplies* or services are otherwise incomplete. However, there *may* be circumstances (*e.g.,* reasons of economy or urgency) when the *contracting officer* determines acceptance or conditional acceptance of *supplies* or services is in the best interest of the Government. The *contracting officer must* make this determination based upon-

(i) Advice of the technical activity that the item is safe to use and will perform its intended purpose;

(ii) Information regarding the nature and extent of the nonconformance or otherwise incomplete *supplies* or services;

(iii) A request from the contractor for acceptance of the nonconforming or otherwise incomplete *supplies* or services (if feasible);

(iv) A recommendation for acceptance, conditional acceptance, or rejection, with supporting rationale; and

(v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

(2) The cognizant *contract administration office*, or other Government activity directly involved, *must* furnish this data to the *contracting officer in writing*, except that in urgent cases it *may* be furnished orally and later confirmed *in writing*. Before making a decision to accept, the *contracting* officer *must* obtain the concurrence of the activity responsible for the technical requirements of the contract and, where health factors are involved, of the responsible health official of the agency concerned.

(d) If the nonconformance is minor, the cognizant *contract administration office may* make the determination to accept or reject, except where this authority is withheld by the *contracting office* of the *contracting* activity. To assist in making this determination, the contract administration office *may* establish a joint contractor-contract administrative office review group. Acceptance of *supplies* and services with critical or major nonconformances is outside the scope of the review group.

(e) The *contracting* officer *must* discourage the repeated tender of nonconforming *supplies* or services, including those with only minor nonconformances, by appropriate action, such as rejection and documenting the contractor’s performance record.

(f) When *supplies* or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the *contracting* officer *must* modify the contract to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally *should* be at least sufficient to cover the estimated cost and

related profit to correct deficiencies and complete unfinished work. The *contracting officer must* document in the contract file the basis for the amounts withheld. For services, the *contracting officer* can consider identifying the value of the individual work requirements or tasks (subdivisions) that *may* be subject to price or fee reduction. This value *may* be used to determine an equitable adjustment for nonconforming services. However, when *supplies* or services involving minor nonconformances are accepted, the contract need not be modified unless it appears that the savings to the contractor in fabricating the nonconforming *supplies* or performing the nonconforming services will exceed the cost to the Government of processing the modification.

(g) Notices of rejection *must* include the reasons for rejection and be furnished promptly to the contractor. Promptness in giving this notice is essential because, if timely nature of rejection is not furnished, acceptance *may* in certain cases be implied as a matter of law. The notice *must* be *in writing* if-

(1) The *supplies* or services have been rejected at a place other than the contractor's plant;

(2) The contractor persists in offering nonconforming *supplies* or services for acceptance; or

(3) Delivery or performance was late without excusable cause.

(h) The *contracting* officer *shall* provide disposition instructions for counterfeit or suspect counterfeit items in accordance with agency policy. Agency policy *may* require the *contracting officer* to direct the contractor to retain such items for investigative or evidentiary purposes.

46.408 Single-agency assignments of Government contract quality assurance.

(a) Government-wide responsibility for quality assurance support for *acquisitions* of certain commodities is assigned as follows:

(1) For drugs, biologics, and other medical *supplies*-the Food and Drug Administration;

(2) For food, except seafood-the Department of Agriculture.

(3) For seafood-the National Marine Fisheries Service of the Department of Commerce.

(b) Agencies requiring quality assurance support for acquiring these *supplies should* request the support directly from the cognizant office.

Subpart 46.5 - Acceptance

46.501 General.

Acceptance constitutes acknowledgment that the *supplies* or services conform with applicable contract quality and quantity requirements, except as provided in this subpart and subject to other terms and conditions of the contract. Acceptance *may* take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract. *Supplies* or services *shall* ordinarily not be accepted before completion of Government contract quality assurance actions (however, see 46.504). Acceptance *shall* ordinarily be evidenced by

execution of an acceptance certificate on an *inspection* or *receiving report* form or commercial shipping document/packing list.

46.502 Responsibility for acceptance.

Acceptance of *supplies* or services is the responsibility of the *contracting officer*. When this responsibility is assigned to a cognizant *contract administration office* or to another agency (see 42.202(g)), acceptance by that office or agency is binding on the Government.

46.503 Place of acceptance.

Each contract *shall* specify the place of acceptance. Contracts that provide for Government contract quality assurance at source *shall* ordinarily provide for acceptance at source. Contracts that provide for Government contract quality assurance at destination *shall* ordinarily provide for acceptance at destination. (For transportation terms, see subpart 47.3.) *Supplies* accepted at a place other than destination *shall* not be reinspected at destination for acceptance purposes, but *should* be examined at destination for quantity, damage in transit, and possible substitution or fraud.

46.504 Certificate of conformance.

A certificate of conformance (see 46.315) *may* be used in certain instances instead of source *inspection* (whether the contract calls for acceptance at source or destination) at the discretion of the *contracting officer* if the following conditions apply:

(a) Acceptance on the basis of a contractor's certificate of conformance is in the Government's interest.

(b)

(1) Small losses would be incurred in the event of a defect; or

(2) Because of the contractor's reputation or *past performance*, it is likely that the *supplies* or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case *shall* the Government's right to inspect *supplies* under the *inspection* provisions of the contract be prejudiced.

46.505 Transfer of title and risk of loss.

(a) Titleto *supplies shall* pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to *supplies shall* remain with the contractor until, and *shall* pass to the Government upon-

(1) Delivery of the *supplies* to a carrier if transportation is *f.o.b. origin*; or

(2) Acceptance by the Government or delivery of the *supplies* to the Government at the destination specified in the contract, whichever is later, if transportation is *f.o.b. destination*.

(c) Paragraph (b) of this section *shall* not apply to *supplies* that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming *supplies* remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section *shall* apply.

(d) Under paragraph (b) of this section, the contractor *shall* not be liable for loss of or damage to *supplies* caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(e) The policy expressed in (a) through (d) of this section is specified in the clause at 52.246-16, Responsibility for *Supplies*, which is prescribed in 46.316.

Subpart 46.6 - Material Inspection and Receiving Reports

46.601 General.

Agencies *shall* prescribe procedures and instructions for the use, preparation, and distribution of material *inspection* and *receiving reports* and commercial shipping document/packing lists to evidence Government *inspection* (see 46.401) and acceptance (see 46.501).

Subpart 46.7 - Warranties

46.701 [Reserved]

46.702 General.

(a) The principal purposes of a *warranty* in a Government contract are-

(1) To delineate the rights and obligations of the contractor and the Government for defective items and services; and

(2) To foster quality performance.

(b) Generally, a *warranty should* provide-

(1) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the *supplies* or services by the Government; and

(2) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Government to assert a contractual right for the correction of defects.

(c) The benefits to be derived from a *warranty must* be commensurate with the cost of the *warranty* to the Government.

46.703 Criteria for use of warranties.

The use of *warranties* is not mandatory. In determining whether a *warranty* is appropriate for a specific *acquisition*, the *contracting officer shall* consider the following factors:

(a) *Nature and use of the supplies or services.* This includes such factors as-

(1) Complexity and function;

(2) Degree of development;

(3) State of the art;

(4) End use;

(5) Difficulty in detecting defects before acceptance; and

(6) Potential harm to the Government if the item is defective.

(b) *Cost. Warranty* costs arise from-

(1) The contractor's charge for accepting the deferred liability created by the *warranty*; and

(2) Government administration and enforcement of the *warranty* (see paragraph (c) of this section).

(c) *Administration and enforcement.* The Government's ability to enforce the *warranty* is essential to the effectiveness of any *warranty*. There *must* be some assurance that an adequate administrative system for reporting defects exists or can be established. The adequacy of a reporting system *may* depend upon such factors as the-

(1) Nature and complexity of the item;

(2) Location and proposed use of the item;

(3) Storage time for the item;

(4) Distance of the using activity from the source of the item;

(5) Difficulty in establishing existence of defects; and

(6) Difficulty in tracing responsibility for defects.

(d) *Trade practice.* In many instances an item is customarily warranted in the trade, and, as a result of that practice, the cost of an item to the Government will be the same whether or not a *warranty* is included. In those instances, it would be in the Government's interest to include such a *warranty*.

(e) *Reduced requirements.* The contractor's charge for assumption of added liability *may* be partially or completely offset by reducing the Government's contract quality assurance requirements where the *warranty* provides adequate assurance of a satisfactory product.

46.704 Authority for use of warranties.

The use of a *warranty* in an *acquisition shall* be approved in accordance with agency procedures.

46.705 Limitations.

(a) Except for the *warranties* in the clauses at 52.246-3, *Inspection* of *Supplies*-Cost-Reimbursement, and 52.246-8, *Inspection* of Research and Development-Cost-Reimbursement, the *contracting officer shall* not include *warranties* in cost-reimbursement contracts, unless authorized in accordance with agency regulations (see 46.708).

(b) *Warranty* clauses *shall* not limit the Government's rights under an *inspection* clause (see subpart 46.3) in relation to *latent defects*, fraud, or gross mistakes that amount to fraud.

(c) Except for *warranty* clauses in *construction* contracts, *warranty* clauses *shall* provide that the *warranty* applies notwithstanding *inspection* and acceptance or other clauses or terms of the contract.

46.706 Warranty terms and conditions.

(a) To facilitate the *pricing* and enforcement of *warranties*, the *contracting officer shall* ensure that *warranties* clearly state the-

(1) Exact nature of the item and its *components* and characteristics that the contractor warrants;

(2) Extent of the contractor's *warranty* including all of the contractor's obligations to the Government for breach of *warranty*;

(3) Specific remedies available to the Government; and

(4) Scope and duration of the *warranty*.

(b) The *contracting officer shall* consider the following guidelines when preparing *warranty* terms and conditions:

(1) Extent of contractor obligations.

(i) Generally, the contractor's obligations under *warranties* extend to all defects discovered during the *warranty* period, but do not include damage caused by the Government. When a *warranty* for the entire item is not advisable, a *warranty may* be required for a particular aspect of the item that *may* require special protection (*e.g.,* installation, *components*, accessories, subassemblies, preservation, packaging, and packing, etc.).

(ii) If the Government specifies the design of the end item and its measurements, tolerances, materials, tests, or *inspection* requirements, the contractor's obligations for correction of defects *shall* usually be limited to defects in material and workmanship or failure to conform to specifications. If the Government does not specify the design, the *warranty* extends also to the usefulness of the design.

(iii) If express *warranties* are included in a contract (except contracts for *commercial products* and *commercial services*), all implied *warranties* of merchantability and fitness for a particular purpose *shall* be negated by the use of specific language in the clause (see clauses 52.246-17, *Warranty* of *Supplies* of a Noncomplex Nature; 52.246-18, *Warranty* of *Supplies* of a Complex Nature; and 52.246-19, *Warranty* of Systems and Equipment under Performance Specifications or Design Criteria).

(2) Remedies.

(i) Normally, a *warranty shall* provide as a minimum that the Government *may*-

(A) Obtain an equitable adjustment of the contract, or

(B) Direct the contractor to repair or replace the defective items at the contractor's expense.

(ii) If it is not practical to direct the contractor to make the repair or replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the Government, the *warranty should* provide *alternate* remedies, such as authorizing the Government to-

(A) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or

(B) Arrange for the repair or replacement of the defective item, by the Government or by another source, at the contractor's expense.

(iii) If it can be foreseen that it will not be practical to return an item to the contractor for repair, to remove it to an *alternate* source for repair, or to replace the defective item, the *warranty should* provide that the Government *may* repair, or require the contractor to repair, the item in place at the contractor's expense. The contract *shall* provide that in the circumstance where the Government is to accomplish the repair, the contractor will furnish at the place of delivery the material or parts, and the installation instructions required to successfully accomplish the repair.

(iv) Unless provided otherwise in the *warranty*, the contractor's obligation to repair or replace the defective item, or to agree to an equitable adjustment of the contract, *shall* include responsibility for the costs of furnishing all labor and material to-

(A) Reinspect items that the Government reasonably expected to be defective,

(B) Accomplish the required repair or replacement of defective items, and

(C) Test, inspect, package, pack, and mark repaired or replaced items.

(v) If repair or replacement of defective items is required, the contractor *shall* generally be required by the *warranty* to bear the expense of transportation for returning the defective item from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the contractor's plant and subsequent return. When defective items are returned to the contractor from other than the place of delivery specified in the contract, or when the Government exercises *alternate* remedies, the contractor's liability for transportation charges incurred *shall* not exceed an amount equal to the cost of transportation by the usual commercial method of *shipment* between the place of delivery specified in the contract and the contractor's plant and subsequent return.

(3) *Duration of the warranty.* The time period or duration of the *warranty must* be clearly specified and *shall* be established after consideration of such factors as (i) the estimated useful life of the item, (ii) the nature of the item including storage or shelf-life, and (iii) trade practice. The period specified *shall* not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.

(4) *Notice.* The *warranty shall* specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. This notice period, which *shall* apply to all defects discovered during the *warranty* period, *shall* be long enough to assure that the Government has adequate time to give notice to the contractor. The *contracting officer shall* consider the following factors when establishing the notice period:

(i) The time necessary for the Government to discover the defects.

(ii) The time reasonably required for the Government to take necessary administrative steps and make a timely report of discovery of the defects to the contractor.

(iii) The time required to discover and report defective replacements.

(5) *Markings.*

(i) The packaging and preservation requirements of the contract *shall* require the contractor to stamp or mark the *supplies* delivered or otherwise furnish notice with the *supplies* of the existence of the *warranty*. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the *supplies* that the *supplies* are under *warranty*. Markings *may* be brief but *should* include—

(A)A brief statement that a *warranty* exists;

(B)The substance of the *warranty*;

(C)Its duration; and

(D)Who to notify if the *supplies* are found to be defective.

(ii) For *commercial products* (see 46.709), the contractor's trade practice in *warranty* marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted *supplies*.

(6) *Consistency. Contracting officers shall* ensure that the *warranty* clause and any other *warranty* conditions in the contract (*e.g.,* in the specifications or an *inspection* clause) are consistent. To the extent practicable, all of the *warranties* to be contained in the contract *should* be expressed in the *warranty* clause.

46.707 Pricing aspects of fixed-price incentive contract warranties.

If a fixed-price incentive contract contains a *warranty* (see 46.708), the estimated cost of the *warranty* to the contractor *should* be considered in establishing the incentive target price and the ceiling price of the contract. All costs incurred, or estimated to be incurred, by the contractor in complying with the *warranty shall* be considered when establishing the total final price. Contractor compliance with the *warranty* after the establishment of the total final price *shall* be at no additional

cost to the Government.

46.708 Warranties of data.

Warranties of data *shall* be developed and used in accordance with agency regulations.

46.709 Warranties of commercial products and commercial services.

The *contracting officer should* take advantage of commercial *warranties*, including extended *warranties*, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of *commercial products* and *commercial services* (see part 12).

46.710 Contract clauses.

The clauses and *alternates* prescribed in this section *may* be used in *solicitations* and contracts in which inclusion of a *warranty* is appropriate (see 46.709 for *warranties* for *commercial products* and *commercial services*). However, because of the many situations that *may* influence the *warranty* terms and conditions appropriate to a particular *acquisition*, the *contracting officer may* vary the terms and conditions of the clauses and *alternates* to the extent necessary. The *alternates* prescribed in this section address the clauses; however, the conditions pertaining to each *alternate must* be considered if the terms and conditions are varied to meet a particular need.

(a)

(1) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-17, *Warranty* of *Supplies* of a Noncomplex Nature, in *solicitations* and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a *warranty* clause has been approved under agency procedures. If the contractor's design rather than the Government's design will be used, insert the word "design" before "material" in paragraph (b)(1)(i).

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a *warranty* would otherwise be prohibitive), the *contracting officer may* use the clause with its *Alternate* II.

(3) If the *supplies* cannot be obtained from another source, the *contracting officer may* use the clause with its *Alternate* III.

(4) If a fixed-price incentive contract is contemplated, the *contracting officer may* use the clause with its *Alternate* IV.

(5) If it is anticipated that recovery of the warranted items will involve considerable Government expense for disassembly and/or reassembly of larger items, the *contracting officer may* use the clause with its *Alternate* V.

(b)

(1) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-18,

Warranty of *Supplies* of a Complex Nature, in *solicitations* and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a *warranty* clause has been approved under agency procedures. If the contractor's design rather than the Government's design will be used, insert the word "design" before "material" in paragraph (b)(1).

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a *warranty* would otherwise be prohibitive), the *contracting officer may* use the clause with its *Alternate* II.

(3) If a fixed-price incentive contract is contemplated, the *contracting officer may* use the clause with its *Alternate* III.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the *contracting officer may* use the clause with its *Alternate* IV.

(c)

(1) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-19, *Warranty* of Systems and Equipment under Performance Specifications or Design Criteria, in *solicitations* and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated; and the use of a *warranty* clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a *warranty* would otherwise be prohibitive), the *contracting officer may* use the clause with its *Alternate* I.

(3) If a fixed-price incentive contract is contemplated, the *contracting officer may* use the clause with its *Alternate* II.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the *contracting officer may* use the clause with its *Alternate* III.

(d) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-20, *Warranty* of Services, in *solicitations* and contracts for services when a fixed-price contract for services is contemplated and the use of *warranty* clause has been approved under agency procedures; unless a clause substantially the same as the clause at 52.246-19, *Warranty* of Systems and Equipment under Performance Specifications or Design Criteria, has been used.

(e)

(1) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-21, *Warranty* of *Construction*, in *solicitations* and contracts when a fixed-price *construction* contract (see 46.705(c)) is contemplated and the use of a *warranty* clause has been approved under agency procedures.

(2) If the Government specifies in the contract the use of any equipment by "brand name and model," the *contracting officer may* use the clause with its *Alternate* I.

Subpart 46.8 - Contractor Liability for Loss of or Damage to Property of the Government

46.800 Scope of subpart.

This subpart prescribes policies and procedures for limiting contractor liability for loss of or damage to property of the Government that-

(a) Occurs after acceptance and

(b) Results from defects or deficiencies in the *supplies* delivered or services performed.

46.801 Applicability.

(a) This subpart does not apply to *commercial products* and *commercial services*. This subpart applies to contracts other than those for—

(1)*Information technology*, including telecommunications;

(2)*Construction*;

(3)*Architect-engineer services*; and

(4)Maintenance and rehabilitation of real property.

(b) See subpart 46.7, *Warranties*, for policies and procedures concerning contractor liability caused by nonconforming *technical data*.

46.802 Definition.

High-value item, as used in this subpart, means a contract end item that-

(1) Has a high unit cost (normally exceeding $100,000 per unit), such as an aircraft, an aircraft engine, a communication system, a computer system, a missile, or a ship, and

(2) Is designated by the *contracting officer* as a *high-value item*.

46.803 Policy.

(a) *General.* The Government will generally act as a self-insurer by relieving contractors, as specified in this subpart, of liability for loss of or damage to property of the Government that (1) occurs after acceptance of *supplies* delivered or services performed under a contract and (2) results from defects or deficiencies in the *supplies* or services. However, the Government will not relieve the contractor of liability for loss of or damage to the contract end item itself, except for *high-value items*.

(b) *High-value items.* In contracts requiring delivery of *high-value items*, the Government will relieve

contractors of contractual liability for loss of or damage to those items. However, this relief *shall* not limit the Government's rights arising under the contract to-

(1) Have any defective item or its *components* corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to a *high-value item* occurs; or

(2) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.

(c) *Exception.* The Government will not provide contractual relief under paragraphs (a) and (b) of this section when contractor liability can be preserved without increasing the contract price.

(d) *Limitations.* Subject to the specific terms of the limitation of liability clause included in the contract, the relief provided under paragraphs (a) and (b) of this section does not apply-

(1) To the extent that contractor liability is expressly provided under a *contract clause* authorized by this regulation;

(2) When a defect or deficiency in, or Government's acceptance of, the *supplies* or services results from willful misconduct or lack of good faith on the part of the contractor's managerial personnel; or

(3) To the extent that any contractor *insurance*, or *self-insurance* reserve, covers liability for loss or damage suffered by the Government through purchase or use of the *supplies* delivered or services performed under the contract.

46.804 [Reserved]

46.805 Contract clauses.

(a) *Contracts that exceed the simplified acquisition threshold.* The *contracting officer shall* insert the appropriate clause or combination of clauses specified in paragraphs (a)(1) through (a)(5) of this section in *solicitations* and contracts when the contract amount is expected to be in excess of the *simplified acquisition threshold* and the contract is subject to the requirements of this subpart as indicated in 46.801:

(1) In contracts requiring delivery of end items that are not *high-value items*, insert the clause at 52.246-23, Limitation of Liability.

(2) In contracts requiring delivery of *high-value items*, insert the clause at 52.246-24, Limitation of Liability-High Value Items.

(3) In contracts requiring delivery of both *high-value items* and other end items, insert both clauses prescribed in (a)(1) and (a)(2) of this section, AlternateI of the clause at 52.246-24, and identify clearly in the contract schedule the *line items* designated as *high-value items*.

(4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability-Services.

(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in paragraph (a)(4) of this section and the appropriate clause or clauses prescribed in paragraph (a)(1), (2), or (3) of this section, and identify clearly in the contract schedule

any high-value *line items*.

(b) *Acquisitions at or below the simplified acquisition threshold.* The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the *simplified acquisition threshold*. However, in response to a contractor's specific request, the *contracting officer may* insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the *simplified acquisition threshold* and *may* obtain any price reduction that is appropriate.