

## **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 Alternate I.

## **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 Alternate I.

## **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.