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.

Parent topic: Subpart 46.3 - Contract Clauses