

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.