

## 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.

**Parent topic:** [Subpart 46.4 - Government Contract Quality Assurance](#)