Subpart 3046.7—Warranties

Parent topic: PART 3046—QUALITY ASSURANCE

3046.702 [Reserved]

3046.790 Use of warranties in major systems acquisitions by the USCG (USCG).

3046.790-1 Scope (USCG).

This subpart provides the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

3046.790-2 Definitions (USCG).

As used in this part:

At no additional cost to the Government means without an increase in price for firm-fixed-price contracts, without an increase in target or ceiling price for fixed-price incentive contracts (see (FAR) 48 CFR 46.707).

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Design and manufacturing requirement means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and finished product tests for the major system being produced.

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

3046.790-3 Policy (USCG).

(a) *Major Systems.* The use of warranties by the USCG in the procurement of major systems valued at $10,000,000 or higher is mandatory, unless waived (see (HSAR) 48 CFR 3046.790-4).

(b) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in paragraph (c)(4) of this section.

(c) When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer

shall ensure that the items listed at the Homeland Security Acquisition Manual (HSAM) Chapter 3046 have been considered. The warranty shall also meet the following requirements:

(1) For systems or components that are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and 46.710(b)(2).

(2) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(3) Any warranty obtained shall specifically exclude coverage for combat damage.

(4) A contractor for a major systems acquisition shall not be required to provide the warranties specified in this section on any property furnished to that contractor by the Government except for defects in installation.

3046.790-4 Waiver (USCG).

(a) The Secretary of Homeland Security may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination, prior to granting the waiver.

The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

3046.791-1 Policy (USCG).

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (HSAR) 48 CFR 3046.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

3046.791-2 Tailoring warranty terms and conditions (USCG).

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

3046.791-3 Warranties on Government-furnished property (USCG).

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (HSAR) 48 CFR 3046.790-1 on any property furnished to that contractor by the Government

except for:

(a) Defects in installation; and

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

3046.792 Cost benefit analysis (USCG).

If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with guidance at (HSAR) 48 CFR 3046.793.

3046.793 Waiver and notification procedures (USCG).

(a) The Secretary of Homeland Security, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.