

FAR PART 46

46.000 Scope of part.

This part prescribes policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract's quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements.

Subpart 46.1- General

46.101 Definitions.

As used in this part-

"Acceptance" means the act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.

"Conditional acceptance" means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

"Contract quality requirements" means the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements.

"Critical nonconformance" means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

"Government contract quality assurance" means the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

"Major nonconformance" means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

"Minor nonconformance" means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

"Off-the-shelf item" means an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale. The item may be commercial or produced to military or Federal specifications or description.

"Patent defect" means any defect which exists at the time of acceptance and is not a latent defect.

"Subcontractor" (see 44.101).

"Testing" means that element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

46.102 Policy.

Agencies shall ensure that-

- (a) Contracts include inspection and other quality requirements, including warranty clauses when appropriate, that are determined necessary to protect the Government's interest;
- (b) Supplies or services tendered by contractors meet contract requirements;
- (c) Government contract quality assurance is conducted before acceptance (except as otherwise provided in this part), by or under the direction of Government personnel;
- (d) No contract precludes the Government from performing inspection;
- (e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407;
- (f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection (Section 8002 of Public Law 103-355). Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and
- (g) The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see Subpart 42.1).

46.103 Contracting office responsibilities.

Contracting offices are responsible for-

- (a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);
- (b) Including in solicitations and contracts the appropriate requirements for the contractor's control of quality for the supplies or services to be acquired;
- (c) Issuing any necessary instructions to the cognizant contract administration office and acting on recommendations submitted by that office (see 42.301 and 46.104(f));
- (d) When contract administration is retained (see 42.201), verifying that the contractor fulfills the contract quality requirements; and
- (e) Ensuring that nonconformances are identified, and establishing the significance of a non-conformance when considering the acceptability of supplies or services which do not meet contract requirements.

46.104 Contract administration office responsibilities.

When a contract is assigned for administration to the contract administration office cognizant of the contractor's plant, that office, unless specified otherwise, shall-

- (a) Develop and apply efficient procedures for performing Government contract quality assurance actions under the contract in accordance with the written direction of the contracting office;
- (b) Perform all actions necessary to verify whether the supplies or services conform to contract quality requirements;
- (c) Maintain, as part of the performance records of the contract, suitable records reflecting-
 - (1) The nature of Government contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and
 - (2) Decisions regarding the acceptability of the products, the processes, and the requirements, as well as action to correct defects.
- (d) Implement any specific written instructions from the contracting office;
- (e) Report to the contracting office any defects observed in design or technical requirements, including contract quality requirements; and
- (f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 46.103(c)).

46.105 Contractor responsibilities.

- (a) The contractor is responsible for carrying out its obligations under the contract by-
 - (1) Controlling the quality of supplies or services;
 - (2) Tendering to the Government for acceptance only those supplies or services that conform to contract requirements;
 - (3) Ensuring that vendors or suppliers of raw materials, parts, components, subassemblies, etc., have an acceptable quality control system; and
 - (4) Maintaining substantiating evidence, when required by the contract, that the supplies or services conform to contract quality requirements, and furnishing such information to the Government as required.
 - (b) The contractor may be required to provide and maintain an inspection system or program for the control of quality that is acceptable to the Government (see 46.202).
 - (c) The control of quality by the contractor may relate to, but is not limited to-
 - (1) Manufacturing processes, to ensure that the product is produced to, and meets, the contract's technical requirements;
 - (2) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;
 - (3) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;
 - (4) Reliability and maintainability assessment (life, endurance, and continued readiness);
 - (5) Fabrication and delivery of products, to ensure that only conforming products are tendered to the Government;
 - (6) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;
 - (7) Preservation, packaging, packing, and marking; and
 - (8) Procedures and processes for services to ensure that services meet contract performance requirements.
 - (d) The contractor is responsible for performing all inspections and test required by the contract except those specifically reserved for performance by the Government (see 46.201(c)).
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Subpart 46.2- Contract Quality Requirements

46.201 General.

(a) The contracting officer shall include in the solicitation and contract the appropriate quality requirements. The type and extent of contract quality requirements needed depends on the particular acquisition and may range from inspection at time of acceptance to a requirement for the contractor's implementation of a comprehensive program for controlling quality.

(b) As feasible, solicitations and contracts may provide for alternative, but substantially equivalent, inspection methods to obtain wide competition and low cost. The contracting officer may also authorize contractor-recommended alternatives when in the Government's interest and approved by the activity responsible for technical requirements.

(c) Although contracts generally make contractors responsible for performing inspection before tendering supplies to the Government, there are situations in which contracts will provide for specialized inspections to be performed solely by the Government. Among situations of this kind are-

(1) Tests that require use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories (e.g., ballistic testing of ammunition, unusual environmental tests, and simulated service tests); and

(2) Contracts that require Government testing for first article approval (see Subpart 9.3).

(d) Except as otherwise specified by the contract, required contractor testing may be performed in the contractor's or subcontractor's laboratory or testing facility, or in any other laboratory or testing facility acceptable to the Government.

46.202 Types of contract quality requirements.

Contract quality requirements fall into four general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved.

46.202-1 Contracts for commercial items.

When acquiring commercial items (see Part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

46.202-2 Government reliance on inspection by contractor.

(a) Except as specified in (b) of this section, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired at or below the simplified acquisition threshold conform to contract quality requirements before they are tendered to the Government (see 46.301).

(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider-

(1) The nature of the supplies and services being purchased and their intended use;

- (2) The potential losses in the event of defects;
- (3) The likelihood of uncontested replacement or correction of defective work; and
- (4) The cost of detailed Government inspection.

46.202-3 Standard inspection requirements.

(a) Standard inspection requirements are contained in the clauses prescribed in 46.302 through 46.308, and 46.310, and in the product and service specifications that are included in solicitations and contracts.

(b) The clauses referred to in (a) of this section-

- (1) Require the contractor to provide and maintain an inspection system that is acceptable to the Government;
- (2) Give the Government the right to make inspections and tests while work is in process; and
- (3) Require the contractor to keep complete, and make available to the Government, records of its inspection work.

46.202-4 Higher-level contract quality requirements.

(a) Requiring compliance with higher-level quality standards is appropriate in solicitations and contracts for complex or critical items (see 46.203(b) and (c)) or when the technical requirements of the contract require-

- (1) Control of such things as work operations, in-process controls, and inspection; or
- (2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(b) When the contracting officer, in consultation with technical personnel, finds it is in the Government's interest to require that higher-level quality standards be maintained, the contracting officer shall use the clause prescribed at 46.311. The contracting officer shall indicate in the clause which higher-level quality standards will satisfy the Government's requirement. Examples of higher-level quality standards are ISO 9001, 9002, or 9003; ANSI/ASQC Q9001, Q9002, or Q9003; QS-9000; AS-9000; ANSI/ASQC E4; and ANSI/ASME NQA-1.

46.203 Criteria for use of contract quality requirements.

The extent of contract quality requirements, including contractor inspection, required under a contract shall usually be based upon the classification of the contract item (supply or service) as determined by its technical description, its complexity, and the criticality of its application.

(a) Technical description. Contract items may be technically classified as-

- (1) Commercial (described in commercial catalogs, drawings, or industrial standards; see Part 2); or
- (2) Military-Federal (described in Government drawings and specifications).

(b) Complexity.

(1) Complex items have quality characteristics, not wholly visible in the end item, for which contractual conformance must be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items.

(2) Noncomplex items have quality characteristics for which simple measurement and test of the end item are sufficient to determine conformance to contract requirements.

(c) Criticality.

(1) A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. A critical item may be either peculiar, meaning it has only one application, or common, meaning it has multiple applications.

(2) A noncritical application is any other application. Noncritical items may also be either peculiar or common.

Subpart 46.3- Contract Clauses

46.301 Contractor inspection requirements.

The contracting officer shall insert the clause at 52.2461, 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 52.2462, 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 Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate II.

46.303 Cost-reimbursement supply contracts.

The contracting officer shall insert the clause at 52.2463, 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 52.2464, 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 52.2465, 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 52.2466, 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 52.2467, 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 52.2468, 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 52.2469, 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 Facilities contracts.

The contracting officer shall insert the clause at 52.24610, Inspection of Facilities, in solicitations and contracts when a facilities contract is contemplated.

46.311 Higher-level contract quality requirement.

The contracting officer shall insert the clause at 52.24611, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-4).

46.312 Construction contracts.

The contracting officer shall insert the clause at 52.24612, 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 52.24613, 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 52.24614, 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(b)(1). (See Part 47, Transportation.)

46.315 Certificate of conformance.

The contracting officer shall insert the clause at 52.24615, 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 52.24616, 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.

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 re-inspected 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 46.2022).

(b) When the conditions in 46.2022(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 without additional cost to the Government. Paragraph (e)(2) of the clause at 52.2462, 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.

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.

Subpart 46.5- Acceptance

46.501 General.

Acceptance constitutes acknowledgment that the supplies or services conform with applicable contract quality and quantity requirements, except as provided in this subpart and subject to other terms and conditions of the contract. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract. Supplies or services shall ordinarily not be accepted before completion of Government contract quality assurance actions (however, see 46.504). Acceptance shall ordinarily be evidenced by execution of an acceptance certificate on an inspection or receiving report form or commercial shipping document/packing list.

46.502 Responsibility for acceptance.

Acceptance of supplies or services is the responsibility of the contracting officer. When this responsibility is assigned to a cognizant contract administration office or to another agency (see 42.202(g)), acceptance by that office or agency is binding on the Government.

46.503 Place of acceptance.

Each contract shall specify the place of acceptance. Contracts that provide for Government contract quality assurance at source shall ordinarily provide for acceptance at source. Contracts that provide for Government contract quality assurance at destination shall ordinarily provide for acceptance at destination. (For transportation terms, see Subpart 47.3.) Supplies accepted at a place other than destination shall not be reinspected at destination for acceptance purposes, but should be examined at destination for quantity, damage in transit, and possible substitution or fraud.

46.504 Certificate of conformance.

A certificate of conformance (see 46.315) may be used in certain instances instead of source inspection (whether the contract calls for acceptance at source or destination) at the discretion of the contracting officer if the following conditions apply:

(a) Acceptance on the basis of a contractor's certificate of conformance is in the Government's interest.

(b)(1) Small losses would be incurred in the event of a defect; or

(2) Because of the contractor's reputation or past performance, it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case shall the Government's right to inspect supplies under the inspection provisions of the contract be prejudiced.

46.505 Transfer of title and risk of loss.

(a) Title to supplies shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the contractor until, and shall pass to the Government upon-

- (1) Delivery of the supplies to a carrier if transportation is f.o.b. origin; or
- (2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.
- (c) Paragraph (b) of this section shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming supplies remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section shall apply.
- (d) Under paragraph (b) of this section, the contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.
- (e) The policy expressed in (a) through (d) of this section is specified in the clause at 52.24616, Responsibility for Supplies, which is prescribed in 46.316.

Subpart 46.6- Material Inspection and Receiving Reports

46.601 General.

Agencies shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection (see 46.401) and acceptance (see 46.501).