

# 52.246-21 Warranty of Construction.

As prescribed in 46.710(e)(1), the *contracting officer* may insert a clause *substantially as follows* in *solicitations* and contracts when a fixed-price *construction* contract (see 46.705 (c)) is contemplated, and the use of a *warranty* clause has been approved under agency procedures:

*Warranty of Construction* (Mar 1994)

(a) In addition to any other *warranties* in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This *warranty* shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this *warranty* shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to Government-owned or controlled real or *personal property*, when that damage is the result of-

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's *warranty* with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The *Contracting Officer* shall notify the Contractor, *in writing*, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(g) With respect to all *warranties*, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall-

(1) Obtain all *warranties* that would be given in normal commercial practice;

(2) Require all *warranties* to be executed, *in writing*, for the benefit of the Government, if directed by the *Contracting Officer*; and

(3) Enforce all *warranties* for the benefit of the Government, if directed by the *Contracting Officer*.

(h) In the event the Contractor's *warranty* under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's *warranty*.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any

tier, the Contractor *shall* not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This *warranty shall* not limit the Government's rights under the *Inspection* and Acceptance clause of this contract with respect to *latent defects*, gross mistakes, or fraud.

(End of clause)

*Alternate I* (Apr 1984). If the Government specifies in the contract the use of any equipment by "brand name and model," the *contracting officer may* add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, *shall* not be included in this *warranty*. In this event, the Contractor *shall* require any subcontractors, manufacturers, or suppliers thereof to execute their *warranties, in writing*, directly to the Government.

**Parent topic:** [52.246 \[Reserved\]](#)