

Subpart 46.7 - Warranties

Parent topic: [Part 46 - Quality Assurance](#)

46.701 [Reserved]

46.702 General.

(a) The principal purposes of a *warranty* in a Government contract are-

- (1) To delineate the rights and obligations of the contractor and the Government for defective items and services; and
- (2) To foster quality performance.

(b) Generally, a *warranty should* provide-

- (1) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the *supplies* or services by the Government; and
- (2) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Government to assert a contractual right for the correction of defects.

(c) The benefits to be derived from a *warranty must* be commensurate with the cost of the *warranty* to the Government.

46.703 Criteria for use of warranties.

The use of *warranties* is not mandatory. In determining whether a *warranty* is appropriate for a specific *acquisition*, the *contracting officer shall* consider the following factors:

(a) *Nature and use of the supplies or services*. This includes such factors as-

- (1) Complexity and function;
- (2) Degree of development;
- (3) State of the art;
- (4) End use;
- (5) Difficulty in detecting defects before acceptance; and
- (6) Potential harm to the Government if the item is defective.

(b) *Cost*. *Warranty* costs arise from-

- (1) The contractor's charge for accepting the deferred liability created by the *warranty*; and

(2) Government administration and enforcement of the *warranty* (see paragraph (c) of this section).

(c) *Administration and enforcement.* The Government's ability to enforce the *warranty* is essential to the effectiveness of any *warranty*. There *must* be some assurance that an adequate administrative system for reporting defects exists or can be established. The adequacy of a reporting system *may* depend upon such factors as the-

- (1) Nature and complexity of the item;
- (2) Location and proposed use of the item;
- (3) Storage time for the item;
- (4) Distance of the using activity from the source of the item;
- (5) Difficulty in establishing existence of defects; and
- (6) Difficulty in tracing responsibility for defects.

(d) *Trade practice.* In many instances an item is customarily warranted in the trade, and, as a result of that practice, the cost of an item to the Government will be the same whether or not a *warranty* is included. In those instances, it would be in the Government's interest to include such a *warranty*.

(e) *Reduced requirements.* The contractor's charge for assumption of added liability *may* be partially or completely offset by reducing the Government's contract quality assurance requirements where the *warranty* provides adequate assurance of a satisfactory product.

46.704 Authority for use of warranties.

The use of a *warranty* in an *acquisition shall* be approved in accordance with agency procedures.

46.705 Limitations.

(a) Except for the *warranties* in the clauses at 52.246-3, *Inspection of Supplies-Cost-Reimbursement*, and 52.246-8, *Inspection of Research and Development-Cost-Reimbursement*, the *contracting officer shall* not include *warranties* in cost-reimbursement contracts, unless authorized in accordance with agency regulations (see 46.708).

(b) *Warranty* clauses *shall* not limit the Government's rights under an *inspection* clause (see subpart 46.3) in relation to *latent defects*, fraud, or gross mistakes that amount to fraud.

(c) Except for *warranty* clauses in *construction* contracts, *warranty* clauses *shall* provide that the *warranty* applies notwithstanding *inspection* and acceptance or other clauses or terms of the contract.

46.706 Warranty terms and conditions.

(a) To facilitate the *pricing* and enforcement of *warranties*, the *contracting officer shall* ensure that *warranties* clearly state the-

- (1) Exact nature of the item and its *components* and characteristics that the contractor warrants;
- (2) Extent of the contractor's *warranty* including all of the contractor's obligations to the Government for breach of *warranty*;
- (3) Specific remedies available to the Government; and
- (4) Scope and duration of the *warranty*.

(b) The *contracting officer shall* consider the following guidelines when preparing *warranty* terms and conditions:

(1) Extent of contractor obligations.

(i) Generally, the contractor's obligations under *warranties* extend to all defects discovered during the *warranty* period, but do not include damage caused by the Government. When a *warranty* for the entire item is not advisable, a *warranty may* be required for a particular aspect of the item that *may* require special protection (*e.g.*, installation, *components*, accessories, subassemblies, preservation, packaging, and packing, etc.).

(ii) If the Government specifies the design of the end item and its measurements, tolerances, materials, tests, or *inspection* requirements, the contractor's obligations for correction of defects *shall* usually be limited to defects in material and workmanship or failure to conform to specifications. If the Government does not specify the design, the *warranty* extends also to the usefulness of the design.

(iii) If express *warranties* are included in a contract (except contracts for *commercial products* and *commercial services*), all implied *warranties* of merchantability and fitness for a particular purpose *shall* be negated by the use of specific language in the clause (see clauses [52.246-17](#), *Warranty of Supplies* of a Noncomplex Nature; [52.246-18](#), *Warranty of Supplies* of a Complex Nature; and [52.246-19](#), *Warranty of Systems and Equipment under Performance Specifications or Design Criteria*).

(2) Remedies.

(i) Normally, a *warranty shall* provide as a minimum that the Government *may*-

(A) Obtain an equitable adjustment of the contract, or

(B) Direct the contractor to repair or replace the defective items at the contractor's expense.

(ii) If it is not practical to direct the contractor to make the repair or replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the Government, the *warranty should* provide *alternate* remedies, such as authorizing the Government to-

(A) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or

(B) Arrange for the repair or replacement of the defective item, by the Government or by another source, at the contractor's expense.

(iii) If it can be foreseen that it will not be practical to return an item to the contractor for repair, to remove it to an *alternate* source for repair, or to replace the defective item, the *warranty should* provide that the Government *may* repair, or require the contractor to repair, the item in place at the contractor's expense. The contract *shall* provide that in the circumstance where the Government is to accomplish the repair, the contractor will furnish at the place of delivery the material or parts, and the installation instructions required to successfully accomplish the repair.

(iv) Unless provided otherwise in the *warranty*, the contractor's obligation to repair or replace the defective item, or to agree to an equitable adjustment of the contract, *shall* include responsibility for the costs of furnishing all labor and material to-

(A) Reinspect items that the Government reasonably expected to be defective,

(B) Accomplish the required repair or replacement of defective items, and

(C) Test, inspect, package, pack, and mark repaired or replaced items.

(v) If repair or replacement of defective items is required, the contractor *shall* generally be required by the *warranty* to bear the expense of transportation for returning the defective item from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the contractor's plant and subsequent return. When defective items are returned to the contractor from other than the place of delivery specified in the contract, or when the Government exercises *alternate* remedies, the contractor's liability for transportation charges incurred *shall* not exceed an amount equal to the cost of transportation by the usual commercial method of *shipment* between the place of delivery specified in the contract and the contractor's plant and subsequent return.

(3) *Duration of the warranty.* The time period or duration of the *warranty must* be clearly specified and *shall* be established after consideration of such factors as (i) the estimated useful life of the item, (ii) the nature of the item including storage or shelf-life, and (iii) trade practice. The period specified *shall* not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.

(4) *Notice.* The *warranty shall* specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. This notice period, which *shall* apply to all defects discovered during the *warranty* period, *shall* be long enough to assure that the Government has adequate time to give notice to the contractor. The *contracting officer shall* consider the following factors when establishing the notice period:

(i) The time necessary for the Government to discover the defects.

(ii) The time reasonably required for the Government to take necessary administrative steps and make a timely report of discovery of the defects to the contractor.

(iii) The time required to discover and report defective replacements.

(5) *Markings.*

(i) The packaging and preservation requirements of the contract *shall* require the contractor to stamp or mark the *supplies* delivered or otherwise furnish notice with the *supplies* of the existence of the *warranty*. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the *supplies* that the *supplies* are under *warranty*. Markings *may* be brief but *should* include—

(A) A brief statement that a *warranty* exists;

(B) The substance of the *warranty*;

(C) Its duration; and

(D) Who to notify if the *supplies* are found to be defective.

(ii) For *commercial products* (see [46.709](#)), the contractor's trade practice in *warranty* marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted *supplies*.

(6) *Consistency*. *Contracting officers shall* ensure that the *warranty* clause and any other *warranty* conditions in the contract (*e.g.*, in the specifications or an *inspection* clause) are consistent. To the extent practicable, all of the *warranties* to be contained in the contract *should* be expressed in the *warranty* clause.

46.707 Pricing aspects of fixed-price incentive contract warranties.

If a fixed-price incentive contract contains a *warranty* (see [46.708](#)), the estimated cost of the *warranty* to the contractor *should* be considered in establishing the incentive target price and the ceiling price of the contract. All costs incurred, or estimated to be incurred, by the contractor in complying with the *warranty shall* be considered when establishing the total final price. Contractor compliance with the *warranty* after the establishment of the total final price *shall* be at no additional cost to the Government.

46.708 Warranties of data.

Warranties of data *shall* be developed and used in accordance with agency regulations.

46.709 Warranties of commercial products and commercial services.

The *contracting officer should* take advantage of commercial *warranties*, including extended *warranties*, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of *commercial products* and *commercial services* (see [part 12](#)).

46.710 Contract clauses.

The clauses and *alternates* prescribed in this section *may* be used in *solicitations* and contracts in which inclusion of a *warranty* is appropriate (see [46.709](#) for *warranties* for *commercial products* and *commercial services*). However, because of the many situations that *may* influence the *warranty* terms and conditions appropriate to a particular *acquisition*, the *contracting officer* *may* vary the terms and conditions of the clauses and *alternates* to the extent necessary. The *alternates* prescribed in this section address the clauses; however, the conditions pertaining to each *alternate* *must* be considered if the terms and conditions are varied to meet a particular need.

(a)

(1) The *contracting officer* *may* insert a clause substantially the same as the clause at [52.246-17](#), *Warranty of Supplies of a Noncomplex Nature*, in *solicitations* and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a *warranty* clause has been approved under agency procedures. If the contractor's design rather than the Government's design will be used, insert the word "design" before "material" in paragraph (b)(1)(i).

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a *warranty* would otherwise be prohibitive), the *contracting officer* *may* use the clause with its *Alternate II*.

(3) If the *supplies* cannot be obtained from another source, the *contracting officer* *may* use the clause with its *Alternate III*.

(4) If a fixed-price incentive contract is contemplated, the *contracting officer* *may* use the clause with its *Alternate IV*.

(5) If it is anticipated that recovery of the warranted items will involve considerable Government expense for disassembly and/or reassembly of larger items, the *contracting officer* *may* use the clause with its *Alternate V*.

(b)

(1) The *contracting officer* *may* insert a clause substantially the same as the clause at [52.246-18](#), *Warranty of Supplies of a Complex Nature*, in *solicitations* and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a *warranty* clause has been approved under agency procedures. If the contractor's design rather than the Government's design will be used, insert the word "design" before "material" in paragraph (b)(1).

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a *warranty* would otherwise be prohibitive), the *contracting officer* *may* use the clause with its *Alternate II*.

(3) If a fixed-price incentive contract is contemplated, the *contracting officer* *may* use the clause with its *Alternate III*.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the *contracting officer* *may* use the

clause with its *Alternate IV*.

(c)

(1) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-19, *Warranty of Systems and Equipment under Performance Specifications or Design Criteria*, in *solicitations* and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated; and the use of a *warranty* clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a *warranty* would otherwise be prohibitive), the *contracting officer may* use the clause with its *Alternate I*.

(3) If a fixed-price incentive contract is contemplated, the *contracting officer may* use the clause with its *Alternate II*.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the *contracting officer may* use the clause with its *Alternate III*.

(d) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-20, *Warranty of Services*, in *solicitations* and contracts for services when a fixed-price contract for services is contemplated and the use of *warranty* clause has been approved under agency procedures; unless a clause substantially the same as the clause at 52.246-19, *Warranty of Systems and Equipment under Performance Specifications or Design Criteria*, has been used.

(e)

(1) The *contracting officer may* insert a clause substantially the same as the clause at 52.246-21, *Warranty of Construction*, 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.

(2) If the Government specifies in the contract the use of any equipment by "brand name and model," the *contracting officer may* use the clause with its *Alternate I*.