

PART 46

QUALITY ASSURANCE

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SUBPART 46.1 - GENERAL

46.101 Definitions.

Nonconformance. A departure from the requirements specified in the contract, specification, drawing, or other approved product description.

Nonconforming Material. Any item, part, or product with one or more characteristics which depart from the requirements in the contract, specification, drawing, or other approved product description.

Deviation. A written authorization, granted after contract award and prior to manufacture of an item, to depart from a particular performance or design requirement of a contract, specification, or referenced document, for a specific number of units or specific period of time.

Waiver. A written authorization granted after contract award to accept a configuration item or other designated item which, during production or after having been submitted for inspection, is found to depart from specified requirements, but nevertheless is considered suitable for use "as is" or after repair by an approved method.

Request for Deviation. The formal document submitted by the contractor to the Government for the purpose of requesting departure from a specific performance or design requirement of a contract, specification, or referenced document.

Request for Waiver. The formal document submitted by the contractor to the Government for the purpose of requesting acceptance of designated nonconforming supplies or services.

Latent defect. One which cannot be ascertained from a reasonable inspection; not readily discernible.

Nonvoluntary recoupment. A recoupment which the contractor is legally and contractually obligated to provide; recompense that the Government can demand from the contractor.

Patent defect. One which is ascertainable from a reasonable inspection at time of acceptance.

Voluntary recoupment. Recompense provided voluntarily by the contractor for defects deemed to be contractor-caused. (The Government cannot demand reimbursement for patent defects discovered after acceptance, because acceptance is conclusive except for latent defects, fraud, gross mistake, warranted items, and the like.)

46.102-90 Consideration of quality in contractual decision-making.

The Government shall consider the use of:

- (a) Contractual means for encouraging excellence in the conduct of contractor -responsible quality efforts;
- (b) Incentive fee arrangements for achieving quality goals;
- (c) Reduced Government surveillance when contractor's quality performance so indicates; and
- (d) Other noncontractual motivation techniques.

46.103 Contracting office responsibilities.

(b) Contracting personnel shall incorporate quality assurance requirements communicated to them by the local quality assurance personnel in solicitations and contracts. In the event a change to any of these requirements is determined to be in the best interest of the Government, contracting personnel will coordinate with the quality element before changing the requirements. Justification for such a change shall be documented in the official contract file or be clearly prescribed in coordinated local procedures. For example, a local procedure may specify that the contracting element can unilaterally change the place of inspection from destination to source, whereas source inspection cannot be changed to destination inspection without referring the matter to the quality element for coordination.

(c) With few exceptions, the activity responsible for technical requirements (e.g., specifications, drawings, and standards) is the applicable military component. The quality/technical element at the DLA buying activity, or the functional expert within the Commodity Business Unit (CBU) (or similar structure), is responsible for receiving these requirements from the Services and transmitting or preparing applicable inspection instructions to the DSC contracting officer for inclusion in contracts.

(90) [RESERVED]

(91) Contract Data Package Recommendation/Deficiency Report (DD Form 1716).

(1) Chiefs of contracting offices will designate a single control point with the responsibility to receive, analyze, maintain control, and assure timely resolution of recommended changes to Contract Data Package(s) (CDPs).

(2) Recommended improvements/reported deficiencies in CDPs are usually submitted on DD Form 1716, Contract Data Package Recommendation/Deficiency Report, but may be received via messages or letter, which are to be processed as though they were submitted on a DD Form 1716.

(3)(i) DD Forms 1716 will be logged in by the control point. The log will contain, as a minimum, the following information:

- (A) Date logged in;
- (B) Control number assigned by submitting activity;
- (C) Contracting officer assigned;
- (D) Submitting activity;
- (E) Originator's required suspense;
- (F) Category of CDP problem;
- (G) Date required actions completed;
- (H) Date logged out.

(ii) The control point will establish a suspense date based on the priority noted in box 5, DD Form 1716.

(iii) The DD Form 1716 will be forwarded for evaluation to the contracting officer having cognizance over the affected contract.

(4) (i) The contracting officer will refer the DD Form 1716 to other technical areas if additional expertise is required. The contracting officer is also responsible for coordination with the technical operations element if contact is required with Service users, engineering support activities (ESAs), or specification preparing activities.

(ii) If it is determined that the recommended improvement/reported deficiency is significant, and delivery and payment have not been completed, action will be taken to modify the current contract. If the recommended improvement/ reported deficiency is insignificant, action will be taken only on future contracts.

(iii) When requested by the submitter of the DD Form 1716, the contracting officer will furnish a reply which states the action to be taken or the rationale for no action. When actions cannot be completed by the suspense date established in accordance with subparagraph (3)(ii) above, the contracting officer will use a DLA Form 65 -R (Notification Form), or equivalent, to notify both the submitter and the control point of the revised completion date.

(iv) When all appropriate actions have been completed, the contracting officer will return the completed DD Form 1716 and any necessary documentation to the control point.

(5) The control point will review the completed DD Form 1716 package to determine if all required actions have been completed and if the corrective action developed, or justification for continuing existing requirements, is appropriate. If the response is determined to be appropriate, the log will be so annotated; if additional actions are required, the package, with rationale for additional required actions, will be returned to the contracting officer.

(6) As a means of identifying trends in recommended improvements/reported deficiencies, the control point will review the log on a quarterly basis. Trend data will be forwarded to the contracting office's policy, plans, and/or programs element in order to assist management in focusing on those areas where procedures have not been followed, contract deficiencies have been noted, or repetitive situations have occurred which necessitate further investigation.

SUBPART 46.2 - CONTRACT QUALITY REQUIREMENTS

46.202-3 Higher-level contract quality requirements.

(b)(90) When you, *in consultation with the Quality Assurance Specialist (QAS), have determined* that use of higher-level quality requirements is warranted, you shall give contractors the option to implement a documented system in accordance with the appropriate International 9000/American National Standards Institute (ANSI) or American Society for Quality Control (ASQC) Q90 standard, *or a system that meets other recognized industry (but non-ISO/ANSI/ASQC) standards, or a process control system that is equivalent to or better than the ISO 9000 standard. This "equivalent or better" system shall not have been previously determined by the Government to be insufficient for its purposes.* In order to provide this option to suppliers contractually, FAR 52.246-11, Higher-Level Contract Quality Requirement (Government Specification), should be used. You should include FAR 52.246-2, Inspection of Supplies-Fixed Price, in order to make clause FAR 52.246-11 operational. The blank to be filled in at subparagraph (b) of the provision shall generally contain the following, or substantially equivalent, language: "ISO 9002 or ANSI/ASQC 092, unless otherwise specified, at the election of the contractor (contractor must indicate its preference for **a particular standard (s)**)."

(91) The "unless otherwise specified" permits not only the use of 9001 or some other applicable standard, but also the relatively infrequent use of ISO 9003, at the recommendation of the QAS, for situations where use of a commercial standard is encouraged, but ISO 9002 is considered too stringent. In the event the contractor is able to meet other recognized industry (but non-ISO/ANSI/ASQC) standards, these may also be indicated in the blank space of this subparagraph. Because use of the ISO/ANSI/ASQC standards already provides some flexibility with regard to quality systems, industry standards apart from those formalized in the ISO 9000/Q90 series should only rarely be used.

(92) You are encouraged to modify existing contracts to permit use of the appropriate ISO 9000/Q90 standard instead of *MIL-I-45208A and MIL-Q-9858, which are being eliminated from the DoDISS*, if the contractor and Government mutually agree to the change. This will ordinarily be accomplished at no cost to either party. *You are cautioned not to use ISO 9003 in place of a MIL-I-45208A system, since these are not equivalent systems. (The latter is more stringent as a stand-alone document.) Use of ISO 9003/Q9003 is only appropriate where conformance to requirements is to be assured solely at final inspection and test .*

(93) *Any quality system proposed by the contractor should provide for the Government's ability to audit/validate its capabilities to ensure the safety and satisfaction of our customers. Additionally, during any pre- and/or post- award conferences the contracting officer should stress that the quality system proposed shall be equal to or better than MIL-I-45208A and*

MIL-Q-9858 standards. It should be clear that the contractor retains quality responsibility for the supplies or services furnished under the contract and their conformance to the contract requirements.

(94) It may be appropriate to evaluate the contractor's proposed quality system in the context of the technical evaluation portion of a best-value source selection. See subpart 15.6. If evaluating a quality system is part of the technical evaluation, then quality assurance personnel should do the evaluation of quality as the subject matter experts in ISO (or similar) validated and/or certified systems.

46.202-3-90 Manufacturing process controls and in-process inspections.

(1) Except for the conditions cited immediately below, the clause at 52.246 -9001, Manufacturing process controls and in-process inspections, shall be used in solicitations which require **higher-level contract quality** requirements, when a need exists to strengthen manufacturing process controls and in-process inspections to assure the integrity of the product.

(2) The clause at 52.246-9001 shall be used in all clothing and textile (C&T) solicitations which require **higher-level contract quality requirements. These latter requirements** and the clause at 52.246-9001 shall be used in C&T solicitations for Government -furnished material (GFM), and shall flow down to the finisher when Contractor -furnished material is a solicitation requirement. C&T solicitations for GFM shall contain coverage to ensure that **higher-level contract quality requirements** and the clause at 52.246-9001 are applicable to the finisher in the event a converter is awarded the prime contract.

SUBPART 46.3 - CONTRACT CLAUSES

46.390 Certificate of quality compliance (COQC).

(a) The contracting officer shall insert the clause at 52.246 -9000, Certificate of Quality Compliance, in all solicitations and contracts for safety -critical items. The contracting officer shall also include the clause in other solicitations and contracts for supplies which meet both of the following conditions:

(1) The material being solicited is required to be produced in accordance with a product specification, drawing, or standard which is designated in the procurement item description (PID).

(2) The Engineering Support Activity, Specification Preparing Activity, and/or Center quality/technical activity have recommended to the contracting officer that objective quality evidence in the form of a specific COQC is needed to ensure that the material offered by the supplier meets all contract and specification requirements. (This recommendation may be accomplished in an automated manner, via the Contract Technical Data File (CTDF) field, "COQC"; or the Center Quality element may otherwise inform the contracting officer that a COQC is required for the particular item.)

(b) The clause may be used regardless of the location (source or destination) at which Government contract quality assurance actions are to be performed. In the case of destination-inspected material, the certificate (or a copy) material, the original certificate must be available for inspection by the Government at the contractor's facility at the time the material is presented for acceptance. A copy may (but need not) accompany the shipment.

46.391 Measuring and test equipment.

The contracting officer shall insert the clause at 52.246 -9003, Measuring and Test Equipment, in solicitations and contracts which contain the COQC and which call for inspection at source. This clause may also be used independently of the COQC clause.

46.392 Product verification testing (PVT).

The contracting officer shall insert the clause at 52.246 -9004, Product Verification Testing (PVT), in solicitations and contracts which contain the COQC clause and which call for inspection at source. This clause may also be used independently of the COQC clause.

SUBPART 46.4 - GOVERNMENT CONTRACT QUALITY ASSURANCE

46.402 Government contract quality assurance at source.

(g) See 46.403 below.

(h) Government contract quality assurance actions shall be performed at source for supplies having a critical application. Exceptions to this policy shall generally be made for off-the-shelf items, or in those situations where previous acquisition or quality history based

on objective evidence permits us to anticipate the receipt of fully -acceptable supplies. In these cases, a determination may be made to perform Government contract quality assurance actions at destination. Objective evidence of good quality history includes such indicators as laboratory testing results from Government -owned or -contracted labs; previous acquisition experience of a sufficient volume/period, during which there were no reported product defects/first article failures/ recurring waiver requests; prior quality certification under a Qualified Products List or Qualified Manufacturer List program; and the like. This determination shall be documented in contractor history files by item. When source inspection is still required for a critical application item, and the item is acquired from a sole source that will not permit quality assurance at source, the matter should be negotiated on a case-by-case basis to provide adequate consideration to the Government for the added cost of performance of the necessary technical quality assurance at destination, at a designated Government/commercial laboratory, or at the using activity. Conversely, if the supplier insists on quality assurance at source for noncritical or noncomplex items which are normally assigned for quality assurance at destination, or for those critical application items that are exceptions to the source inspection requirement, this matter should be negotiated with adequate consideration flowing to the Government, on a case-by-case basis for the added cost of performance of unnecessary Government quality assurance at source.

(90) In addition to the circumstances cited in FAR 46.402, contract quality assurance at source may also be necessary when there are requirements for technical inspection; e.g., first article inspection, in-process inspection, and/or requirements for special testing or detailed inspection. Contracts should be assigned for contract quality assurance at destination if verification as to type and kind, quantity, and condition is sufficient.

46.402-90 Acquiring quality assurance support on contracts awarded to contractors located overseas.

When the solicitation designates quality assurance at source and the award is anticipated to be made to a contractor located overseas, the contracting officer will obtain a commitment from the cognizant overseas DCMC component or host nation Government quality assurance authority prior to the award of the contract to perform the requested contract administration services (CAS). Contracting activities are authorized to deviate from this requirement when acquisition history provides confidence that adequate technical/quality CAS for a specific contract commodity is available in an applicable overseas geographical area.

46.403 Government contract quality assurance at destination.

(a) Prior to designating that Government contract quality assurance actions will be performed at destination, the contracting officer shall determine that the --

(90) Depot or receiving activity has the technical ability to perform quality assurance;

(91) Necessary technical data, specifications, blueprints, etc., are available at the receiving point or will be furnished the receiving activity prior to receipt of the supplies; and

(92) Equipment required to perform quality assurance is available at the receiving point.

(b) Acquisition of items for direct shipment overseas may be assigned for contract quality assurance at destination using the Fast Payment procedure in FAR Subpart 13.3 (DFARS Subpart 213.3) if there are no requirements for technical inspection. Other purchases for direct shipment overseas shall be assigned for quality assurance at source, unless the contracting officer determines that the provisions of FAR 46.403(b) are met. When items acquired for direct shipment overseas are shipped through freight consolidation points with contract quality assurance at destination, the ultimate overseas consignee shall be the place of performance of contract quality assurance. The solicitation and the contract shall clearly designate the overseas consignee as the destination and shall provide supplementary guidance as to transshipment point and "mark for" information. Requests for DD Form 250, Material Inspection and Receiving Report, or other evidence of receipt of material shall be addressed to the ultimate overseas consignee, and not to the freight consolidation point.

46.407 Nonconforming supplies or services.

(c)(1) The offer of nonconforming material to the Government should be the exception, and contractors should be discouraged from submitting requests for waivers/deviations (hereinafter sometimes referred to as waivers) in all cases where the contractor is at fault in producing the nonconforming supplies. Contracting officers should emphasize to the contractor that the latter is responsible for the control of product quality and for offering to the Government for acceptance only that material which conforms to contractual requirements. When evaluation of technical requirements indicates a specification change is required or would be beneficial to the Government, contracting officers shall take action through appropriate channels with the activity responsible for technical requirements to change the requirements in question, rather than waive them. Caution and good judgment must be exercised by the total Government team involved in the waiver evaluation process to ensure that technical requirements are not degraded

during any attempt to assist the contractor in solving its problems with schedule compliance or with fulfilling the valid technical requirements contained in the contract. See subparagraph (f)(90), below.

(90) See definitions at 46.101 and DFARS 246.407(1). The contracting element shall control all contractor requests for waivers and deviations by maintaining a register and recording the following information: type of waiver or deviation (critical, major, or minor); brief description of the requested waiver/deviation; contract number; contractor's name; item identification (NSN and noun nomenclature); specification/technical data; date the request was received; center/service element(s) in the evaluation loop; date resolved; action taken; consideration obtained; specification change made; and any pertinent or commodity-oriented data desired. The data shall be used to report in accordance with the Management Information System Glossary (RCS DLA(M)26(C)MIN). Unless the specification clearly defines major and minor characteristics, all test characteristic nonconformances submitted as waiver requests shall be classified as major nonconformances and processed as such. When several minor nonconformances are submitted for a single item, a determination will be made as to whether the cumulative effect is a major nonconformance.

(91) The contracting officer shall ascertain whether the contractor's request for waiver was forwarded through the ACO and includes the ACO's recommendations for approval or disapproval. The contracting officer must have the ACO's comments and recommendations, in order to evaluate properly a request for waiver. Conversely, the ACO must be fully apprised of the request for waiver to ensure that the contractor has taken action to correct and prevent recurrence of the conditions causing the nonconformance. Therefore, requests for waiver submitted directly to the contracting officer shall be returned to the contractor for resubmission through the ACO, except in those situations where time is an essential element. In such cases, the ACO's recommendations will be obtained by the most expeditious means available. The contracting officer shall refer the request for waiver to the quality and supply elements of the Center, or the CBU, for evaluation and recommendations. In addition to those criteria listed at FAR 46.407(c)(1), the following factors shall be considered in making a decision to accept or reject the waiver request:

(A) Suitability of the item for use "as is," or the practicability and cost of rework or repair. For a major nonconformance, this determination must be made by the activity responsible for technical requirements and obtained in writing.

(B) Previous request(s) for waiver(s) from the same contractor.

(C) Previous request(s) of the same nonconforming characteristics from the same contractor and/or other contractors.

(D) The supply status of the item and the effect that disapproval of the request for waiver/deviation will have on the delivery schedule.

(92) The contracting officer shall submit each accept decision on critical and major nonconformances for approval by the chief of the contracting office. The contractor will not be notified until the chief of the contracting office has made the decision to approve or disapprove the waiver request.

(d) Contracting officers shall make a conscious decision on each DLA contract whether CAO authority to accept minor nonconformances will be withheld. Contracts to new contractors, contracts for new or significantly-changed items or sensitive items (i.e., those with very high visibility), or those cases where previous experience with a contractor warrants that all minor nonconformances be submitted to the contracting office shall receive high consideration. If CAO authority is withheld, the letter of delegation sent to the CAO will clearly indicate such. All contractor requests for waiver of minor nonconformances forwarded to the contracting office shall require approval by the chief of the contracting office.

(d)(90) Contracting officers need to recognize that situations may occur where contractors have a single line producing items which may be supplied as spare parts procured under DLA contracts or further processed by the manufacturer and incorporated into major systems or subsystems procured by the military services. In many of these instances, Material Review Board (MRB) activity is authorized for use in the military service contracts. If CAO authority for approval of minor nonconformances is withheld on DLA contracts in these situations, the Centers and CAOs should work together to resolve any issues concerning how to handle material which may have been subjected to previous MRB activity in the in-process area.

(e) All nonconformance information for decisions on waiver requests made by the Center and any waiver or MRB intelligence provided by the CAO, when authority has not been withheld by the contracting office, shall be included in the contractor's performance record.

(f) (90) No waivers or deviations from design requirements are to be permitted without a commitment to verify the validity of the technical data for the item (e.g., the military or federal specification, engineering drawings, etc.) with the appropriate engineering support activity, and to change any such requirement found to be erroneous, outdated, or unduly

restrictive, prior to any future procurements of the item. The only exception authorized is to satisfy requisitions under "readiness" situations and then for direct shipment only (i.e., Direct Vendor Delivery), not for stock. The Lead Standardization Activity (LSA) will be furnished copies of all approved waivers and deviations from military or federal specifications. The LSA will assure that the specification is revised to reflect the product changes allowed by the waiver/deviation. Minor waivers/deviations resulting from errors in manufacturing or from a contractor's inability to meet valid technical requirements are to be granted only under exceptional circumstances, when such waivers are in the best interests of the Government (e.g., when backorders warrant urgent delivery), and never on a repetitive basis. Major/critical nonconformance waiver requests for the sole benefit of the contractor shall not be granted. (This waiver paragraph does not apply to off-specification fuel that can be blended at the depot to be made acceptable.)

(91) The hardware centers, and DPSC's medical and clothing and textile commodities, are strongly encouraged to use the calculation provided below as a baseline, or starting point, in determining the adequacy of the contractor's offer of consideration for those rare instances in which waivers or deviations are granted and memorialized via contract modification. These costs are taken from the DLA-DORO Report, Cost of Nonconforming Supplies Update (1994). At the time the study was originally conducted several years ago, the overall DLA average cost associated with a product quality deficiency report, or PQDR, amounted to \$501 in administrative costs plus 3.55 percent of the contract value for holding costs. Today, the DLA average administrative cost is \$868; holding cost percentages have been separately established by Center, as follows (DPSC Subsistence and DFSC are not included):

| | |
|-------------|---------------------|
| DSCC | =5.64% (or 0.0564) |
| DSCC (DESC) | =8.13% (or 0.0813) |
| DSCR | =5.14% (or 0.0514) |
| DISC | =12.81% (or 0.1281) |
| DPSC (C&T) | =0.07% (or 0.0007) |
| DPSC (Med) | =1.47% (0.0147) |

(i) Calculation: Amount of consideration = \$868 + [H x proposed contract value].

Where - \$868 represents the total administrative costs to the Government ; H represents the Center average holding cost proportion of the overall contract cost, expressed as a decimal, rather than as a percentage.

Step One: Multiply H for the individual Center by the contract dollar amount of the supplies covered by the waiver or deviation. This is the total holding (variable) cost component for nonconforming supplies.

Step Two: Add \$868 (the fixed, or administrative, cost to the Government of dealing with nonconformances) to the result of step one. This is the total amount of consideration which should be used as a guide in determining the adequacy of the contractor's final offer of compensation for the waiver or deviation.

(ii) It is important to note that, if the contracting officer chooses to use this guidance, but is unable to obtain agreement with the contractor on a reasonable (vice a token) consideration amount, the Government is not obligated to accept a lesser amount merely for the sake of reaching that agreement and restoring the contractor to a "conforming" or satisfactory status. In such situations (and assuming the proper notification has been made in writing to the contractor), it may be preferable to leave the contract in a nonconforming status than to modify it for an insignificant amount, or at no cost to the contractor. Either course of action, modifying the contract or refusing to restore the contractor to a satisfactory status in the event of its failure to make a good-faith offer of adequate consideration, will still preserve the Government's right to maintain a record of the deficiency, and to consider future business with the contractor in light of this poor performance. Concern about the possibility of failure to reach agreement with the contractor should, therefore, not affect the contracting officer's decision to use this means of determining the adequacy of the contractor's offer.

(92) [Subparagraphs (f)(92) through (f)(95) do not apply to contracts containing express warranty provisions.] Nothing in this section shall be construed to require the contractor to make restitution to the Government for patent nonconformances discovered after Government inspection and acceptance in accordance with FAR clause 52.246 -2, Inspection of Supplies - Fixed Price, or any other standard inspection clause. Nevertheless, in each instance of a contractor-caused, post-acceptance nonconformance, the contracting office that defective product or service, and request repair or replacement. This does not prohibit local procedures which allow for the quality element to discuss quality and technical issues with contractors in the investigation of contractor-caused defective material prior to transmittal of the case to the contracting officer for formal notification to the contractor. After the formal notification, the contractor must decide how to respond to the request. This response (to which the contracting officer must agree as being in the best interest of the Government) may take the form of an offer of monetary restitution (including offset against other contracts), in lieu of repair or replacement in kind.

(93) If the contractor fails to respond to the notice of nonconformance, follow-up letters should be sent, as necessary. If the contractor also refuses to acknowledge the follow-ups, the contracting officer has other options, including assigning the contractor to the Contractor Alert List or ensuring that a preaward survey is performed on the contractor prior to award of any future contract. (Furthermore, whether or not the Government is provided consideration, the fact of that poor performance should still be considered in best-value decisions.)

(94) When workload constraints preclude following up on every initial post-acceptance nonconformance notification, priority should be placed where: the nonconformance is major or critical; the number or dollar amount of the items potentially affected is high; and/or the contractor has a history of tendering defective supplies to the Government.

(95) The contracting officer cannot "hold out" for a specific amount of money when the contractor volunteers a refund or contractual offset in lieu of repair or replacement. He or she may, though, determine whether the amount offered is a realistic alternative to the other ways in which the contractor could rectify the problem. If the refund amount is less than the contract price of the nonconforming items for which it is offered, it may or may not be characterized as a full voluntary refund, because it may only be a partial mitigation of damages. That is, it may not represent the full value of the Government's loss. On the other hand, where the contractor decides that repair is the appropriate form of recoupment, and such repair is less expensive to the contractor than replacement or monetary reimbursement of the full contractual price of the defective items, the Government may nevertheless have been fully compensated for the value of its loss. The contracting officer must determine whether the method of recompense provided is full mitigation for loss; that determination will affect the reporting of the recoupment. See subparagraph (96)(iv), below:

(96) At any time, the Centers should be able to ascertain the number and dollar value of all reported contractor-caused item nonconformances and their disposition. The Agency overall should be provided information on dollar totals associated with these nonconformances and with the corrective actions taken. Therefore, beginning with the third quarter of FY 95, all contracting activities exclusive of DFSC shall compile and report to MMPOA on a quarterly basis, no later than 30 days after the end of a fiscal quarter, and cumulatively. Additionally, up to eleven previous quarters should also be reported. That is, there should eventually be twelve separate quarterly records (three complete fiscal years' worth of data) and one overall total reported in this fashion; the earliest quarter should drop off with each new reporting cycle. If there are remaining unresolved nonconformances from such a "retired" quarter, they should be written off, unless they are the subject of litigation, or a resolution is imminent. The totals requested below should be provided for all reported contractor-caused nonconformances able to be identified by contract by fiscal quarter in which notice of the nonconformance is received by the contracting officer (via PQDR or other means), rather than by contract year. Aggregated totals for collections will be maintained by quarter according to the date the nonconformance is received by the contracting officer, regardless of the date of receipt of the reimbursement. For example, if the contracting officer receives a PQDR for resolution in the second quarter of FY95 on a 1992 contract, the record of the nonconformance will be established in FY95, second quarter. If collections against that nonconformance are received in installments, the first one in the third quarter of that fiscal year and the next in FY 96, these reimbursements will both be reported against the FY 95 second quarter total. Obviously, in order to do this, the contract identity of the records comprising the total of the nonconformances for any quarter will have to be maintained at the Center; collections will need to be "credited" against the appropriate complaint. However, only totals need be reported to MMPOA, as indicated below. A sample report is provided at 90.14.

(i) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of validated complaints for which the Government should seek recompense (i.e., nonvoluntary and voluntary recoupments), except for items covered by warranty or fraudulently-tendered items covered under the Counterfeit Material/Unauthorized Product Substitution (CM/UPS) program, the contracting activity should report:

- (A) total dollar value [see (iv), below];
- (B) total dollars demanded/requested;
- (C) total dollars recouped.

(ii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total number of defects discovered after acceptance that are covered by express warranty, the contracting activity should report:

- (A) total dollar value [see (iv), below];
- (B) total dollar demanded;
- (C) total dollars recouped.

(iii) For the immediately preceding fiscal quarter, up to eleven previous fiscal quarters, and cumulatively, of the total dollars recouped, categories (i) and (ii), the contracting activity should report:

(A) total dollars - monetary reimbursement (including, where used, contract offsets; this may also include repairs to defective items that have been retained by the Government, to the extent these can be quantified. See (f)(95), above, and (IV), below):

(B) total dollars - replacements.

(iv) In order to establish a record of nonconformance against which a voluntary or nonvoluntary recoupment can be applied, the contracting officer must make an initial evaluation of the extent of the Government's loss. In so doing, he/she will likely use the contract price of the defective items as the amount of that loss. However, this may or may not ultimately be determined the correct amount to be collected from a nonconforming contractor. If, either as a result of independent research or in response to a contractor's offer of consideration for less than the contract price, the contracting officer finds that the Government's loss would be satisfied by a lesser amount than originally indicated, the contracting officer should revise the total for nonconformance and the total requested/demanded ((A) and (B) in (i) and (ii), above) downward to what he/she considers a realistic and appropriate amount. On the other hand, total dollars recouped ((C) in (i) and (ii), above) must exactly reflect what has been collected "in cash or in kind." If the amount the contractor offers is less than the contract price but is considered adequate restitution for the nonconformance, the total for the nonconformance and the amount demanded/requested should be identical to the amount received. If the contractor's offer is less than the contract price and the contracting officer does not consider it adequate compensation for the Government's loss, the total for the nonconformance and the total demanded/requested, whether or not these are revised downward from the original record, should not be made equivalent to the contractor's inadequate recompense.

(90) No part of section 46.407 pertains to the deliberate intent on the part of the contractor to provide off-specification product, or otherwise to make a fraudulent tender to the Government. When quality assurance or other personnel discover evidence indicating that the contractor deliberately failed to honor its contractual undertaking, all cognizant parties, including the administrative contracting officer, should confer with PLFA Fraud counsel in accordance with DLAR 5500.10, Combating Fraud in DLA Operations. In line with this policy, recoveries for fraud should continue to be reported as collections by the Office of General Counsel; however, they should not be included in the recoupment reporting scheme set forth in (f)(96), above.

46.470-1 Planning.

(90) The planning necessary to determine a "tailored" approach to Government contract quality assurance actions shall include, but not be limited to, consideration of the following:

- (1) Possible effect of failure on health or safety of personnel, or on associated or related equipment;
- (2) Tactical, strategic, or technical importance;
- (3) Complexity, and the need for required reliability;
- (4) Pertinency, completeness, and reliability of the contractor's quality records;
- (5) Previous quality history of the contractor; and
- (6) Unit cost.

SUBPART 46.5 - ACCEPTANCE

46.503 Place of acceptance.

When a contract provides for Government contract quality assurance at source, the place of manufacture (if different from the prime contractor) will be designated for each contract line or subline item. This is necessary to provide for automatic distribution of contract documents to QARs cognizant of plant locations other than the prime contractor.

SUBPART 46.7 - WARRANTIES

46.790 Record of warranty actions.

When warranty actions have been initiated under contracts containing warranty clauses in accordance with FAR Subpart 46.7 (DFARS Subpart 246.7), it is essential all DSCs maintain a record of these warranty actions. This record is necessary to help determine the usefulness of the warranty clause versus the cost of administering the warranty actions. The record will be maintained in a central location on a fiscal-year basis. No more than two prior fiscal years' records will be retained. The record shall contain as a minimum the following information:

- (a) Date and reason warranty was exercised;
- (b) Contract number;
- (c) Contractor;
- (d) Dollar value of material covered by warranty;
- (e) Disposition of material or other consideration obtained; and
- (f) Date warranty action completed.