

### **3.10.4-2 Inspection of Supplies - Fixed-Price - Alternate II (February 2003)**

If the contract is a fixed-ceiling price contract with retroactive price redetermination, the following (g) and (h) will replace the (g) and (h) of the basic clause:

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, when determining the price under the price redetermined clause. However, replacements or corrections by the contractor after the establishment of the redetermined prices shall be at no increase in the redetermined price.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and equitably reduce the initial contract price or, if established, the redetermined contract price or (2) may terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce the initial contract price or, if it is established, the redetermined contract price. Failure to agree upon an equitable price reduction shall be a dispute."

#### **PRESCRIPTION**

Should be used in RFI/RFPs and contracts for fixed ceiling price with retroactive price redetermination.