

## Defense Federal Acquisition Regulation Supplement

### Part 252—Solicitation Provisions and Contract Clauses

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(Revised June 8, 2011)

#### **252.246-7000 Material Inspection and Receiving Report.**

As prescribed in [246.370](#), use the following clause:

##### MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area WorkFlow (WAWF) electronic form (see paragraph (b) of the clause at [252.232-7003](#)) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F-401, Table 1, of the Defense FAR Supplement.

(End of clause)

#### **252.246-7001 Warranty of Data.**

As prescribed in [246.710](#)(1), use the following clause:

##### WARRANTY OF DATA (DEC 1991)

(a) *Definition.* “Technical data” has the same meaning as given in the clause in this contract entitled, Rights in Technical Data and Computer Software.

(b) *Warranty.* Notwithstanding inspection and acceptance by the Government of technical data furnished under this contract, and notwithstanding any provision of this contract concerning the conclusiveness of acceptance, the Contractor warrants that all technical data delivered under this contract will at the time of delivery conform with the specifications and all other requirements of this contract. The warranty period shall extend for three years after completion of the delivery of the line item of data (as identified in DD Form 1423, Contract Data Requirements List) of which the data forms a part; or any longer period specified in the contract.

(c) *Contractor Notification.* The Contractor agrees to notify the Contracting Officer in writing immediately of any breach of the above warranty which the Contractor discovers within the warranty period.

(d) *Remedies.* The following remedies shall apply to all breaches of the warranty, whether the Contractor notifies the Contracting Officer in accordance with paragraph (c) of this clause or if the Government notifies the Contractor of the breach in writing within the warranty period:

(1) Within a reasonable time after such notification, the Contracting Officer may—

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(i) By written notice, direct the Contractor to correct or replace at the Contractor's expense the nonconforming technical data promptly; or

(ii) If the Contracting Officer determines that the Government no longer has a requirement for correction or replacement of the data, or that the data can be more reasonably corrected by the Government, inform the Contractor by written notice that the Government elects a price or fee adjustment instead of correction or replacement.

(2) If the Contractor refuses or fails to comply with a direction under paragraph (d)(1)(i) of this clause, the Contracting Officer may, within a reasonable time of the refusal or failure—

(i) By contract or otherwise, correct or replace the nonconforming technical data and charge the cost to the Contractor; or

(ii) Elect a price or fee adjustment instead of correction or replacement.

(3) The remedies in this clause represent the only way to enforce the Government's rights under this clause.

(e) The provisions of this clause apply anew to that portion of any corrected or replaced technical data furnished to the Government under paragraph (d)(1)(i) of this clause.

(End of clause)

#### ALTERNATE I (DEC 1991)

As prescribed in [246.710\(2\)](#), substitute the following for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed 75 percent of the target profit.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) Damages due the Government under the provisions of this warranty are not an allowable cost.

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(iv) The additional liability in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

#### ALTERNATE II (DEC 1991)

As prescribed at [246.710\(3\)](#), substitute the following paragraph for paragraph (d)(3) of the basic clause:

(3) In addition to the remedies under paragraphs (d)(1) and (2) of this clause, the Contractor shall be liable to the Government for all damages to the Government as a result of the breach of the warranty.

(i) The additional liability under paragraph (d)(3) of this clause shall not exceed ten percent of the total contract price.

(ii) If the breach of the warranty is with respect to the data supplied by an equipment subcontractor, the limit of the Contractor's liability shall be—

(A) Ten percent of the total subcontract price in a firm fixed-price subcontract;

(B) Seventy-five percent of the total subcontract fee in a cost-plus-fixed-fee or cost-plus-award-fee subcontract; or

(C) Seventy-five percent of the total subcontract target profit or fee in a fixed-price or cost-plus-incentive-type contract.

(iii) The additional liability specified in paragraph (d)(3) of this clause shall not apply—

(A) With respect to the requirements for product drawings and associated lists, special inspection equipment (SIE) drawings and associated lists, special tooling drawings and associated lists, SIE operating instructions, SIE descriptive documentation, and SIE calibration procedures under MIL-T-31000, General Specification for Technical Data Packages, Amendment 1, or MIL-T-47500, General Specification for Technical Data Packages, Supp 1, or drawings and associated

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lists under level 2 or level 3 of MIL-D-1000A, Engineering and Associated Data Drawings, or DoD-D-1000B, Engineering and Associated Lists Drawings (Inactive for New Design) Amendment 4, Notice 1; or drawings and associated lists under category E or I of MIL-D-1000, Engineering and Associated Lists Drawings, provided that the data furnished by the Contractor was current, accurate at time of submission, and did not involve a significant omission of data necessary to comply with the requirements; or

(B) To defects the Contractor discovers and gives written notice to the Government before the Government discovers the error.

#### **252.246-7002 Warranty of Construction (Germany).**

As prescribed in [246.710\(4\)](#), use the following clause:

#### WARRANTY OF CONSTRUCTION (GERMANY) (JUN 1997)

(a) In addition to any other representations in this contract, the Contractor warrants, except as provided in paragraph (j) of this clause, that the work performed under this contract conforms to the contract requirements and is free of any defect of 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 the period(s) specified in Section 13, VOB, Part B, commencing from the date of final acceptance of the work under this contract. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for the period(s) specified in Section 13, VOB, Part B, 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, or design furnished or workmanship performed.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable period of 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 period of 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—

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- (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 as 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 Contractor's negligence, or the negligence of a 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 or for the repair of any damage resulting from any defect in Government-furnished material or design.
- (j) This warranty shall not limit the Government's right under the Inspection clause of this contract, with respect to latent defects, gross mistakes, or fraud.

(End of clause)

#### **252.246-7003 Notification of Potential Safety Issues.**

As prescribed in [246.371\(a\)](#), use the following clause:

##### NOTIFICATION OF POTENTIAL SAFETY ISSUES (JAN 2007)

(a) *Definitions.* As used in this clause—

“Credible information” means information that, considering its source and the surrounding circumstances, supports a reasonable belief that an event has occurred or will occur.

“Critical safety item” means a part, subassembly, assembly, subsystem, installation equipment, or support equipment for a system that contains a characteristic, any failure, malfunction, or absence of which could have a safety impact.

“Safety impact” means the occurrence of death, permanent total disability, permanent partial disability, or injury or occupational illness requiring hospitalization; loss of a weapon system; or property damage exceeding \$1,000,000.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for the Contractor or another subcontractor under this contract.

(b) The Contractor shall provide notification, in accordance with paragraph (c) of this clause, of—

- (1) All nonconformances for parts identified as critical safety items acquired by the Government under this contract; and
- (2) All nonconformances or deficiencies that may result in a safety impact for

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systems, or subsystems, assemblies, subassemblies, or parts integral to a system, acquired by or serviced for the Government under this contract.

(c) The Contractor—

(1) Shall notify the Administrative Contracting Officer (ACO) and the Procuring Contracting Officer (PCO) as soon as practicable, but not later than 72 hours, after discovering or acquiring credible information concerning nonconformances and deficiencies described in paragraph (b) of this clause; and

(2) Shall provide a written notification to the ACO and the PCO within 5 working days that includes—

(i) A summary of the defect or nonconformance;

(ii) A chronology of pertinent events;

(iii) The identification of potentially affected items to the extent known at the time of notification;

(iv) A point of contact to coordinate problem analysis and resolution; and

(v) Any other relevant information.

(d) The Contractor—

(1) Is responsible for the notification of potential safety issues occurring with regard to an item furnished by any subcontractor; and

(2) Shall facilitate direct communication between the Government and the subcontractor as necessary.

(e) Notification of safety issues under this clause shall be considered neither an admission of responsibility nor a release of liability for the defect or its consequences. This clause does not affect any right of the Government or the Contractor established elsewhere in this contract.

(f)(1) The Contractor shall include the substance of this clause, including this paragraph (f), in subcontracts for—

(i) Parts identified as critical safety items;

(ii) Systems and subsystems, assemblies, and subassemblies integral to a system; or

(iii) Repair, maintenance, logistics support, or overhaul services for systems and subsystems, assemblies, subassemblies, and parts integral to a system.

(2) For those subcontracts described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

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(i) The Contractor or higher-tier subcontractor; and

(ii) The ACO and the PCO, if the subcontractor is aware of the ACO and the PCO for the contract.

(End of clause)

#### **252.246-7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.**

As prescribed in [246.270-4](#), use the following clause:

##### SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS (OCT 2010)

(a) *Definition.* “Discipline Working Group,” as used in this clause, means representatives from the DoD Components, as defined in MIL-STD-3007F, who are responsible for the unification and maintenance of the Unified Facilities Criteria (UFC) documents for a particular discipline area.

(b) The Contractor shall ensure, consistent with the requirements of the applicable inspection clause in this contract, that the facilities, infrastructure, and equipment acquired, constructed, installed, repaired, maintained, or operated under this contract comply with Unified Facilities Criteria (UFC) 1-200-01 for—

- (1) Fire protection;
- (2) Structural integrity;
- (3) Electrical systems;
- (4) Plumbing;
- (5) Water treatment;
- (6) Waste disposal; and
- (7) Telecommunications networks.

(c) The Contractor may apply a standard equivalent to or more stringent than UFC 1-200-01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.

(End of clause)

#### **252.246-7005 Notice of Warranty Tracking of Serialized Items.**

As prescribed in [246.710\(5\)\(i\)\(A\)](#), use the following provision:

##### NOTICE OF WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

(a) *Definition.* “Unique item identifier” and “warranty tracking” are defined in the clause at [252.246-7006](#), Warranty Tracking of Serialized Items.

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(b) *Reporting of data for warranty tracking and administration.* The offeror shall provide the information required by Attachment \_\_, Warranty Tracking Information, (indicated by a single asterisk (\*)), on each contract line item number, subline item number, or exhibit line item number for warranted items. The offeror shall provide all information required by Attachment \_\_, Warranty Repair Source Instruction, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The “Warranty Item Unique Item Identifier data category may also be completed in conjunction with Attachment \_\_, Warranty Repair Source Instruction. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The offeror shall submit the data for warranty tracking to the Contracting Officer.

(End of provision)

#### **252.246-7006 Warranty Tracking of Serialized Items.**

As prescribed in [246.710\(5\)\(i\)\(B\)](#), use the following clause:

#### WARRANTY TRACKING OF SERIALIZED ITEMS (JUN 2011)

(a) *Definitions.* As used in this clause—

“Duration” means the warranty period. This period may be a stated period of time, amount of usage, or the occurrence of a specified event, after formal acceptance of delivery, for the Government to assert a contractual right for the correction of defects.

“Enterprise” means the entity (e.g., a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

“Enterprise identifier” means a code that is uniquely assigned to an enterprise by an issuing agency.

“First use” means the initial or first-time use of a product by the Government.

“Fixed expiration” means the date the warranty expires and the Contractor’s obligation to provide for a remedy or corrective action ends.

“Installation” means the date a unit is inserted into a higher level assembly in order to make that assembly operational.

“Issuing agency” means an organization responsible for assigning a globally unique identifier to an enterprise (e.g., Dun & Bradstreet’s Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS-0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at

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<http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm>.

“Item type” means a coded representation of the description of the item being warranted, consisting of the codes C - component procured separate from end item, S - subassembly procured separate from end item or subassembly, E – embedded in component, subassembly or end item parent, and P – parent end item.

“Starting event” means the event or action that initiates the warranty.

“Serialized item” means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

“Unique item identifier” means a set of data elements marked on an item that is globally unique and unambiguous.

“Usage” means the quantity and an associated unit of measure that specifies the amount of a characteristic subject to the contractor’s obligation to provide for remedy or corrective action, such as a number of miles, hours, or cycles.

“Warranty administrator” means the organization specified by the guarantor for managing the warranty.

“Warranty guarantor” means the enterprise that provides the warranty under the terms and conditions of a contract.

“Warranty repair source” means the organization specified by a warranty guarantor for receiving and managing warranty items that are returned by a customer.

“Warranty tracking” means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

(b) *Reporting of data for warranty tracking and administration.* The Contractor shall provide all information required by Attachment \_\_, Warranty Tracking Information on each contract line item number, subline item number, or exhibit line item number for warranted items. The Contractor shall provide all information required by Attachment \_\_, Warranty Repair Source Instructions, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The “Warranty Item Unique Item Identifier” data category may also be completed in conjunction with Attachment \_\_, Warranty Repair Source Instructions. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

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(c) *Reservation of rights.* The terms of this clause shall not be construed to limit the Government's rights or remedies under any other contract clause.

(End of clause)