

§ 5446.590 Post-acceptance discovery of defects (test).

(a) The purpose of this test is to determine the viability of contract coverage which provides remedies to the Government for patent defects discovered after acceptance. Specific procedures are set forth in the test plan. The test will apply to designated FSCs or items at DCSC, DESC, and DISC for which these Centers have experienced unusually high levels of nonconformances, as evidenced by PQDR data from the System for Analysis of Laboratory Testing (SALT) data base. The DLA laboratory testing program and/or completed, validated PQDR investigations will be used to uncover nonconformances and to support determinations of contractor causation. The clause at 5452.246-9005, Remedies for the Post-Acceptance Discovery of Nonconformances (Test), will be used in contracts for the covered FSCs/items to provide remedies for those nonconformances.

(b) The clause at 5452.246.9005 gives the Government the means to pursue repair, replacement or recoupment, at Government option, for a period of one year after the cognizant Government representative signifies acceptance by signature on the DD250 or similar documentation. These remedies also apply to replacements for up to one year after their acceptance. Remedies provided under this clause do not preclude the use of the nonconformance against the contractor in future sources selection decisions. After one year from the acceptance date, acceptance shall be conclusive in accordance with the FAR standard inspection clauses (e.g., paragraph (k) of FAR 52.246-2, which states that acceptance shall be conclusive except for latent defects, fraud, and the like). Future discoveries of patent defects (after the twelve-month period has ended) are subject to voluntary recoupment procedures.

(c) Receipts of the designated items will be targeted (identified/segregated) upon their delivery to a depot. Not all items or all lots in the designated FSCs will be subject to lab testing. However, in the event of a lab test failure, lab personnel will report their results to the ICP; the contracting officer will be notified through the Center Quality element. The contracting officer shall pursue remedies available under the clause at 5452.246-9005 when the nonconformance can be traced to a specific contract and is contractor-caused.

(d) Even for those nonconformances not originally uncovered via random laboratory testing, labs may be used as necessary to validate the existence of

the patent defects. Positive lab test results shall not prohibit the Government's pursuit of remedies for nonconformances subsequently identified by depot personnel, end-users, or others (whether or not confirmed by lab testing) within the twelve months after acceptance. As stated in paragraph (b) of this section after the one-year period has passed, any discovery of patent defects in these items shall be handled in accordance with voluntary recoupment procedures.

(e) Like warranties, the clause requires that the items or packages be marked with notice of coverage, and contractor-prepared shipping documents must also carry notice of the clause's applicability to the shipped items.

(f) During the test period, the contracting officer shall include the clause at 5452.246-9005, Remedies for Post-Acceptance Discovery of Nonconformances (Test), in all non-SASPS-I contracting actions for the covered FSCs/items, except where the contracting officer determines that the cost for inclusion of the clause is unreasonable. The cost reasonableness will be based on evaluation of the contractor's stated prices for the item with and without clause inclusion. (The latter is to be expressed via "additive CLIN.") A determination that the cost is unreasonable must be approved at a level above the contracting officer and documented in the contract file. Since the purpose of the test is to determine the viability of the clause, such determinations must not be used customarily.

(g) Contracting officers shall maintain a separate log, in the same fashion and containing the same data fields as the Warranty Log, for all items covered by the Remedies for Post-Acceptance Discovery of Nonconformances (Test) clause. The log must distinguish between patent and latent defects.

PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5452.246-9005 [Added]

2. The authority citation for part 5452 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, 48 CFR part 1, subpart 1.3 and 48 CFR part 201, subpart 201.3.

3. Part 5452, subpart 5452.2, is amended by adding section 5452.246-9005 to read as follows:

§ 5452.246-9005 Remedies for Post-Acceptance Discovery of Nonconformance (test).

As prescribed in 5446.590, insert the following clause in contracts for designated FSCs or items at DCSC, DESC, and DISC to provide remedies for nonconformances.

5452.246-9005—Remedies for Post-Acceptance Discovery of Nonconformances (Test) (June 1995) (DLAR)

(a) **Definitions.** (1) *Acceptance:* The word acceptance as used herein means the execution of the acceptance block and signing of a DD Form 250 (or similar documentation) by the authorized Government representative.

(2) *Supplies:* The word supplies as used herein means the end-item furnished by the contractor and any related services required under this contract. The word does not include technical data.

(b) *Purpose and scope.* Notwithstanding Government inspection and acceptance in accordance with any of the standard inspection clauses of supplies furnished under this contract, or any other term or condition of the contract concerning the conclusiveness thereof, and notwithstanding that the contractor may already have been paid for contractual performance and the contract otherwise closed, such acceptance shall not be considered final for a period of one year after the date that a cognizant Government representative signifies acceptance by signature on the DD Form 250 or similar documentation. Upon discovery during the one-year period of any nonconforming supplies delivered under this contract, acceptance may be rescinded in accordance with the terms set forth below. After one year, the terms of the standard inspection clause concerning the conclusiveness of acceptance shall apply.

(c) *Contractor's obligations.* (1) As stated above, notwithstanding Government acceptance, the contractor agrees that at the time of delivery of each item, lot, or shipment, and continuing for a period of one year following acceptance:

(i) All supplies delivered under this contract shall be free from defects in material and workmanship (and design, if it is the contractor's, rather than the Government's, design that shall be used), and shall conform with all requirements of this contract;

(ii) The preservation, packaging, packing and marking, and the preparation for, and method of, shipment of all end-items shall conform with the requirements of this contract; and

(iii) All nonconformances discovered by the Government during the one-year period after acceptance that are determined/ adjudged not to be the fault of the Government shall subject the contractor to the remedies set forth in (e), below.

(2) All items delivered under this contract may be subject to post-acceptance laboratory testing by a Government-designated laboratory in accordance with applicable sampling plans set forth elsewhere in this contract. If either such testing or a completed, validated product quality deficiency report investigation uncovers or