

52.246-21

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

[48 FR 42478, Sept. 19, 1983, as amended at 66 FR 2136, Jan. 10, 2001]

52.246-21 Warranty of Construction.

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows 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:

WARRANTY OF CONSTRUCTION (APR 1984)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in 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 a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year 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, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

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

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(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—

(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, if 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 negligence of the Contractor or 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 nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

Alternate I (APR 1984). If the Government specifies in the contract the use of any equipment by *brand name and model*, the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a *brand name and model* basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

[48 FR 42478, Sept. 19, 1983, as amended at 59 FR 11388, Mar. 10, 1994]

52.246-22 [Reserved]

52.246-23 Limitation of Liability.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) below, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of