

Subchapter 3046.7 Warranties

3046.702 General.

The following areas shall also be addressed by all Components in relation to the use of warranties in DHS contracts:

- (a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by FAR Part 7, HSAR Part 3007, and HSAM Chapter 3007.
- (b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.
- (c) Each Component shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and to accumulate data relative to warranty costs.

3046.703 Criteria for use of warranties.

Warranties should be obtained only when they are cost beneficial. To determine whether use of a warranty is cost beneficial, an analysis shall be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar supplies or services. If a warranty is determined to be appropriate, the contract file shall be documented with the reason for inclusion of a warranty and identify the specific parts, subassemblies, systems or contract line item(s) on which a warranty should apply, and shall address why a warranty is appropriate under the criteria set forth in FAR 46.703.

3046.704 Authority for use of warranties.

Contracting officers are authorized to approve the use of warranties.

3046.706 Warranty terms and conditions.

- (a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:
 - (1) Identify the affected line item(s) and the applicable specification(s);
 - (2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;

- (3) Require that the system conform to the specified Government performance requirements;
 - (4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;
 - (5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;
 - (6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;
 - (7) Identify the specific paragraphs containing Government performance requirements which must be met;
 - (8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;
 - (9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);
 - (10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;
 - (11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and
 - (12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.
- (b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

3046.708 Warranties of data.

Warranties of data shall be used only after consultation with legal counsel.