

(2) The cognizant contract administration office, or other Government activity directly involved, must, furnish this data to the contracting officer in writing, except that in urgent cases it may be furnished orally and later confirmed in writing. Before making a decision to accept, the contracting officer must, obtain the concurrence of the activity responsible for the technical requirements of the contract and, where health factors are involved, of the responsible health official of the agency concerned.

(d) If the nonconformance is minor, the cognizant contract administration office may make the determination to accept or reject, except where this authority is withheld by the contracting office of the contracting activity. To assist in making this determination, the contract administration office may establish a joint contractor-contract administrative office review group. Acceptance of supplies and services with critical or major nonconformances is outside the scope of the review group.

(e) The contracting officer must discourage the repeated tender of nonconforming supplies or services, including those with only minor nonconformances, by appropriate action, such as rejection and documenting the contractor's performance record.

(f) When supplies or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the contracting officer must modify the contract to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally should be at least sufficient to cover the estimated cost and related profit to correct deficiencies and complete unfinished work. The contracting officer must document in the contract file the basis for the amounts withheld. For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction. This value may be used to determine an equitable adjustment for nonconforming services. However, when supplies or services involving minor

nonconformances are accepted, the contract need not be modified unless it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the modification.

(g) Notices of rejection must include the reasons for rejection and be furnished promptly to the contractor. Promptness in giving this notice is essential because, if timely nature of rejection is not furnished, acceptance may in certain cases be implied as a matter of law. The notice must, be in writing if—

(1) The supplies or services have been rejected at a place other than the contractor's plant;

(2) The contractor persists in offering nonconforming supplies or services for acceptance; or

(3) Delivery or performance was late without excusable cause.

[48 FR 42415, Sept. 19, 1983, as amended at 61 FR 31663, June 20, 1996; 62 FR 44816, Aug. 22, 1997; 64 FR 51846, Sept. 24, 1999]

#### **46.408 Single-agency assignments of Government contract quality assurance.**

(a) Government-wide responsibility for quality assurance support for acquisitions of certain commodities is assigned as follows:

(1) For drugs, biologics, and other medical supplies—the Food and Drug Administration;

(2) For food, except seafood—the Department of Agriculture.

(3) For seafood—the National Marine Fisheries Service of the Department of Commerce.

(b) Agencies requiring quality assurance support for acquiring these supplies should request the support directly from the cognizant office.

### **Subpart 46.5—Acceptance**

#### **46.501 General.**

Acceptance constitutes acknowledgment that the supplies or services conform with applicable contract quality and quantity requirements, except as provided in this subpart and subject to