

## Department of Transportation

1246.792

### 1246.790-1 Policy. (USCG)

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (TAR) 48 CFR 1246.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

### 1246.790-2 Tailoring warranty terms and conditions. (USCG)

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

### 1246.790-3 Warranties on Government-furnished property. (USCG)

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (TAR) 48 CFR 1246.790-1 on any property furnished to that contractor by the Government except for:

(a) Defects in installation; and

(b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

### 1246.791 Cost benefit analysis. (USCG)

Warranties shall be obtained for a major systems acquisition only when it is cost beneficial in accordance with TAM (Copies of the Transportation Acquisition Manual may be obtained from the Government Printing Office) 1246.703. If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with USCG guidance at 48 CFR 1246.792.

### 1246.792 Waiver and notification procedures. (USCG)

(a) The Secretary of Transportation, without delegation, may waive the requirement for a warranty for USCG

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major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, at a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the Office of Acquisition and Grant Management (M-60). The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

**PART 1247—TRANSPORTATION**

**Subpart 1247.1—General**

Sec.

1247.104-370 Contract clause.

**Subpart 1247.3—Transportation in Supply Contracts**

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1247.305-70 Solicitation provisions.

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**Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels**

1247.506 Procedures.

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**48 CFR Ch. 12 (10-1-02 Edition)**

SOURCE: 59 FR 40287, Aug. 8, 1994, unless otherwise noted.

**Subpart 1247.1—General**

**1247.104-370 Contract clause.**

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247-70, Acceptable Service at Reduced Rates, to implement the requirements of (FAR) 48 CFR 47.104-3.

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

**Subpart 1247.3—Transportation in Supply Contracts**

**1247.305 Solicitation provisions, contract clauses, and transportation factors.**

**1247.305-70 Solicitation provisions.**

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (TAR) 48 CFR 1252.247-71, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(b);

(b) (TAR) 48 CFR 1252.247-72, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(e);

(c) (TAR) 48 CFR 1252.247-73, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-4(b);

(d) (TAR) 48 CFR 1252.247-74, Shipments to Ports and Air Terminals, with Alternates I, II, and III, shall be inserted in accordance with (FAR) 48 CFR 47.305-6(a)(1) through (a)(4);

(e) (TAR) 48 CFR 1252.247-75, F.o.b. Designated Air Carrier's Terminal, Point of Exportation, implements the requirements of (FAR) 48 CFR 47.305-6(a)(5); and

(f) (TAR) 48 CFR 1252.247-76, Nomination of Additional Ports, implements the requirements of (FAR) 48 CFR 47.305-6(d).

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

**1247.305-71 Contract clause.**

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247-77, Supply Movement in the Defense