SUPPLEMENTAL QUALITY ASSURANCE PROVISION (SQAP)

REVISIONS

REV	DESCRIPTION	DATE	APPROVED
	ENERGY QAP E35	December 2011	

E35 NONCONFORMING SUPPLIES AND SERVICES

(a) DEFINITION**: As used in this contract provision:**

Deviation is defined as a written authorization granted after contract award and prior to manufacture of an item, to depart from a particular performance or design requirement of a contract, specification, or referenced document, for a specific number of units or specific period of time, normally the duration of the contract.

Extraordinary situation means the matter cannot await resolution until the next DLA Energy business day (0800 to 1630 hours EST, Monday through Friday, Federal Holidays excluded).

Waiver is defined as a written authorization granted after contract award to accept a configuration item or other designated item which, during production or after having been submitted for inspection, is found to depart from specified requirements, but nevertheless is considered suitable for use "as is" or after repair by an approved method. Approval is on a case-by-case basis and is normally for a set period of time.

(b) The Government may, at its discretion, accept nonconforming supplies or services. In such cases, the Contractor must obtain a deviation or waiver from the Contracting Officer prior to acceptance.

(c) The following procedures shall be used to request a deviation or waiver.

(1) Requests for deviations and waivers shall be submitted by the Contractor to the Contracting Officer with a copy to the appropriate Inspection Office referenced in the LIST OF INSPECTION OFFICES FOR DLA ENERGY CONTRACTS or QUALITY REPRESENTATIVE contract provision of this contract. Each request shall provide the following information: Contractor name; name and contact information of the contractor's authorized negotiator; contract number; contract line item number and product nomenclature, clause or contract provision number, paragraph and subparagraph, as appropriate; the nature of the request; the reason for the request; the corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and an agreement to pay an equitable price reduction, estimated and proposed by DLA Energy, over and above the administrative fee, contingent on the impact of the specific circumstances on DLA Energy relative to approval of the deviation or waiver.

(2) In extraordinary situations, the Contractor may initially submit a verbal request for a waiver, but not a deviation, to the Contracting Officer. Written requests shall be submitted to the Contracting Officer by the next DLA Energy business day (0800 to 1630 hours EST, Monday through Friday, Federal Holidays excluded). If the Contracting Officer cannot be reached, the Duty Officer shall be contacted to provide the necessary information to the proper individuals as soon as possible. The Duty Officer's telephone number is **(800) 286-7633** or **(703) 767-8420.**

(3) If a deviation or waiver is granted, the contract will be modified to accept the nonconforming supplies or services and to require the Contractor to provide an equitable price reduction or other adequate consideration commensurate with the deviation or waiver being granted. If the situation warrants, a deviation or waiver may be granted without prior agreement on price reduction or other consideration, subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such an agreement, in addition to a brief description of the terms of the deviation or waiver, shall be documented on the shipping document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS contract provision of this contract.

(4) If a deviation or waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less than $500, which covers administrative costs, plus any additional cost of Government reinspection or retest, if necessary.

5) If a deviation or waiver is granted modifying this contract, but the supplies accepted are subsequently determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the deviation or waiver. If, however, this consideration exceeds $1000, a second contract modification shall be issued reducing the Contractor's obligation to $1000 (the administrative cost of issuing the two required modifications), plus, if appropriate, any cost of Government reinspection or retest performed as a result of the deviation or waiver being granted.

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DLA Land & Maritime DLA Troop Support DLA Aviation DLA Energy

DEFENSE LOGISTICS AGENCY ENERGY
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(d) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under the INSPECTION OF SUPPLIES - FIXED-PRICE, INSPECTION OF SERVICES - FIXED PRICE, or CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS contract provision, then in no event will consideration be less than $500 to cover administrative costs. This $500 fee is in addition to --

(1) Consideration commensurate with the extent of nonconforming supplies; and

(2) Cost of Government reinspection or retest, if necessary.

The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

(e) Contractors shall be held responsible for payment of any fines or penalties imposed on a receiving activity by an environmental enforcement agency, resulting from the delivery of nonconforming supplies under a DLA Energy contract.

(f) Repeated tender of nonconforming supplies or services, including those with only minor defects, will be discouraged by appropriate actions, including, but not limited to, rejecting the supplies or services whenever feasible and documenting the Contractor's performance records.

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