

April 9, 1991
POLICY LETTER 91-3
TO THE HEADS OF EXECUTIVE AGENCIES AND
ESTABLISHMENTS

SUBJECT: Reporting Nonconforming Products

1. **Purpose.** This Policy Letter establishes policies and procedures for using a Government-wide system for exchanging information among agencies about nonconforming products and materials. The use of a central system will enhance communications among agencies. Specifically, it will help eliminate instances where individual agencies or their contractors acquire products and materials previously identified as nonconforming by other agencies.
2. **Definition.** For purposes of this Policy Letter, a nonconforming product, process or material (nonconforming product) is a product that does not meet manufacturing specifications, design, composition or other contract requirements.
3. **Background.** Recent General Accounting Office (GAO) and Inspectors General (IG) reports indicate that nonconforming products are a common problem. A July 1990 survey report of 22 Federal agencies by the President's Council on Integrity and Efficiency (PCIE) reveals that approximately 40 percent of Government personnel involved in the procurement process have had recent experience with nonconforming products. In comparison, 85 percent of the employees who perform quality assurance/quality control responsibilities or receive or use products are aware of recent product substitution problems. The PCIE survey found that instances of nonconforming products occur most frequently in the construction equipment and materials area. Office equipment and supplies are second in frequency and electronic equipment is third.

The Federal Acquisition Regulation (FAR) Part 46.407 requires that contracting officers ordinarily reject nonconforming products when the nonconformance adversely affects safety, health, reliability, durability, performance, interchangeability, or other contract objectives. Such products, if not detected, can compromise defense and other agency missions, result in unanticipated replacement, repair or maintenance costs, and jeopardize public safety and health. Nonconforming products often result from the failure of supplies to adequately control quality and in some instances from criminal intent.

4. **Policy.** Agencies shall review existing programs or, where necessary, establish new programs to assure the quality of purchased products and materials. Information shall be exchanged among agencies about nonconforming products. The existing Government/Industry Data Exchange Program (GIDEP) operated by the Department of Defense will serve as the central data base for receiving and disseminating information about such products.
 - a. **Screening Information.** Information should be submitted to GIDEP about nonconforming products that (1) do not meet the requirements of contracts (including purchase orders), catalogue descriptions or referenced specifications, or (2) are commonly available products or materials such as, nondevelopmental items, commercial off-the-shell items, National Stock Numbered items, catalogue items, and (3) if the nonconformance is not reported to GIDEP, continued supply or use could adversely affect other Government agencies or contractors. Information should not be transmitted to GIDEP that would not benefit other agencies or protect the public; e.g., routine

acceptance test anomalies or routine quality deficiency reports. GIDEP information should be limited to situations where the nonconformity(s) adversely affect safety, health, operating performance or could result in significant maintenance cost and the nonconformity(s) has not been granted formal waivers or deviations by the acquiring agency.

b. Internal Controls. Each agency, as part of its periodic internal controls reviews under Office of Management and Budget Circular A-123, shall assess its programs for identifying and preventing the acquisition of nonconforming products. As a minimum, this assessment should address:

--The impact such products have on the agency's mission and on the health and safety of agency employees and the public, and

--The agency's procedures for assuring the quality of acquired products and materials and, where appropriate, recommendations for improving those procedures.

New assessments of agency programs for controlling nonconforming products are not required in those agencies where such assessments have been made within the past 18 months.

5. **Required Practices.** Agencies not currently participating in GIDEP shall commence participating within 60 days of the date of this Policy Letter. Agencies are required to participate only in the "Failure Experience" data interchange. Participation in the other GIDEP data bases is elective and shall be determined by each agency. An application for GIDEP participation is attached (Attachment 1). The application shall be completed and mailed to the GIDEP Operations Center, Corona, California 91720-5000. The operations Center will provide additional information to each agency applicant about using GIDEP.

a. Safety, Health and other Considerations. Information about any nonconforming product that could be harmful to employees or to public safety and health should be promptly transmitted to GIDEP. Cases of fraud or suspected fraud including counterfeit and misrepresented products should be referred to the appropriate authorities in accordance with existing agency procedures. Defective or ambiguous specifications should be referred to appropriate agency officials or to the Government's specifications manager. Other causes for nonconformance should be directed to the contractor through the contracting officer.

b. Sensitive Information. Agencies shall work through their respective Inspectors General or other appropriate officers and establish specific procedures and processes for receiving and disseminating sensitive information. Special procedures are being developed to permit GIDEP to disseminate sensitive information directly to designated agency contact points. Sensitive information concerns any person or entity that is under investigation or being considered for investigation as a result of the submission of nonconforming products to an agency. Agency procedures shall ensure the timely preparation and release of sensitive information about nonconforming products to GIDEP while assuring that such information is screened prior to release to prevent (1) compromising ongoing and future criminal/civil investigations and prosecutions, or (2) the release of privileged grand jury information or information under seal by a court. The requirements of this section do not supersede existing agency regulations or procedures concerning the release of sensitive information, and in no event shall sensitive information be provided to GIDEP unless authorized by law or agreement.

c. **Notifying the Supplier** In addition to the actions specified in FAR Part 46.407, GIDEP procedures shall be followed regarding notification of suppliers of nonconforming products. Generally, these procedures require that the specific nonconforming features of a product be identified in writing and provided by letter to the supplier of the item. The supplier is given 15 days to respond to the agency notice. Notice of the nonconforming product together with the supplier's response, if any, shall be transmitted to GIDEP at the end of the 15 day period. Information about products that have a direct adverse impact on public safety or health shall be transmitted to GIDEP concurrent with the notification to the supplier. GIDEP will disseminate information about nonconforming products to all agency and private industry contact points.

6. **Use of GIDEP Information.** GIDEP information is intended for the protection of the Government and should not be relied on for the protection of third parties. While GIDEP is primarily intended to serve Federal agencies and contractors, some activities regulated by Federal agencies not participate in it. This Policy Letter does not preclude such participation.
7. **GIDEP Waiver.** If an agency because of the small size of its procurement program or for other specific agency unique reasons believes that participating in GIDEP would not be appropriate, the rationale for not participating shall be provided by letter from the agency's Senior Procurement Executive to the Administrator for Federal Procurement Policy. The Administrator will review such requests on a case-by-case basis.
8. **Use of FAR.** The initiation of any suspension or debarment action resulting from nonconforming products including use of the GSA listing of "Parties Excluded From Procurement Programs" shall continue to be governed by Part 9.4 of the FAR. Contracting officers decisions to accept or reject nonconforming products shall continue in accordance with Part 46 of the FAR.
9. **Effective Date.** This Policy Letter is effective upon issuance.
10. **Information.** Questions or inquiries about this Policy Letter should be directed to Charles W. Clark, Office of Federal Procurement Policy, 725 17th Street, NW, Washington, DC, 20503, telephone (202) 395-6803

(signed)
Allan V. Burma
Administrator

Attachment

Attachment 1

Agency Application for GIDEP Participation

We hereby apply for participating in the Government-Industry Data Exchange Program (GIDEP).

We agree to govern our participation in accordance with current requirements as set forth in the GIDEP Policies and Procurements Manual.

Our initial participation will be in the Failure Experience Data Interchange. Our Agency title is:

_____.

Our appointed GIDEP representative is:

Name (including middle initial): _____

Phone number (including area code): _____

FAX number (including area code): _____

Mailing Address _____

Participation in GIDEP is requested by:

Name: _____

Phone: _____

Title: _____

Signature: _____

Date: _____

If you have any questions please contact:

GIDEP Operations Center at (714) 736-4877

(AUTOVON 933-4877)

GIDEP Program Manager at (703) 602-2369

(Autovon 332-2369)