

(i) After considering the factors in 247.572-1(d)(3)(i)(A) and (B), if the contracting officer concludes that the freight charges proposed by U.S.-flag carriers may be excessive or otherwise unreasonable, the contracting officer must prepare a report in determination and finding format that includes, as appropriate—

(A) An analysis of the carrier's costs in accordance with FAR Subpart 15.4, or profit in accordance with 215.404-4. The costs or profit should not be so high as to make it unreasonable to apply the preference for U.S.-flag vessels;

(B) A description of efforts taken pursuant to FAR 15.405, to negotiate a reasonable price. For the purpose of FAR 15.405(d), this report is the referral to a level above the contracting officer; and

(C) An analysis of whether the costs are excessive (i.e., costs beyond the economic penalty normally incurred by excluding foreign competition), taking into consideration factors such as those listed at 247.572-1(d)(3)(i)(C).

(ii) The contracting officer must forward the report to—

(A) The commander, MSC, through the Contracts and Business Management Directorate, MSC; or

(B) The Commander, MTMC, through the Principal Assistant Responsible for Contracting, MTMC.

(iii) If an agreement with the contracting officer, the Commander, MSC, or the Commander, MTMC, will forward the report to the Secretary of the Navy or the Secretary of the Army, respectively, for a determination as to whether the proposed freight charges are excessive or otherwise unreasonable.

[65 FR 50147, Aug. 17, 2000]

**247.573 Solicitation provision and contract clauses.**

(a) Use the provision at 252.247-7022, Representation of Extent of Transportation by Sea, in all solicitations except—

(1) Those for direct purchase of ocean transportation services; or

(2) Those with an anticipated value at or below the simplified acquisition threshold.

(b)(1) Use the clause at 252.247-7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, except those for direct purchase of ocean transportation services.

(2) Use the clause with its Alternate I in other than construction contracts, if any of the supplies to be transported are commercial items that are shipped in direct support of U.S. military contingency operations, exercises, or forces deployed in humanitarian or peacekeeping operations.

(3) Use the clause with its Alternate II in other than construction contracts, if any of the supplies to be transported are commercial items that are commissary or exchange cargoes transported outside of the Defense Transportation System in accordance with 10 U.S.C. 2643.

(4) Use the clause with its Alternate III in solicitations and contracts with an anticipated value at or below the simplified acquisition threshold.

(c) Use the clause at 252.247-7024, Notification of Transportation of Supplies by Sea, in all contracts for which the offeror made a negative response to the inquiry in the provision at 252.247-7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247-7025, Re-flagging or Repair Work, in all time charter solicitations and contracts for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.571(c).

[56 FR 36466, July 31, 1991, as amended at 59 FR 10580, Mar. 7, 1994; 60 FR 29501, June 5, 1995; 64 FR 2598, Jan. 15, 1999; 65 FR 14401, Mar. 16, 2000; 67 FR 38021, May 31, 2002]

**PART 249—TERMINATION OF CONTRACTS**

**Subpart 249.1—General Principles**

Sec.

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Termination status report.

249.105-2 Release of excess funds.

249.106 Fraud or other criminal conduct.

249.108 Settlement of subcontract settlement proposals.

249.108-4 Authorization for subcontract settlements without approval or ratification.

## 249.105

- 249.109 Settlement agreements.
- 249.109-7 Settlement by determination.
- 249.110 Negotiation memorandum.

### Subpart 249.5—Contract Termination Clauses

- 249.501 General.
- 249.501-70 Special termination costs.

### Subpart 249.70—Special Termination Requirements

- 249.7000 Terminated contracts with Canadian Commercial Corporation.
- 249.7001 Congressional notification on significant contract terminations.
- 249.7002 [Reserved]
- 249.7003 Notification of anticipated contract terminations or reductions.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36471, July 31, 1991, unless otherwise noted.

## Subpart 249.1—General Principles

### 249.105 Duties of termination contracting officer after issuance of notice of termination.

#### 249.105-1 Termination status report.

When the contract administration office receives a termination notice, it will, under Report Control Symbol DD-AT&L(AR)1411—

- (i) Prepare a DD Form 1598, Contract Termination Status Report;
- (ii) Within 30 days, send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible;
- (iii) Continue reporting semiannually to cover the 6 month periods ending March and September. The semiannual reports must be submitted within 30 days after the end of the reporting period; and
- (iv) Submit a final report within 30 days after closing the termination case.

[56 FR 36471, July 31, 1991, as amended at 59 FR 27674, May 27, 1994; 64 FR 51077, Sept. 21, 1999; 65 FR 39706, June 27, 2000]

#### 249.105-2 Release of excess funds.

The DD Form 1598, Contract Termination Status Report, may be used to recommend the release of excess funds. The final recommendation to release

## 48 CFR Ch. 2 (10-1-02 Edition)

excess funds should include the appropriations and allocated amounts.

### 249.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct, the TCO must report the facts in accordance with the procedures at 209.406-3 or 209.407-3.

[64 FR 62986, Nov. 18, 1999]

### 249.108 Settlement of subcontract settlement proposals.

#### 249.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) Industrial plant equipment included in the inventory—

(1) Is subject to the screening requirements in FAR 45.608.

(2) Shall not be disposed of until screening is completed when the cost of that equipment is used in determining the amount of the claim.

### 249.109 Settlement agreements.

#### 249.109-7 Settlement by determination.

(a)(i) Use a Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination—

(A) When the contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(B) To confirm the determination when the contractor does not appeal the termination contracting officer's decision.

(ii) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument number to the letter of determination. Send a copy of the SF 30 to the contractor by certified mail return receipt requested.

### 249.110 Negotiation memorandum.

(a)(i) *Fixed price contracts.* Use the format in Table 49-1, Settlement Memorandum-Fixed Price Contracts, for the termination contracting officer's settlement memorandum for fixed price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to

**Department of Defense**

**249.110**

use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(ii) *Cost-reimbursement contracts*. Use Part I of the format in Table 49-1 and Part II of the format in Table 49-2, Set-

tlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

**TABLE 49-1—SETTLEMENT MEMORANDUM-FIXED PRICE CONTRACTS**

**Part I—General Information**

1. Identification. (Identify memorandum as to its purpose and content.)
  - a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.
  - b. Names and titles of both contractor and Government personnel who participated in the negotiation.
2. Description of terminated contract.
  - a. Date of contract and contract number.
  - b. Type of contract (e.g., fixed price, fixed price incentive).
  - c. General description of contract items.
  - d. Total contract price.
  - e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).
3. Termination notice.
  - a. Reference termination notice and state effective date of termination.
  - b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.
  - c. State whether termination notice was amended, and explain any amendment.
  - d. State whether contractor stopped work on effective termination date. If not, furnish details.
  - e. State whether the contractor promptly terminated subcontracts.
  - f. Statement as to the diversion of common items and return of goods to suppliers, if any.
  - g. Furnish information as to contract performance and timeliness of deliveries by the contractor.
4. Contractor's settlement proposal.
  - a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)
  - b. Basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain rationale for approval when claim is filed on other than inventory basis.
  - c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

**Part II—Summary of Contractor's Claim and Negotiated Settlement**

Prepare a summary substantially as follows:

Item claimed	Contractor's proposal	Dollars accepted	Costs questioned	Unresolved items	TCO negotiated amount
1. Contractor's costs as set forth on settlement proposal. Metals, raw materials, etc.. Total.					
2. Profit.					
3. Settlement expenses.					
4. Total.					
5. Settlement with subs.					
6. Acceptable finished product.					
7. Gross Total.					
8. Disposal and other credits.					
9. Net settlement.					
10. Partial, progress & advance payments.					
11. Net payments requested.					

**Part III—Discussion of Settlement**

1. Contractor's cost.
  - a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.
  - b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included.
  - c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
  - d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.
  - e. Comment on any unadjusted contractual changes which are included in the settlement.
  - f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
  - g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.
2. Profit. Explain the basis and factors considered in arriving at a fair profit.
3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.
4. Subcontractor's settlements. Include the number of no costs settlements, settlements concluded by the contractor under delegation of authority and those approved by the termination contracting officer, as well as the net amount of each.
5. Partial payments. Furnish the total amount of partial payments, if any.
6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.
7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.
8. Assignments. List any assignments, giving name and address of assignee.
9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.
10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.
11. Government property. State whether all Government property has been accounted for.
12. Special tooling. If involved, furnish comment on disposition.
13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

**Tabular Summary for Complete or Partial Termination**

	Amount claimed	Amount allowed
Prime contractors charges (before disposal credits).		
Plus: Subcontractor charges (after disposal credits).		
Gross settlement:		
Less: disposal credits—Prime.		
Net settlement—Less:		
Prior payment credits (this settlement).		
Previous partial settlements.		
Other credits or deductions.		
Net payment:		
Total contract price (complete termination).		
Contract Price of Items Terminated (for partial termination)—Less:		
Total payments to date.		
Net payment from this settlement.		
Fund reserved for reservations.		
Reduction in contract price.		

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.
15. Include statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-2—SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

**Part II—Summary of Settlement**

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49-3 and 49-4. Partial settlements may be summarized on Table 49-4.
2. Comments. Explain tabular summaries.
  - a. Summary of final settlement (see Table 49-3).
    - (1) Explain why the auditor's final report was not available for consideration, if applicable.
    - (2) Explain how the fixed fee was adjusted. Identify basis used such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.
    - (3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.
    - (4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.
    - (5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.
    - (6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
    - (7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
    - (8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
    - (9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.
    - (10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
    - (11) Show number and amounts of settlements with subcontractors.
    - (12) Use the following summary where settlement includes costs and fixed fee in a complete termination:

Gross settlement .....		\$ _____
Less: Disposal credits .....		_____
Net settlement .....		_____
Less: Prior payments .....		_____
Other credits or deductions .....		_____
Total .....		_____
Net payment .....		\$ _____
Total contract estimated cost plus fixed fee .....		_____
Less: Net settlement .....		_____
Estimated reserve for exclusions .....		_____
Final contract price:		
(Consisting of \$ _____ for reimbursement of costs and		
\$ _____ for adjusted fixed fee) .....		_____
Reduction in contract price (credit) .....		_____

- (13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).
- (14) Government property. State whether all Government property has been accounted for.
- (15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-3—SUMMARY OF SETTLEMENT

		Amount claimed	Amount allowed
1. Previous reimbursed costs—Prime and Subs .....	\$	\$	\$
2. Previous unreimbursed costs .....			
3. Total cost settlement .....	\$	\$	\$
4. Previous fees paid—Prime .....	\$	\$	\$
5. Previous fees unpaid—Prime .....			

TABLE 49-3—SUMMARY OF SETTLEMENT—Continued

		Amount claimed	Amount allowed
6. Total fee settlement .....		\$ _____	\$ _____
7. Gross settlement .....		\$ _____	\$ _____
Less: Deductions not reflected in Items 1-7.			
a. Disposal credits .....	\$ _____		
b. Other charges against contractor arising from contract .....	\$ _____		
8. Net settlement .....			\$ _____
Less: Prior payment credits .....			
9. Net payment .....			\$ _____
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):			
Aggregate gross amount of previous settlements .....			\$ _____
Aggregate net amount of previous partial settlements .....			\$ _____
Aggregate net payment provided in previous partial settlements .....			\$ _____
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.			\$ _____

TABLE 49-4—UNREIMBURSED COSTS SUBMITTED ON SF 1437 \*

Costs	Amounts claimed by contractor's proposal	Auditor's recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material.				
2. Direct labor.				
3. Indirect factory expense.				
4. Dies, jigs, fixtures and special tools.				
5. Other costs.				
6. General and administrative expenses.				
7. Fee.				
8. Settlement expense.				
9. Settlement with subs.				
10. Total costs (Items 1-9).				

\* Expand the format to include recommendations of technical personnel as required.

[56 FR 36471, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

**Subpart 249.5—Contract Termination Clauses**

**249.501 General.**

**249.501-70 Special termination costs.**

(a) The clause at 252.249-7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of \$25 million; or

(ii) Total production investment in excess of \$100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—

## Department of Defense

249.7001

- (i) The Government's incremental assignment of funds to the contract;
- (ii) The time when certain performance milestones are accomplished by the contractor; or
- (iii) Other specific time periods agreed upon by the contracting officer and the contractor.

### Subpart 249.70—Special Termination Requirements

#### 249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Terminate contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, "Canadian Agreement" (for a copy of the LOA or for questions on its currency, contact the Foreign Contracting Directorate, Office of the Director of Defense Procurement, (703) 697-9351, DSN 227-9351));

(2) Policies in the Canadian Agreement and part 249; and

(3) The Procedures Manual on Termination of Contracts, Public Works and Government Services Canada.

(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contract Claims Resolution Board of the Public Works and Government Services Canada has approved settlements with Canadian subcontractors when the Procedures Manual on Termination of Contracts requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory

for screening to the TCO (see FAR 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d) The Canadian Commercial Corporation should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO of the cognizant contract administration office of the Defense Contract Management Agency for settlement. The TCO will inform the Canadian Commercial Corporation of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the Canadian Commercial Corporation termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

[56 FR 36471, July 31, 1991, as amended at 65 FR 39706, June 27, 2000]

#### 249.7001 Congressional notification on significant contract terminations.

(a) Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor.

(b) Department and agency liaison offices will coordinate timing of the congressional notification and public release of the information with release of the termination notice to the contractor. Department and agency liaison offices are—

(1) Army—Chief, Legislative Liaison (SALL-SPA)

## 249.7002

(2) Navy—Chief of Legislative Affairs (OLA-N)

(3) Air Force—SAF/AQC

(4) Defense Advanced Research Projects Agency—CMO

(5) Defense Information Systems Agency—Contract Management Division (Code 260)

(6) Defense Intelligence Agency—RSQ

(7) Defense Logistics Agency—DLSCP

(8) National Imagery and Mapping Agency—HQ NIMA (AQ)

(9) Defense Threat Reduction Agency—Acquisition Management Office (AM)

(10) National Security Agency/Central Security Service—Chief, Office of Contracting

(11) Ballistic Missile Defense Organization—Director of Contracts (BMDO-DCT)

(c) Request clearance to release information in accordance with departmental procedures as soon as possible after the decision to terminate is made. Until clearance has been obtained, treat this information as “For Official Use Only” unless the information is classified.

(d) Include the following in the request for clearance—

(1) Contract number, date, and type of contract;

(2) Name of the company;

(3) Nature of contract or end item;

(4) The reason for the termination;

(5) Contract price of the items terminated;

(6) Total number of contractor employees involved, including the Government's estimate of the number who may be discharged;

(7) Statement of anticipated impact on the company and the community;

(8) The area labor category, whether the contractor is a large or small business, and any known impact on hard core disadvantaged employment programs;

(9) Total number of subcontractors involved and the impact in this area; and

(10) An unclassified draft of a suggested press release.

(e) To minimize termination costs, liaison offices will act promptly on all requests for clearances and provide a

## 48 CFR Ch. 2 (10-1-02 Edition)

response not later than two working days after receipt of the request.

(f) This reporting requirement is assigned Report Control Symbol DD-AT&L(AR)1412.

[56 FR 36471, July 31, 1991, as amended at 56 FR 67220, Dec. 30, 1991; 59 FR 27674, May 27, 1994; 61 FR 50455, Sept. 26, 1996; 64 FR 51077, Sept. 21, 1999; 65 FR 39706, June 27, 2000]

### 249.7002 [Reserved]

### 249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and Section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Job Training Partnership Act (29 U.S.C. 1661 and 1662) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to:

(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act.

(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination of or substantial reduction in the funding of affected contracts—

(i) Directly to the Secretary of Labor; and

(ii) Through the contracting officer to each prime contractor.

(c) Use the clause at 252.249-7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

[61 FR 64637, Dec. 6, 1996; 61 FR 66077, Dec. 16, 1996; 62 FR 49304, Sept. 19, 1997]

## PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.  
250.001 Definitions.

### Subpart 250.1—General

250.102-70 Limitations on payment.