

## Federal Acquisition Regulation

## 49.002

### Subpart 49.5—Contract Termination Clauses

- 49.501 General.
- 49.502 Termination for convenience of the Government.
- 49.503 Termination for convenience of the Government and default.
- 49.504 Termination of fixed-price contracts for default.
- 49.505 Other termination clauses.

### Subpart 49.6—Contract Termination Forms and Formats

- 49.601 Notice of termination for convenience.
- 49.601-1 Telegraphic notice.
- 49.601-2 Letter notice.
- 49.602 Forms for settlement of terminated contracts.
- 49.602-1 Termination settlement proposal forms.
- 49.602-2 Inventory forms.
- 49.602-3 Schedule of accounting information.
- 49.602-4 Partial payments.
- 49.602-5 Settlement agreement.
- 49.603 Formats for termination for convenience settlement agreements.
- 49.603-1 Fixed-price contracts—complete termination.
- 49.603-2 Fixed-price contracts—partial termination.
- 49.603-3 Cost-reimbursement contracts—complete termination, if settlement includes cost.
- 49.603-4 Cost-reimbursement contracts—complete termination, with settlement limited to fee.
- 49.603-5 Cost-reimbursement contracts—partial termination.
- 49.603-6 No-cost settlement agreement—complete termination.
- 49.603-7 No-cost settlement agreement—partial termination.
- 49.603-8 Fixed-price contracts—settlements with subcontractors only.
- 49.603-9 Settlement of reservations.
- 49.604 Release of excess funds under terminated contracts.
- 49.605 Request to settle subcontractor settlement proposals.
- 49.606 Granting subcontract settlement authorization.
- 49.607 Delinquency notices.

AUTHORITY: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

SOURCE: 48 FR 42447, Sept. 19, 1983, unless otherwise noted.

### 49.000 Scope of part.

This part establishes policies and procedures relating to the complete or partial termination of contracts for the

convenience of the Government or for default. It prescribes contract clauses relating to termination and excusable delay and includes instructions for using termination and settlement forms.

### 49.001 Definitions.

As used in this part—

*Other work* means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

*Plant clearance period*, as used in this subpart, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

*Settlement agreement* means a written agreement in the form of a contract modification settling all or a severable portion of a settlement proposal.

*Settlement proposal* means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word *claim* under false claims acts (see 18 U.S.C. 287 and 31 U.S.C. 3729).

*Unsettled contract change* means any contract change or contract term for which a definitive modification is required but has not been executed.

[48 FR 42443, Sept. 19, 1983, as amended at 51 FR 2666, Jan. 17, 1986; 66 FR 2134, Jan. 10, 2001; 67 FR 43514, June 27, 2002; 69 FR 17748, Apr. 5, 2004]

### 49.002 Applicability.

(a) This part applies to contracts that provide for termination for the convenience of the Government or for the default of the contractor (see also 13.302-4).

(b) Contractors shall use this part, unless inappropriate, to settle subcontracts terminated as a result of modification of prime contracts. The contracting officer shall use this part

as a guide in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever the settlement will be the basis of a proposal for reimbursement from the Government under a cost-reimbursement contract.

(c) The contracting officer may use this part in determining an equitable adjustment resulting from a modification under the Changes clause of any contract, except cost-reimbursement contracts.

(d) When action to be taken or authority to be exercised under this part depends upon the *amount* of the settlement proposal, that amount shall be determined by deducting from the gross settlement proposed the amounts payable for completed articles or work at the contract price and amounts for the settlement of subcontractor settlement proposals. Credits for retention or other disposal of termination inventory and amounts for advance or partial payments shall not be deducted.

[48 FR 42447, Sept. 19, 1983, as amended at 62 FR 64927, Dec. 9, 1997]

### Subpart 49.1—General Principles

#### 49.100 Scope of subpart.

(a) This subpart deals with—

(1) The authority and responsibility of contracting officers to terminate contracts in whole or in part for the convenience of the Government or for default;

(2) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(3) General procedures for the settlement of terminated contracts; and

(4) Settlement agreements.

(b) Additional principles applicable to the termination for convenience and settlement of fixed-price and cost-reimbursement contracts are included in subparts 49.2 and 49.3. Additional principles applicable to the termination of contracts for default are included in subpart 49.4.

#### 49.101 Authorities and responsibilities.

(a) The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter

into settlement agreements under this regulation.

(b) The contracting officer shall terminate contracts, whether for default or convenience, only when it is in the Government's interest. The contracting officer shall effect a no-cost settlement instead of issuing a termination notice when (1) it is known that the contractor will accept one, (2) Government property was not furnished, and (3) there are no outstanding payments, debts due the Government, or other contractor obligations.

(c) When the price of the undelivered balance of the contract is less than \$5,000, the contract should not normally be terminated for convenience but should be permitted to run to completion.

(d) After the contracting officer issues a notice of termination, the termination contracting officer (TCO) is responsible for negotiating any settlement with the contractor, including a no-cost settlement if appropriate. Auditors and TCO's shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements involving small business concerns.

(e) If the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part of the units still to be delivered, preference shall be given to the continuing performance of small business contracts over large business contracts unless the chief of the contracting office determines that this is not in the Government's interest.

(f) The contracting officer is responsible for the release of excess funds resulting from the termination unless this responsibility is specifically delegated to the TCO.

[48 FR 42447, Sept. 19, 1983, as amended at 55 FR 52797, Dec. 21, 1990; 56 FR 67134, Dec. 27, 1991]

#### 49.102 Notice of termination.

(a) *General.* The contracting officer shall terminate contracts for convenience or default only by a written notice to the contractor (see 49.601). When the notice is mailed, it shall be sent by