

49.405

(iii) Order of a court of competent jurisdiction.

[65 FR 46067, July 26, 2000]

49.405 Completion by another contractor.

If the surety does not arrange for completion of the contract, the contracting officer normally will arrange for completion of the work by awarding a new contract based on the same plans and specifications. The new contract may be the result of sealed bidding or any other appropriate contracting method or procedure. The contracting officer shall exercise reasonable diligence to obtain the lowest price available for completion.

[48 FR 42447, Sept. 19, 1983, as amended at 50 FR 1746, Jan. 11, 1985; 50 FR 52429, Dec. 23, 1985]

49.406 Liquidation of liability.

The contract provides that the contractor and the surety are liable to the Government for resultant damages. The contracting officer shall use all retained percentages of progress payments previously made to the contractor and any progress payments due for work completed before the termination to liquidate the contractor's and the surety's liability to the Government. If the retained and unpaid amounts are insufficient, the contracting officer shall take steps to recover the additional sum from the contractor and the surety.

Subpart 49.5—Contract Termination Clauses

49.501 General.

This subpart prescribes the principal contract termination clauses. This subpart does not apply to contracts that use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter.

[75 FR 82577, Dec. 30, 2010]

49.502 Termination for convenience of the Government.

(a) *Fixed-price contracts that do not exceed the simplified acquisition threshold*

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(short form)—(1) *General use.* The contracting officer shall insert the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed the simplified acquisition threshold, except (i) if use of the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is appropriate, (ii) in contracts for research and development work with an educational or nonprofit institution on a no-profit basis, (iii) in contracts for architect-engineer services, or (iv) if one of the clauses prescribed or cited at 49.505(a) or (c), is appropriate.

(2) *Dismantling and demolition.* If the contract is for dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its *Alternate I*.

(b) *Fixed-price contracts that exceed the simplified acquisition threshold*—(1)(i) *General use.* The contracting officer shall insert the clause at 52.249-2, Termination for Convenience of the Government (Fixed-Price), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold, except in contracts for (i) dismantling and demolition, (ii) research and development work with an educational or nonprofit institution on a no-profit basis, or (iii) architect-engineer services; it shall not be used if the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), is appropriate (see 49.502(c)), or one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.

(ii) *Construction.* If the contract is for construction, the contracting officer shall use the clause with its *Alternate I*.

(iii) *Partial payments.* If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its *Alternate II*. In such

contracts for construction, the contracting officer shall use the clause with its *Alternate III*.

(2) *Dismantling and demolition*. The contracting officer shall insert the clause at 52.249-3, Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its *Alternate I*.

(c) *Service contracts (short form)*. The contracting officer shall insert the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the contracting officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination. Examples of services where this clause may be appropriate are contracts for rental of unreserved parking space, laundry and dry-cleaning, etc.

(d) *Research and development contracts*. The contracting officer shall insert the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), in solicitations and contracts when either a fixed-price or cost-reimbursement contract is contemplated for research and development work with an educational or nonprofit institution on a no-profit or no-fee basis.

(e) *Subcontracts—(1) General use*. The prime contractor may find the clause at 52.249-1, Termination for Conven-

ience of the Government (Fixed-Price) (Short Form), or at 52.249-2, Termination for Convenience of the Government (Fixed-Price), as appropriate, suitable for use in fixed-price subcontracts, except as noted in subparagraph (2) below; *provided*, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (d)) in 52.249-2 should be deleted and the periods reduced for submitting the subcontractor's termination settlement proposal (e.g., 6 months), and for requesting an equitable price adjustment (e.g., 45 days).

(2) *Research and development*. The prime contractor may find the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), suitable for use in subcontracts placed with educational or nonprofit institutions on a no-profit or no-fee basis; *provided*, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (h)) should be deleted, the period for submitting the subcontractor's termination settlement proposal should be reduced (e.g., 6 months), the subcontract should be placed on a no-profit or no-fee basis, and the subcontract should incorporate or be negotiated on the basis of the cost principles in part 31 of the Federal Acquisition Regulation.

[48 FR 42447, Sept. 19, 1983, as amended at 61 FR 39222, July 26, 1996; 71 FR 57368, Sept. 28, 2006; 72 FR 27389, May 15, 2007]

EDITORIAL NOTE: At 72 FR 27389, May 15, 2007, §49.502 was amended by removing from paragraphs (a)(1)(iv) and (b)(1)(i)(C) “49.505(a), (b), or (e)” and adding “49.505(a) or (c)” in its place. However, because of inaccurate amendatory language, this amendment could not be incorporated.

49.503 Termination for convenience of the Government and default.

(a) *Cost-reimbursement contracts—(1) General use*. Insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a