

# Part 49 - Termination of Contracts

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[49.000 Scope of part.](#)

[49.001 Definitions.](#)

[49.002 Applicability.](#)

[Subpart 49.1 - General Principles](#)

[49.100 Scope of subpart.](#)

[49.101 Authorities and responsibilities.](#)

[49.102 Notice of termination.](#)

[49.103 Methods of settlement.](#)

[49.104 Duties of prime contractor after receipt of notice of termination.](#)

[49.105 Duties of termination contracting officer after issuance of notice of termination.](#)

[49.105-1 Release of excess funds.](#)

[49.105-2 Cleanup of construction site.](#)

[49.106 Fraud or other criminal conduct.](#)

[49.107 Audit of prime contract settlement proposals and subcontract settlements.](#)

[49.108 Settlement of subcontract settlement proposals.](#)

[49.108-1 Subcontractor's rights.](#)

[49.108-2 Prime contractor's rights and obligations.](#)

[49.108-3 Settlement procedure.](#)

[49.108-4 Authorization for subcontract settlements without approval or ratification.](#)

[49.108-5 Recognition of judgments and arbitration awards.](#)

[49.108-6 Delay in settling subcontractor settlement proposals.](#)

[49.108-7 Assignment of rights under subcontracts.](#)

[49.109 Settlement agreements.](#)

[49.109-1 General.](#)

[49.109-2 Reservations.](#)

[49.109-3 Government property.](#)

[49.109-4 No-cost settlement.](#)

[49.109-5 Partial settlements.](#)

[49.109-6 Joint settlement of two or more settlement proposals.](#)

[49.109-7 Settlement by determination.](#)

[49.110 Settlement negotiation memorandum.](#)

[49.111 Review of proposed settlements.](#)

[49.112 Payment.](#)

[49.112-1 Partial payments.](#)

[49.112-2 Final payment.](#)

[49.113 Unsettled contract changes.](#)

[49.114 Settlement of terminated incentive contracts.](#)

[Subpart 49.2 - Additional Principles for Fixed-Price Contracts Terminated for Convenience](#)

[49.201 General.](#)

[49.202 Profit.](#)

[49.203 Adjustment for loss.](#)

[49.204 Deductions.](#)

[49.205 Completed end items.](#)

[49.206 Settlement proposals.](#)

[49.206-1 Submission of settlement proposals.](#)

[49.206-2 Bases for settlement proposals.](#)

[49.206-3 Submission of inventory disposal schedules.](#)

[49.207 Limitation on settlements.](#)

[49.208 Equitable adjustment after partial termination.](#)

[Subpart 49.3 - Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience](#)

[49.301 General.](#)

[49.302 Discontinuance of vouchers.](#)

[49.303 Procedure after discontinuing vouchers.](#)

[49.303-1 Submission of settlement proposal.](#)

[49.303-2 Submission of inventory disposal schedules.](#)

[49.303-3 Audit of settlement proposal.](#)

[49.303-4 Adjustment of indirect costs.](#)

[49.303-5 Final settlement.](#)

[49.304 Procedure for partial termination.](#)

[49.304-1 General.](#)

[49.304-2 Submission of settlement proposal \(fee only\).](#)

[49.304-3 Submission of vouchers.](#)

[49.305 Adjustment of fee.](#)

[49.305-1 General.](#)

[49.305-2 Construction contracts.](#)

[Subpart 49.4 - Termination for Default](#)

[49.401 General.](#)

[49.402 Termination of fixed-price contracts for default.](#)

[49.402-1 The Government's right.](#)

[49.402-2 Effect of termination for default.](#)

[49.402-3 Procedure for default.](#)

[49.402-4 Procedure in lieu of termination for default.](#)

[49.402-5 Memorandum by the contracting officer.](#)

[49.402-6 Repurchase against contractor's account.](#)

[49.402-7 Other damages.](#)

[49.402-8 Reporting Information.](#)

[49.403 Termination of cost-reimbursement contracts for default.](#)

[49.404 Surety-takeover agreements.](#)

[49.405 Completion by another contractor.](#)

[49.406 Liquidation of liability.](#)

#### [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 Electronic 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.](#)

## **49.000 Scope of part.**

(a) This part covers the policy and procedures for terminating contracts early. The Government can terminate contracts for two main reasons:

(1) For its own convenience.

(2) Because the contractor failed to perform (called "default").

(b) This part prescribes—

(1) The contract clauses relating to termination and excusable delay; and

(2) Instructions for using termination and settlement forms.

## **49.001 Definitions.**

As used in this part—

*Other work* means Government and commercial work the contractor is doing now or plans to do later, which does not include work on the contract that was terminated.

*Plant clearance period*, a set time period that starts when the contract is completed or terminated and ends 90 days after the contracting officer receives acceptable inventory schedules for each property classification. The parties can agree to make this period longer if needed. The final phase starts after the contracting officer receives acceptable inventory schedules.

*Settlement agreement* means a written agreement in the form of a contract modification that settles all or part of a settlement proposal

*Settlement proposal* means a contractor's or subcontractor's proposal for ending a contract terminated in whole or in part. The proposal must use the required forms and include supporting data from this part. Settlement proposals count as "claims" under false claims laws (see 18 U.S.C. 287 and 31 U.S.C. 3729).

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

## **49.002 Applicability.**

(a)

(1) This part applies to contracts that allow termination for Government convenience or contractor default. See part 13 for information on simplified acquisition contracts.

(2) This part does not apply to contracts for commercial products and commercial services awarded under part 12 procedures. For those contracts, use part 12 for termination policies. This part can be used as guidance for those contracts, but only if it does not conflict with part 12 or the applicable clause.

(b) Contractors must use this part to settle subcontracts terminated after a cost-reimbursement prime contract is modified, unless the contracting officer deems such a use inappropriate. The contracting officer must use this part as a guide when reviewing subcontract settlements. This applies when the contractor uses the subcontract settlement as basis for reimbursement under a cost-reimbursement contract.

(c) The contracting officer may use this part to determine equitable adjustments resulting from a modification under Changes clauses. This does not apply to cost-reimbursement contracts.

(d) When this part refers to the "amount" of a settlement proposal, calculate as follows:

(1) Start with the total settlement amount requested.

(2) Then subtract—

(i) Amounts due for completed work at the contract price; and

(ii) Amounts for settling subcontractor proposals.

(3) Do not subtract—

(i) Credits from keeping or selling termination inventory; and

(ii) Advance or partial payments already made.

## **Subpart 49.1 - General Principles**

### **49.100 Scope of subpart.**

(a) This subpart covers-

(1) The authority and duties of contracting officers to terminate contracts completely or partially for Government convenience or contractor default;

(2) What contractors and contracting officers must do after a termination notice;

(3) Basic procedures for settling terminated contracts; and

(4) Settlement agreements.

(b) More detailed rules are in other subparts. Subparts 49.2 and 49.3 cover convenience terminations and settlements for fixed-price and cost-reimbursement contracts. Subpart 49.4 covers default terminations.

### **49.101 Authorities and responsibilities.**

(a) Contract termination clauses give contracting officers the authority to—

(1) Terminate contracts for convenience or default; and

(2) Enter into settlement agreements under this regulation.

(b) The contracting officer must terminate contracts, whether for default or convenience, only when it is in the Government's interest. Use a no-cost settlement instead of a termination notice when—

(1) It is known that the contractor will accept it,

(2) Government property was not furnished, and

(3) There are no outstanding payments, debts due the Government, or other contractor obligations.

(c) Contracting officers should not terminate a contract for convenience when the remaining work is worth less than \$5,000.

(d) After the contracting officer or termination contracting officer (TCO) issues a termination notice, the TCO handles the settlement negotiations, including no-cost settlements if appropriate. The TCO is responsible for working out payment details with the contractor. Auditors and TCOs must work quickly on reviews, negotiations, and give special attention to small business settlements.

(e) When the same item is under contract with both large and small businesses, and the contracting officer needs to terminate some of the undelivered items for convenience, the contracting officer must give preference to continuing small business contracts unless it can be clearly shown that the small business will be unable to provide the item in a timely fashion.

(f) The contracting officer handles releasing extra funds from terminations. This responsibility can be given to the TCO if specified in writing.

## **49.102 Notice of termination.**

(a) *General.* Contracting officers must terminate contracts only with a written notice to the contractor. See 49.601 for the notice format. The notice of termination may be expedited by means of electronic communication capable of providing confirmation of receipt by the contractor. When mailing the notice, use certified mail and request return receipt. If hand-delivering the notice, get written acknowledgment from the contractor. The notice must include the following:

(1) Why the contract is terminated (convenience or default) and the related contract clause.

(2) When the termination takes effect.

(3) How much of the contract is terminated (partial or complete). If partial, which parts are terminated.

(4) Any special instructions; and

(5) Steps the contractor should take to help employees if the termination, together with all other outstanding terminations, will cause significant job losses. See 49.601-2, paragraph (g).



(b) *Distribution of copies.* The contracting officer must simultaneously send the termination notice to the contractor; the contract administration office; and any known assignee, guarantor, or surety.

(c) *Amendment of termination notice.* The contracting officer may amend a termination notice to-

(1) Fix minor mistakes;

(2) Add more information or instructions; or

(3) Rescind the notice if it is discovered that the terminated items were completed or shipped before the contractor received the notice.

(d) *Reinstatement of terminated contracts.* Upon written consent of the contractor, the contracting office may reinstate a terminated portion of a contract in whole or in part by amending the notice of termination if it has been determined in writing that-

(1) Circumstances clearly indicate that the Government still needs the terminated items; and

(2) Reinstatement benefits the Government.

## **49.103 Methods of settlement.**

(a) Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience may be effected by-

(1) Negotiated agreement;

(2) Determination by the TCO;

(3) Costing-out under vouchers using SF 1034, Public Voucher for Purchases and Services Other Than Personal, for cost-reimbursement contracts (as prescribed in subpart 49.3); or

(4) A combination of these methods.

(b) When possible, the TCO should negotiate a fair and prompt settlement with the contractor. The TCO must settle a settlement proposal by determination only when it cannot be settled by agreement.

## **49.104 Duties of prime contractor after receipt of notice of termination.**

After receiving a termination notice, the contractor is required to follow the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause for convenience terminations generally require the contractor to—

- (a) Stop work immediately on the terminated portion of the contract and stop placing subcontracts for that work;
- (b) Terminate all subcontracts related to the terminated portion of the prime contract;
- (c) Immediately tell the TCO about any special circumstances that prevent stopping work;
- (d) Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, if the termination is partial. Support this request with evidence of any cost increases;
- (e) Take necessary or directed action to protect and preserve property in the contractor's possession in which the Government has or may acquire an interest. When directed by the TCO, deliver this property to the Government;
- (f) Promptly notify the TCO in writing of any legal proceedings arising from any subcontract or other commitment related to the terminated portion of the contract;
- (g) Settle outstanding liabilities and proposals arising from termination of subcontracts. Get any approvals or ratifications the TCO requires;
- (h) Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and
- (i) Dispose of termination inventory as directed or authorized by the TCO.

## **49.105 Duties of termination contracting officer after issuance of notice of termination.**

- (a) Following the termination clause and termination notice, the TCO must-
  - (1) Tell the prime contractor what actions to take;
  - (2) Review the prime contractor's settlement proposal and, when appropriate, subcontractor settlement proposals;

(3) Quickly negotiate settlement with the contractor and make a settlement agreement; and

(4) Quickly settle the contractor's settlement proposal by determination for portions on which agreement cannot be reached, if a complete settlement cannot be negotiated.

(b) To speed up settlement, the TCO may ask for specially trained people to-

(1) Assist in dealings with the contractor;

(2) Advise on legal and contract matters;

(3) Conduct accounting reviews and assist with accounting matters; and

(4) Handle the following termination inventory tasks (see subpart 45.6):

(i) Verify the inventory exists;

(ii) Decide what can be allocated and in what amounts;

(iii) Recommend whether items can be used or are serviceable;

(iv) Do necessary screening and redistribution; and

(v) Help the contractor get rid of remaining items.

(c) The TCO should quickly hold a meeting with the contractor to make a clear plan for completing the settlement. When appropriate, after talking with the contractor, major subcontractors should be asked to attend. Topics to be discussed and documented include the following:

(1) Basic rules for settling any settlement proposal, including what the contractor must do under the termination clause.

(2) How much of the contract is terminated, when work stops, and status of plans, drawings, and information that would have been delivered if the contract had been completed.

(3) Status of any continuing work;

(4) The contractor's duty to terminate subcontracts and basic rules for settling subcontractor settlement proposals.

(5) Names of subcontractors involved and dates the termination notices were issued to them.

(6) Contractor staff handling review and settlement of subcontractor settlement proposals and methods being used.

(7) Plans for transferring title and for delivering to the Government any materials the Government needs.

(8) Basic rules and procedures for protecting, preserving, and getting rid of contractor and subcontractor termination inventories, including preparing termination inventory schedules.

(9) Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information (49.602-3)).

(10) What form to use when submitting settlement proposals.

(11) Accounting review of settlement proposals.

(12) Any need for interim financing through partial payments.;

(13) Rough timeline for negotiating the settlement, including when the contractor and subcontractors must submit settlement proposals, termination inventory schedules, and accounting information schedules (see 49.206-3 and 49.303-2).

(14) Actions taken by the contractor to reduce harm to employees hurt by the termination (see paragraph (g) of the letter notice in 49.601-2).

(15) Contractor's duty to provide accurate, complete, and current cost or pricing data, and to certify this data (see part 15 requirements for certified cost or pricing data) when the termination settlement amount, or partial termination settlement amount plus the estimated cost to complete the continued work, exceeds the cost or pricing data threshold in part 15.

#### **49.105-1 Release of excess funds.**

(a) The TCO must estimate funds needed for settlement, and within 30 days of receiving the termination notice, recommend that the contracting officer release excess funds. The contracting officer or TCO (if given the responsibility) should quickly release the initial excess funds. The TCO must not recommend releasing amounts under \$1,000 unless requested by the contracting officer.

(b) The TCO must continuously monitor funding requirements in order to release additional excess funds promptly. See 49.604 for a recommended format. If previous funding releases create

a shortage for settlement, the TCO must tell the contracting officer immediately. The contracting officer must restore the funds within 30 days.

#### **49.105-2 Cleanup of construction site.**

For terminated construction contracts, the contracting officer must direct cleanup actions to ensure: site cleanup, protection of usable materials, removal of hazards, and any other actions needed for a safe and healthy site.

#### **49.106 Fraud or other criminal conduct.**

If the TCO suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts under agency procedures.

#### **49.107 Audit of prime contract settlement proposals and subcontract settlements.**

(a) *Prime contractor audits.* The TCO must send settlement proposals to the audit agency for review when the value meets or exceeds the certified cost or pricing data threshold in part 15. The TCO may send proposals valued below the threshold for certified cost and pricing data for audit review.

(1) When referring proposals, include-

- (i) Specific information the TCO considers relevant; and
- (ii) Facts and circumstances to help the audit agency.

(2) The audit agency must-

- (i) Develop requested information;
- (ii) Make additional accounting reviews as appropriate; and
- (iii) Submit written comments and recommendations to the TCO.

(3) For proposals under the threshold that do not need formal examination, the TCO will do a desk review and include a written summary in the termination case file.

(b) *Subcontract settlement audits.* The TCO must refer subcontract settlements to the audit agency when—

- (1) The amount exceeds the certified cost or pricing data threshold; or

(2) The TCO decides a complete or partial accounting review is advisable. The audit agency must submit written comments and recommendations to the TCO. This review does not remove the prime contractor's or higher-tier subcontractor's responsibility to do their own accounting review.

*(c) Contractor responsibilities.*

(1) Prime contractors and subcontractors must perform accounting reviews and necessary field audits. However, the TCO should request a Government audit of a subcontractor's settlement proposal when—

(i) A subcontractor objects, for competitive reasons, to an upper-tier contractor reviewing its records;

(ii) The Government audit agency is already working at the subcontractor's location, or can do the audit more economically;

(iii) Government audit is needed for consistent treatment and orderly administration; or

(iv) The contractor has substantial or controlling financial interest in the subcontractor.

(2) The audit agency should avoid duplicating reviews done by upper-tier contractors. However, this does not prevent additional Government reviews when appropriate.

*(d) Using audit reports.* Audit reports are advisory only. The TCO uses them for negotiating settlements or making unilateral determinations. Government personnel handling audit reports must be careful not to reveal privileged information that could hurt the negotiation position of the Government, prime contractor, or higher-tier subcontractor. When appropriate and in the Government's best interest, the TCO may give audit reports to prime contractors and higher-tier subcontractors for settling subcontract proposals.

## **49.108 Settlement of subcontract settlement proposals.**

### **49.108-1 Subcontractor's rights.**

Subcontractors have no direct contract rights against the Government when a prime contract is terminated. Subcontractors may have rights against the prime contractor or intermediate subcontractor with whom it has contracted. When a prime contract is terminated, the prime

contractor and each subcontractor are responsible for promptly settling the settlement proposals of their immediate subcontractors.

#### **49.108-2 Prime contractor's rights and obligations.**

(a) Termination for convenience clauses require prime contractors to terminate subcontracts related to terminated prime work unless the TCO directs otherwise. Prime contractors should include termination clauses in their subcontracts for their protection. See subpart 49.5 for suggestions on subcontract termination clauses.

(b) If a prime contractor fails to include proper termination clauses in subcontracts or fails to exercise clause rights, this does not—

(1) Affect the Government's right to require subcontract termination; or

(2) Increase Government obligations beyond what they would have been with proper clauses.

(c) Normally, the TCO should measure the reasonableness of prime contractor settlements with subcontractors by the total amount due under paragraph (f) of the subcontract termination clause suggested in 49.502(e). The TCO must allow reimbursement above that amount only in unusual cases and only when the subcontract terms did not unreasonably increase the subcontractor's rights.

#### **49.108-3 Settlement procedure.**

(a) Contractors must settle with subcontractors following the same policies and principles used for prime contract settlements in this subpart and subparts 49.2 or 49.3. However, the prime contractor or next higher tier subcontractor must accept the basis and form of the subcontractor's settlement proposal. Each settlement must have enough accounting data and other information for the Government to adequately review it. The Government will never pay the prime contractor any amount for lost anticipated profits or consequential damages from terminating any subcontract (but see 49.108-5).

(b) Except as provided in 49.108-4, the TCO must require that-

(1) All subcontractor termination inventory be disposed of and accounted for following the procedures in paragraph (j) of clause 52.245-1, Government Property; and

(2) The prime contractor submit all termination settlements with subcontractors for approval or ratification.

(c) The TCO must quickly examine each subcontract settlement received to determine whether-

(1) The subcontract termination was necessary because of the prime contract termination (or because of a change order—see 49.002(c));

(2) The settlement was made in good faith;

(3) The settlement amount is reasonable; and

(4) The settlement is allocable to the terminated portion of the contract (or if only partially allocable, that the proposed allocation is reasonable).

(d) When considering if any subcontract settlement is reasonable, the TCO must generally follow the provisions in this part for settling prime contracts. The TCO must also comply with any applicable requirements in 49.106 and 49.111 for accounting and other reviews. After the examination, the TCO must notify the contractor in writing of—

(1) Approval or ratification; and

(2) The reasons for disapproval.

#### **49.108-4 Authorization for subcontract settlements without approval or ratification.**

(a)

(1) The TCO may give written authorization to the prime contractor to complete settlements of subcontracts terminated in whole or in part without approval or ratification when the settlement amount (see 49.002(d)) is \$100,000 or less. This requires a written request from the contractor. The TCO may grant this authorization if—

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling settlement proposals, including proposals for keeping, selling, or otherwise disposing of termination inventory of the immediate and lower tier subcontractors. The TCO must obtain advice and recommendations from—

(A) The appropriate audit agency about the adequacy of the contractor's audit administration, including personnel; and

(B) The cognizant plant clearance officer about the adequacy of the contractor's procedures and personnel for handling property disposal matters;



(ii) Any termination inventory included in determining the settlement amount will be disposed of as directed by the prime contractor, except that disposing of the inventory will not be subject to-

(A) Review by the TCO under 49.108-3(c); or

(B) The screening requirements in 45.602-3; and

(iii) A certificate similar to the certificate in the settlement proposal form in 49.602-1(a) will accompany the settlement.

(2) Except as stated in paragraph (a)(4) of this section, authority granted to a prime contractor under paragraph (a)(1) of this section by any TCO must apply to all Executive agencies' prime contracts that are terminated or modified by change orders.

(3) Except as stated in paragraph (a)(4) of this section, the TCO must accept settlements of terminated lower tier subcontracts as part of the prime contractor's settlement proposal. This applies when the settlements are completed by any of the prime contractor's immediate or lower-tier subcontractors who have been granted authority as prime contractors to settle subcontracts, provided that the settlement is within the limit of the authority. Authorization to settle proposals of lower-tier subcontractors must not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise this authority when acting as a subcontractor for its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor must notify the purchaser.

(4) The provisions of paragraphs (a)(1), (2), and (3) of this section do not apply to contracts under the administration of any contracting officer if the contracting officer notifies the prime contractor concerned. This notice must—

(i) Be in writing; and

(ii) If paragraph (a)(3) of this section is involved, specify any subcontractor affected.

(b) Section 45.602 must apply to disposal of completed end items allocable to the terminated subcontract. However, these items may be disposed of without review by the TCO under 49.108-3 and without screening under 45.602-3, if the items do not require demilitarization and the total amount (at the subcontract price) when added to the settlement amount does not exceed the amount authorized under this section.

(c) A TCO granting the authorization in paragraph (a)(1) of this section must periodically (at least annually) make a selective review of settlements and settlement procedures. This review determines if the contractor is making adequate reviews and fair settlements, and whether the authorization should remain in effect. The TCO must obtain advice and recommendations from the appropriate audit agency and the cognizant plant clearance officer. The TCO must revoke the authorization by written notice to the contractor, effective on the date of receipt, when—

- (1) The contractor's procedures are not adequate;
- (2) Improper settlements are being made; or
- (3) The authority has not been used in the preceding 2 years.

(d) The contractor may make any number of separate settlements with a single subcontractor but must not divide settlement proposals solely to bring them under an authorization limit. Separate settlement proposals that would normally be included in a single proposal, such as those based on a series of separate orders for the same item under one contract, must be consolidated whenever possible.

(e) Upon written request of the contractor, the TCO may increase an authorization granted under paragraph (a)(1) of this section to authorize the contractor to conclude settlements under a particular prime contract. The TCO may limit the increased authorization to specific subcontracts or classes of subcontracts.

(f) Authorizations granted under 49.108-4 do not authorize the settlement of requisitions or orders placed with any unit within the contractor's corporate entity.

#### **49.108-5 Recognition of judgments and arbitration awards.**

(a) When a subcontractor obtains a final judgment against a prime contractor, the TCO must treat the judgment amount as a cost of settling with the contractor. This applies to the extent the judgment is properly allocable to the terminated portion of the prime contract, if these conditions are met:

- (1) The prime contractor made reasonable efforts to include in the subcontract a termination clause described in 49.502(e), 49.503(c), or a similar clause that excludes payment of anticipatory profits or consequential damages.
- (2) The subcontract provisions about termination rights of both parties are fair and reasonable and do not unreasonably increase the subcontractor's common law rights.

(3) The contractor made reasonable efforts to settle the subcontractor's settlement proposal.

(4) The contractor promptly notified the contracting officer when the proceedings that led to the judgment began and did not refuse to give the Government control of the defense.

(5) The contractor defended the suit diligently or, if the Government took control of the defense, provided reasonable assistance when requested.

(b) If not all conditions in paragraphs (a)(1) through (5) of this section are met, the TCO may allow the contractor the part of the judgment considered fair for settling the subcontract proposal. The TCO must consider the policies in this part for settlement proposals.

(c) When a contractor and subcontractor submit the subcontractor's settlement proposal to arbitration under any applicable law or contract provision, the TCO must recognize the arbitration award as the cost of settling the contractor's proposal. This applies to the same extent and under the same conditions as in paragraphs (a) and (b) of this section.

#### **49.108-6 Delay in settling subcontractor settlement proposals.**

When a prime contractor's inability to settle with a subcontractor delays prime contract settlement, the TCO may settle with the prime contractor. The TCO must exclude the subcontractor settlement proposal from the settlement completely or partially and reserve the rights of the Government and prime contractor regarding the subcontractor proposal.

#### **49.108-7 Assignment of rights under subcontracts.**

(a) Termination for convenience clauses in 52.249 (except short-form clauses) require prime contractors to assign to the Government all rights, titles, and interests under any subcontract terminated because of prime contract termination. The TCO directs this assignment. The TCO must not require assignment unless it benefits the Government.

(b) Termination for convenience clauses (except short-form clauses) also give the Government the right to settle and pay any settlement proposal from a subcontract termination at its discretion. This right does not obligate the Government to settle and pay subcontractor settlement proposals. Generally, the prime contractor must settle and pay these proposals. However, when the TCO determines it benefits the Government, the TCO must settle the subcontractor's proposal using prime contract settlement procedures after notifying the

contractor (e.g., when a subcontractor is the only source and a delay by the prime contractor in settlement or payment would hurt the subcontractor's financial position). Direct settlements with subcontractors are not encouraged.

## **49.109 Settlement agreements.**

### **49.109-1 General.**

When a termination settlement has been negotiated and all required reviews have been obtained, the contractor and the TCO must execute a settlement agreement. Use Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see 49.603). The settlement must cover—

(a) Any offsets that the Government has against the contractor that may be applied against the terminated contract; and

(b) All subcontractor settlement proposals, except proposals that are specifically excluded from the agreement and reserved for separate settlement.

### **49.109-2 Reservations.**

(a) The TCO must—

(1) Reserve in the settlement agreement any rights or demands of the parties that are excluded from the settlement;

(2) Ensure reservation wording does not create rights for the parties beyond those existing before executing the settlement agreement;

(3) Mark each applicable settlement agreement with "This settlement agreement contains a reservation" and keep in the contract file until the reservation is removed;

(4) Ensure sufficient funds are kept to cover complete settlement of reserved items; and

(5) At the appropriate time, prepare a separate settlement of reserved items and include it in a separate settlement agreement.

(b) A recommended format for settlement of reservations appears in 49.603-9.

### **49.109-3 Government property.**

Before executing a settlement agreement, the TCO must determine the accuracy of the Government property account for the terminated contract. If an audit reveals property the contractor cannot account for, the TCO must either—

- (a) Reserve the Government's rights regarding that property in the settlement agreement; or
- (b) Make an appropriate deduction from the amount otherwise due the contractor.

#### **49.109-4 No-cost settlement.**

The TCO must execute a no-cost settlement agreement (see 49.603-6 or 49.603-7, as applicable) if—

- (a) The contractor has not incurred costs for the terminated contract portion; or
- (b) The contractor is willing to waive the costs incurred; and
- (c) No amounts are due the Government under the contract.

#### **49.109-5 Partial settlements.**

The TCO should try to settle all rights and liabilities of the parties in one agreement except those from any continuing contract portion. Generally, the TCO must not make partial settlements covering particular items of the prime contractor's settlement proposal. However, the TCO may make a partial settlement when complete settlement cannot be finished promptly if—

- (a) Agreed upon issues are clearly severable from other issues; and
- (b) The partial settlement will not hurt the Government's or contractor's interests in disposing of the unsettled part.

#### **49.109-6 Joint settlement of two or more settlement proposals.**

(a) With contractor consent, the TCO or TCOs concerned may jointly negotiate two or more termination settlement proposals with the same contractor under different contracts, even if the contracts are with different contracting offices or agencies. Consolidate accounting work as much as practical. The resulting settlement may be shown by—

- (1) One settlement agreement covering all contracts involved; or
  - (2) A separate agreement for each contract involved.
- (b) When the settlement agreement covers more than one contract, it must—

- (1) Clearly identify the contracts involved,
- (2) Assign an amendment modification number to each contract,
- (3) Divide the total settlement amount among the contracts on some reasonable basis;
- (4) Have attached or incorporated a schedule showing the division; and
- (5) Be distributed and attached to each contract involved the same way as other contract modifications.

#### **49.109-7 Settlement by determination.**

(a) *General.* If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the TCO must issue a determination of the amount due. This determination must be consistent with the termination clause, including any cost principles incorporated by reference. The TCO must comply with 49.109-1 through 49.109-6 in making a settlement by determination and with 49.203 in making an adjustment for loss, if any.

(b) *Notice to contractor.* Before issuing a determination of the amount due the contractor, the TCO must give the contractor at least 15 days' notice by certified mail (return receipt requested) to submit written evidence. The evidence must reach the TCO on or before a stated date and must support the amount previously proposed.

(c) *Justification of settlement proposal.*

(1) The contractor has the burden of establishing the proposed amount by proof satisfactory to the TCO.

(2) The contractor may submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as desired. The TCO may request the contractor to submit additional documents and data, and may request appropriate accountings, investigations, and audits.

(3) The TCO may accept copies of documents and records without requiring original documents unless there is a question of authenticity.

(4) The TCO may hold any conferences considered appropriate—

(i) To confer with the contractor,

(ii) To obtain additional information from Government personnel or from independent experts, or

(iii) To consult persons who have submitted affidavits or reports.

(d) *Determinations.* After reviewing the information available, the TCO must determine the amount due and must transmit a copy of the determination to the contractor by certified mail (return receipt requested), or by any other method that provides evidence of receipt. The transmittal letter must advise the contractor that the determination is a final decision from which the contractor may appeal under the Disputes clause, except as shown in paragraph (f) of this section. The determination must specify the amount due the contractor and will be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in 49.602-1 and by additional information, schedules, and analyses as appropriate. The TCO must explain each major item of disallowance. The TCO need not reconsider any other action relating to the terminated portion of the contract that was ratified or approved by the TCO or another contracting officer.

(e) *Preservation of evidence.* The TCO must retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. The TCO must return books of account, together with other original papers and documents, to the contractor within a reasonable time.

(f) *Appeals.* The contractor may appeal, under the Disputes clause, any settlement by determination, except when the contractor has failed to submit the settlement proposal within the time provided in the contract and failed to request an extension of time. The pendency of an appeal will not affect the authority of the TCO to settle the settlement proposal or any part by negotiation with the contractor at any time before the appeal is decided.

(g) *Decision on the contractor's appeal.* The TCO must give effect to a decision of the Claims Court or a board of contract appeals, when necessary, by an appropriate modification to the contract. When appropriate, the TCO should obtain a release from the contractor. TCOs are authorized to modify the formats of settlement agreements in 49.603 to agree with this provision.

## **49.110 Settlement negotiation memorandum.**

(a) The TCO must, at the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities. Pricing aspects of the settlement must be documented, and memorandum distributed, both in accordance with part 15.

(b) If the settlement was negotiated on the basis of individual items, the TCO must specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually but must support the total amount of the recommended settlement in reasonable detail. The memorandum must include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered. The TCO should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

## **49.111 Review of proposed settlements.**

Each agency must establish procedures for administrative review of proposed termination settlements when necessary. When one agency provides termination settlement services for another agency, the agency providing the services must also perform the settlement review function.

## **49.112 Payment.**

### **49.112-1 Partial payments.**

(a) *General.* If the contract authorizes partial payments on settlement proposals before settlement, a prime contractor may request them on the form prescribed in 49.602-4 at any time after submission of interim or final settlement proposals. The Government will process applications for partial payments promptly. A subcontractor must submit its application through the prime contractor. The prime contractor must attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor must be made only through the prime contractor and only after the prime contractor has submitted its interim or final settlement proposal. Except for undelivered acceptable finished products, partial payments must not be made for profit or fee claimed under the terminated portion of the contract. In exercising discretion on the extent of partial payments to be made, the TCO must consider the diligence of the contractor in settling with subcontractors and in preparing its own settlement proposal.

(b) *Amount of partial payment.* Before approving any partial payment, the TCO must obtain any desired accounting, engineering, or other specialized reviews of the data submitted in support of the contractor's settlement proposal. If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, the TCO may authorize reasonable payments up to—



(1) 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO (see 49.205);

(2) 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO under 49.108-3(c) or was authorized under 49.108-4;

(3) 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) 90 percent of other allowable costs (including settlement expense and manufacturing and administrative indirect costs) allocable to the terminated portion of the contract and not included in paragraphs (b)(1), (2), or (3) of this section; or

(5) 100 percent of partial payments made to subcontractors under this section.

(c) *Recognition of assignments.* When an assignment of claims has been made under the contract, the Government must not make partial payments to other than the assignee unless the parties to the assignment consent in writing (see part 32).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of termination inventory, the TCO must protect the Government's interest. This must be done by obtaining title to the completed end items or termination inventory, or by the creation of a lien in favor of the Government, paramount to all other liens, on the completed end items or termination inventory, or by other appropriate means.

(e) *Deductions in computing amount of partial payments.* The TCO must deduct from the gross amount of any partial payment otherwise payable under 49.112-1(b)—

(1) All unliquidated balances of progress and advance payments (including interest) made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property, the costs of which are included in the application for payment.

(f) *Limitation on total amount.* The total amount of all partial payments must not exceed the amount that will, in the opinion of the TCO, become due to the contractor because of the termination.

(g) *Effect of overpayment.* If the total of partial payments exceeds the amount finally determined due on the settlement proposal, the contractor must repay the excess to the Government on demand, together with interest. However, interest will not be charged for any—

(1) Excess payment attributable to a reduction in the settlement proposal because of retention or other disposition of termination inventory, until 10 days after the date of the retention or disposition, or a later date determined by the TCO; or

(2) Overpayment under cost-reimbursement research and development contracts without profit or fee if the overpayments are repaid to the Government within 30 days after demand.

(h) *Certification and approval of partial payments.*

(1) The contractor must place the following certification on vouchers or invoices for partial payments:

"The payment covered by this voucher is a partial payment on the Contractor's settlement proposal under contract No. \_\_\_\_\_ under part 49 of the Federal Acquisition Regulation."

(2) The TCO shall approve the invoice or voucher by noting on it the following:

"Payment of \$ \_\_\_\_\_ is approved."

#### **49.112-2 Final payment.**

(a) *Negotiated settlement.* After execution of a settlement agreement, the contractor must submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The TCO must attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the disbursing officer for payment.

(b) *Settlement by determination.* If the settlement is by determination and-

(1) There is no appeal within the allowed time, the contractor must submit a voucher or invoice showing the amount determined due, less any portion previously paid; or

(2) There is an appeal, the contractor must submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

(c) *Construction contracts.* In the case of construction contracts, before forwarding the final payment voucher, the contracting officer must ascertain whether there are any outstanding labor violations. If so, the contracting officer must determine the amount to be withheld from the final payment (see part 22).

(d) *Interest.* The Government must not pay interest on the amount due under a settlement agreement or a settlement by determination. The Government may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Disputes clause at 52.233-1.

### **49.113 Unsettled contract changes.**

(a) Before settling a completely terminated contract, the TCO must get a list from the contracting office of all related contract changes that have not been settled. The TCO must settle all unsettled contract changes as part of the final settlement. Get recommendations from the contracting office about the changes before settling them.

(b) When only part of a contract has been terminated, the contracting officer will usually handle any outstanding unsettled contract changes. However, the contracting officer may delegate this job to the TCO.

### **49.114 Settlement of terminated incentive contracts.**

(a) *Fixed-price incentive contracts.* The TCO shall settle terminated fixed-price incentive (FPI) contracts under the provisions of paragraph (j) of the clause at [52.216-16 Incentive Price Revision-Firm Target.](#), Incentive Price Revision-Firm Target, and [52.249-2 Termination for Convenience of the Government \(Fixed-Price\).](#), Termination for Convenience of the Government (Fixed-Price).

(1) *Partial termination.* Under a partially terminated contract, the TCO shall negotiate a settlement as provided in the termination clause of the contract, and paragraph (j) of the clause at [52.216-16 Incentive Price Revision-Firm Target.](#), Incentive Price Revision-Firm Target, or paragraph (1) of the clause at [52.216-17 Incentive Price Revision-Successive Targets.](#), Incentive Price Revision-Successive Targets. The contracting officer shall apply the incentive price revision provisions to completed items accepted by the Government, including any for which the contractor may request reimbursement in the settlement proposal. The TCO shall reimburse the contractor at target price for completed articles included in the settlement proposal for which a final price has not been established. The

TCO shall incorporate in the settlement agreement an appropriate reservation as to final price for these completed articles.

(2) *Complete termination.* If any items were delivered and accepted by the Government, the contracting officer shall establish prices under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see [52.249-2 Termination for Convenience of the Government \(Fixed-Price\)](#)), Termination for Convenience of the Government (Fixed-Price)) shall govern and the provisions of the incentive clause shall not apply. The TCO responsible for the termination settlement will ensure, on the basis of evidence considered proper (including coordination with the contracting officer), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) *Cost-plus-incentive-fee contracts.* The TCO shall settle terminated cost-plus-incentive-fee contracts under the clause at [52.249-6 Termination \(Cost-Reimbursement\)](#), Termination (Cost-Reimbursement).

(1) *Partial termination.* Under a partial termination, the TCO shall limit the settlement to an adjustment of target fee as provided in paragraph (e) of the clause at [52.216-10 Incentive Fee](#), Incentive Fee. The settlement agreement shall include a reservation regarding any adjustment of target cost resulting from the partial termination. The contracting officer shall adjust the target cost, if required.

(2) *Complete termination.* The parties shall negotiate the settlement under the provisions of [subpart 49.3](#) and the clause at [52.249-6 Termination \(Cost-Reimbursement\)](#), Termination (Cost Reimbursement). The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

## **Subpart 49.2 - Additional Principles for Fixed-Price Contracts Terminated for Convenience**

### **49.201 General.**

(a) Fair compensation involves judgment and has no exact measurement. Different methods can determine fair compensation. Business judgment, not strict accounting rules, is most important when making settlements. Settlements should pay contractors fairly for—

(1) Work they have completed;

(2) Preparations they made for terminated portions of the contract; and

(3) A reasonable profit amount.

(b) The main goal is to reach an agreed settlement. Parties can agree on a total payment amount without breaking down specific costs or profit components.

(c) Cost and accounting information helps guide—but does not strictly control—fair compensation decisions. When appropriate—

(1) Costs can be estimated;

(2) Preparations they made for terminated portions of the contract; and

(3) Uncertain matters can be resolved through agreement.

(d) Other data types or standards might provide equally reliable guidance. Keep recordkeeping, reporting, and accounting for terminated contracts to a minimum while protecting public interest.

## **49.202 Profit.**

(a) The TCO can use any reasonable method to determine a fair profit.

(1) The TCO must pay profit to the contractor for-

(i) Work they did on the terminated part; and

(ii) Preparations made for the terminated portion of work.

(2) Do not pay profit for-

(i) Settlement costs (the costs of working out the final payment);

(ii) To cover the profit amount the contractor expected to make on work they never did; or

(iii) Consequential damages.

(3) When the contractor helps settle subcontractor proposals, do not base their profit on the amount of those settlements. The effort involved in reaching settlement may be considered.

(4) Do not pay profit for materials or services that subcontractors had not delivered by the termination date, regardless of the percentage of completion.

(b) When deciding on profit, think about these things:

(1) How much and how hard was the work compared to all the work the contract required. Engineering estimates are not required, but should be considered if they are available.

(2) Engineering work, planning schedules, technical studies, supervision, and other needed services.

(3) How well the contractor did, especially—

(i) Making quality products on time;

(ii) Keeping costs down;

(iii) Using materials, buildings, and workers economically; or

(iv) Disposition of termination inventory.

(4) How much money the contractor put in and how much risk they took.

(5) New ideas and technical help the contractor gave to the Government and other contractors.

(6) The type of business, including where materials come from and how complicated the manufacturing is.

(7) How much profit the contractor would have made if they had finished the whole contract.

(8) How much profit both sides expected when they made the contract.

(9) How hard it was to manage subcontractors, including picking them, placing contracts with them, managing them, and working out settlements when their contracts were terminated.

(c) For construction contracts, the contracting officer must-

(1) Follow paragraphs (a) and (b) of this section;

(2) Allow profit on settlements with construction subcontractors for actual work done at the job site; and

(3) Exclude profit on settlements with construction subcontractors for materials they had on hand or preparations made to complete the work.

## 49.203 Adjustment for loss.

(a) When settling a terminated contract, the TCO must not allow profit if the contractor would have lost money completing the full contract. The TCO must—

(1) Figure out how much the contractor would have lost;

(2) Adjust the settlement payment accordingly using the methods in paragraph (b) or (c) of this section; and

(3) Consider factors like production efficiency when estimating completion costs.

(b) For inventory-based settlements payment is limited to the sum of items in paragraphs (b)(1), (2), and (3) of this section, minus all disposal credits and minus all unliquidated previous advance and progress payments previously made—

(1) The settlement expenses.

(2) The contract price for acceptable completed items.

(3) The remainder of the settlement amount otherwise agreed upon or determined (including the allocable portion of initial costs (see part 31), reduced by multiplying the remainder by the ratio of the total contract price to the total cost incurred before termination, plus the estimated cost to complete the entire contract.

(i) The total contract price to

(ii) The total cost incurred before termination plus the estimated cost to complete the entire contract.

(c) If the settlement is on a total cost basis (see 49.206-2(b)), the contractor must not be paid more than the total of the amounts in paragraphs (c)(1) and (2) of this section, minus all disposal and other credits, all advanced and progress payments, and all other amounts previously paid under the contract—

(1) The amount negotiated or determined for settlement expenses.

(2) The remainder of the total settlement amount otherwise agreed upon or determined (lines 7 and 14 of SF 1436, Settlement Proposal (Total Cost Basis) reduced by multiplying the remainder of the ratio of-

(i) The total contract price to

(ii) The remainder plus the estimated cost to complete the entire contract.

## **49.204 Deductions.**

From the settlement payment, the TCO must subtract—

- (a) The price of any inventory kept or purchased by the contractor, plus proceeds from materials sold but not yet paid or credited to the Government;
- (b) The fair value, as determined by the TCO, of any inventory that was lost, damaged beyond usability, or not delivered to the Government (normal spoilage is expected, as is inventory for which the Government has expressly assumed the risk of loss);
- (c) Any other appropriate amounts for that specific case.

## **49.205 Completed end items.**

- (a) Right after the termination date, the TCO must-
  - (1) Have all undelivered finished products inspected and accepted if they meet contract requirements; and
  - (2) Decide which accepted products should be delivered under the contract.
- (b) The contractor must bill for accepted and delivered products at the contract price in the normal way. Do not include these in the settlement proposal.
- (c) When finished products are accepted but will not be delivered under the contract, the TCO should include them in the settlement proposal at the contract price. The TCO should adjust for any savings in shipping or other costs, and include any credits for buying, keeping, or selling them.
- (d) Work in place accepted by the Government under a construction contract is not considered a completed item, even if the Government paid for it at unit prices specified in the contract.

## **49.206 Settlement proposals.**

### **49.206-1 Submission of settlement proposals.**

- (a) Subject to the termination clause, the contractor should quickly submit a settlement proposal to the TCO for the amount claimed because of the termination. The final settlement proposal must be submitted within one year from the termination date, unless the TCO allows



more time. If a single contract involves two or more divisions of the contractor, they can combine their termination costs in a single settlement proposal.

(b) The settlement proposal must cover all cost elements including settlements with subcontractors and any proposed profit. With the TCO's agreement, proposals may be filed in steps covering separate parts of costs. These step-by-step proposals must include all costs of a particular type, unless the TCO says otherwise.

(c) Settlement proposals must be on the forms prescribed in 49.602 unless those forms do not work for a particular contract. Settlement proposals must have reasonable detail supported by adequate accounting data. Actual costs, standard costs (properly adjusted), or average costs may be used if the contractor determines them based on generally accepted accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the TCO approves the estimation method. Contractors do not have to maintain overly complicated cost accounting systems just because their contracts might be terminated.

(d) The contractor should use Settlement Proposal (Short Form), SF 1438, when the total proposal is less than \$10,000, unless the TCO authorizes otherwise. Combine settlement proposals that would normally go together whenever possible, such as those based on a series of separate orders for the same item under one contract. Do not split them up just to bring them below \$10,000.

(e) Submit Schedule of Accounting Information, SF 1439, for each termination requiring a settlement proposal, except when using Standard Form 1438. Even if several step-by-step proposals are submitted, only one SF 1439 should be submitted unless major changes happen in the information after the original form is filed.

#### **49.206-2 Bases for settlement proposals.**

(a) *Inventory basis.*

(1) The inventory basis is the preferred method for settlement proposals. With this approach, the contractor may propose only costs allocable to the terminated portion of the contract. The settlement proposal must separately list—

(i) Metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling, at purchase or manufacturing cost;

(ii) Charges such as engineering costs, initial costs, and general administrative costs;

(iii) Costs of settlements with subcontractors;

(iv) Settlement expenses; and

(v) Other proper charges.

(2) An allowance for profit (49.202) or adjustment for loss (49.203(b)) must be added to complete the gross settlement proposal. All unliquidated advance and progress payments and all disposal and other known credits must then be subtracted.

(3) The inventory basis is also appropriate for—

(i) The partial termination of a construction or related professional services contract.

(ii) The partial or complete termination of supply orders under any terminated construction contract.

(iii) Complete termination of a unit-price professional services contract (not lump-sum contracts).

(b) *Total cost basis.*

(1) When the inventory basis is not practical or would cause delays, the total-cost basis (SF 1436) may be used if the TCO approves it in advance. Examples include the following—

(i) When production has not started and costs represent planning, preproduction, or "get ready" expenses.

(ii) When the contractor's accounting system cannot easily establish unit costs for work in process and finished products.

(iii) When the contract does not specify unit prices.

(iv) When the termination is complete and involves a letter contract.

(2) For a complete termination using the total-cost basis, the contractor must itemize costs incurred under the contract up to the effective date of termination. The costs of settlements with subcontractors and applicable settlement expenses must also be added. An allowance for profit or adjustment for loss must be made. The contract price for

all end items delivered or to be delivered and accepted must be deducted. All unliquidated advance and progress payments and known disposal and other credits must also be deducted.

(3) For a partial termination using the total-cost basis, the contractor must wait until completing the continued portion of the contract before submitting the proposal. The proposal must follow paragraph (b)(2) instructions, except it must include all costs incurred up to the completion of the continued portion.

(4) For a completely terminated construction contract or lump-sum professional services contract, the contractor must—

(i) Use the total cost basis of settlement;

(ii) Omit Line 10 "Deduct-Finished Product Invoiced or to be Invoiced" from Section II of SF 1436 Settlement Proposal (Total Cost Basis); and

(iii) Reduce the gross settlement amount by the total of all progress and other payments.

(c) *Other basis.* Settlement proposals cannot be submitted on any basis other than paragraph (a) or (b) of this section without prior approval from the chief of the contracting or contract administration office.

#### **49.206-3 Submission of inventory disposal schedules.**

Subject to the termination clause terms, the contractor should prepare inventory schedules on Standard Form 1428, Inventory Disposal Schedule, listing inventory which is allocable to the terminated portion of the contract. The schedules must be submitted within 120 days of the effective date of termination unless extended by the TCO.

#### **49.207 Limitation on settlements.**

The total amount payable to the contractor for a settlement, before subtracting disposal or other credits and not counting settlement costs, must not be more than the contract price minus payments already made or to be made under the contract.

#### **49.208 Equitable adjustment after partial termination.**

Under the termination clause, after partial termination, a contractor can request an equitable adjustment in the price of the continued part of a fixed-price contract. The TCO must forward the

proposal to the contracting officer except when the TCO has authority to negotiate. The contractor must submit the proposal using the format in the Uniform Contract Format shown in part 15.

(a) When the contracting officer keeps responsibility for negotiating the equitable adjustment and making a supplemental agreement, the contracting officer must make sure no part of a price increase is included in a termination settlement made or in process.

(b) The TCO must also make sure no part of the costs included in the equitable adjustment are included in the termination settlement.

## **Subpart 49.3 - Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience**

### **49.301 General.**

Cost-reimbursement contract termination clauses cover both cost and fee settlements. The contract explains which costs are allowed.

### **49.302 Discontinuance of vouchers.**

(a) After complete contract termination, the contractor shall stop using Standard Form 1034 (Public Voucher) after the last day of the sixth month following the month of the termination. The contractor may elect to stop using any time during the 6-month period. When the contractor has vouchered out all costs within the 6-month period, a proposal for fee, if any, may be submitted on SF 1437 or by certified letter. The contractor must submit fee proposals to the Termination Contracting Officer (TCO) within 1 year of termination, unless the deadline is extended by the TCO. When use of vouchers is discontinued, the contractor must submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

(b) For partial terminations, see section 49.304.

### **49.303 Procedure after discontinuing vouchers.**

#### **49.303-1 Submission of settlement proposal.**

Unless extended by the TCO, within 1 year of termination the contractor must submit a final proposal for unvouchered costs and any fee, using the form in 49.602-1 unless the TCO approves another format. The proposal must not include—

- (a) Any costs already disallowed by the Government; or
- (b) Previously questioned costs still under review.

#### **49.303-2 Submission of inventory disposal schedules.**

For termination inventory, contractors must submit complete inventory disposal schedules to the TCO, only reflecting items allocable to the terminated portion. These schedules must be submitted within 120 days of termination and be prepared on Standard Form 1428. TCO approval in writing is required for any time extensions.

#### **49.303-3 Audit of settlement proposal.**

The TCO must submit the settlement proposal for audit review unless it only adjusts the fee.

#### **49.303-4 Adjustment of indirect costs.**

(a) To avoid delays when the contract has the 52.216-7 clause (Allowable Cost and Payment), the TCO may—

- (1) Negotiate indirect costs when final rates have not been negotiated;
- (2) Use reasonable billing rates as final rates; or
- (3) Save the indirect cost adjustment for the final settlement agreement when rates are established.

(b) When negotiating indirect costs the contractor must remove these costs and related direct costs from calculations for other contracts during the same accounting period.

#### **49.303-5 Final settlement.**

(a) The TCO finalizes the settlement after receiving the audit report (if needed), and the contract audit closing statement for costs vouchered.

(b) Fee adjustments follow 49.305.

(c) The final agreement may resolve all issues between both parties. However—

- (1) Costs disallowed by the Government are not allowable; and
- (2) Costs of the same nature as those disallowed are not allowable.

(d) Parties can agree on total costs without agreeing on each individual item. Differences can be compromised, and uncertain issues can be resolved by agreement. However, an overall settlement must not include costs that are unallowable under the terms of the contract.

## **49.304 Procedure for partial termination.**

### **49.304-1 General.**

(a) For partial terminations, the TCO must limit settlement to fee adjustment and reduced estimated cost. The TCO must adjust fee as provided in 49.304-2 and 49.305, unless—

(1) The terminated portion is clearly severable from the balance of the contract; and

(2) Performance of the contract is virtually complete, or when the remaining work involves only minor items, spare parts, or is not substantial.

(b) For these exceptions, follow 49.302 and 49.303.

### **49.304-2 Submission of settlement proposal (fee only).**

For fee-only proposals the contractor must limit the settlement proposal to a proposed reduction in fee. The final settlement proposal must be submitted to the TCO within one year of termination, using the form prescribed in 49.602-1 or a certified letter. It must include proof supporting the fee amount.

### **49.304-3 Submission of vouchers.**

When only adjusting the fee in partial terminations the contractor must continue to submit the SF 1034, Public Voucher for Purchases and Services Other than Personal, for reimbursable costs. The Government must not reimburse the contractor for costs of settlements with subcontractors without required approvals or ratifications.

## **49.305 Adjustment of fee.**

### **49.305-1 General.**

(a)

(1) The TCO must determine the final fee based on contract terms, typically using percentage of completion.

(2) Important factors include-

(i) The extent and difficulty of the work performed by the contractor; and

(ii) Work performed in—

(A) Stopping performance;

(B) Settling terminated subcontracts; and

(C) Disposing of inventory.

(3) These costs must be compared with the total work required by the contract or the terminated portion.

(4) The contractor's adjusted fee must not include an allowance for fee in subcontractor effort included in subcontractor settlement proposals.

(b) Completion percentage is not only based on costs incurred ratio. The percentage might be higher or lower than the ratio of costs incurred, depending on the TCO's evaluation of other important factors.

#### **49.305-2 Construction contracts.**

(a) The percentage of completion basis includes all contractor effort, not just the actual construction work. It includes such factors as—

(1) Mobilization including organization,

(2) Use of finances,

(3) Ordering and receiving materials;

(4) Placing subcontracts,

(5) Creating shop drawings;

(6) Performing work in place by own personnel;

(7) Supervising subcontractors;

(8) Managing the job;

(9) Closing down the project;

(b) Calculate the fee adjustment as follows—

- (1) Assign a weighted value to each factor based on importance and difficulty.
- (2) The total weighted value should be easily divisible (e.g., by 100) to determine percentages.
- (3) Determine the percentage complete of each factor based on specific facts of each contract.
- (4) Multiply the completion percentage by the importance value for each factor.
- (5) Add these values for overall completion percentage.
- (6) Apply this percentage to the total fee applicable to the terminated portion of the contract to calculate the equitable adjustment.

## **Subpart 49.4 - Termination for Default**

### **49.401 General.**

(a) In a termination for default, the Government exercises its right to terminate a contract because the contractor failed or is expected to fail to perform its contractual obligations.

(b) If the contractor establishes, or it is otherwise determined that, the contractor was not in default, or the failure to perform was excusable (i.e., beyond the contractor's control and without fault or negligence), then the default clauses prescribed at 49.503 provide that the termination will be treated as a termination for convenience. The parties' rights and obligations will be governed accordingly.

(c) The Government may exercise termination or cancellation rights beyond those in the contract clauses (for example, paragraph (h) of the Default clause at 52.249-8).

(d) For default terminations of Federal Supply Schedule orders, see GSA procedures for those contracts.

(e) Despite the provisions of this section, the contracting officer may reinstate a terminated contract by amending the termination notice if-

- (1) The contractor provides written consent;
- (2) The contracting officer makes a written determination that the supplies or services are still needed; and
- (3) Reinstatement benefits the Government.



## **49.402 Termination of fixed-price contracts for default.**

### **49.402-1 The Government's right.**

Under contracts with the Default clause at 52.249-8, the Government has the right, subject to the notice requirements of the clause, to terminate the contract completely or partially for default if the contractor fails to-

- (a) Deliver supplies or perform services within the time specified in the contract;
- (b) Perform any other provision of the contract; or
- (c) Make progress, and that failure puts contract performance at risk.

### **49.402-2 Effect of termination for default.**

(a) Under a default termination, the Government-

- (1) Is not responsible for the contractor's costs on undelivered work;
- (2) Is entitled to repayment of advance and progress payments for that work; and
- (3) May require the contractor to transfer title and deliver completed supplies and manufacturing materials.

(b) The contracting officer must not use the Default clause to acquire completed supplies or manufacturing materials unless the Government does not already have title under other contract provisions. The contracting officer should only acquire manufacturing materials for another contractor after considering any difficulties the other contractor might have using them.

(c) Subject to paragraph (d), the Government must pay the contractor the contract price for any completed supplies and the agreed amount for manufacturing materials acquired by the Government under the Default clause.

(d) To protect against overpayment when laborers and material suppliers might have liens against the completed supplies or materials, the contracting officer must take one or more of these measures before payment:

- (1) Verify that payment bonds from the contractor adequately cover all claims or obtain similar bonds to cover outstanding liens.
- (2) Require the contractor to provide statements from laborers and material suppliers giving up any lien rights they may have.

(3) Create an agreement among all parties that releases the Government from potential liability.

(4) Withhold appropriate amounts from payments when the above measures are inadequate.

(5) Take other suitable actions based on the situation and the contractor's financial condition.

(e) The contractor is responsible for any excess costs the Government incurs buying similar supplies and services, and for any other damages, whether or not the Government buys replacement items.

#### **49.402-3 Procedure for default.**

(a) Before deciding on default termination, the Government must review the situation (i.e., default, convenience, or no-cost cancellation) with contracting and technical personnel, as well as legal counsel, to ensure the action is appropriate.

(b) The administrative contracting officer must get prior approval from the contracting office before issuing a show cause notice or cure notice. This approval should be obtained quickly.

(c) When the contractor fails to deliver supplies or perform services within the specified time (Default clause paragraph (a)(1)), no advance notice of termination is required. However, if the Government has taken actions that might suggest it waived the contract deadlines, the contracting officer must send a notice setting a new deadline. This notice must state that the Government reserves its rights under the Default clause.

(d) For failures covered under Default clause paragraph (a)(1) - such as not providing a required performance bond or endangering contract performance - the contracting officer must-

(1) Give the contractor written notice specifying the failure;

(2) Allow 10 days (or longer if necessary) to cure the failure;

(3) When appropriate, include this notice in the show cause notice; and

(4) After the time period expires, decide whether to terminate the contract or accept the resolution.

(e) A sample cure notice format appears in 49.607.

(f) Show cause notice procedures are as follows:

(1) If default termination seems appropriate, the contracting officer should, when practical, notify the contractor in writing about-

- (i) The possible termination;
- (ii) The contractual liabilities involved;
- (iii) Why the contract might be terminated;
- (iv) The opportunity to explain why termination should not occur;
- (v) That a lack of response may be taken as an admission by the contractor that no valid explanation exists; and
- (vi) When appropriate, a suggested discussion.

(2) A sample show cause notice appears in 49.607.

(g)

(1) When default termination is likely, the contracting officer must notify the surety in writing. If the contractor is later terminated for default, the contracting officer must send the surety a copy of the default notice.

(2) If the surety requests it and the contractor and any assignees agree, arrangements can be made to send checks to the contractor through the surety. The contractor must submit a written request to the disbursing officer specifically directing this change in payment address.

(h) For small business contractors-

(1) The contracting officer must immediately send copies of any cure notice or show cause notice to the contracting office's small business specialist and Small Business Administration Area Office nearest the contractor;

(2) When possible, the contracting officer should consult with the small business specialist before proceeding with default termination.

(i) The contracting officer must consider these factors when deciding whether to terminate a contract for default:

- (1) The contract terms and relevant laws and regulations.
- (2) The specific failure and any explanations provided.

(3) Whether the supplies or services can be obtained from other sources.

(4) How urgently the items are needed and how long it would take to get them from other sources compared to the original contractor.

(5) How essential the contractor is to Government acquisition programs and how termination might affect their ability to supply other contracts.

(6) How termination might affect the contractor's ability to repay guaranteed loans, progress payments, or advance payments.

(7) Any other relevant facts and circumstances.

(j) After following procedures in paragraphs (a) through (i), if the contracting officer decides termination is proper, the contracting officer must issue a notice of termination stating-

(1) The contract number and date;

(2) What specific actions or failures constitute the default;

(3) That the contractor's right to proceed with the contract (or a specified portion) is terminated;

(4) That the Government may purchase similar supplies or services and charge any excess costs to the contractor;

(5) If the failure is determined not excusable, that the notice serves as this decision, and the contractor may appeal under the Disputes clause;

(6) That the Government reserves all other legal rights and remedies; and

(7) That this notice is a decision that the contractor is in default and has the right to appeal under the Disputes clause.

(k) The contracting officer must-

(1) Distribute the termination notice to all parties who received the original contract;

(2) Send a copy to the contractor's surety and ask if they want to arrange for completion of the work; and

(3) Tell the disbursing officer to stop payments under the terminated contract until further notice.

(l) For construction contracts, promptly after issuing the termination notice, the contracting officer must determine-

- (1) How the work will be completed; and
- (2) Whether materials, equipment, and plant that are on the site will be needed.

(m) If the contracting officer determines before issuing the termination notice that the failure was excusable, they must not terminate for default. If termination is still in the Government's interest, they may terminate for convenience.

(n) If the contracting officer cannot determine before issuing the notice whether the failure was excusable, they must-

- (1) Make a written decision on this issue as soon as possible after issuing the notice;
- (2) Deliver the decision promptly to the contractor; and
- (3) Notify the contractor of their right to appeal under the Disputes clause.

#### **49.402-4 Procedure in lieu of termination for default.**

Instead of terminating for default, the contracting officer may take these alternative actions when they serve the Government's interests:

- (a) Allow the contractor, surety, or guarantor to continue performance under a revised delivery schedule.
- (b) Permit the contractor to continue performance through a subcontract or other business arrangement with an acceptable third party, as long as the Government's rights are adequately protected.
- (c) Execute a no-cost termination settlement agreement using the formats in 49.603-6 and 49.603-7 when-
  - (1) The supplies or services are no longer needed; and
  - (2) The contractor is not liable for damages under 49.402-7.

#### **49.402-5 Memorandum by the contracting officer.**

When a contract is terminated for default or when an alternative procedure from 49.402-4 is used, the contracting officer must prepare a memorandum for the contract file explaining the reasons for the action.

#### **49.402-6 Repurchase against contractor's account.**

(a) Generally, the contracting officer decides whether to repurchase before issuing the termination notice when supplies or services are still needed after termination. Guidelines for repurchasing are as follows:

(1) The contracting officer must repurchase similar items against the contractor's account as soon as practical.

(2) The price must be reasonable considering quality and delivery requirements.

(3) The contracting officer may buy more than the undelivered quantity if needed.

(4) Extra cost can only be charged to the contractor for the undelivered quantity (including permitted variations).

(b) For repurchases limited to the undelivered quantity-

(1) The Default clause allows the contracting officer to use any terms and acquisition method;

(2) The contracting officer must maximize competition;

(3) The Default clause serves as the authority; and

(4) For quantities exceeding the undelivered amount, treat the entire purchase as a new acquisition.

(c) If the repurchase costs more than the terminated supplies or services, after completing the repurchase contract, the contracting officer must demand payment from the contractor for the excess amount. This calculation should account for changes in transportation costs, discounts, etc. If the contractor does not pay, follow the procedures in part 32 for collecting contract debts.

#### **49.402-7 Other damages.**

(a) If the contract is terminated for default or an alternative action is taken (see 49.402-4), the contracting officer must assess and demand any liquidated damages the Government is

entitled to under the contract. Under the clause at 52.211-11, these damages are in addition to any excess repurchase costs.

(b) If the Government has suffered other measurable damages, including administrative costs, the contracting officer must, based on legal advice, take appropriate action as outlined in part 32 to assert the Government's demand for these damages.

#### **49.402-8 Reporting Information.**

The contracting officer must follow agency procedures to report information about the termination for default notice, any withdrawal of the termination, and any conversion to a termination for convenience. This report must comply with requirements in 42.1503(h).

#### **49.403 Termination of cost-reimbursement contracts for default.**

(a) The right to terminate a cost-reimbursement contract for default comes from the Termination for Default or for Convenience of the Government clause at 52.249-6. The clause requires giving the contractor 10 days' notice before termination.

(b) Settling a cost-reimbursement contract terminated for default follows the same principles as termination for convenience (subparts 49.1 and 49.3), except-

(1) The costs of preparing the contractor's settlement proposal are not allowable (see paragraph (h)(3) of the clause); and

(2) The contractor receives reimbursement for allowable costs, with an appropriate reduction in the total fee (see paragraph (h)(4) of the clause).

(c) The contracting officer must use the procedures in 49.402 when appropriate for cost-reimbursement contracts. However, these contracts do not include provisions for recovering excess repurchase costs after termination (but see paragraph (g) of clause 52.246-3 regarding the contractor's failure to replace or correct defective supplies).

#### **49.404 Surety-takeover agreements.**

(a) These procedures apply mainly, but not exclusively, to fixed-price construction contracts terminated for default.

(b) Since the surety must pay for damages resulting from the contractor's default, the surety has certain rights in completing the contract and using undisbursed funds. The contracting

officer must carefully consider the surety's proposals, evaluating how they might affect the Government's rights against the surety.

(c) The contracting officer should allow sureties to complete the contract unless-

(1) The people or companies proposed by the surety are not qualified or competent;

or

The proposal does not serve the Government's best interests.(2)

(d) Multiple parties may claim the defaulting contractor's assets, including unpaid earnings. The surety may include a "takeover" agreement in its proposal to establish its rights to payment. The contracting officer may enter into a written agreement with the surety (but not before the termination date). Consider using a three-way agreement among the Government, surety, and defaulting contractor to resolve remaining rights, including claims to unpaid earnings.

(e) Any takeover agreement must require the surety to complete the contract and the Government to pay the surety's costs up to the unpaid contract price, subject to these conditions:

(1) Any unpaid earnings of the defaulting contractor may be used to pay Government claims against the contractor, except when those earnings are needed to pay the surety's actual completion costs and expenses (not including bond payments).

(2) The surety must meet contract requirements for liquidated damages for delays unless the delays qualify as excusable under the contract.

(3) If contract proceeds were assigned to a financing institution, the surety cannot receive payment from unpaid earnings without the assignee's written permission.

(4) The Government must not pay the surety more than it spent completing the work and meeting its payment bond obligations. Payments to the surety for its payment bond obligations require—

(i) Agreement among the Government, defaulting contractor, and surety;

(ii) A determination by the Comptroller General about who gets paid and how much; or

(iii) A court order from a court of competent jurisdiction.

## **49.405 Completion by another contractor.**



The contract makes the contractor and surety liable for resulting damages. The contracting officer must use all retained percentages of progress payments and any progress payments due for completed work to offset the contractor's and surety's liability. If these amounts are not enough, the contracting officer must take steps to recover the additional amount from the contractor and surety.

## **Subpart 49.5 - Contract Termination Clauses**

### **49.501 General.**

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

### **49.502 Termination for convenience of the Government.**

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

(1) *General use.* Insert the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when using a fixed-price contract and the contract amount is not expected to exceed the simplified acquisition threshold, except if-

(i) The clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is more appropriate;

(ii) The contract is for research and development work with an educational or nonprofit institution on a no-profit basis;

(iii) The contract is for architect-engineer services; or

(iv) One of the clauses prescribed or cited at 49.505(a) or (c) is more appropriate.

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

*(b) Fixed-price contracts that exceed the simplified acquisition threshold-*

(1)

(i) *General use.* Insert the clause at 52.249-2, Termination for Convenience of the Government (Fixed-Price), when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

(ii) *Exceptions.* Do not use this clause for contracts for the following:

(A) Dismantling and demolition.

(B) Research and development work with an educational or nonprofit institution on a no-profit basis.

(C) Architect-engineer services.

(D) If the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), is more appropriate (see 49.502(c)), or if one of the clauses prescribed or cited at 49.505(a) or (c) is appropriate.

(2) *Construction.* If the contract is for construction, use the clause with its Alternate I.

(i) *Partial payments.* If the contract is with an agency of the Government or with State, local or foreign governments or their agencies, and the contracting officer determines that requiring interest payments on excess partial payments is inappropriate, use the clause with its Alternate II. For construction contracts with these same organizations, use the clause with its Alternate III.

(ii) *Dismantling and demolition.* 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 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, use the clause with its Alternate I.

(c) *Service contracts (short form).*

(1) Insert the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), in solicitations and contracts for services when all of these conditions are met:

(i) A fixed-price contract is contemplated (regardless of dollar value).

(ii) 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.

(iii) If terminated for the Government's convenience, the contractor would limit termination settlement charges to services rendered before the termination date.

(2) This clause may be appropriate in contracts for services such as rental of unreserved parking space, or laundry and dry cleaning.

(d) *Research and development contracts.* 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, and the contract is for research and development work with an educational or nonprofit institution on a nonprofit or no-fee basis.

(e) Subcontracts-

(1) *General use.* The prime contractor may find these clauses suitable for use in fixed-price subcontracts (except as noted in paragraph (e)(2) below): 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), or 52.249-2, Termination for Convenience of the Government (Fixed-Price), as appropriate, provided the relationship between the contractor and subcontractor is clearly indicated. Delete conditions that do not apply (for example, paragraph (d) in 52.249-2.) Reduce the time periods for submitting the subcontractor's termination settlement proposal (for example, to 6 months) and the time for requesting an equitable price adjustment (for example, to 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. Conditions that do not apply (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.

## **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 cost-reimbursement contract is contemplated, except in research and development contracts with educational or nonprofit institutions that have no fee.

(2) *Construction.* If the contract is for construction, insert the clause with its Alternate I.

(3) *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, insert the clause with its Alternate II. In such contracts for construction, insert the clause with its Alternate III.

(4) *Time-and-material and labor-hour contracts.* If the contract is a time-and-material or labor-hour contract, insert the clause with its Alternate IV. 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, insert the clause with its Alternate V.

(b) Insert the clause at 52.249-7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services when a fixed-price contract is contemplated.

(c) *Subcontracts.* The prime contractor may use and customize the clause at 52.249-6, Termination (Cost-Reimbursement), suitable for use in cost-reimbursement subcontracts, as long as the relationship between the contractor and subcontractor is clearly indicated. The contractor should delete conditions that do not apply (for example, paragraphs (e), (j), and (n)). Reduce the time period for the subcontractor to submit their termination settlement proposal (for example, to 6 months).

## **49.504 Termination of fixed-price contracts for default.**

### *(a)*

(1) *Supplies and services*. Insert the clause at 52.249-8, Default (Fixed-Price Supply and Service), in solicitations and contracts when a fixed-price contract is contemplated, and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).

(2) *Transportation*. If the contract is for transportation or transportation-related services, insert the clause with its Alternate I.

(b) *Research and development*. Insert the clause at 52.249-9, Default (Fixed-Price Research and Development), in solicitations and contracts for research and development when a fixed-price contract is contemplated, and the contract amount is expected to exceed the simplified acquisition threshold, except for contracts with educational or nonprofit institutions on a no-profit basis. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate.

(c)

(1) *Construction*. Insert the clause at 52.249-10, Default (Fixed-Price Construction), in solicitations and contracts for construction when a fixed price contract is contemplated, and the amount is expected to exceed the simplified acquisition threshold. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if completion dates are essential.)

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

(3) *National emergencies*. If the contract is to be awarded during a period of national emergency, the contracting officer may use the clause-

(i) With its Alternate II when a fixed-price contract for construction is contemplated; or

(ii) With its Alternate III when a contract for dismantling, demolition, or removal of improvements is contemplated.

## **49.505 Other termination clauses.**

(a) *Personal service contracts*. Insert clause 52.249-12, Termination (Personal Services), in solicitations and contracts for personal services (see part 37).

(b) *Excusable delays*. Insert clause 52.249-14, Excusable Delays, in—

(1) Solicitations and contracts for supplies, services, construction, and research and development on a fee basis when a cost-reimbursement contract is contemplated; and

(2) Time-and-material and labor-hour contracts.

(c) *Communication service contracts*. Agencies must prescribe and insert agency-specific clauses for canceling or terminating orders under communication service contracts with common carriers.

## **Subpart 49.6 - Contract Termination Forms and Formats**

### **49.601 Notice of termination for convenience.**

(See 49.402-3(g) for notice of termination for default.)

#### **49.601-1 Electronic notice.**

The contracting officer may provide expedited notice of termination by electronic means that includes a requirement for the contractor to confirm receipt. If the contractor does not confirm receipt promptly, the contracting officer must resend the notice electronically and expedite the letter notice described in 49.601-2. If the contractor confirms receipt of the electronic notice, and the notice contains all information required in 49.601-2, the contracting officer does not need to send the letter notice.

(a) *Complete termination*: Use the following electronic notice when completely terminating a supply contract for convenience. This notice may be modified for other than supply contracts.

Date \_\_\_\_\_

XYZ Corporation New York, NY 12345

Contract No. \_\_\_\_\_ is completely terminated under clause \_\_\_\_\_, effective \_\_\_\_\_ [insert "immediately, (today's date)" or "on \_\_\_\_\_, 20\_\_\_\_," or "as soon as you have delivered, including prior deliveries, the following items:" (list)]. Immediately stop all work, terminate subcontracts, and place no further orders except to the extent [insert if applicable "necessary to complete items not terminated or"] that you or a subcontractor wish to retain and continue for your own account any work-in-process or other materials. Provide by electronic means similar instructions to all subcontractors and suppliers. Detailed instructions follow.

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(Contracting Officer)

(b) *Partial termination*: The following electronic notice is suggested for use if a supply contract is being partially terminated for convenience. If appropriately modified, the notice may be used for other than supply contracts.

Date \_\_\_\_\_

XYZ Corporation New York, NY 12345

Contract No. \_\_\_\_\_ is partially terminated under clause \_\_\_\_\_, effective \_\_\_\_\_ [insert "immediately, (today's date)" or "on \_\_\_\_\_, 20\_\_\_\_"]. Reduce items to be delivered as follows: [insert instructions]. Immediately stop all work, terminate subcontracts, and place no further orders except as necessary to perform the portion not terminated or that you or a subcontractor wish to retain and continue for your account any work-in-process or other materials. Provide by electronic means similar instructions to all subcontractors and suppliers. Detailed instructions follow.

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(Contracting Officer)

#### **49.601-2 Letter notice.**

The following letter notice of termination is suggested for use if a contract for supplies is being terminated for convenience. With appropriate modifications, it may be used in terminating contracts for other than supplies and in terminating subcontracts. This notice shall be sent by certified mail, return receipt requested, or electronically, provided evidence of receipt is received by the contracting officer. If no prior electronic notice was issued, or if no confirmation of an electronic notice was received, use the alternate notice that follows this notice.

#### **NOTICE OF TERMINATION TO PRIME CONTRACTORS**

*[At the top of the notice, set out all special details relating to the particular termination; e.g., name and address of company, contract number of terminated contract, line items, etc.]*

(a) *Effective date of termination*. This confirms the Government's electronic notice to you dated \_\_\_\_\_, 20\_\_\_\_, terminating \_\_\_\_\_ [insert "completely" or "in part"] Contract No. \_\_\_\_\_ (referred to as "the contract") for the Government's convenience under the clause

entitled \_\_\_\_\_ *[insert title of appropriate termination clause]*. The termination is effective on the date and in the manner stated in the electronic notice.

(b) *Cessation of work and notification to immediate subcontractors.* You shall take the following steps:

(1) Stop all work, make no further shipments, and place no further orders relating to the contract, except for-

(i) The continued portion of the contract, if any;

(ii) Work-in-process or other materials that you may wish to retain for your own account; or

(iii) Work-in-process that the Contracting Officer authorizes you to continue (A) for safety precautions, (B) to clear or avoid damage to equipment, (C) to avoid immediate complete spoilage of work-in-process having a definite commercial value, or (D) to prevent any other undue loss to the Government. (If you believe this authorization is necessary or advisable, immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.)

(2) Keep adequate records of your compliance with subparagraph (b)(1) of this section showing the-

(i) Date you received the Notice of Termination;

(ii) Effective date of the termination; and

(iii) Extent of completion of performance on the effective date.

(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this termination. In the notice-

(i) Specify your Government contract number;

(ii) State whether the contract has been terminated completely or partially;

(iii) Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract, subject to the exceptions in subparagraph (b)(1) of this section;

(iv) Provide instructions to submit any settlement proposal promptly; and

(v) Request that similar notices and instructions be given to its immediate subcontractors.



(4) Notify the Contracting Officer of all pending legal proceedings that are based on subcontracts or purchase orders under the contract, or in which a lien has been or may be placed against termination inventory to be reported to the Government. Also, promptly notify the Contracting Officer of any such proceedings that are filed after receipt of this Notice.

(5) Take any other action required by the Contracting Officer or under the Termination clause in the contract.

(c) *Termination inventory.*(1)As instructed by the Contracting Officer, transfer title and deliver to the Government all termination inventory of the following types or classes, including subcontractor termination inventory that you have the right to take: [*Contracting Officer insert proper identification or "None"*].

(2) To settle your proposal, it will be necessary to establish that all prime and subcontractor termination inventory has been properly accounted for. For detailed information, see part 45.

(d) *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these settlement proposals as promptly as possible. For purposes of reimbursement by the Government, settlements will be governed by the provisions of [part 49](#).

(e) *Completed end items.*(1) Notify the Contracting Officer of the number of items completed under the contract and still on hand and arrange for their delivery or other disposal (see 49.205).

(2) Invoice acceptable completed end items under the contract in the usual way and do not include them in the settlement proposal.

(f) *Patents.* If required by the contract, promptly forward the following to the Contracting Officer:

(1) Disclosure of all inventions, discoveries, and patent applications made in the performance of the contract.

(2) Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the contract.

(g) *Employees affected.*(1)If this termination, together with other outstanding terminations, will necessitate a significant reduction in your work force, you are urged to-

(i) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that the Service can take timely action in assisting displaced workers;

(ii) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local State Employment Service offices;

(iii) Advise affected employees to file applications with the State Employment Service to qualify for unemployment insurance, if necessary;

(iv) Inform officials of local unions having agreements with you of the impending reduction-in-force; and

(v) Inform the local Chamber of Commerce and other appropriate organizations which are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.

(2) If practicable, urge subcontractors to take similar actions to those described in subparagraph (1) of this section.

(h) *Administrative.* The contract administration office named in the contract will identify the Contracting Officer who will be in charge of the settlement of this termination and who will, upon request, provide the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

(i) Please acknowledge receipt of this notice as provided below.

\_\_\_\_\_ (Contracting Officer)

\_\_\_\_\_  
\_\_\_\_\_ (Name of Office)

\_\_\_\_\_ (Address)

#### ACKNOWLEDGMENT OF NOTICE

The undersigned acknowledges receipt of a signed copy of this notice on \_\_\_\_\_, 20\_\_\_\_. Two signed copies of this notice are returned.

\_\_\_\_\_ (Name of Contractor)

By \_\_\_\_\_ (Name)

\_\_\_\_\_ (Title)

(End of notice)

*Alternate notice.* Substitute the following paragraph (a) for paragraph (a) of 49.601-2, Notice of Termination to Prime Contractors, if no prior electronic notice was issued, or if no confirmation of an electronic notice was received:

(a) *Effective date of termination.* You are notified that Contract No. \_\_\_\_\_ (referred to as "the contract") is terminated \_\_\_\_\_ [*insert "completely" or "in part"*] for the Government's convenience under the clause entitled \_\_\_\_\_ [*insert title of appropriate termination clause*]. The termination is effective \_\_\_\_\_ [*insert either "immediately upon receipt of this Notice" or "on \_\_\_\_\_, 20\_\_\_\_," or "as soon as you have delivered, including prior deliveries, the following items:" (list)*]. Reduce items to be delivered as follows: [*insert instructions*].

## **49.602 Forms for settlement of terminated contracts.**

The standard forms listed below shall be used for settling terminated prime contracts. The forms at 49.602-1 and 49.601-2 may also be used for settling terminated subcontracts. A listing of the Standard forms is located in subpart 53.3.

### **49.602-1 Termination settlement proposal forms.**

(a) [Standard Form 1435](#), Settlement Proposal (Inventory Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on an inventory basis (see 49.206-2(a)).

(b) [Standard Form 1436](#), Settlement Proposal (Total Cost Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on a total cost basis (see 49.206-2(b)).

(c) [Standard Form 1437](#), Settlement Proposal for Cost- Reimbursement Type Contracts, shall be used to submit settlement proposals resulting from the termination of cost-reimbursement contracts (see 49.302).

(d) [Standard Form 1438](#), Settlement Proposal (Short Form), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the total proposal is less than \$10,000 (see 49.206-1(d)).

### **49.602-2 Inventory forms.**

[Standard Form \(SF\) 1428](#), Inventory Disposal Schedule, and [SF 1429](#), Inventory Disposal Schedule-Continuation Sheet, shall be used to support settlement proposals submitted on the forms specified in 49.602-1(b) and (d).

### **49.602-3 Schedule of accounting information.**

[Standard Form 1439](#), Schedule of Accounting Information, shall be filed in support of a settlement proposal unless the proposal is filed on [Standard Form 1438](#), Settlement Proposal (Short Form) (see 49.206-1(e)).

### **49.602-4 Partial payments.**

[Standard Form 1440](#), Application for Partial Payment, shall be used to apply for partial payments (see 49.112).

### **49.602-5 Settlement agreement.**

[Standard Form 30](#) ( [SF 30](#)), Amendment of Solicitation/Modification of Contract, shall be used to execute a settlement agreement (see 49.109).

## **49.603 Formats for termination for convenience settlement agreements.**

The formats to be used for termination for convenience settlement agreements should be substantially as shown in this section (see 49.109). Termination contracting officers (TCO's) may, however, modify the contents of these agreements to conform with special termination clauses prescribed or authorized by their agencies (e.g., see 49.501 and 49.505(c)).

### **49.603-1 Fixed price contracts-complete termination.**

*[Insert the following in Block 14 of [SF 30](#) for settlements of fixed-price contracts completely terminated.]*

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated \_\_\_\_\_.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the contractor a certificate stating-

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6)(i) The Contractor has received \$\_\_\_\_\_ for work and services performed, or items delivered, under the completed portion of the contract. The Government confirms the right of the Contractor, subject to paragraph (7) of this section, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$\_\_\_\_\_ [*insert net amount of settlement*], arrived at by deducting from the sum of \$\_\_\_\_\_ [*for proposals on an inventory basis insert gross*

*amount of settlement; for proposals on a total cost basis, insert gross amount of settlement less amount shown in subdivision(6)(i) of this sub-section]-*

(A) The amount of \$\_\_\_\_\_ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest),

(B) The amount of \$\_\_\_\_\_ for all applicable property disposal credits [*insert if appropriate,* "and (C) the amount of \$\_\_\_\_ for all other amounts due the Government under this contract, except as provided in paragraph (7) of this section."]

(iii) The net settlement of \$\_\_\_\_ in subdivision(ii)of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) of this section.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.*]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective certified cost or pricing data.

(End of agreement)

#### **49.603-2 Fixed-price contracts-partial termination.**

*[Insert the following in Block 14 of [SF 30](#) for settlements of fixed-price contracts partially terminated.]*

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated \_\_\_\_\_.

(b) The parties agree to the following:

(1) The terminated portion of the contract is as follows: *[specify the terminated portion clearly as to-*

(i) Line item numbers,

- (ii) Descriptions,
- (iii) Quantity terminated,
- (iv) Unit price of items,
- (v) Total price of terminated items, and
- (vi) *Any other explanation necessary to avoid uncertainty or misunderstanding*].

(2) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(3) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating-

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(4) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(5) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(6) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the



amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(7)(i) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$\_\_\_\_\_ [*insert net amount of settlement*], arrived at by deducting from \$\_\_\_\_\_ [*insert gross amount of settlement*],

(A) the amount of \$\_\_\_\_\_ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest) applicable to the terminated portion of the contract and

(B) the amount of \$\_\_\_\_\_ for all applicable property disposal credits.

(ii) The net settlement of \$\_\_\_\_\_ in subdivision (b)(7)(i) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the terminated portion of the contract, except as provided in paragraph (b)(8) of this section.

(iii) Upon payment of the net settlement of \$\_\_\_\_\_, all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to take further payments or carry out other undertakings concerning the terminated portion of the contract shall cease; provided, that nothing in this agreement shall impair or affect any covenants, terms, or conditions of the contract relating to the completed or continued portion of this contract.

(8) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109). The suggested language of the excepted items in the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.]*

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective certified cost or pricing data.

(End of agreement)

#### **49.603-3 Cost reimbursement contracts-complete termination, if settlement includes cost.**

*[Insert the following in Block 14 of [SF 30](#) for settlement of cost-reimbursement contracts that are completely terminated, if settlement includes costs.]*

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated \_\_\_\_\_.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating-

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract; and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6)(i) The Contractor has received \$\_\_\_\_\_ for work and services performed, or articles delivered, under the contract before the effective date of termination. The Government confirms the right of the Contractor, subject to paragraph (b)(7) of this section, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$\_\_\_\_\_ [*insert net amount of settlement*], arrived at by deducting from the sum of \$\_\_\_\_\_ [*insert gross amount of settlement less amount shown in subdivision(6)(i) a of this section*]-

(A) The amount of \$\_\_\_ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest),

(B) The amount of \$\_\_\_ for all applicable property disposal credits [*insert if appropriate,* "and (C) the amount of \$\_\_\_ for all other amounts due the Government under this contract, except as provided in paragraph (b)(7) of this section."]

(iii) The net settlement of \$\_\_\_\_\_ in subdivision (b)(6)(ii) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and of all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) in this section.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.*]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) Unresolved demands or assertions by the Contractor against the Government for costs under Government Accountability Office exceptions or other costs of the same nature that are excluded from the settlement without prejudice to the rights of either party, as follows: *[Insert amount and describe charges not waived.]*

(xi) Claims by the Contractor against the Government, when the Contractor's rights of reimbursement are disputed, that are excluded without prejudice to the rights of either party are as follows: *[Insert the amounts and describe the claims on which the Contracting Officer has made findings and has disallowed and on which the Contractor has taken, or intends to take, timely appeal.]*

(xii) Unresolved demands or assertions by the Contractor against the Government that are unknown in amount and involve costs alleged to be reimbursable under the contract are as follows: *[Insert the estimated amounts and describe the charges.]*

(xiii) Unknown amounts alleged by the Contractor against the Government, based upon responsibility of the Contractor to third parties that involve costs reimbursable under the contract.

(xiv) Debts due the Government by the Contractor that are based on refunds, rebates, credits, or other amounts not now known to the Government, with interest, now due or that may become due the Contractor from third parties, if the amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. The Contractor shall pay to the Government, within 30 days after receipt, any of these amounts that become due from any third

party or any other source. Interest at the rate established by the Secretary of the Treasury under 50 U.S.C. (App.) 1215(b)(2) shall accrue and shall be paid to the Government on any amounts that remain unpaid after the 30-day period.

(xv) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective certified cost or pricing data.

(End of agreement)

#### **49.603-4 Cost-reimbursement contracts-complete termination, with settlement limited to fee.**

*[Insert the following in Block 14 of [SF 30](#) for settlement of cost-reimbursement contracts that are completely terminated, if settlement is limited to fee.]*

(a) This supplemental agreement settles the amount of fee due under the contract, terminated in its entirety by Notice of Termination dated \_\_\_\_\_.

(b) The parties agree to the following:

(1) The Contractor has received \$\_\_\_\_\_ on account of its fee under the contract before the effective date of termination.

(2) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, \$\_\_\_\_\_ *[insert net amount to be paid on account of fee]*. This sum, with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor on account of its fee under the contract.

(3) The Contractor's allowable costs under the contract will be paid under the terms and conditions of the contract and parts 31 and 49 of the Federal Acquisition Regulation. *[Insert paragraph (a)(3) of this subsection only if there are costs to be vouchered out (see 49.302) or if there are costs to be covered later by a separate settlement agreement.]*

(4) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: *[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights*

*and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.]*

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.]*

(iii) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(iv) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(v) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(vi) All rights and liabilities of the parties relating to Government property furnished to, or acquired by, the Contractor for the performance of the contract.

(vii) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(viii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective certified cost or pricing data.

(End of agreement)

#### **49.603-5 Cost-reimbursement contracts-partial termination.**

*[Insert the following in Block 14 of [SF 30](#), Amendment of Solicitation/Modification of Contract, for settlement agreements for cost-reimbursement contracts as a result of partial termination.]*

(a) This supplemental agreement settles the termination settlement proposal resulting from the Notice of Termination dated \_\_\_\_\_.

(b) The parties agree as follows:

(1) The contract is amended by deleting the terminated portion as follows: *[specify the terminated portion clearly as to-*

(i) Line item numbers,

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit and total price of terminated items, and

(v) *Any other explanation necessary to avoid uncertainty or misunderstanding*].

(2) The fee stated in the contract is decreased by \$\_\_\_\_, from \$\_\_\_\_ to \$\_\_\_\_ *[Insert, if appropriate,"(3) The estimated cost of the contract is decreased by \$\_\_\_\_, from \$\_\_\_\_ to \$\_\_\_\_"]*.

(c) The Contractor's allowable costs and earned fee, if any, for the terminated portion of the contract will continue to be reimbursed on [SF 1034](#), Public Voucher for Purchase and Services Other Than Personal, under the applicable provisions of the contract and part 31 of the Federal Acquisition Regulation.

(End of agreement)

#### **49.603-6 No-cost settlement agreement-complete termination.**

*[Insert the following in Block 14 of [SF 30](#) if a no-cost settlement agreement, under a complete termination, is to be executed.]*

(a) This supplemental agreement *[insert "modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated \_\_\_\_" or, if not previously terminated, "terminates the contract in its entirety"]*.

(b) The parties agree as follows:



The Contractor unconditionally waives any charges against the Government because of the termination of the contract and, except as set forth below, releases it from all obligations under the contract or due to its termination. The Government agrees that all obligations under the contract are concluded, except as follows: *[List reserved or excepted rights and liabilities. See 49.109 and 49.603-1.]*

(End of agreement)

#### **49.603-7 No-cost settlement agreement-partial termination.**

*[Insert the following in Block 14 of [SF 30](#) if a no-cost settlement agreement, under partial termination, is to executed.]*

(a) This supplemental agreement modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated \_\_\_\_.

(b) The parties agree as follows:

(1) The terminated portion of the contract is as follows: *[Specify-*

(i) Line item numbers,

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit and total price of terminated items, and

(v) *Any other explanation necessary to avoid uncertainty or misunderstanding.]*

(2) The Contractor unconditionally waives any charges against the Government arising under the terminated portion of the contract or by reason of its termination, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings under the terminated portion of the contract. The Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries under the terminated portion of the contract. Nothing in this paragraph affects any other covenants, terms, or conditions of the contract. Under the terminated portion of the contract, the following rights and liabilities of the parties are reserved: *[List reserved or excepted rights and liabilities. See [49.109-2](#) and [49.603-1\(b\)\(7\)](#).]*

(End of agreement)

#### **49.603-8 Fixed-price contracts-settlements with subcontractors only.**

*[Insert the following in Block 14 of [SF 30](#) for settlements of fixed-price contracts covering only settlements with subcontractors.]*

(a) This agreement settles that portion of the settlement proposal of the contractor that is based upon termination of the following subcontracts entered into in performing this contract:

*[Insert a list of the terminated subcontracts included in this settlement.]*

(b) The parties agree to the following:

(1) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by the agreement, has furnished the Contractor a certificate stating-

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(2) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement-

(i) Are properly allocable to the terminated portion of the contract;

(ii) Do not exceed the reasonable quantitative requirements of the terminated portion of the contract; and

(iii) Do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(3) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(4) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the

amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(5) The Government agrees to pay the Contractor or its assignee, upon presentation of a proper invoice or voucher, \$\_\_\_\_ [*insert net amount of settlement*], which, together with the amount of \$\_\_\_\_ previously paid the Contractor as partial, progress, or advance payments, constitutes payment in full and complete settlement, except as provided in paragraph (b)(6) of this section, of the amount due the Contractor for that portion of its settlement proposal that is based upon termination of the subcontracts listed above.

(6) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1.*]

(End of agreement)

#### **49.603-9 Settlement of reservations.**

[*Insert the following in Block 14 of [SF 30](#) for settlement of reservations.*]

(a) Supplemental Agreement No. \_\_\_\_, dated \_\_\_\_, was executed to reflect the settlement of the termination of this contract. The supplemental agreement excepted from the settlement certain items described in the agreement including the items described in paragraph (b) of this section. This supplemental agreement settles those items.

(b) The parties agree to the following:

(1) The Government agrees to pay the contractor \$\_\_\_\_ for the following reserved or excepted items:\* [*List items.*]

(2) The Contractor releases and forever discharges the Government from all liability and from all existing and future claims and demands that it may have under this contract, insofar as it pertains to the contract, for the items described in subparagraph (1) of this section.\*

*\*When payment is due the Government, reverse the words "Government" and "contractor" in subparagraphs (b)(1) and (b)(2).*

(End of agreement)

#### **49.604 Release of excess funds under terminated contracts.**

The following format shall be used to recommend the release of excess funds under terminated contracts, except if the contracting office retains responsibility for settlement of the termination-

From: Termination Contracting Officer \_\_\_\_\_ [address]

To: Contracting office \_\_\_\_\_ [address]

Subj: Terminated Contract No \_\_\_\_\_ with \_\_\_\_\_ [Contractor]

Refs:

(a) [Cite termination notice and effective date.]

(b) [Cite prior letters releasing excess funds, if any.]

(1) Referenced termination notice, \_\_\_\_ [insert "completely" or "partially"] terminated contract \_\_\_\_\_.

(2) Based on the best information available, it is estimated that the gross settlement cost will be \$\_\_\_\_. The amount available for release as excess to the contract is \$\_\_\_\_. Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

[If prior letters recommending release of excess funds are cited, use the following as paragraph 2:

The estimated settlement costs previously reported by reference (b) in the amount of \$\_\_\_\_ are revised. On the best evidence now available, it is estimated that the settlement costs will be \$\_\_\_\_. The additional amount available for release is \$\_\_\_\_.]

(3) The related appropriations and amounts involved are:

Appropriations	Allocated Amounts
_____	_____

\_\_\_\_\_

Copies to: Paying Office Accounting and Finance Office Other.

## 49.605 Request to settle subcontractor settlement proposals.

Contractors requesting authority to settle subcontractor settlement proposals shall furnish applicable information from the list below and any additional information required by the contracting officer-

- (a) Name of contractor and address of principal office;
- (b) Name and location of divisions of the applicant's plant for which authorization is requested;
- (c) An explanation of the necessity and justification for the authorization requested;
- (d) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling proposals;
- (e) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government agencies and the percentage applicable to each agency;
- (f) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage applicable to each agency;
- (g) The extent of the applicant's experience in termination matters, including the handling of proposals of subcontractors;
- (h) The approximate amount and general nature of terminations of the applicant currently in process;
- (i) A statement that no other application has been made for any division of the applicant's plant covered by the application or, if one has been made, a full statement of the facts;
- (j) The limit of authorization requested.

## **49.606 Granting subcontract settlement authorization.**

Contracting officers shall use the following format when granting subcontract settlement authorization-

### **LETTER OF AUTHORIZATION**

(a) Your request of \_\_\_\_ (date) is approved, and you are authorized, subject to the limitations of subsection 49.109-4 and those stated below, to settle, without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of a Government contract being terminated or modified-

- (1) For the convenience of the Government or

(2) Under any other circumstances that may require the Government to bear the cost of their settlement.

(b) This authorization does not extend to the disposition of Government-furnished material or articles completed but undelivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government, except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed \$\_\_\_\_\_ [*insert limit of authorization being granted*].

(c) This authorization is subject to the following conditions and requirements-

(1) The amount of the subcontract termination settlement does not exceed \$\_\_\_\_\_ [*insert limit of authorization being granted*], computed as follows:

(i) Do not deduct advance or partial payments or credits for retention or other disposal of termination inventory allocated to the settlement proposal.

(ii) Deduct amounts payable for completed articles or work at the contract price or for the settlement of termination proposals of subcontractors (except those settlements that have not been approved by the Government).

(2) Any termination inventory involved has been disposed of under subsection 49.108-4, except that screening and Government approval of scrap and salvage determinations are not required.

(3) The Contracting Officer may incorporate into each Notice of Termination specific instructions about the disposition of specific items of termination inventory, or the Contracting Officer may, at any time before final settlement, issue specific instructions. These instructions will not affect any disposal action taken by you or your subcontractors before their receipt.

(4) The settlements made by you with your subcontractors and suppliers under this authorization, including sales, retention, or other dispositions of property involved in making these settlements, are reimbursable under part 49 and the Termination clause of the contract, and do not require approval of the Contracting Officer.

(5) Any number of separate settlements of \$\_\_\_\_\_ [*insert limit of authorization granted*] or less may be made with a single subcontractor. Settlement proposals that would normally be included in a single proposal; e.g., those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and shall not be divided to bring them within the authorization.

(6) This authorization does not apply if a subcontractor or supplier is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or if there is any common interest between you by reason of stock ownership, or otherwise, that is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

(7) A representative of this office will, from time to time, review the methods used in negotiating settlements with your subcontractors and will make a selective examination of the settlements made by you. If the review indicates that you are not adequately protecting the Government's interest, this delegation will be revoked.

(End of letter)

## **49.607 Delinquency notices.**

The formats of the delinquency notices in this section may be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See part 42 for stop-work orders.)

(a) *Cure notice.* If a contract is to be terminated for default before the delivery date, a "Cure Notice" is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the "Cure Notice" should not be issued. The "Cure Notice" may be in the following format:

### **Cure Notice**

You are notified that the Government considers your \_\_\_\_ [*specify the contractor's failure or failures*] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government may terminate for default under the terms and conditions of the \_\_\_\_\_ [*insert clause title*] clause of this contract.

(End of notice)

(b) *Show cause notice.* If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the following "Show Cause Notice" may be used. It should be sent immediately upon expiration of the delivery period.

### **Show Cause Notice**

Since you have failed to \_\_\_\_ [*insert "perform Contract No. \_\_\_\_ within the time required by its terms," or "cure the conditions endangering performance under Contract No \_\_\_\_ as described to you in the Government's letter of \_\_\_\_ (date)"*], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to \_\_\_\_ [*insert the name and complete address of the contracting officer*], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

(End of notice)



# Part 52 - Solicitation Provisions and Contract Clauses

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## [Subpart 52.2 - Text of Provisions and Clauses](#)

### [52.249 \[Reserved\]](#)

#### [52.249-1 Termination for Convenience of the Government \(Fixed-Price\) \(Short Form\).](#)

#### [52.249-2 Termination for Convenience of the Government \(Fixed-Price\).](#)

#### [52.249-3 Termination for Convenience of the Government \(Dismantling, Demolition, or Removal of Improvements\).](#)

#### [52.249-4 Termination for Convenience of the Government \(Services\) \(Short Form\).](#)

#### [52.249-5 Termination for Convenience of the Government \(Educational and Other Nonprofit Institutions\).](#)

#### [52.249-6 Termination \(Cost-Reimbursement\).](#)

#### [52.249-7 Termination \(Fixed-Price Architect-Engineer\).](#)

#### [52.249-8 Default \(Fixed-Price Supply and Service\).](#)

#### [52.249-9 Default \(Fixed-Price Research and Development\).](#)

#### [52.249-10 Default \(Fixed-Price Construction\).](#)

#### [52.249-11 \[Reserved\]](#)

#### [52.249-12 Termination \(Personal Services\).](#)

#### [52.249-13 \[Reserved\]](#)

#### [52.249-14 Excusable Delays.](#)

## **52.249 [Reserved]**

### **52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).**

As prescribed in 49.502(a)(1), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

*Alternate I* (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, designate the basic clause as paragraph (a) and add the following paragraph (b):

(b) Upon receipt of the termination notice, if title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of the contract, except for property that the Contractor (a) disposed of by bona fide sale or (b) removed from the site.

**52.249-2 Termination for Convenience of the Government (Fixed-Price).**

As prescribed in 49.502 (b)(1)(i), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (APR 2012)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the

Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government-

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart [49.001](#) of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government

to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of-

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs

attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under [49.202](#) of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(2)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted-

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract;  
and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App.1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

*Alternate I* (SEPT 1996). If the contract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of-

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under [49.202](#) of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

*Alternate II* (SEPT 1996). 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, delete paragraph (m)(2) of the basic clause.

*Alternate III* (SEPT 1996). If the contract is for construction and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (g) for paragraph (g) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of-

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under [49.202](#) of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

### **52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).**



As prescribed in 49.502(b)(2), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF  
IMPROVEMENTS) (APR 2012)

(a) The Government may terminate performance of work under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor disposed of by bona fide sale or removed from the site.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government-

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; and

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract has been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting

Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of settlement costs, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be amended and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of-

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in subdivision (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision(iii) and shall reduce the amount of the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Preservation and protection of property under paragraph (b)(8) of this clause.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

(i) The cost principles and procedures of [part 31](#) of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g), or (l) of this clause, the Government shall pay the Contractor-

(1) The amount determined by the Contracting Officer, if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted-

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against cost incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C.App 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor shall make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

*Alternate I* (Sept1996). 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, delete paragraph (m)(2) from the basic clause.

## **52.249-4 Termination for Convenience of the Government (Services) (Short Form).**

As prescribed in 49.502(c), insert the following clause 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:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)

**52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).**

As prescribed in 49.502(d), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (AUG 2016)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including-

(i) Materials or equipment produced, in process, or acquired for the work terminated; and

(ii) Completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under paragraph (b)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of

information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in subpart 31.3 of the Federal Acquisition Regulation (FAR), Contracts with Educational Institutions (defined as institutions of higher education in the OMB Uniform Guidance in 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)), as in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution and is a nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cost principles and procedures in subpart 31.7 of the FAR, Contracts with Nonprofit Organizations, shall apply; unless the Contractor is a nonprofit institution listed in the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, as exempted from the cost principles in subpart E, in which case the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(g) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

## **52.249-6 Termination (Cost-Reimbursement).**

As prescribed in 49.503(a)(1), insert the following clause:

TERMINATION (COST-REIMBURSEMENT) (MAY 2004)



(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if-

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government-

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer

may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in [part 31](#) of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government shall pay the Contractor-

(1) The amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted-

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any claim which the Government has against the Contractor under this contract;  
and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)

(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App.1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

*Alternate I* (Sept1996). If the contract is for construction, substitute the following paragraph (h)(4) for paragraph (h)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but

excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

*Alternate II* (Sept1996). 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, delete paragraph (m)(2) from the basic clause.

*Alternate III* (Sept1996). If the contract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following paragraph (h)(4) shall be substituted for paragraph (h)(4) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

*Alternate IV* (Sept1996). If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause:

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include-

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including-

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit-

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

*Alternate V (Sept 1996).* If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Government or with State, local or foreign governments or their agencies, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include-

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including-



(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit-

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

## **52.249-7 Termination (Fixed-Price Architect-Engineer).**

As prescribed in 49.503(b), insert the following clause in solicitations and contracts for architect-engineer services when a fixed-price contract is contemplated:

### **TERMINATION (FIXED-PRICE ARCHITECT-ENGINEER) (APR 1984)**

(a) The Government may terminate this contract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall-

(1) Immediately discontinue all services affected (unless the notice directs otherwise); and

(2) Deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Government, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the Contractor to fulfill the contract obligations, the Government may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Government.

(d) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

## **52.249-8 Default (Fixed-Price Supply and Service).**

As prescribed in 49.504(a)(1), insert the following clause:

### **DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)**

(a)

(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may

withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

*Alternate I (APR 1984).* If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

## **52.249-9 Default (Fixed-Price Research and Development).**

As prescribed in 49.504(b), insert the following clause:

DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT) (APR 1984)

(a)

(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to-

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in

sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

## **52.249-10 Default (Fixed-Price Construction).**

As prescribed in 49.504(c)(1), insert the following clause:

### **DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)**

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for

any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the- work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

(i) Acts of God or of the public enemy,

(ii) Acts of the Government in either its sovereign or contractual capacity,

(iii) Acts of another Contractor in the performance of a contract with the Government,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) Freight embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

*Alternate I* (APR 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

*Alternate II* (APR 1984). If the contract is to be awarded during a period of national emergency, paragraph (b)(1) below may be substituted for paragraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

(i) Acts of God or of the public enemy,

(ii) Acts of the Government in either its sovereign or contractual capacity,



(iii) Acts of another Contractor in the performance of a contract with the Government,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) Freight embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

*Alternate III* (APR 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following paragraph (b)(1) may be substituted for paragraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

## **52.249-11 [Reserved]**

## **52.249-12 Termination (Personal Services).**

As prescribed in 49.505(a), insert the following clause in solicitations and contracts for personal services (see part 37 ):

### **TERMINATION (PERSONAL SERVICES) (APR 1984)**

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

(End of clause)

## **52.249-13 [Reserved]**

### **52.249-14 Excusable Delays.**

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, and labor-hour contracts. When used in construction contracts, substitute the words "completion time" for "delivery schedule" in the last sentence of the clause.

#### **EXCUSABLE DELAYS (APR 1984)**

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default,- unless-

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)