Part 49 - Termination of Contracts

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 Termination status reports.

49.105-2 Release of excess funds.

49.105-3 Termination case file.

49.105-4 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 Government assistance in settling subcontracts.

49.108-8 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 Cost principles.

49.114 Unsettled contract changes.

49.115 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.

Parent topic: Federal Acquisition Regulation

49.000 Scope of part.

This part establishes policies and procedures relating to the complete or *partial termination* of contracts for the convenience of the Government or for default. It prescribes *contract clauses* relating to termination and excusable delay and includes instructions for using termination and settlement forms.

49.001 Definitions.

As used in this part-

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

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

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

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

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

49.002 Applicability.

(a)

(1) This part applies to contracts that provide for termination for the convenience of the Government or for the default of the contractor (see also 12.403 and 13.302-4).

(2) This part does not apply to *commercial product* and *commercial service* contracts awarded using part 12 procedures. See 12.403 for termination policies for contracts for the *acquisition* of *commercial products* and *commercial services*. However, for contracts for the *acquisition* of *commercial products* and *commercial services*, this part provides administrative guidance which *may* be followed unless it is inconsistent with the requirements and procedures in 12.403, Termination, and the clause at 52.212-4, Contract Terms and Conditions-*Commercial Products* and *Commercial Services*.

(b) Contractors *shall* use this part, unless inappropriate, to settle subcontracts terminated as a result of modification of prime contracts. The *contracting officer shall* use this part as a guide in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever the settlement will be the basis of a proposal for reimbursement from the Government under a cost-reimbursement contract.

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

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

Subpart 49.1 - General Principles

49.100 Scope of subpart.

(a) This subpart deals with-

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

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

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

(4) *Settlement agreements*.

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

49.101 Authorities and responsibilities.

(a) The termination clauses or other *contract clauses* authorize *contracting officers* to terminate contracts for convenience, or for default, and to enter into *settlement agreements* under this regulation.

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

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

(2) Government property was not furnished, and

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

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

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

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

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

49.102 Notice of termination.

(a) *General.* The *contracting officer shall* terminate contracts for convenience or default only by a written notice to the contractor (see 49.601). The notice of termination *may* be expedited by means of electronic communication capable of providing confirmation of receipt by the contractor. When the notice is mailed, it *shall* be sent by certified mail, return receipt requested. When the *contracting office* arranges for hand delivery of the notice, a written acknowledgment *shall* be obtained from the contractor. The notice *shall* state-

(1) That the contract is being terminated for the convenience of the Government (or for default) under the *contract clause* authorizing the termination;

(2) The *effective date of termination*;

(3) The extent of termination;

(4) Any special instructions; and

(5) The steps the contractor *should* take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph (g) of the notice in 49.601-2). If the termination notice is by telegram, include these "steps" in the confirming letter or modification.

(b) *Distribution of copies.* The *contracting officer shall* simultaneously send the termination notice to the contractor, and a copy to the *contract administration office* and to any known assignee,

guarantor, or *surety* of the contractor.

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

(1) Correct nonsubstantive mistakes in the notice;

(2) Add supplemental data or instructions; or

(3) Rescind the notice if it is determined that items terminated had been completed or shipped before the contractor's receipt of the notice.

(d) *Reinstatement of terminated contracts.* Upon written consent of the contractor, the *contracting office may* reinstate the 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 a requirement for the terminated items; and

(2) Reinstatement is advantageous to the Government.

49.103 Methods of settlement.

Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience *may* be effected by (a) negotiated agreement, (b) determination by the TCO, (c) 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 (d) a combination of these methods. When possible, the TCO *should* negotiate a fair and prompt settlement with the contractor. The TCO *shall* 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 receipt of the notice of termination, the contractor *shall* comply with the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause applicable to convenience terminations generally require that the contractor-

(a) Stop work immediately on the *terminated portion of the contract* and stop placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the TCO of any special circumstances precluding the stoppage of work;

(d) Perform the *continued portion of the contract* and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;

(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 and, as directed by the TCO, deliver the property to the Government;

(f) Promptly notify the TCO *in writing* of any legal proceedings growing out of any subcontract or other commitment related to the *terminated portion of the contract*;

(g) Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;

(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) Consistent with the termination clause and the notice of termination, the TCO *shall*-

(1) Direct the action required of the prime contractor;

(2) Examine the *settlement proposal* of the prime contractor and, when appropriate, the *settlement proposals* of sub-contractors;

(3) Promptly negotiate settlement with the contractor and enter into a *settlement agreement*; and

(4) Promptly settle the contractor's *settlement proposal* by determination for the elements that cannot be agreed on, if unable to negotiate a complete settlement.

(b) To expedite settlement, the TCO *may* request specially qualified personnel to-

(1) Assist in dealings with the contractor;

(2) Advise on legal and contractual matters;

(3) Conduct accounting reviews and advise and assist on accounting matters; and

(4) Perform the following functions regarding *termination inventory* (see subpart 45.6):

(i) Verify its existence.

(ii) Determine qualitative and quantitative allocability.

(iii) Make recommendations concerning serviceability.

(iv) Undertake necessary screening and redistribution.

(v) Assist the contractor in accomplishing other disposition.

(c) The TCO *should* promptly hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the TCO, after consulting with the contractor, principal subcontractors *should* be requested to attend. Topics that *should* be discussed at the conference and documented include-

(1) General principles relating to the settlement of any *settlement proposal*, including obligations of

the contractor under the termination clause of the contract;

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor *settlement proposals*;

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

(6) Contractor personnel handling review and settlement of subcontractor *settlement proposals* and the methods being used;

(7) Arrangements for transfer of title and delivery to the Government of any material required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' *termination inventories*, including the preparation of *termination inventory* schedules;

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

(10) Form in which to submit *settlement proposals*;

(11) Accounting review of *settlement proposals*;

(12) Any requirement for interim financing in the nature of partial payments;

(13) Tentative time schedule for negotiation of the settlement, including submission by the contractor and subcontractors of *settlement proposals*, *termination inventory* schedules, and accounting information schedules (see 49.206-3 and 49.303-2);

(14) Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph (g) of the letter notice in 49.601-2); and

(15) Obligation of the contractor to furnish accurate, complete, and current *cost or pricing data*, and to certify to that effect in accordance with 15.403-4(a)(1) when the amount of a termination *settlement agreement*, or a *partial termination settlement agreement* plus the estimate to complete the *continued portion of the contract* exceeds the threshold in 15.403-4.

49.105-1 Termination status reports.

When the TCO and *contracting officer* are in different activities, the TCO will furnish periodic status reports on termination actions to the *contracting office* upon request. The *contracting office shall* specify the information required.

49.105-2 Release of excess funds.

(a) The TCO *shall* estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the *contracting officer*. The initial deobligation of excess funds *should* be accomplished in a timely manner by the *contracting officer*, or the TCO, if delegated the responsibility. The TCO *shall* not recommend the release of amounts under $1,000, unless requested by the *contracting officer*.

(b) The TCO *shall* maintain continuous surveillance of required funds to permit timely release of any additional excess funds (a recommended format for release of excess funds is in 49.604). If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO *shall* promptly inform the *contracting officer*, who *shall* reinstate the funds within 30 days.

49.105-3 Termination case file.

The TCO responsible for negotiating the final settlement *shall* establish a separate case file for each termination. This file will include memoranda and records of all actions relative to the settlement (see 4.801).

49.105-4 Cleanup of construction site.

In the case of terminated *construction* contracts, the *contracting officer shall* direct action to ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other action necessary to leave a safe and healthful 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) The TCO *shall* refer each prime contractor *settlement proposal* valued at or above the threshold for obtaining *certified cost or pricing data* set forth in FAR 15.403-4(a)(1) to the appropriate audit agency for review and recommendations. The TCO *may* submit *settlement proposals* of less than the threshold for obtaining *certified cost or pricing data* to the audit agency. Referrals *shall* indicate any specific information or data that the TCO considers relevant and *shall* include facts and circumstances that will assist the audit agency in performing its function. The audit agency *shall* develop requested information and *may* make any further accounting reviews it considers appropriate. After its review, the audit agency *shall* submit written comments and recommendations to the TCO. When a formal examination of *settlement proposals* valued under the threshold for obtaining *certified cost or pricing data* is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

(b) The TCO *shall* refer subcontract settlements received for approval or ratification to the appropriate audit agency for review and recommendations when—

(1) The amount exceeds the threshold for obtaining *certified cost or pricing data*; or

(2) The TCO determines that a complete or partial accounting review is advisable. The audit agency *shall* submit written comments and recommendations to the TCO. The review by the audit agency does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review.

(c)

(1) The responsibility of the prime contractor and of each subcontractor (see 49.108) includes performance of accounting reviews and any necessary field audits. However, the TCO *should* request the Government audit agency to perform the accounting review of a subcontractor's *settlement proposal* when-

(i) A subcontractor objects, for competitive reasons, to an accounting review of its records by an upper tier contractor;

(ii) The Government audit agency is currently performing audit work at the subcontractor's plant, or can perform the audit more economically or efficiently;

(iii) Audit by the Government is necessary for consistent audit treatment and orderly administration; or

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

(2) The audit agency *should* avoid duplication of accounting reviews performed by the upper tier contractor on subcontractor *settlement proposals*. However, this *should* not preclude the Government from making additional reviews when appropriate. When the contractor is performing accounting reviews according to this section, the TCO *should* request the audit agency to periodically examine the contractor's accounting review procedures and performance, and to make appropriate comments and recommendations to the TCO.

(d) The audit report is advisory only, and is for the TCO to use in negotiating a settlement or issuing a unilateral determination. Government personnel handling audit reports *must* be careful not to reveal privileged information or information that will jeopardize the negotiation position of the Government, the prime contractor, or a higher tier subcontractor. Consistent with this, and when in the Government's interest, the TCO *may* furnish audit reports under paragraph (c) of this section to prime and higher tier subcontractors for their use in settling subcontract *settlement proposals*.

49.108 Settlement of subcontract settlement proposals.

49.108-1 Subcontractor's rights.

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. A subcontractor *may* have rights against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the *settlement*

proposals of their immediate subcontractors.

49.108-2 Prime contractor's rights and obligations.

(a) *Termination for convenience* clauses provide that after receipt of a termination notice the prime contractor *shall*, unless directed otherwise by the TCO, terminate all subcontracts to the extent that they relate to the performance of prime work terminated. Therefore, prime contractors *should* include a termination clause in their subcontracts for their own protection. Suggestions regarding use of subcontract termination clauses are in subpart 49.5.

(b) The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, *shall* not-

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

(2) Increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(c) In any case, the reasonableness of the prime contractor's settlement with the subcontractor *should* normally be measured by the aggregate amount due under paragraph (f) of the subcontract termination clause suggested in 49.502(e). The TCO *shall* allow reimbursement in excess of that amount only in unusual cases and then only to the extent that the terms of the subcontract did not unreasonably increase the rights of the subcontractor.

49.108-3 Settlement procedure.

(a) Contractors *shall* settle with subcontractors in general conformity with the policies and principles relating to settlement of prime contracts in this subpart and subparts 49.2 or 49.3. However, the basis and form of the subcontractor's *settlement proposal must* be acceptable to the prime contractor or the next higher tier subcontractor. Each settlement *must* be supported by accounting data and other information sufficient for adequate review by the Government. In no event will the Government pay the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see 49.108-5).

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

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

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

(c) The TCO *shall* promptly examine each subcontract settlement received to determine that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a *change order*-see 49.002(b)). The TCO will also determine if the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the *terminated portion of the contract* (or, if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the TCO *shall* generally be guided by the provisions of this part relating to the settlement of prime contracts, and *shall* comply with any applicable

requirements of 49.107 and 49.111 relating to accounting and other reviews. After the examination, the TCO *shall* notify the contractor *in writing* of-

(1) Approval or ratification, or

(2) The reasons for disapproval.

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

(a)

(1) The TCO *may*, upon written request, give written authorization to the prime contractor to conclude settlements of subcontracts terminated in whole or in part without approval or ratification when the amount of settlement (see 49.002(d)) is $100,000 or less, if-

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling *settlement proposals*, including proposals for retention, sale, or other disposal of *termination inventory* of the immediate and lower tier subcontractors (the TCO *shall* obtain the advice and recommendations of-

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

(B) The cognizant *plant clearance officer* relating to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters);

(ii) Any *termination inventory* included in determining the amount of the settlement will be disposed of as directed by the prime contractor, except that the disposition of the inventory *shall* 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 provided in paragraph (a)(4) of this section, authority granted to a prime contractor under paragraph (a)(1) of this section by any TCO *shall* apply to all *Executive agencies*' prime contracts that are terminated, or modified by *change orders*.

(3) Except as provided in paragraph (a)(4) of this section, the TCO *shall* accept, as part of the prime contractor's *settlement proposal*, settlements of terminated lower tier subcontracts concluded 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 *shall* not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements *may* also exercise this authority in its capacity as a subcontractor, with respect to its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor *shall* notify the purchaser.

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

(i) Be *in writing*, and

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

(b) Section 45.602 *shall* 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 amount of the settlement does not exceed the amount authorized under this subsection.

(c) A TCO granting the authorization in paragraph (a)(1) of this section *shall* periodically (at least annually) make a selective review of settlements and settlement procedures to determine if the contractor is making adequate reviews and fair settlements, and whether the authorization *should* remain in effect. The TCO *shall* obtain the advice and recommendations of the appropriate audit agency and the cognizant *plant clearance officer*. When it is determined that the contractor's procedures are not adequate, or that improper settlements are being made, or when the authority has not been used in the preceding 2 years, the TCO *shall* revoke the authorization by written notice to the contractor, effective on the date of receipt.

(d) The contractor *may* make any number of separate settlements with a single subcontractor but *shall* 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, *shall* be consolidated whenever possible.

(e) Upon written request of the contractor, the TCO *may* increase an authorization granted under paragraph (a)(1) of this subsection 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 this 49.108-4 *shall* not authorize the settlement of requisitions or orders placed with any unit within the contractor's corporate entity.

(g) Recommended formats for a request to settle subcontractor *settlement proposals* and the TCO's letter of authorization to the contractor are in 49.605 and 49.606, respectively.

49.108-5 Recognition of judgments and arbitration awards.

(a) When a subcontractor obtains a final judgment against a prime contractor, the TCO *shall*, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the contractor, to the extent the judgment is properly allocable to the terminated portion of the prime contract, if-

(1) The prime contractor has made reasonable efforts to include in the subcontract a termination clause described in 49.502(e), 49.503(c), or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor made reasonable efforts to settle the *settlement proposal* of the subcontractor;

(4) The contractor gave prompt notice to the *contracting officer* of the initiation of the proceedings in which the judgment was rendered and did not refuse to give the Government control of the defense of the proceedings; and

(5) The contractor diligently defended the suit or, if the Government assumed control of the defense of the proceedings, rendered reasonable assistance requested by the Government.

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

(c) When a contractor and a subcontractor submit the subcontractor's *settlement proposal* to arbitration under any applicable law or contract provision, the TCO *shall* recognize the arbitration award as the cost of settling the proposal of the contractor 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 the settlement of the prime contract, the TCO *may* settle with the prime contractor. The TCO *shall* except the subcontractor *settlement proposal* from the settlement in whole or part and reserve the rights of the Government and the prime contractor with respect to the subcontractor proposal.

49.108-7 Government assistance in settling subcontracts.

In unusual cases the TCO *may* determine, with the consent of the prime contractor, that it is in the Government's interest to provide assistance to the prime contractor in the settlement of a particular subcontract. In these situations, the Government, the prime contractor, and a subcontractor *may* enter into an agreement covering the settlement of one or more subcontracts. In these settlements, the subcontractor *shall* be paid through the prime contractor as part of the overall settlement with the prime contractor.

49.108-8 Assignment of rights under subcontracts.

(a) The *termination for convenience* clauses in 52.249, except the short-form clauses, obligate the prime contractor to assign to the Government, as directed by the TCO, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract. The TCO *shall* not require the assignment unless it is in the Government's interest.

(b) The *termination for convenience* clauses (except the short-form clauses) also provide the Government the right, in its discretion, to settle and pay any *settlement proposal* arising out of the termination of subcontracts. This right does not obligate the Government to settle and pay *settlement proposals* of subcontractors. As a general rule, the prime contractor is obligated to settle

and pay these proposals. However, when the TCO determines that it is in the Government's interest, the TCO *shall*, after notifying the contractor, settle the subcontractor's proposal using the procedures for settlement of prime contracts. An example in which the Government's interest would be served is when a subcontractor is a sole source and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's proposal will jeopardize the financial position of the subcontractor. 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 *shall* execute a *settlement agreement* on Standard Form 30 (Amendment of *Solicitation*/Modification of Contract) (see 49.603). The settlement *shall* cover-

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

(b) All *settlement proposals* of subcontractors, except proposals that are specifically excepted from the agreement and reserved for separate settlement.

49.109-2 Reservations.

(a) The TCO *shall*-

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

(2) Ensure that the wording of the reservation does not create any rights for the parties beyond those in existence before execution of the *settlement agreement*;

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

(4) Ensure that sufficient funds are retained to cover complete settlement of the 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 execution of a *settlement agreement*, the TCO *shall* determine the accuracy of the Government property account for the terminated contract. If an audit discloses property for which the contractor cannot account, the TCO *shall* reserve in the *settlement agreement* the rights of the Government regarding that property or make an appropriate deduction from the amount otherwise

due the contractor.

49.109-4 No-cost settlement.

The TCO *shall* 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 portion of the contract* 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* attempt to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any *continued portion of the contract*. Generally, the TCO *shall* not attempt to make partial settlements covering particular items of the prime contractor's *settlement proposal*. However, when a TCO cannot promptly complete settlement under the terminated contract, a partial settlement *may* be entered into if-

(a) The issues on which agreement has been reached are clearly severable from other issues and

(b) The partial settlement will not prejudice the Government's or contractor's interests in disposing of the unsettled part of the *settlement proposal*.

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

(a) With the consent of the contractor, the TCO or TCO's concerned *may* negotiate jointly two or more termination *settlement proposals* of the same contractor under different contracts, even though the contracts are with different *contracting offices* or agencies. In such cases, accounting work *shall* be consolidated to the greatest extent practical. The resulting settlement *may* be evidenced by one *settlement agreement* covering all contracts involved or by a separate agreement for each contract involved.

(b) When the *settlement agreement* covers more than one contract, it *shall*-

(1) Clearly identify the contracts involved,

(2) Assign an amendment modification number to each contract,

(3) Apportion the total amount of the settlement among the several contracts on some reasonable basis,

(4) Have attached or incorporated a schedule showing the apportionment, and

(5) Be distributed and attached to each contract involved in the same manner 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 *shall* issue a determination of the amount due consistent with the termination clause, including any cost principles incorporated by reference. The TCO *shall* 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. Copies of determinations *shall* receive the same distribution as other *contract modifications*.

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

(c) Justification of *settlement proposal*.

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

(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 *shall* determine the amount due and *shall* 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 *shall* 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 *shall* 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 *shall* 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 *shall* 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 *shall* 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 *shall* 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 *shall* 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. TCO's 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 *shall*, 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 *shall* be documented in accordance with 15.406-3. The memorandum *shall* be distributed in accordance with 15.406-3.

(b) If the settlement was negotiated on the basis of individual items, the TCO *shall* 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 *shall* support the total amount of the recommended settlement in reasonable detail. The memorandum *shall* 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 *shall* establish procedures, when necessary, for the administrative review of proposed termination settlements. When one agency provides termination settlement services for another agency, the agency providing the services *shall* 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 *shall* submit its application through the prime contractor which *shall* attach its own *invoice* and recommendations to the subcontractor's application. Partial payments to a subcontractor *shall* 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 *shall* 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 *shall* 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 *shall* 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, reasonable payments *may* be authorized in the discretion of the TCO 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; and

(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 *shall* not make partial payments to other than the assignee unless the parties to the assignment consent *in writing* (see 32.805(e)).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of *termination inventory*, the TCO *shall* protect the Government's interest. This *shall* 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 *shall* 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 *shall* 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 *shall* repay the excess to the Government on demand, together with interest. The interest *shall* be computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App.1215(b)(2) from the date the excess payment was received by the contractor to the date of repayment. 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 *shall* 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 *shall* submit a voucher or *invoice* showing the amount agreed upon, less any portion previously paid. The TCO *shall* 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 *shall* submit a voucher or *invoice* showing the amount determined due, less any portion previously paid; or

(2) There is an appeal, the contractor *shall* 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 shall* ascertain whether there are any outstanding labor violations. If so, the *contracting officer shall* determine the amount to be withheld from the final payment (see subpart 22.4).

(d) *Interest.* The Government *shall* 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 Cost principles.

The cost principles and procedures in the applicable subpart of part 31 *shall*, subject to the general principles in 49.201-

(a) Be used in asserting, negotiating, or determining costs relevant to termination settlements under contracts with other than educational institutions, and

(b) Be a guide for the negotiation of settlements under contracts for experimental, developmental, or research work with educational institutions (but see 31.104).

49.114 Unsettled contract changes.

(a) Before settlement of a completely terminated contract, the TCO *shall* obtain from the *contracting office* a list of all related *unsettled contract changes*. The TCO *shall* settle, as part of final settlement, all *unsettled contract changes* after obtaining the recommendations of the *contracting office* concerning the changes.

(b) When the contract has been partially terminated, any outstanding *unsettled contract changes* will usually be handled by the *contracting officer*. However, the *contracting officer may* delegate this function to the TCO.

49.115 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, and 52.249-2, *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, or paragraph (1) of the clause at 52.216-17, 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)) *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).

(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. 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). 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) A settlement *should* compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods *may* be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties *may* agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data *may* provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs *may* be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards *may* furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts *should* be kept to a minimum compatible with the reasonable protection of the public interest.

49.202 Profit.

(a) The TCO *shall* allow profit on preparations made and work done by the contractor for the *terminated portion of the contract* but not on the settlement expenses. Anticipatory profits and consequential damages *shall* not be allowed (but see 49.108-5). Profit for the contractor's efforts in settling subcontractor proposals *shall* not be based on the dollar amount of the subcontract *settlement agreements* but the contractor's efforts will be considered in determining the overall rate of profit allowed the contractor. Profit *shall* not be allowed the contractor for material or services that, as of the *effective date of termination*, have not been delivered by a subcontractor, regardless of the percentage of completion. The TCO *may* use any reasonable method to arrive at a fair profit.

(b) In negotiating or determining profit, factors to be considered include-

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract (engineering estimates of the percentage of completion ordinarily *should* not be required, but if available *should* be considered);

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to-

(i) Attainment of quantity and quality production;

(ii) Reduction of costs;

(iii) Economic use of materials, facilities, and manpower; and

(iv) Disposition of *termination inventory*;

(4) Amount and source of capital and extent of risk assumed;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit that the contractor would have earned had the contract been completed;

(8) The rate of profit both parties contemplated at the time the contract was negotiated; and

(9) Character and difficulty of subcontracting, including selection, placement, and management of subcontracts, and effort in negotiating settlements of terminated subcontracts.

(c) When computing profit on the terminated portion of a *construction* contract, the *contracting officer shall*-

(1) Comply with paragraphs (a) and (b) of this section;

(2) Allow profit on the prime contractor's settlements with *construction* subcontractors for actual work in place at the job site; and

(3) Exclude profit on the prime contractor's settlements with *construction* subcontractors for materials on hand and for preparations made to complete the work.

49.203 Adjustment for loss.

(a) In the negotiation or determination of any settlement, the TCO *shall* not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The TCO *shall* negotiate or determine the amount of loss and make an adjustment in the amount of settlement as specified in paragraph (b) or (c) of this section. In estimating the cost to complete, the TCO *shall* consider expected production efficiencies and other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis (see 49.206-2(a)), the contractor *shall* not be paid more than the total of the amounts in paragraphs (b)(1), (2), and (3) of this section, less all disposal credits and all unliquidated advance and progress payments previously made under the contract:

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

(2) The contract price, as adjusted, for acceptable completed end items (see 49.205).

(3) The remainder of the settlement amount otherwise agreed upon or determined (including the allocable portion of initial costs (see 31.205-42(c)), reduced by multiplying the remainder by the ratio of-

(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 *shall* not be paid more than the total of the amounts in paragraphs (c)(1) and (2) of this section, less all disposal and other credits, all advance 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 by 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 amount payable to the contractor under a settlement, the TCO *shall* deduct-

(a) The agreed price for any part of the *termination inventory* purchased or retained by the contractor, and the proceeds from any materials sold that have not been paid or credited to the Government;

(b) The fair value, as determined by the TCO, of any part of the *termination inventory* that, before transfer of title to the Government or to a buyer under part 45, is lost or so damaged as to become undeliverable (normal spoilage is excepted, as is inventory for which the Government has expressly assumed the risk of loss); and

(c) Any other amounts as appropriate in the particular case.

49.205 Completed end items.

(a) Promptly after the *effective date of termination*, the TCO *shall* (1) have all undelivered completed end items inspected and accepted if they comply with the contract requirements, and (2) determine which accepted end items are to be delivered under the contract. The contractor *shall invoice* accepted and delivered end items at the contract price in the usual manner and *shall* not include them in the *settlement proposal*. When completed end items, though accepted, are not to be delivered under the contract, the contractor *shall* include them in the *settlement proposal* at the contract price, adjusted for any saving of *freight* or other charges, together with any credits for their purchase, retention, or sale.

(b) Work in place accepted by the Government under a *construction* contract is not considered a completed item even though that work *may* have been paid for at unit prices specified in the contract.

49.206 Settlement proposals.

49.206-1 Submission of settlement proposals.

(a) Subject to the provisions of the termination clause, the contractor *should* promptly submit to the TCO a *settlement proposal* for the amount claimed because of the termination. The final *settlement proposal must* be submitted within oneyear from the effective date of the termination, unless the period is extended by the TCO. Termination charges under a single prime contract involving two or more divisions or units of the prime contractor *may* be consolidated and included in a single *settlement proposal*.

(b) The *settlement proposal must* cover all cost elements including settlements with subcontractors and any proposed profit. With the consent of the TCO, proposals *may* be filed in successive steps covering separate portions of the contractor's costs. Such interim proposals *shall* include all costs of a particular type, except as the TCO *may* authorize otherwise.

(c) *Settlement proposals must* be on the forms prescribed in 49.602 unless the forms are inadequate for a particular contract. *Settlement proposals must* be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs *may* be used in preparing *settlement proposals* if they are determined under generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs *may* be used if the method of arriving at the estimates is approved by the TCO. Contractors *shall* not be required to maintain unduly elaborate cost accounting systems merely because their contracts *may* subsequently be terminated.

(d) The contractor *may* use the *Settlement Proposal* (Short Form), SF 1438 (see 49.602-1(d) and 53.249), when the total proposal is less than $10,000, unless otherwise instructed by the TCO. *Settlement proposals* that would normally be included in a single *settlement proposal*; *e.g.,* those based on a series of separate orders for the same item under one contract, *should* be consolidated whenever possible and not divided to bring them below $10,000.

(e) The Schedule of Accounting Information, SF 1439, *must* be submitted for each termination under a contract for which a *settlement proposal* is submitted, except when the Standard Form 1438 is used. Although several interim proposals *may* be submitted, SF 1439 need be submitted only once unless, subsequent to filing the original form, major changes occur in the information submitted.

49.206-2 Bases for settlement proposals.

(a) Inventory basis.

(1) Use of the inventory basis for *settlement proposals* is preferred. Under this basis, the contractor *may* propose only costs allocable to the *terminated portion of the contract*, and the *settlement proposal must* itemize separately-

(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 made to complete the gross *settlement proposal*. All unliquidated advance and progress payments and all disposal and other credits known when the proposal is submitted *must* then be deducted.

(3) This inventory basis is also appropriate for use under the following circumstances:

(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) The complete termination of a unit-price (as distinguished from a lump-sum) professional services contract.

(b) Total cost basis.

(1) When use of the inventory basis is not practicable or will unduly delay settlement, the total-cost basis (SF 1436) *may* be used if approved in advance by the TCO as in the following examples:

(i) If production has not commenced and the accumulated costs represent planning and preproduction or "get ready" expenses.

(ii) If, under the contractor’s accounting system, unit costs for work in process and finished *products* cannot readily be established.

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

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

(2) When the total-cost basis is used under a complete termination, 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 (49.202) or adjustment for loss (49.203(c)) *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 disposal and other credits known when the proposal is submitted *must* also be deducted.

(3) When the total-cost basis is used under a *partial termination*, the *settlement proposal shall* not be submitted until completion of the *continued portion of the contract*. The *settlement proposal must* be prepared as in paragraph (b)(2) of this section, except that all costs incurred to the date of completion of the *continued portion of the contract must* be included.

(4) If a *construction* contract or a lump-sum professional services contract is completely terminated, the contractor *shall*-

(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 amount of the settlement by the total of all progress and other payments.

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

49.206-3 Submission of inventory disposal schedules.

Subject to the terms of the termination clause, and whenever *termination inventory* is involved, the contractor *shall* submit complete inventory disposal schedules to the TCO reflecting inventory that is allocable to the *terminated portion of the contract*. The inventory disposal schedules *shall* be submitted within 120 days from the *effective date of termination* unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules *shall* be prepared on Standard Form 1428, Inventory Disposal Schedule.

49.207 Limitation on settlements.

The total amount payable to the contractor for a settlement, before deducting disposal or other credits and exclusive of settlement costs, *must* not exceed the contract price less payments otherwise made or to be made under the contract.

49.208 Equitable adjustment after partial termination.

Under the termination clause, after *partial termination*, a contractor *may* request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. The TCO *shall* forward the proposal to the *contracting officer* except when negotiation authority is delegated to the TCO. The contractor *shall* submit the proposal in the format of Table 15-2 of 15.408.

(a) When the *contracting officer* retains responsibility for negotiating the equitable adjustment and executing a *supplemental agreement*, the *contracting officer shall* ensure that no portion of an increase in price is included in a termination settlement made or in process.

(b) The TCO *shall* also ensure that no portion 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.

Termination clauses for cost-reimbursement contracts (see 49.503(a)) provide for the settlement of costs and fee, if any. The *contract clauses* governing costs *shall* determine what costs are allowable.

49.302 Discontinuance of vouchers.

(a) When the contract has been completely terminated, the contractor *shall* not use Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal) after the last *day* of the sixth month following the month in which the termination is effective. The contractor *may* elect to stop using vouchers at 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 (see 49.602-1) or by letter appropriately certified. The contractor *must* submit a substantiated proposal for fee to the TCO within 1 year from the *effective date of termination*, unless the period is extended by the TCO. When the use of vouchers is discontinued, the contractor *shall* submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

(b) When the contract is partially terminated, 49.304 *shall* apply.

49.303 Procedure after discontinuing vouchers.

49.303-1 Submission of settlement proposal.

The contractor *shall* submit a final *settlement proposal* covering unvouchered costs and any proposed fee to within 1 year from the *effective date of termination*, unless the period is extended by the TCO. The contractor *shall* use the form prescribed in 49.602-1, unless the TCO authorizes otherwise. The proposal *shall* not include costs that have been-

(a) Finally disallowed by the *contracting officer*; or

(b) Previously vouchered and formally questioned by the Government but not yet decided as to allowability.

49.303-2 Submission of inventory disposal schedules.

Subject to the terms of the termination clause, and whenever *termination inventory* is involved, the contractor *shall* submit complete inventory disposal schedules to the TCO reflecting inventory that is allocable to the *terminated portion of the contract*. The inventory disposal schedules *shall* be submitted within 120 days from the *effective date of termination* unless otherwise extended by the TCO based on a written justification to support the extension. The inventory disposal schedules *shall* be prepared on Standard Form 1428 Inventory Disposal Schedule.

49.303-3 Audit of settlement proposal.

The TCO *shall* submit the *settlement proposal* to the appropriate audit agency for review (see 49.107). However, if the *settlement proposal* is limited to an adjustment of fee, no referral to the audit agency is required.

49.303-4 Adjustment of indirect costs.

(a) If the contract contains the clause at 52.216-7, Allowable Cost and Payment, and it appears that adjustment of *indirect costs* will unduly delay final settlement, the TCO, after obtaining information from the appropriate audit agency, *may* agree with the contractor to-

(1) Negotiate the amount of *indirect costs* for the contract period for which *final indirect cost rates* have not been negotiated, or to use billing rates as final rates for this period if the billing rates appear reasonable; or

(2) Reserve any *indirect cost* adjustment in the final *settlement agreement*, pending establishment of negotiated rates under subpart 42.7.

(b) When an amount of *indirect cost* is negotiated under paragraph (a)(1) of this section, the contractor *shall* eliminate the *indirect cost* and the related *direct costs* on which it was based from the total pool and base used to compute *indirect costs* for other contracts performed during the applicable accounting period.

49.303-5 Final settlement.

(a) The TCO *shall* proceed with the settlement and execution of a *settlement agreement* upon receipt of the audit report, if applicable, and the contract audit closing statement covering vouchered costs.

(b) The TCO *shall* adjust the fee as provided in 49.305.

(c) The final *settlement agreement may* include all demands of the Government and proposals of the contractor under the terminated contract. However, no amount *shall* be allowed for any item of cost disallowed by the Government, nor for any other item of cost of the same nature.

(d) If an overall settlement of costs is agreed upon, agreement on each element of cost is not necessary. If appropriate, differences *may* be compromised and doubtful questions settled by agreement. An overall settlement *shall* not include costs that are clearly not allowable under the terms of the contract.

49.304 Procedure for partial termination.

49.304-1 General.

(a) In a *partial termination*, the TCO *shall* limit the settlement to an adjustment of the fee, if any, and with the concurrence of the *contracting office* to a reduction in the estimated cost. The TCO *shall* adjust the fee as provided in 49.304-2 and 49.305, unless-

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

(2) Performance of the contract is virtually complete, or performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

(b) In the case of the exceptions in paragraph (a), the procedures in 49.302 and 49.303 apply.

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

The contractor *shall* limit the *settlement proposal* to a proposed reduction in the amount of fee. The final *settlement proposal shall* be submitted to the TCO within oneyear from the *effective date of termination*, unless the period is extended by the TCO. The proposal *may* be submitted in the form prescribed in 49.602-1 or by letter appropriately certified. The contractor *shall* substantiate the amount of fee claimed (see 49.305).

49.304-3 Submission of vouchers.

When a *partial termination* settlement is limited to adjustment of fee, the contractor *shall* continue to submit the SF 1034, Public Voucher for Purchases and Services Other than Personal, for costs reimbursable under the contract. The contractor *shall* not be reimbursed for costs of settlements with subcontractors unless required approvals or ratifications have been obtained (see 49.108).

49.305 Adjustment of fee.

49.305-1 General.

(a) The TCO *shall* determine the adjusted fee to be paid, if any, in the manner provided by the contract. The determination is generally based on a percentage of completion of the contract or of the terminated portion. When this basis is used, factors such as the extent and difficulty of the work performed by the contractor (*e.g.,* planning, scheduling, technical study, engineering work, production and supervision, placing and supervising subcontracts, and work performed by the contractor in (1) stopping performance, (2) settling terminated subcontracts, and (3) disposing of *termination inventory*) *shall* be compared with the total work required by the contract or by the terminated portion. The contractor's adjusted fee *shall* not include an allowance for fee for subcontract effort included in subcontractors' *settlement proposals*.

(b) The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion is only one factor in computing the percentage of completion. This percentage *may* be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the TCO of other pertinent factors.

49.305-2 Construction contracts.

(a) The percentage of completion basis refers to the contractor's total effort and not solely to the actual *construction* work. Generally, the effort of a contractor under a cost-reimbursement *construction* or professional services contract can be segregated into factors such as-

(1) Mobilization including organization,

(2) Use of finances,

(3) *Contracting* for and receipt of materials,

(4) Placement of subcontracts,

(5) Preparation of *shop drawings*,

(6) Work in place performed by own forces,

(7) Supervision of subcontractors' work,

(8) Job administration, and

(9) Demobilization.

(b) Each of the applicable factors in paragraph (a) of this section *shall* be assigned a weighted value depending on its importance and difficulty. The total weight value of all factors *should* be easily divisible (*e.g.,* by 100) to determine percentages. The percentage of completion of each factor *must* be established based upon the specific facts of each contract. When totaled, the percentage of completion of each factor applied to the weighted value of each factor results in the overall percentage of contract completion. The percentage of completion is then applied to the total contract fee or to the fee applicable to the *terminated portion of the contract* to arrive at an equitable adjustment.

Subpart 49.4 - Termination for Default

49.401 General.

(a) *Termination for default* is generally the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

(b) If the contractor can establish, or it is otherwise determined that the contractor was not in default or that the failure to perform is excusable; *i.e.,* arose out of causes beyond the control and without the fault or negligence of the contractor, the default clauses prescribed in 49.503 and located at 52.249 provide that a *termination for default* will be considered to have been a termination for the convenience of the Government, and the rights and obligations of the parties governed accordingly.

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

(d) For default terminations of orders under Federal Supply Schedule contracts, see subpart 8.4.

(e) Notwithstanding the provisions of this 49.401, the *contracting officer may*, with the written consent of the contractor, reinstate the terminated contract by amending the notice of termination, after a written determination is made that the *supplies* or services are still required and reinstatement is advantageous to the Government.

49.402 Termination of fixed-price contracts for default.

49.402-1 The Government's right.

Under contracts containing 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) Make delivery of the *supplies* or perform the services within the time specified in the contract,

(b) Perform any other provision of the contract, or

(c) Make progress and that failure endangers performance of the contract.

49.402-2 Effect of termination for default.

(a) Under a *termination for default*, the Government is not liable for the contractor's costs on undelivered work and is entitled to the repayment of advance and progress payments, if any, applicable to that work. The Government *may* elect, under the Default clause, to require the contractor to transfer title and deliver to the Government completed *supplies* and manufacturing materials, as directed by the *contracting officer*.

(b) The *contracting officer shall* not use the Default clause as authority to acquire any completed *supplies* or manufacturing materials unless it has been ascertained that the Government does not already have title under some other provision of the contract. The *contracting officer shall* acquire manufacturing materials under the Default clause for furnishing to another contractor only after considering the difficulties the other contractor *may* have in using the materials.

(c) Subject to paragraph (d) of this section, the Government *shall* pay the contractor the contract price for any completed *supplies*, and the amount agreed upon by the *contracting officer* and the contractor for any manufacturing materials, acquired by the Government under the Default clause.

(d) The Government *must* be protected from overpayment that might result from failure to provide for the Government's potential liability to laborers and material suppliers for lien rights outstanding against the completed *supplies* or materials after the Government has paid the contractor for them. To accomplish this, before paying for *supplies* or materials, the *contracting officer shall* take one or more of the following measures:

(1) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' *claims* or whether it is feasible to obtain similar bonds to cover outstanding liens.

(2) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they *may* have to the *supplies* and materials.

(3) Obtain appropriate agreement by the Government, the contractor, and lienors ensuring release of the Government from any potential liability to the contractor or lienors.

(4) Withhold from the amount due for the *supplies* or materials any amount the *contracting officer* determines necessary to protect the Government's interest, but only if the measures in paragraphs (d)(1), (2), and (3) of this section cannot be accomplished or are considered inadequate.

(5) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.

(e) The contractor is liable to the Government for any excess costs incurred in acquiring *supplies* and services similar to those terminated for default (see 49.402-6), and for any other damages, whether or not repurchase is effected (see 49.402-7).

49.402-3 Procedure for default.

(a) When a default termination is being considered, the Government *shall* decide which type of termination action to take (*i.e.,* default, convenience, or no-cost cancellation) only after review by *contracting* and technical personnel, and by counsel, to ensure the propriety of the proposed action.

(b) The administrative *contracting officer shall* not issue a show cause notice or cure notice without the prior approval of the *contracting office*, which *should* be obtained by the most expeditious means.

(c) Subdivision (a)(1)(i) of the Default clause covers situations when the contractor has defaulted by failure to make delivery of the *supplies* or to perform the services within the specified time. In these situations, no notice of failure or of the possibility of *termination for default* is required to be sent to the contractor before the actual notice of termination (but see paragraph (e) of this section). However, if the Government has taken any action that might be construed as a waiver of the contract delivery or performance date, the *contracting officer shall* send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. The notice *shall* reserve the Government's rights under the Default clause.

(d) Subdivisions (a)(1)(ii) and (a)(1)(iii) of the Default clause cover situations when the contractor fails to perform some of the other provisions of the contract (such as not furnishing a required performance bond) or so fails to make progress as to endanger performance of the contract. If the termination is predicated upon this type of failure, the *contracting officer shall* give the contractor written notice specifying the failure and providing a period of 10 days (or longer period as necessary) in which to cure the failure. When appropriate, this notice *may* be made a part of the notice described in paragraph (e)(1) of this section. Upon expiration of the 10 days (or longer period), the *contracting officer may* issue a notice of *termination for default* unless it is determined that the failure to perform has been cured. A format for a cure notice is in 49.607.

(e)

(1) If *termination for default* appears appropriate, the *contracting officer should*, if practicable, notify the contractor *in writing* of the possibility of the termination. This notice *shall* call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract *should* not be terminated for default. The notice *may* further state that failure of the contractor to present an explanation *may* be taken as an admission that no valid explanation exists. When appropriate, the notice *may* invite the contractor to discuss the matter at a conference. A format for a show cause notice is in 49.607.

(2) When a *termination for default* appears imminent, the *contracting officer shall* provide a written notification to the *surety*. If the contractor is subsequently terminated for default, a copy of the notice of default *shall* be sent to the *surety*.

(3) If requested by the *surety*, and agreed to by the contractor and any assignees, arrangements *may* be made to have future checks mailed to the contractor in care of the *surety*. In this case, the contractor *must* forward a written request to the designated disbursing officer specifically directing a change in address for mailing checks.

(4) If the contractor is a small business firm, the *contracting officer shall* immediately provide a copy of any cure notice or show cause notice to the *contracting office*'s small business specialist and the Small Business Administration Area Office nearest the contractor. The *contracting officer should*, whenever practicable, consult with the small business specialist before proceeding with a default termination (see also 49.402-4).

(f) The *contracting officer shall* consider the following factors in determining whether to terminate a contract for default:

(1) The terms of the contract and applicable laws and regulations.

(2) The specific failure of the contractor and the excuses for the failure.

(3) The availability of the *supplies* or services from other sources.

(4) The urgency of the need for the *supplies* or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the delinquent contractor.

(5) The degree of essentiality of the contractor in the Government *acquisition* program and the effect of a *termination for default* upon the contractor's capability as a supplier under other contracts.

(6) The effect of a *termination for default* on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments.

(7) Any other pertinent facts and circumstances.

(g) If, after compliance with the procedures in paragraphs (a) through (f) of this 49.402-3, the *contracting officer* determines that a *termination for default* is proper, the *contracting officer shall* issue a notice of termination stating-

(1) The contract number and date;

(2) The acts or omissions constituting the default;

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

(4) That the *supplies* or services terminated *may* be purchased against the contractor's account, and that the contractor will be held liable for any excess costs;

(5) If the *contracting officer* has determined that the failure to perform is not excusable, that the notice of termination constitutes such decision, and that the contractor has the right to appeal such decision under the Disputes clause;

(6) That the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(7) That the notice constitutes a decision that the contractor is in default as specified and that the

contractor has the right to appeal under the Disputes clause.

(h) The *contracting officer shall* make the same distribution of the termination notice as was made of the contract. A copy *shall* also be furnished to the contractor's *surety*, if any, when the notice is furnished to the contractor. The *surety should* be requested to advise if it desires to arrange for completion of the work. In addition, the *contracting officer shall* notify the disbursing officer to withhold further payments under the terminated contract, pending further advice, which *should* be furnished at the earliest practicable time.

(i) In the case of a *construction* contract, promptly after issuance of the termination notice, the *contracting officer shall* determine the manner in which the work is to be completed and whether the materials, appliances, and plant that are on the site will be needed.

(j) If the *contracting officer* determines before issuing the termination notice that the failure to perform is excusable, the contract *shall* not be terminated for default. If termination is in the Government's interest, the *contracting officer may* terminate the contract for the convenience of the Government.

(k) If the *contracting officer* has not been able to determine, before issuance of the notice of termination whether the contractor's failure to perform is excusable, the *contracting officer shall* make a written decision on that point as soon as practicable after issuance of the notice of termination. The decision *shall* be delivered promptly to the contractor with a notification that the contractor has the right to appeal as specified in the Disputes clause.

49.402-4 Procedure in lieu of termination for default.

The following courses of action, among others, are available to the *contracting officer* in lieu of *termination for default* when in the Government's interest:

(a) Permit the contractor, the *surety*, or the guarantor, to continue performance of the contract under a revised delivery schedule.

(b) Permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the Government are adequately preserved.

(c) If the requirement for the *supplies* and services in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in 49.402-7, execute a no-cost termination *settlement agreement* using the formats in 49.603-6 and 49.603-7 as a guide.

49.402-5 Memorandum by the contracting officer.

When a contract is terminated for default or a procedure authorized by 49.402-4 is followed, the *contracting officer shall* prepare a memorandum for the contract file explaining the reasons for the action taken.

49.402-6 Repurchase against contractor's account.

(a) When the *supplies* or services are still required after termination, the *contracting officer shall* repurchase the same or similar *supplies* or services against the contractor's account as soon as practicable. The *contracting officer shall* repurchase at as reasonable a price as practicable, considering the quality and delivery requirements. The *contracting officer may* repurchase a quantity in excess of the undelivered quantity terminated for default when the excess quantity is needed, but excess cost *may* not be charged against the defaulting contractor for more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract). Generally, the *contracting officer* will make a decision whether or not to repurchase before issuing the termination notice.

(b) If the repurchase is for a quantity not over the undelivered quantity terminated for default, the Default clause authorizes the *contracting officer* to use any terms and *acquisition* method deemed appropriate for the repurchase. However, the *contracting officer shall* obtain competition to the maximum extent practicable for the repurchase. The *contracting officer shall* cite the Default clause as the authority. If the repurchase is for a quantity over the undelivered quantity terminated for default, the *contracting officer shall* treat the entire quantity as a new *acquisition*.

(c) If repurchase is made at a price over the price of the *supplies* or services terminated, the *contracting officer shall*, after completion and final payment of the repurchase contract, make written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs such as transportation, discounts, etc. If the contractor fails to make payment, the *contracting officer shall* follow the procedures in subpart 32.6 for collecting contract debts due the Government.

49.402-7 Other damages.

(a) If the *contracting officer* terminates a contract for default or follows a course of action instead of *termination for default* (see 49.402-4), the *contracting officer* promptly *must* assess and demand any liquidated damages to which the Government is entitled under the contract. Under the *contract clause* at 52.211-11, these damages are in addition to any excess repurchase costs.

(b) If the Government has suffered any other ascertainable damages, including administrative costs, as a result of the contractor's default, the *contracting officer must*, on the basis of legal advice, take appropriate action as prescribed in subpart 32.6 to assert the Government's demand for the damages.

49.402-8 Reporting Information.

The *contracting officer*, in accordance with agency procedures, *shall* ensure that information relating to the *termination for default* notice and a subsequent withdrawal or a conversion to a *termination for convenience* is reported in accordance with 42.1503(h).

49.403 Termination of cost-reimbursement contracts for default.

(a) The right to terminate a cost-reimbursement contract for default is provided for in the *Termination for Default* or for Convenience of the Government clause at 52.249-6. A 10-*day* notice to the contractor before *termination for default* is required in every case by the clause.

(b) Settlement of a cost-reimbursement contract terminated for default is subject to the principles in subparts 49.1 and 49.3 the same as when a contract is terminated for convenience, except that-

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

(2) The contractor is reimbursed the allowable costs, and an appropriate reduction is made in the total fee, if any, (see paragraph (h)(4) of the clause).

(c) The *contracting officer shall* use the procedures in 49.402 to the extent appropriate in considering the *termination for default* of a cost-reimbursement contract. However, a cost-reimbursement contract does not contain any provision for recovery of excess repurchase costs after *termination for default* (but see paragraph (g) of the clause at 52.246-3 with respect to failure of the contractor to replace or correct defective *supplies*).

49.404 Surety-takeover agreements.

(a) The procedures in this section apply primarily, but not solely, to fixed-price *construction* contracts terminated for default.

(b) Since the *surety* is liable for damages resulting from the contractor's default, the *surety* has certain rights and interests in the completion of the contract work and application of any undisbursed funds. Therefore, the *contracting officer must* consider carefully the *surety*'s proposals for completing the contract. The *contracting officer must* take action on the basis of the Government's interest, including the possible effect upon the Government's rights against the *surety*.

(c) The *contracting officer should* permit *surety offers* to complete the contract, unless the *contracting officer* believes that the persons or firms proposed by the *surety* to complete the work are not competent and qualified or the proposal is not in the best interest of the Government.

(d) There *may* be conflicting demands for the defaulting contractor's assets, including unpaid prior earnings (retained percentages and unpaid progress estimates). Therefore, the *surety may* include a "takeover" agreement in its proposal, fixing the *surety*'s rights to payment from those funds. The *contracting officer may* (but not before the *effective date of termination*) enter into a written agreement with the *surety*. The *contracting officer should* consider using a tripartite agreement among the Government, the *surety*, and the defaulting contractor to resolve the defaulting contractor's residual rights, including assertions to unpaid prior earnings.

(e) Any takeover agreement *must* require the *surety* to complete the contract and the Government to pay the *surety*'s costs and expenses up to the balance of the contract price unpaid at the time of default, subject to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before termination, *must* be subject to debts due the Government by the contractor, except to the extent that the unpaid earnings *may* be used to pay the completing *surety* its actual costs and expenses incurred in the completion of the work, but not including its payments and obligations under the payment bond given in connection with the contract.

(2) The *surety* is bound by contract terms governing liquidated damages for delays in completion of the work, unless the delays are excusable under the contract.

(3) If the contract proceeds have been assigned to a financing institution, the *surety must* not be paid from unpaid earnings, unless the assignee provides written consent.

(4) The *contracting officer must* not pay the *surety* more than the amount it expended completing the work and discharging its liabilities under the defaulting contractor's payment bond. Payments to the *surety* to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor *must* be only on authority of-

(i) Mutual agreement among the Government, the defaulting contractor, and the *surety*;

(ii) Determination of the Comptroller General as to payee and amount; or

(iii) Order of a court of competent jurisdiction.

49.405 Completion by another contractor.

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

49.406 Liquidation of liability.

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

Subpart 49.5 - Contract Termination Clauses

49.501 General.

This subpart prescribes the principal contract termination clauses. This subpart does not apply to contracts that use the clause at 52.213-4, Terms and Conditions-Simplified *Acquisitions* (Other Than *Commercial 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*. The *contracting officer shall* insert the clause at 52.249-1, *Termination for Convenience* of the Government (Fixed-Price) (Short Form), in *solicitations* and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed the *simplified acquisition threshold*, except-

(i) If use of the clause at 52.249-4, *Termination for Convenience* of the Government (Services) (Short Form) is appropriate,

(ii) In contracts for research and development work with an educational or nonprofit institution on a no-profit basis,

(iii) In contracts for *architect-engineer services*, or

(iv) If one of the clauses prescribed or cited at 49.505(a) or (c), is appropriate.

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

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

(1)

(i) *General use.* The *contracting officer shall* insert the clause at 52.249-2, *Termination for Convenience* of the Government (Fixed-Price), in *solicitations* and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the *simplified acquisition threshold* except in contracts for -

(A) Dismantling and demolition,

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

(C) *Architect-engineer services*; it *shall* not be used if the clause at 52.249-4, *Termination for Convenience* of the Government (Services) (Short Form), is appropriate (see 49.502(c)), or one of the clauses prescribed or cited at 49.505(a) or (c), is appropriate.

(2) *Construction.* If the contract is for *construction*, the *contracting officer shall* use the clause with its AlternateI.

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

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

contracting officer shall use the clause with its AlternateI.

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

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

(e) Subcontracts-

(1) *General use.* The prime contractor *may* find the clause at 52.249-1, *Termination for Convenience* of the Government (Fixed-Price) (Short Form), or at 52.249-2, *Termination for Convenience* of the Government (Fixed-Price), as appropriate, suitable for use in fixed-price subcontracts, except as noted in paragraph (e)(2) of this section; provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (*e.g.,* paragraph (d)) in 52.249-2 *should* be deleted and the periods reduced for submitting the subcontractor's termination *settlement proposal* (*e.g.,*6 months), and for requesting an equitable price adjustment (*e.g.,*45 days).

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

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 contracts for research and development with an educational or nonprofit institution on a no-fee basis.

(2) *Construction.* If the contract is for *construction*, the *contracting officer shall* use the clause with its AlternateI.

(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, the *contracting officer shall* use the clause with its AlternateII. In such contracts for *construction*, the *contracting officer shall* use the clause with its AlternateIII.

(4) *Time-and-material and labor-hour contracts.* If the contract is a time-and-material or labor-hour contract, the *contracting officer shall* use the clause with its AlternateIV. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the *contracting officer* determines that the requirement to pay interest on excess partial payments is inappropriate, the *contracting officer shall* use the clause with its *Alternate* 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* find the clause at 52.249-6, Termination (Cost-Reimbursement), suitable for use in cost-reimbursement subcontracts; provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (*e.g.,* paragraphs (e), (j) and (n)) *should* be deleted and the period for submitting the subcontractor's termination *settlement proposal should* be reduced (*e.g.,*6 months).

49.504 Termination of fixed-price contracts for default.

(a)

(1) *Supplies and services.* The *contracting officer shall* 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, the *contracting officer shall* use the clause with its AlternateI.

(b) *Research and development.* The *contracting officer shall* 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 those 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 (*e.g.,* if the *contracting officer* believes that key personnel essential to the work *may* be devoted to other programs).

(c)

(1) *Construction.* The *contracting officer shall* 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 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 completion dates are essential).

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

(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 AlternateII when a fixed-price contract for *construction* is contemplated, or

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

49.505 Other termination clauses.

(a) *Personal service contracts.* The *contracting officer shall* insert the clause at 52.249-12, Termination (Personal Services), in *solicitations* and contracts for personal services (see part 37).

(b) *Excusable delays.* The *contracting officer shall* insert the clause at 52.249-14, Excusable Delays, in *solicitations* and contracts for *supplies*, services, *construction*, and research and development on a fee basis, when a cost-reimbursement contract is contemplated. The *contracting officer shall* also insert the clause in time-and-material contracts, and labor-hour contracts.

(c) *Communication service contracts.* This regulation does not prescribe a clause for the cancellation or termination of orders under communication service contracts with common carriers because of special agency requirements that apply to these services. An appropriate clause, however, *shall* be prescribed at agency level, within those agencies *contracting* for these services.

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 shall* resend the notice electronically, and expedite the letter notice described in 49.601-2. If confirmation of the electronic notice is received, and the electronic notice includes all content in 49.601-2, the *contracting officer* need not send the letter notice described in 49.601-2.

(a) *Complete termination:* The following electronic notice is suggested for use if a supply contract is being completely 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 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.

_____

(*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.

_____

(*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 paragraph (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 paragraph (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 paragraph (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 49.112-1).

49.602-5 Settlement agreement.

Standard Form30 (SF 30), Amendment of *Solicitation*/Modification of Contract, *shall* be used to execute a *settlement agreement* (see 49.109-1).

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 49.109-2). 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 Block14 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 49.109-2). 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 he 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 49.109-2). 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 49.109-2). 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 49.109-2 and 49.603-1(b)(7).*]

(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(b)(7).*]

(End of agreement)

49.603-9 Settlement of reservations.

[*Insert the following in Block14 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 listed in paragraph (b) of this section.

(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 paragraph (1) of this section.*

**When payment is due the Government, reverse the words "Government" and "contractor" in paragraphs (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:

: 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 49.108-4 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 subpart 42.13 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)