52.249-10 Default (Fixed-Price Construction).

As prescribed in 49.504(c)(1), insert the following clause:

Default (Fixed-Price *Construction*) (Apr 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government *may*, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government *may* take over the work and complete it by contract or otherwise, and *may* take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its *sureties shall* be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the- work.

(b) The Contractor's right to proceed *shall* not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

(i) Acts of God or of the public enemy,

(ii) Acts of the Government in either its sovereign or contractual capacity,

(iii) Acts of another Contractor in the performance of a contract with the Government,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) *Freight* embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the *Contracting Officer*), notifies the *Contracting Officer in writing* of the causes of delay. The *Contracting Officer shall* ascertain the facts and the extent of delay. If, in the judgment of the *Contracting Officer*, the findings of fact warrant such action, the time for completing the work *shall* be extended. The findings of the *Contracting Officer shall* be final and conclusive on the parties, but

subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

Alternate I (Apr 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government *may*, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government *may* take over the work and complete it by contract or otherwise, and *may* take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it *shall* revest in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its *sureties shall* be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

Alternate II (Apr 1984). If the contract is to be awarded during a period of national *emergency*, paragraph (b)(1) below *may* be substituted for paragraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

(i) Acts of God or of the public enemy,

(ii) Acts of the Government in either its sovereign or contractual capacity,

(iii) Acts of another Contractor in the performance of a contract with the Government,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) *Freight* embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

Alternate III (Apr 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national *emergency*, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following paragraph (b)(1) *may* be substituted for paragraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government *may*, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government *may* take over the work and complete it by contract or otherwise, and *may* take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it *shall* revest in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its *sureties shall* be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed *shall* not be terminated nor the Contractor charged with damages under this clause, if-

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include-

(i) Acts of God or of the public enemy,

(ii) Acts of the Government in either its sovereign or contractual capacity,

(iii) Acts of another Contractor in the performance of a contract with the Government,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) *Freight* embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

Parent topic: 52.249 [Reserved]