

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](#)).

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