

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

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

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

(b) The parties agree to the following:

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

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

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

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

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

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

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

(6)(i) The Contractor has received \$ _____ for work and services performed, or articles delivered, under the contract before the *effective date of termination*. The Government confirms the right of the Contractor, subject to paragraph (b)(7) of this section, to retain this sum and agrees that it

constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

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

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

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

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

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). 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)

Parent topic: 49.603 Formats for termination for convenience settlement agreements.