Part 249 - TERMINATION OF CONTRACTS

Subpart 249.1 - GENERAL PRINCIPLES

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Termination status reports.

249.105-2 Release of excess funds.

249.109 Settlement agreements.

249.109-7 Settlement by determination.

249.109-70 Limitation on pricing of the terminated effort.

249.110 Settlement negotiation memorandum.

Subpart 249.5 - CONTRACT TERMINATION CLAUSES

249.501 General.

249.501-70 Special termination costs.

Subpart 249.70 - SPECIAL TERMINATION REQUIREMENTS

249.7000 Terminated contracts with Canadian Commercial Corporation.

249.7001 Congressional notification on significant contract terminations.

249.7002 Reserved.

249.7003 Notification of anticipated contract terminations or reductions.

249.7004 Contract clause.

Parent topic: Defense Federal Acquisition Regulation

Subpart 249.1 - GENERAL PRINCIPLES

249.105 Duties of termination contracting officer after issuance of notice of termination.

249.105-1 Termination status reports.

Follow the procedures at PGI 249.105-1 for reporting status of termination actions.

249.105-2 Release of excess funds.

See PGI 249.105-2 for guidance on recommending the release of excess funds.

249.109 Settlement agreements.

249.109-7 Settlement by determination.

Follow the procedures at PGI 249.109-7 for settlement of a convenience termination by determination.

249.109-70 Limitation on pricing of the terminated effort.

When there is a termination for convenience (partial or whole) or a change that reduces scope, follow the procedures at PGI 249.109-70 for limitation on pricing of the terminated or reduced effort.

249.110 Settlement negotiation memorandum.

Follow the procedures at PGI 249.110 for preparation of a settlement negotiation memorandum.

Subpart 249.5 - CONTRACT TERMINATION CLAUSES

249.501 General.

249.501-70 Special termination costs.

(a) The clause at 252.249-7000 , Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is two years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of $25 million; or

(ii) Total production investment in excess of $100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—

(i) The Government's incremental assignment of funds to the contract;

(ii) The time when certain performance milestones are accomplished by the contractor; or

(iii) Other specific time periods agreed upon by the contracting officer and the contractor.

Subpart 249.70 - SPECIAL TERMINATION REQUIREMENTS

249.7000 Terminated contracts with Canadian Commercial Corporation.

(a) Terminate contracts with the Canadian Commercial Corporation in accordance with—

(1) The Letter of Agreement (LOA) between the Department of Defence Production (Canada) and the U.S. DoD, “Canadian Agreement” (for a copy of the LOA or for questions on its currency, contact the Office of the Principal Director, Defense Pricing, Contracting, and Acquisition Policy (Contract Policy) at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil;

(2) Policies in the Canadian Agreement and Part 249; and

(3) The Canadian Supply Manual, Chapter 8, Annex 8.3, available at http://www.tpsgc-pwgsc.gc.ca/app-acq/ga-sm/index-eng.html, “Termination for Convenience Process, Public Works and Government Services Canada.”

(b) Contracting officers shall ensure that the Canadian Commercial Corporation submits termination settlement proposals in the format prescribed in FAR 49.602 and that they contain the amount of settlements with subcontractors. The termination contracting officer (TCO) shall prepare an appropriate settlement agreement. (See FAR 49.603.) The letter transmitting a settlement proposal must certify—

(1) That disposition of inventory has been completed; and

(2) That the Contract Claims Resolution Board of the Public Works and Government Services Canada has approved settlements with Canadian subcontractors when the Procedures Manual on Termination of Contracts requires such approval.

(c)(1) The Canadian Commercial Corporation will—

(i) Settle all Canadian subcontractor termination claims under the Canadian Agreement; and

(ii) Submit schedules listing serviceable and usable contractor inventory for screening to the TCO (see FAR 45.6).

(2) After screening, the TCO must provide guidance to the Canadian Commercial Corporation for disposition of the contractor inventory.

(3) Settlement of Canadian subcontractor claims are not subject to the approval and ratification of the TCO. However, when the proposed negotiated settlement exceeds the total contract price of the prime contract, the TCO shall obtain from the U.S. contracting officer prior to final settlement—

(i) Ratification of the proposed settlement; and

(ii) A contract modification increasing the contract price and obligating the additional funds.

(d) The Canadian Commercial Corporation should send all termination settlement proposals submitted by U.S. subcontractors and suppliers to the TCO of the cognizant contract administration office of the Defense Contract Management Agency for settlement. The TCO will inform the Canadian Commercial Corporation of the amount of the net settlement of U.S. subcontractors and suppliers so that this amount can be included in the Canadian Commercial Corporation termination proposal. The Canadian Commercial Corporation is responsible for execution of the settlement agreement with these subcontractors.

(e) The Canadian Commercial Corporation will continue administering contracts that the U.S. contracting officer terminates.

(f) The Canadian Commercial Corporation will settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government.

(g) The U.S. agency administering the contract with the Canadian Commercial Corporation shall provide any services required by the Canadian Commercial Corporation, including disposal of inventory, for settlement of any subcontracts placed in the United States. Settlement of such U.S. subcontracts will be in accordance with this regulation.

249.7001 Congressional notification on significant contract terminations.

Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations must be cleared through department/agency liaison offices before release of the termination notice, or any information on the proposed termination, to the contractor. Follow the procedures at PGI 249.7001 for congressional notification and release of information.

See DoD Class Deviation 2011-O0002, Congressional Notification on Significant Contract Terminations, issued on October 8, 2010. The class deviation eliminates the congressional notification requirement for firms performing in Iraq or Afghanistan if the firm is not incorporated in the United States. This deviation is effective until incorporated in the DFARS or rescinded.

249.7002 Reserved.

249.7003 Notification of anticipated contract terminations or reductions.

(a) Section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160) and section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104-201) are intended to help establish benefit eligibility under the Workforce Innovation and Opportunity Act (29 U.S.C. Chapter 32) for employees of DoD contractors and subcontractors adversely affected by termination or substantial reductions in major defense programs.

(b) Departments and agencies are responsible for establishing procedures to—

(1) Identify which contracts (if any) under major defense programs will be terminated or substantially reduced as a result of the funding levels provided in an appropriations act; and

(2) Within 60 days of the enactment of such an act, provide notice of the anticipated termination of or substantial reduction in the funding of affected contracts—

(i) Directly to the Secretary of Labor; and

(ii) Through the contracting officer to each prime contractor.

(c) When subcontracts have been issued, the prime contractor is responsible for—

(1) Providing notice of the termination or substantial reduction in funding to all first-tier subcontractors with a subcontract valued equal to or greater than $700,000; and

(2) Requiring that each subcontractor—

(i) Provide such notice to each of its subcontractors for subcontracts valued greater than $150,000; and

(ii) Impose a similar notice and flowdown requirement in subcontracts valued greater than $150,000 at all tiers.

249.7004 Contract clause.

Use the clause at 252.249-7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.