52.249-6 Termination (Cost-Reimbursement).

As prescribed in 49.503(a)(1), insert the following clause:

Termination (Cost-Reimbursement) (*May* 2004)

(a) The Government *may* terminate performance of work under this contract in whole or, from time to time, in part, if-

(1) The *Contracting Officer* determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the *Contracting Officer*) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The *Contracting Officer shall* terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after *termination for default*, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the *Contracting Officer*, the Contractor *shall* immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the *continued portion of the contract*.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the *Contracting Officer*, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government *shall* have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the *Contracting Officer*, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the *Contracting Officer*, deliver to the Government-

(i) The fabricated or unfabricated parts, work in process, completed work, *supplies*, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that *may* be necessary, or that the *Contracting Officer may* direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or *may* acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the *Contracting Officer*, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor (i)is not required to extend credit to any purchaser and (ii) *may* acquire the property under the conditions prescribed by, and at prices approved by, the *Contracting Officer*. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the *Contracting Officer*.

(d) The Contractor *shall* submit complete *termination inventory* schedules no later than 120 days from the *effective date of termination*, unless extended *in writing* by the *Contracting Officer* upon written request of the Contractor within this 120-*day* period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal *Acquisition* Regulation, the Contractor *may* submit to the *Contracting Officer* a list, certified as to quantity and quality, of *termination inventory* not previously disposed of, excluding items authorized for disposition by the *Contracting Officer*. The Contractor *may* request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The *Contracting Officer may* verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and *shall* correct the list, as necessary, before final settlement.

(f) After termination, the Contractor *shall* submit a final termination settlement proposal to the *Contracting Officer* in the form and with the certification prescribed by the *Contracting Officer*. The Contractor *shall* submit the proposal promptly, but no later than 1 year from the *effective date of termination*, unless extended *in writing* by the *Contracting Officer* upon written request of the Contractor within this 1-year period. However, if the *Contracting Officer* determines that the facts justify it, a termination settlement proposal *may* be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the *Contracting Officer may* determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and *shall* pay the amount determined.

(g) Subject to paragraph (f) of this clause, the Contractor and the *Contracting Officer may* agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract *shall* be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the *Contracting Officer* fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the *Contracting Officer shall* determine, on the basis of information available, the amount, if any, due the Contractor, and *shall* pay that amount, which *shall* include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that *may* continue for a reasonable time with the approval of or as directed by the *Contracting Officer*; however, the

Contractor *shall* discontinue those costs as rapidly as practicable.

(2) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the *terminated portion of the contract* if not included in paragraph (h)(1) of this clause.

(3) The reasonable costs of settlement of the work terminated, including-

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the *termination inventory*. If the termination is for default, no amounts for the preparation of the Contractor's termination settlement proposal *may* be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement *shall* include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable *shall* be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in part 31 of the Federal *Acquisition* Regulation, in effect on the date of this contract, *shall* govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor *shall* have the right of appeal, under the Disputes clause, from any determination made by the *Contracting Officer* under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the *Contracting Officer* has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, the Government *shall* pay the Contractor-

(1) The amount determined by the *Contracting Officer* if there is no right of appeal or if no timely appeal has been taken; or

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there *shall* be deducted-

(1) All unliquidated advance or other payments to the Contractor, under the terminated portion of this contract;

(2) Any *claim* which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, *supplies*, or other things acquired by

the Contractor or sold under this clause and not recovered by or credited to the Government.

(l) The Contractor and *Contracting Officer must* agree to any equitable adjustment in fee for the *continued portion of the contract* when there is a *partial termination*. The *Contracting Officer shall* amend the contract to reflect the agreement.

(m)

(1) The Government *may*, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the *terminated portion of the contract*, if the *Contracting Officer* believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor *shall* repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App.1215(b)(2). Interest *shall* be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest *shall* not be charged on any excess payment due to a reduction in the Contractor's termination 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 *Contracting Officer* because of the circumstances.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

Alternate I (Sept1996). If the contract is for *construction*, substitute the following paragraph (h)(4) for paragraph (h)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement *shall* include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable *shall* be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate II (Sept1996). 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, delete paragraph (m)(2) from the basic clause.

Alternate III (Sept1996). If the contract is for *construction* with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following paragraph (h)(4) *shall* be substituted for paragraph (h)(4) of the basic clause. Paragraph (m)(2) *may* be deleted from the basic clause if the *contracting officer* determines that the requirement to pay interest on excess partial payments is inappropriate.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement *shall* include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable *shall* be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate IV (Sept1996). If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause:

(h) If the Contractor and the *Contracting Officer* fail to agree in whole or in part on the amount to be paid because of the termination of work, the *Contracting Officer shall* determine, on the basis of information available, the amount, if any, due the Contractor and *shall* pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include-

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the *effective date of termination* by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the *effective date of termination*, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the *effective date of termination*, if they are reasonably incurred after the effective date, with the approval of or as directed by the *Contracting Officer*; however, the Contractor *shall* discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the *terminated portion of the contract*; and

(v) The reasonable costs of settlement of the work terminated, including-

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the *termination inventory*.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit-

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(l) If the termination is partial, the Contractor *may* file with the *Contracting Officer* a proposal for an equitable adjustment of price(s) for the *continued portion of the contract*. The *Contracting Officer shall* make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause *shall* be requested within 90 days from the *effective date of termination*, unless extended *in writing* by the *Contracting Officer*.

Alternate V (Sept1996). If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Government or with State, local or foreign governments or their agencies, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause. Paragraph (m)(2) *may* be deleted from the basic clause if the *contracting officer* determines that the requirement to pay interest on excess partial payments is inappropriate.

(h) If the Contractor and the *Contracting Officer* fail to agree in whole or in part on the amount to be paid because of the termination of work, the *Contracting Officer shall* determine, on the basis of information available, the amount, if any, due the Contractor and *shall* pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include-

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the *effective date of termination* by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the *effective date of termination*, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the *effective date of termination* if they are reasonably incurred after the effective date, with the approval of or as directed by the *Contracting Officer*; however, the Contractor *shall* discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the *terminated portion of the contract*; and

(v) The reasonable costs of settlement of the work terminated, including-

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the *termination inventory*.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit-

(i) Any amount for preparation of the Contractor’s termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

(l) If the termination is partial, the Contractor *may* file with the *Contracting Officer* a proposal for an equitable adjustment of the price(s) for the *continued portion of the contract*. The *Contracting Officer shall* make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause *shall* be requested within 90 days from the *effective date of termination*, unless extended *in writing* by the *Contracting Officer*.

Parent topic: 52.249 [Reserved]