

Update: Terminations, Stop Work Orders, and De-Scopes

What Contractors and Grant Recipients Need to Know

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Agenda

- Terminations for Convenience
- Changes and De-scopes
- Stop Work Orders
- Payment Issues

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Terminations for Convenience



Termination for Convenience

- FAR Parts 49 and 52 give the Gov't broad authority to terminate without cause
 - No termination where the price of the undelivered portion is less than \$5,000
 - Can be partial termination
- Contractor's recovery:
 - costs incurred,
 - profit on work performed,
 - costs of preparing termination settlement proposal,
 - continuing costs, and
 - subcontractor costs
- No-cost settlement instead of termination for convenience where...
 - Contractor amenable
 - No government property
 - No debts due the government
- For Grants—2 CFR 200.340 Termination: “if an award no longer effectuates the program goals or agency priorities”



Procedures and Best Practices

- **Notice of Termination**
- **Contractor Obligations Upon Notice**
 - Stop work
 - Notifications to subcontractors and employees
 - Inventory and disposal
 - Documentation
- **Settlement proposal and inventory schedule due dates**
- **Partial Termination**
 - Burden of proof
 - Price adjustment on unterminated portion – overhead/amortized costs

Recovery Considerations

- **Contracts**

- Lost profits
- Expected overhead vs Unabsorbed overhead
- Negotiations and audits after termination proposal submission
- Appeal / CDA

- **Grants**

- Administrative appeal
- APA appeal
 - Violating an injunction
 - Improper basis of termination

Changes and De-scopes



De-Scoping Contracts and Grants

Changes Generally

- FAR 52.243-X Changes: “within the general scope of the contract”
- The Changes clause entitles contractors to an equitable adjustment if “any change under this clause causes an increase or decrease in the Contractor’s cost of. . .the work under [the] contract.”
- Timely notice
- De-scoping = deductive change



Procedures and Best Practices

- **Documentation**

- Document the change (increase/decrease in costs, impact on schedule, etc.)
- Notify the CO that a change occurred
- Reserve the right to an equitable adjustment (money + time)

- **Duty to Proceed**

- **Grants**

- Bilateral changes and Extension; no express government unilateral right (§200.308, .309)



Recovery Considerations

- **Contracts**

- Calculating deductive change costs
- Impact on remaining work after de-scope
- Defective option exercise

- **Grants**

- Changing/removing PoP
 - Last Trump Administration ended grants by de-scoping performance period
- Changing scope of work
- Weighing risks and how to proceed

Stop Work Orders



Stop Work Orders

- A stop work order requires an immediate halt to the work specified in the respective contract or grant.
- Stop work orders are covered under FAR 52.242-15
 - Can be issued for 90 days (or more by agreement)
 - When the period ends, the contractor must resume, or the CO must terminate the work
 - The contractor is generally entitled to an equitable adjustment + profit
- Can lead to delays, increased costs, and disruptions– and contractors should comply with the order and take steps to minimize costs during the stoppage period.

Procedures and Best Practices

- **Compliance**
 - Immediate cessation of work
- **Notifications**
 - Employees & subcontractors/suppliers
- **Cost mitigation and documentation**
 - Impact on schedule
- **Preparation for resuming work**



Recovery Considerations

- **Contracts**

- Unabsorbed overhead
- Indefinite stop work period
- Commercial item contracts
 - Clause optional, no Christian doctrine

- **Grants**

- Government rights
- For-profit vs non-profit
 - Advance payment vs carrying costs
- Weighing risks of pausing vs ending
 - Contractor right to terminate

Payment Issues



Payments Generally

- **Contracts**

- Fixed Price Contracts
 - FAR 52.232-X
- Cost Reimbursement Contracts
 - FAR 52.216-7
- Commercial Item Contracts
 - FAR 52.212-4

- **Grants**

- Non-profit
 - 2 CFR 200.305
- For-profit
 - Agency-specific

Recovery Considerations

- **Contracts & Grants**

- Types of payment issues
 - Late payments
 - Short payments
 - Non-payments
 - Threats of non-payment
- Reservation of rights

- Grants

- Government action: categorizing and weighing risks
 - No disputes clause
- Suspension of payment accounts

Questions?



Thank you



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