

49.000 Scope of part.

49.001 Definitions.

49.002 Applicability.

Subpart 49.1 - General Principles

49.100 Scope of subpart.

49.101 Authorities and responsibilities.

49.102 Notice of termination.

49.103 Methods of settlement.

49.104 Duties of prime contractor after receipt of notice of termination.

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

49.105-1 ~~Termination status reports~~ [Release of excess funds](#).

49.105-2 ~~Release of excess funds.~~

~~49.105-3 Termination case file.~~

~~49.105-4~~ Cleanup of construction site.

49.106 Fraud or other criminal conduct.

49.107 Audit of prime contract settlement proposals and subcontract settlements.

49.108 Settlement of subcontract settlement proposals.

49.108-1 Subcontractor's rights.

49.108-2 Prime contractor's rights and obligations.

49.108-3 Settlement procedure.

49.108-4 Authorization for subcontract settlements without approval or ratification.

49.108-5 Recognition of judgments and arbitration awards.

49.108-6 Delay in settling subcontractor settlement proposals.

49.108-7 ~~Government assistance in settling subcontracts.~~

~~49.108-8~~ Assignment of rights under subcontracts.

49.109 Settlement agreements.

49.109-1 General.

49.109-2 Reservations.

49.109-3 Government property.

49.109-4 No-cost settlement.

49.109-5 Partial settlements.

49.109-6 Joint settlement of two or more settlement proposals.

49.109-7 Settlement by determination.

49.110 Settlement negotiation memorandum.

49.111 Review of proposed settlements.

49.112 Payment.

49.112-1 Partial payments.

49.112-2 Final payment.

49.113 ~~Cost principles~~ Unsettled contract changes.

49.114 ~~Unsettled contract changes.~~

~~49.115~~ Settlement of terminated incentive contracts.

Subpart 49.2 - Additional Principles for Fixed-Price Contracts Terminated for Convenience

49.201 General.

49.202 Profit.

49.203 Adjustment for loss.

49.204 Deductions.

49.205 Completed end items.

49.206 Settlement proposals.

49.206-1 Submission of settlement proposals.

49.206-2 Bases for settlement proposals.

49.206-3 Submission of inventory disposal schedules.

49.207 Limitation on settlements.

49.208 Equitable adjustment after partial termination.

Subpart 49.3 - Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

49.301 General.

49.302 Discontinuance of vouchers.

49.303 Procedure after discontinuing vouchers.

49.303-1 Submission of settlement proposal.

49.303-2 Submission of inventory disposal schedules.

49.303-3 Audit of settlement proposal.

49.303-4 Adjustment of indirect costs.

49.303-5 Final settlement.

49.304 Procedure for partial termination.

49.304-1 General.

49.304-2 Submission of settlement proposal (fee only).

49.304-3 Submission of vouchers.

49.305 Adjustment of fee.

49.305-1 General.

49.305-2 Construction contracts.

Subpart 49.4 - Termination for Default

49.401 General.

49.402 Termination of fixed-price contracts for default.

49.402-1 The Government's right.

49.402-2 Effect of termination for default.

49.402-3 Procedure for default.

49.402-4 Procedure in lieu of termination for default.

49.402-5 Memorandum by the contracting officer.

49.402-6 Repurchase against contractor's account.

49.402-7 Other damages.

49.402-8 Reporting Information.

49.403 Termination of cost-reimbursement contracts for default.

49.404 Surety-takeover agreements.

49.405 Completion by another contractor.

49.406 Liquidation of liability.

Subpart 49.5 - Contract Termination Clauses

49.501 General.

49.502 Termination for convenience of the Government.

49.503 Termination for convenience of the Government and default.

49.504 Termination of fixed-price contracts for default.

49.505 Other termination clauses.

Subpart 49.6 - Contract Termination Forms and Formats

49.601 Notice of termination for convenience.

49.601-1 Electronic notice.

49.601-2 Letter notice.

49.602 Forms for settlement of terminated contracts.

49.602-1 Termination settlement proposal forms.

49.602-2 Inventory forms.

49.602-3 Schedule of accounting information.

49.602-4 Partial payments.

49.602-5 Settlement agreement.

49.603 Formats for termination for convenience settlement agreements.

49.603-1 Fixed price contracts-complete termination.

49.603-2 Fixed-price contracts-partial termination.

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

49.603-4 Cost-reimbursement contracts-complete termination, with settlement limited to fee.

49.603-5 Cost-reimbursement contracts-partial termination.

49.603-6 No-cost settlement agreement-complete termination.

49.603-7 No-cost settlement agreement-partial termination.

49.603-8 Fixed-price contracts-settlements with subcontractors only.

49.603-9 Settlement of reservations.

49.604 Release of excess funds under terminated contracts.

49.605 Request to settle subcontractor settlement proposals.

49.606 Granting subcontract settlement authorization.

49.607 Delinquency notices.

| ~~Parent topic: Federal Acquisition Regulation~~

49.000 Scope of part.

(a) This part ~~establishes policies~~ covers the policy and procedures ~~relating to the complete or partial termination of~~ for terminating contracts ~~for the convenience of~~ early. The Government ~~or can terminate contracts~~ for two main reasons:

(1) For its own convenience.

(2) Because the contractor failed to perform (called "default-It").

(b) This part prescribes—

(1) The contract clauses relating to termination and excusable delay; and ~~includes~~

(2) Instructions for using termination and settlement forms.

49.001 Definitions.

As used in this part—

Other work means ~~any current or scheduled work of the contractor, whether~~ Government ~~or and~~ commercial; ~~other than~~ work the contractor is doing now or plans to do later, which does not include work ~~related to on~~ the ~~terminated~~ contract that was terminated.

Plant clearance period, ~~as used in this subpart, means the a set time period beginning on that starts when the effective date of contract completion is completed or termination terminated and ending ends~~ 90 days ~~(or such longer period as may be agreed to)~~ after ~~receipt by~~ the contracting officer ~~of receives~~ acceptable inventory schedules for each property classification. The parties can agree to make this period longer if needed. The final phase ~~of the plant clearance period means that period starts~~ after ~~receipt of~~ the contracting officer receives acceptable inventory schedules.

Settlement agreement means a written agreement in the form of a contract modification ~~settling that settles~~ all or ~~a severable portion part~~ of a settlement proposal;

Settlement proposal means a contractor's or subcontractor's proposal for ~~effecting settlement of ending~~ a contract terminated in whole or in part, ~~submitted by a contractor or subcontractor in.~~ The proposal must use the form, required forms and supported by the include supporting data; required by from this part. ~~A settlement proposal is included within the generic meaning of the word "claim"~~ Settlement proposals count as "claims" under false claims ~~acts~~ laws (see 18 U.S.C. 287 and 31 U.S.C. 3729).

Unsettled contract change means ~~any a~~ contract change or contract term for which a ~~definitive~~ formal modification is required but has not been executed.

49.002 Applicability.

(a)(1) This part applies to contracts that ~~provide for~~allow termination for ~~the Government~~convenience of the Government or ~~for the default of the contractor (see also 12.403 and default. See part 13.302-4).~~for information on simplified acquisition contracts.

(2) This part does not apply to contracts for commercial ~~product~~products and commercial ~~service~~contractsservices awarded usingunder part 12 procedures. ~~See~~For those contracts, use part 12.403 for termination policies for contracts for the acquisition of commercial products and commercial services. However, for contracts for the acquisition of commercial products and commercial services, this part provides administrative. This part can be used as guidance which may be followed unless for those contracts, but only if it is inconsistent does not conflict with the requirements and procedures in 12.403, Termination, and the part 12 or the applicable clause at 52.212-4, Contract Terms and Conditions-Commercial Products and Commercial Services.

(b) Contractors ~~shall~~must use this part, ~~unless inappropriate,~~ to settle subcontracts terminated ~~as after a result of modification of cost-reimbursement prime contracts.~~contract is modified, unless the contracting officer shall deems such a use inappropriate. The contracting officer must use this part as a guide in evaluating when reviewing subcontract settlements of subcontracts terminated for the convenience of a. This applies when the contractor whenever uses the subcontract settlement will be the as basis of for reimbursement under a proposal for reimbursement from the Government under a cost-reimbursement contract.

(c) The contracting officer may use this part ~~in determining an~~to determine equitable ~~adjustment~~adjustments resulting from a modification under ~~the Changes clause of any contract, except clauses. This does not apply to~~ cost-reimbursement contracts.

(d) When ~~action to be taken or authority to be exercised under this part depends upon~~this part refers to the "amount" of ~~the~~a settlement proposal, ~~that amount shall be determined by deducting from the gross~~calculate as follows:

(1) Start with the total settlement ~~proposed the amounts payable~~amount requested.

(2) Then subtract—

(i) Amounts due for completed ~~articles or~~ work at the contract price; and

(ii) Amounts for ~~the settlement of~~settling subcontractor ~~settlement~~ proposals.

(3) Do not subtract—

(i) Credits ~~for retention or other disposal of~~from keeping or selling termination inventory; and ~~amounts for~~

(ii) Advance or partial payments ~~shall not be deducted~~already made.

Subpart 49.1 - General Principles

49.100 Scope of subpart.

(a) This subpart ~~deals with~~covers-

(1) The authority and ~~responsibility~~duties of contracting officers to terminate contracts ~~in whole completely~~ or ~~in part partially~~ for ~~the Government~~ convenience ~~of the Government~~ or ~~for contractor~~ default;

(2) ~~Duties of the contractor~~ What contractors and ~~the contracting officer~~officers must do after ~~issuance of the notice of a~~ termination notice;

(3) ~~General~~Basic procedures for ~~the settlement of~~settling terminated contracts; and

(4) Settlement agreements.

(b) ~~Additional principles applicable to the termination for~~ More detailed rules are in other subparts. Subparts 49.2 and 49.3 cover convenience terminations and ~~settlement of settlements for~~ fixed-price and cost-reimbursement contracts ~~are included in subparts 49.2 and 49.3.~~ Additional principles applicable to the termination of contracts for. Subpart 49.4 covers default ~~are included in subpart 49.4~~terminations.

49.101 Authorities and responsibilities.

(a) ~~The Contract~~ termination clauses ~~or other contract clauses authorize~~give contracting officers the authority to—

(1) Terminate contracts for convenience; ~~or for default;~~ and ~~to~~

(2) Enter into settlement agreements under this regulation.

(b) The contracting officer ~~shall~~must terminate contracts, whether for default or convenience, only when it is in the Government's interest. ~~The contracting officer shall effect~~Use a no-cost settlement instead of ~~issuing~~ a termination notice when—

(1) It is known that the contractor will accept ~~one~~it,

(2) Government property was not furnished, and

(3) There are no outstanding payments, debts due the Government, or other contractor obligations.

(c) ~~When the price of the undelivered balance of the~~ Contracting officers should not terminate a contract for convenience when the remaining work is worth less than \$5,000, ~~the contract should not normally be terminated for convenience but should be permitted to run to completion.~~

(d) After the contracting officer ~~issues a notice of termination, the~~or termination contracting officer (TCO) issues a termination notice, the TCO handles the settlement negotiations, including no-cost settlements if appropriate. The TCO is responsible for ~~negotiating any settlement working out payment details~~ with the contractor, ~~including a no-cost settlement if appropriate.~~ Auditors and ~~TCO's shall promptly schedule and complete audit~~ TCOs must work quickly on

reviews ~~and~~, negotiations, ~~giving particular~~ and give special attention to ~~the need for timely action on all settlements involving~~ small business ~~concerns~~ settlements.

(e) ~~If~~ When the same item is under contract with both large and small ~~business concerns~~ businesses, and ~~it is necessary~~ the contracting officer needs to terminate some of the undelivered items for convenience ~~part of the units still to be delivered,~~ the contracting officer must give preference ~~shall be given to the~~ continuing ~~performance of~~ small business contracts ~~over large~~ unless it can be clearly shown that the small business ~~contracts unless the chief of~~ will be unable to provide the ~~contracting office determines that this is not~~ item in the Government's ~~interest~~ a timely fashion.

(f) The contracting officer ~~is responsible for the release of excess~~ handles releasing extra funds ~~resulting from the termination unless~~ terminations. This responsibility ~~is specifically delegated~~ can be given to the TCO if specified in writing.

49.102 Notice of termination.

(a) General. ~~The contracting officer shall~~ Contracting officers must terminate contracts ~~for convenience or default~~ only by with a written notice to the contractor ~~(. See 49.601-2, for the notice format.~~ The notice of termination may be expedited by means of electronic communication capable of providing confirmation of receipt by the contractor. When mailing the notice is mailed, it shall be sent by use certified mail, and request return receipt requested. When the contracting office arranges for. If hand delivery of delivering the notice, a get written acknowledgment shall be obtained from the contractor. The notice shall state must include the following:

(1) ~~That~~ Why the contract is ~~being terminated for the~~ (convenience of the Government (or for default) under and the related contract clause ~~authorizing.~~

(2) When the termination; takes effect.

~~(2) The effective date of termination;~~

~~(3) The extent of termination;~~

(3) How much of the contract is terminated (partial or complete). If partial, which parts are terminated.

(4) Any special instructions; and

(5) ~~The~~ Steps the contractor should take to ~~minimize the impact on personnel~~ help employees if the termination, together with all other outstanding terminations, will ~~result in a cause~~ significant ~~reduction in the contractor's work force (see~~ job losses. See 49.601-2, paragraph (g) of the notice in 49.601-2). If the termination notice is by telegram, include these "steps" in the confirming letter or modification.

(b) Distribution of copies. The contracting officer ~~shall~~must simultaneously send the termination notice to the contractor, ~~and a copy to~~; the contract administration office~~;~~; and ~~to~~; any known assignee, guarantor, or surety ~~of the contractor~~.

(c) Amendment of termination notice. The contracting officer may amend a termination notice to-

(1) ~~Correct nonsubstantive~~Fix minor mistakes ~~in the notice~~;

(2) Add ~~supplemental data~~more information or instructions; or

(3) Rescind the notice if it is ~~determined~~discovered that ~~items~~the terminated ~~had been~~items were completed or shipped before the ~~contractor's receipt of~~contractor received the notice.

(d) Reinstatement of terminated contracts. Upon written consent of the contractor, the contracting office may reinstate ~~the~~a terminated portion of a contract in whole or in part by amending the notice of termination if it has been determined in writing that-

(1) Circumstances clearly indicate ~~a requirement for~~that the Government still needs the terminated items; and

(2) Reinstatement ~~is advantageous to~~benefits the Government.

49.103 Methods of settlement.

(a) Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience may be effected by ~~(a)~~;

(1) Negotiated agreement, ~~(b)~~;

(2) Determination by the TCO, ~~(c)~~;

(3) Costing-out under vouchers using SF 1034, Public Voucher for Purchases and Services Other Than Personal, for cost-reimbursement contracts (as prescribed in subpart 49.3), ~~(d)~~; or ~~(d)~~

(4) A combination of these methods.

(b) When possible, the TCO should negotiate a fair and prompt settlement with the contractor. The TCO ~~shall~~must settle a settlement proposal by determination only when it cannot be settled by agreement.

49.104 Duties of prime contractor after receipt of notice of termination.

After ~~receipt of the notice of~~receiving a termination notice, the contractor ~~shall comply with~~is required to follow the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause ~~applicable to~~for convenience terminations generally require ~~that the contractor~~to

- (a) Stop work immediately on the terminated portion of the contract and stop placing subcontracts ~~thereunder~~ for that work;
- (b) Terminate all subcontracts related to the terminated portion of the prime contract;
- (c) Immediately ~~advise~~ tell the TCO ~~of~~ about any special circumstances ~~precluding the stoppage of that prevent stopping~~ work;
- (d) Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, ~~supported by evidence of any increase in the cost,~~ if the termination is partial. Support this request with evidence of any cost increases;
- (e) Take necessary or directed action to protect and preserve property in the contractor's possession in which the Government has or may acquire an interest ~~and, as~~. When directed by the TCO, deliver ~~the~~ this property to the Government;
- (f) Promptly notify the TCO in writing of any legal proceedings ~~growing out of~~ arising from any subcontract or other commitment related to the terminated portion of the contract;
- (g) Settle outstanding liabilities and proposals arising ~~out of~~ from termination of subcontracts, ~~obtaining~~. Get any approvals or ratifications ~~required by~~ the TCO requires;
- (h) Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and
- (i) Dispose of termination inventory; as directed or authorized by the TCO.

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

- (a) ~~Consistent with~~ Following the termination clause and ~~the notice of~~ termination notice, the TCO ~~shall~~ must-
 - (1) ~~Direct the action required of~~ Tell the prime contractor what actions to take;
 - (2) ~~Examine the settlement proposal of~~ Review the prime ~~contractor~~ contractor's settlement proposal and, when appropriate, ~~the subcontractor~~ settlement proposals ~~of sub-contractors~~;
 - (3) ~~Promptly~~ Quickly negotiate settlement with the contractor and ~~enter into~~ make a settlement agreement; and
 - (4) ~~Promptly~~ Quickly settle the contractor's settlement proposal by determination for ~~the elements that~~ portions on which agreement cannot be ~~agreed on~~ reached, if ~~unable to negotiate~~ a complete settlement cannot be negotiated.
- (b) To ~~expedite~~ speed up settlement, the TCO may ~~request~~ task for specially ~~qualified personnel~~ trained people to-

(1) Assist in dealings with the contractor;

(2) Advise on legal and ~~contractual~~contract matters;

(3) Conduct accounting reviews and ~~advise and~~ assist ~~on~~with accounting matters; and

(4) ~~Perform~~Handle the following ~~functions regarding~~ termination inventory tasks (see subpart 45.6):

(i) Verify ~~its existence~~the inventory exists;

(ii) ~~Determine qualitative~~Decide what can be allocated and ~~quantitative allocability~~in what amounts;

~~(iii) Make recommendations concerning serviceability.~~

(iii) Recommend whether items can be used or are serviceable;

(iv) ~~Undertake~~Do necessary screening and redistribution~~;~~ and

(v) ~~Assist~~Help the contractor ~~in accomplishing other disposition~~get rid of remaining items.

(c) The TCO should ~~promptly~~quickly hold a ~~conference~~meeting with the contractor to ~~develop~~make a ~~definite program~~clear plan for ~~effecting~~completing the settlement. When appropriate ~~in the judgment of the TCO~~, after ~~consulting~~talking with the contractor, ~~principal~~major subcontractors should be ~~requested~~asked to attend. Topics ~~that should to~~ be discussed ~~at the conference~~ and documented include ~~the following~~:

(1) ~~General principles relating to the settlement of~~Basic rules for settling any settlement proposal, including ~~obligations of~~what the contractor must do under the termination clause ~~of the contract~~;

(2) ~~Extent~~How much of the ~~termination, point at which~~contract is terminated, when work ~~is stopped~~stops, and status of ~~any~~ plans, drawings, and information that would have been delivered ~~had if~~ the contract had been completed;

(3) Status of any continuing work;

(4) ~~Obligation of the contractor~~The contractor's duty to terminate subcontracts and ~~general principles to be followed in~~basic rules for settling subcontractor settlement proposals;

(5) Names of subcontractors involved and ~~the~~ dates the termination notices were issued to them;

(6) Contractor ~~personnel~~staff handling review and settlement of subcontractor settlement proposals and ~~the~~ methods being used;

- (7) ~~Arrangements~~Plans for ~~transfer of~~transferring title and ~~delivery~~for delivering to the Government ~~of any material required by~~materials the Government; needs.
- (8) ~~General principles~~Basic rules and procedures ~~to be followed in the protection, preservation for protecting, preserving, and disposition~~getting rid of the contractor's ~~contractor and subcontractors'~~subcontractor termination inventories, including ~~the preparation of~~preparing termination inventory schedules;.
- (9) Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information (49.602-3))~~);~~).
- (10) ~~Form in which~~What form to ~~submit~~use when submitting settlement proposals;.
- (11) Accounting review of settlement proposals;.
- (12) Any ~~requirement~~need for interim financing ~~in the nature of~~through partial payments;.
- (13) ~~Tentative time schedule~~Rough timeline for ~~negotiation of~~negotiating the settlement, including ~~submission by~~when the contractor and subcontractors ~~of~~must submit settlement proposals, termination inventory schedules, and accounting information schedules (see 49.206-3 and 49.303-2~~);~~).
- (14) Actions taken by the contractor to ~~minimize impact upon~~reduce harm to employees ~~affected adversely~~hurt by the termination (see paragraph (g) of the letter notice in 49.601-2~~); and~~).
- (15) ~~Obligation of the contractor to furnish~~Contractor's duty to provide accurate, complete, and current cost or pricing data, and to certify ~~to that effect in accordance with 15.403-4(a)(1)~~this data (see part 15 requirements for certified cost or pricing data) when the ~~amount of a~~ termination settlement ~~agreement~~amount, or a partial termination settlement ~~agreement~~amount plus the ~~estimate~~estimated cost to complete the continued ~~portion of the contract~~work, exceeds the cost or pricing data threshold in part 15.403-4.

~~49.105-1 Termination status reports.~~

~~When the TCO and contracting officer are in different activities, the TCO will furnish periodic status reports on termination actions to the contracting office upon request. The contracting office shall specify the information required.~~

~~49.105-2 Release of excess funds.~~

(a) The TCO ~~shall~~must estimate ~~the funds required to settle the termination, needed for~~ settlement, and within 30 days ~~after the receipt of~~of receiving the termination notice, recommend ~~that the contracting officer release of excess funds to.~~ The contracting officer. ~~The initial deobligation of excess funds should be accomplished in a timely manner by the contracting officer, or the TCO, or TCO (if delegated~~given the responsibility.) should quickly release the initial excess funds. The TCO ~~shall~~must not recommend ~~the release of~~releasing amounts under \$1,000; unless requested by the contracting officer.

(b) The TCO ~~shall maintain continuous surveillance of required funds to permit timely~~ must continuously monitor funding requirements in order to release ~~of any~~ additional excess funds ~~(promptly. See 49.604 for a recommended format for release of excess funds is in 49.604).~~ If previous funding releases ~~of excess funds result in~~ create a shortage ~~of the amount required for~~ settlement, the TCO ~~shall promptly inform~~ must tell the contracting officer immediately. The contracting officer, ~~who shall reinstate~~ must restore the funds within 30 days.

~~49.105-3 Termination case file.~~

~~The TCO responsible for negotiating the final settlement shall establish a separate case file for each termination. This file will include memoranda and records of all actions relative to the settlement (see 4.801).~~

~~49.105-42 Cleanup of construction site.~~

~~In the case of~~ For terminated construction contracts, the contracting officer ~~shall~~ must direct ~~action to ensure the cleanup of the actions to ensure:~~ site cleanup, protection of ~~serviceable~~ usable materials, removal of hazards, and any other ~~action necessary to leave~~ actions needed for a safe and ~~healthful~~ healthy site.

49.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts under agency procedures.

49.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) ~~The TCO shall refer each~~ Prime contractor audits. The TCO must send settlement ~~proposal valued at or above~~ proposals to the threshold audit agency for obtaining review when the value meets or exceeds the certified cost or pricing data ~~set forth~~ threshold in FAR part 15.403-4(a)(1) ~~to the appropriate audit agency for review and recommendations.~~ The TCO may ~~submit~~ send proposals ~~of less than~~ valued below the threshold for ~~obtaining~~ certified cost ~~or~~ and pricing data ~~to the~~ for audit ~~agency. Referrals shall indicate any~~ review.

(1) When referring proposals, include-

(i) Specific information ~~or data that~~ the TCO considers relevant; ~~and shall include~~

(ii) Facts and circumstances ~~that will assist~~ to help the audit agency ~~in performing its function.~~

(2) The audit agency shall must-

(i) Develop requested information ~~and may make any further;~~

(ii) Make additional accounting reviews ~~it considers~~ as appropriate. ~~After its review, the audit agency shall;~~ and

(iii) Submit written comments and recommendations to the TCO. ~~When a formal examination of settlement~~

(3) For proposals ~~valued~~ under the threshold ~~for obtaining certified cost or pricing data is that do~~ not ~~warranted~~ need formal examination, the TCO will ~~perform or have performed~~ do a desk review and include a written summary ~~of the review~~ in the termination case file.

(b) Subcontract settlement audits. The TCO ~~shall~~ must refer subcontract settlements ~~received for approval or ratification to the appropriate audit agency for review and recommendations~~ when—

(1) The amount exceeds the certified cost or pricing data threshold ~~for obtaining certified cost or pricing data~~; or

(2) The TCO ~~determines that~~ decides a complete or partial accounting review is advisable. The audit agency ~~shall~~ must submit written comments and recommendations to the TCO. ~~The~~ This review ~~by the audit agency~~ does not ~~relieve~~ remove the prime ~~contractor~~ contractor's or higher-tier ~~subcontractor of the subcontractor's~~ responsibility ~~for performing~~ to do their own accounting review.

(c) Contractor responsibilities.

(1) ~~The responsibility of the prime contractor and of each subcontractor (see 49.108) includes performance of~~ Prime contractors and subcontractors must perform accounting reviews and ~~any~~ necessary field audits. However, the TCO should request ~~the~~ a Government audit ~~agency to perform the accounting review~~ of a subcontractor's settlement proposal when—

(i) A subcontractor objects, for competitive reasons, to an ~~accounting review of its records by an~~ upper-tier contractor reviewing its records;

(ii) The Government audit agency is ~~currently performing audit work~~ already working at the subcontractor's ~~plant~~ location, or can ~~perform~~ do the audit more economically ~~or efficiently~~;

(iii) ~~Audit by the~~ Government audit is ~~necessary~~ needed for consistent ~~audit~~ treatment and orderly administration; or

(iv) The contractor has ~~a~~ substantial or controlling financial interest in the subcontractor.

(2) The audit agency should avoid ~~duplication of accounting~~ duplicating reviews ~~performed done~~ by ~~the upper-tier contractor on subcontractor settlement proposals~~ contractors. However, this ~~should~~ does not ~~preclude the Government from making~~ prevent additional Government reviews when appropriate. ~~When the contractor is performing accounting reviews according to this section, the TCO should request the audit agency to periodically examine the contractor's accounting review procedures and performance, and to make appropriate comments and recommendations to the TCO.~~

(d) ~~The~~ Using audit ~~report is~~ reports. Audit reports are advisory only, ~~and is~~. The TCO uses them for ~~the TCO to use in negotiating a settlement~~ settlements or ~~issuing a~~ making unilateral ~~determination~~ determinations. Government personnel handling audit reports must be careful not to reveal privileged information ~~or information~~ that ~~will jeopardize~~ could hurt the negotiation

position of the Government, ~~the~~ prime contractor, or ~~a~~ higher-tier subcontractor. ~~Consistent with this, When appropriate and when~~ in the Government's best interest, the TCO may furnish ~~give~~ audit reports ~~under paragraph (e) of this section~~ to prime contractors and higher-tier subcontractors for ~~their use in settling subcontract~~ settlement proposals.

49.108 Settlement of subcontract settlement proposals.

49.108-1 Subcontractor's rights.

~~A subcontractor has~~ Subcontractors have no ~~contractual~~ direct contract rights against the Government ~~upon the termination of when~~ a prime contract. ~~A subcontractor is terminated.~~ Subcontractors may have rights against the prime contractor or intermediate subcontractor with whom it has contracted. ~~Upon termination of When~~ a prime contract is terminated, the prime contractor and each subcontractor are responsible for ~~the prompt settlement of~~ promptly settling the settlement proposals of their immediate subcontractors.

49.108-2 Prime contractor's rights and obligations.

(a) Termination for convenience clauses ~~provide that after receipt of a termination notice the prime contractor shall, unless directed otherwise by the TCO, require prime contractors to terminate all subcontracts to the extent that they relate~~ related to the performance of terminated prime work ~~terminated. Therefore, unless the TCO directs otherwise.~~ Prime contractors should include ~~a termination~~ clause clauses in their subcontracts for their ~~own~~ protection. ~~Suggestions regarding use of See subpart 49.5 for suggestions on subcontract termination clauses are in subpart 49.5.~~

(b) ~~The failure of If~~ a prime contractor fails to include ~~an appropriate~~ proper termination clause clauses in ~~any subcontract, subcontracts~~ or fails to exercise ~~the~~ clause rights, ~~shall this does~~ not —

(1) Affect the Government's right to require ~~the subcontract~~ termination of the subcontract; or

(2) Increase ~~the obligation of the~~ Government obligations beyond what ~~it they~~ would have been ~~if the subcontract had contained an appropriate clause~~ with proper clauses.

~~(e) In any case, (c) Normally, the TCO should measure the reasonableness of the prime contractor's settlement~~ contractor settlements with ~~the subcontractor should normally be measured~~ subcontractors by the aggregate total amount due under paragraph (f) of the subcontract termination clause suggested in 49.502(e). The TCO ~~shall~~ must allow reimbursement ~~in excess of above~~ that amount only in unusual cases and ~~then only to the extent that the terms of when~~ the subcontract terms did not unreasonably increase the subcontractor's rights ~~of the subcontractor~~.

49.108-3 Settlement procedure.

(a) Contractors ~~shall~~ must settle with subcontractors ~~in general conformity with following the same policies and principles relating to settlement of used for prime contracts~~ contract settlements in this subpart and subparts 49.2 or 49.3. However, the prime contractor or next higher tier subcontractor must accept the basis and form of the subcontractor's settlement proposal ~~must be acceptable to the prime contractor or the next higher tier subcontractor.~~ Each settlement must be supported by have enough accounting data and other information ~~sufficient for adequate review~~

~~by~~ for the Government. ~~In no event will~~ to adequately review it. The Government will never pay the prime contractor any amount for ~~loss of anticipatory~~ lost anticipated profits or consequential damages ~~resulting from the termination of~~ terminating any subcontract (but see 49.108-5).

(b) Except as provided in 49.108-4, the TCO ~~shall~~ must require that-

(1) All subcontractor termination inventory be disposed of and accounted for ~~in accordance with~~ following the procedures ~~contained~~ in paragraph (j) of ~~the~~ clause ~~at~~ 52.245-1, Government Property; and

(2) The prime contractor submit, ~~for approval or ratification,~~ all termination settlements with subcontractors for approval or ratification.

(c) The TCO ~~shall promptly~~ must quickly examine each subcontract settlement received to determine ~~that whether-~~

(1) The subcontract termination was ~~made necessary by the termination because~~ of the prime contract termination (or ~~by issuance because~~ of a change order—see 49.002(b)). ~~The TCO will also determine if c));~~

(2) The settlement was ~~arrived at~~ made in good faith;

(3) The settlement amount is reasonable ~~in amount;~~ and

(4) The settlement is allocable to the terminated portion of the contract (or, if only partially allocable ~~only in part~~, that the proposed allocation is reasonable). ~~In~~

(d) When considering ~~the reasonableness of if~~ any subcontract settlement is reasonable, the TCO ~~shall~~ must generally ~~be guided by~~ follow the provisions ~~of in~~ this part ~~relating to the settlement of for settling~~ prime contracts, ~~and shall.~~ The TCO must also comply with any applicable requirements ~~of in~~ 49.107 106 and 49.111 ~~relating to for~~ accounting and other reviews. After the examination, the TCO ~~shall~~ must notify the contractor in writing of—

(1) Approval or ratification, ~~or;~~ and

(2) The reasons for disapproval.

49.108-4 Authorization for subcontract settlements without approval or ratification.

~~(a)-(1)~~ (1) The TCO may, ~~upon written request,~~ give written authorization to the prime contractor to ~~conclude complete~~ settlements of subcontracts terminated in whole or in part without approval or ratification when the ~~amount of~~ settlement amount (see 49.002(d)) is \$100,000 or less. This requires a written request from the contractor. The TCO may grant this authorization if—

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling settlement proposals, including proposals for ~~retention, sale~~ keeping, selling, or ~~other~~

~~disposal~~ otherwise disposing of termination inventory of the immediate and lower tier subcontractors ~~(~~. The TCO ~~shall~~ must obtain ~~the~~ advice and recommendations ~~of~~ from—

(A) The appropriate audit agency ~~relating to~~ about the adequacy of the contractor's audit administration, including personnel; and

(B) The cognizant plant clearance officer ~~relating to~~ about the adequacy of the contractor's procedures and personnel for ~~the administration of~~ handling property disposal matters);

(ii) Any termination inventory included in determining the ~~amount of the~~ settlement amount will be disposed of as directed by the prime contractor, except that ~~the disposition~~ disposing of the inventory ~~shall~~ will not be subject to—

(A) Review by the TCO under 49.108-3(c); or

(B) The screening requirements in 45.602-3; and

(iii) A certificate similar to the certificate in the settlement proposal form in 49.602-1(a) will accompany the settlement.

(2) Except as ~~provided~~ stated in paragraph (a)(4) of this section, authority granted to a prime contractor under paragraph (a)(1) of this section by any TCO ~~shall~~ must apply to all Executive agencies' prime contracts that are terminated; or modified by change orders.

(3) Except as ~~provided~~ stated in paragraph (a)(4) of this section, the TCO ~~shall~~ must accept; settlements of terminated lower tier subcontracts as part of the prime contractor's settlement proposal. This applies when the settlements ~~of terminated lower tier subcontracts concluded are completed~~ by any of the prime contractor's immediate or lower-tier subcontractors who have been granted authority as prime contractors to settle subcontracts; provided; that the settlement is within the limit of the authority. Authorization to settle proposals of lower-tier subcontractors ~~shall~~ must not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise this authority ~~in its capacity~~ when acting as a subcontractor; ~~with respect to~~ for its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor ~~shall~~ must notify the purchaser.

(4) The provisions of paragraphs (a)(1), (2), and (3) of this section ~~shall~~ do not apply to contracts under the administration of any contracting officer if the contracting officer ~~so~~ notifies the prime contractor concerned. This notice ~~shall~~ must—

(i) Be in writing; and

(ii) If paragraph (a)(3) of this section is involved, specify any subcontractor affected.

(b) Section 45.602 ~~shall~~ must apply to disposal of completed end items allocable to the terminated subcontract. However, these items may be disposed of without review by the TCO under 49.108-3 and without screening under 45.602-3, if the items do not require demilitarization

and the total amount (at the subcontract price) when added to the ~~amount of the~~ settlement ~~amount~~ does not exceed the amount authorized under this ~~subsection~~section.

(c) A TCO granting the authorization in paragraph (a)(1) of this section ~~shall~~must periodically (at least annually) make a selective review of settlements and settlement procedures ~~to determine~~. This review determines if the contractor is making adequate reviews and fair settlements, and whether the authorization should remain in effect. The TCO ~~shall~~must obtain ~~the~~ advice and recommendations ~~of~~from the appropriate audit agency and the cognizant plant clearance officer. ~~When it is determined that the contractor's procedures are not adequate, or that improper settlements are being made, or when the authority has not been used in the preceding 2 years,~~ The TCO ~~shall~~must revoke the authorization by written notice to the contractor, effective on the date of receipt, ~~when—~~

(1) The contractor's procedures are not adequate;

(2) Improper settlements are being made; or

(3) The authority has not been used in the preceding 2 years.

(d) The contractor may make any number of separate settlements with a single subcontractor but ~~shall~~must not divide settlement proposals solely to bring them under an authorization limit. Separate settlement proposals that would normally be included in a single proposal, such as those based on a series of separate orders for the same item under one contract, ~~shall~~must be consolidated whenever possible.

(e) Upon written request of the contractor, the TCO may increase an authorization granted under paragraph (a)(1) of this ~~subsection~~section to authorize the contractor to conclude settlements under a particular prime contract. The TCO may limit the increased authorization to specific subcontracts or classes of subcontracts.

(f) Authorizations granted under ~~this~~ 49.108-4 ~~shall~~do not authorize the settlement of requisitions or orders placed with any unit within the contractor's corporate entity.

~~(g) Recommended formats for a request to settle subcontractor settlement proposals and the TCO's letter of authorization to the contractor are in 49.605 and 49.606, respectively.~~

49.108-5 Recognition of judgments and arbitration awards.

(a) When a subcontractor obtains a final judgment against a prime contractor, the TCO ~~shall, for the purposes of settling the prime contract,~~must treat the ~~amount of the~~ judgment ~~amount~~ as a cost of settling with the contractor; This applies to the extent the judgment is properly allocable to the terminated portion of the prime contract, if- these conditions are met:

(1) The prime contractor ~~has~~ made reasonable efforts to include in the subcontract a termination clause described in 49.502(e), 49.503(c), or a similar clause ~~excluding~~that excludes payment of anticipatory profits or consequential damages;.

(2) The ~~provisions of the subcontract relating to the~~ provisions about termination rights of ~~the both parties upon its termination~~ are fair and reasonable and do not unreasonably increase the subcontractor's common law rights ~~of the subcontractor;~~

(3) The contractor made reasonable efforts to settle the subcontractor's settlement proposal ~~of the subcontractor;~~

(4) The contractor ~~gave prompt notice to~~ promptly notified the contracting officer ~~of the initiation of when~~ the proceedings ~~in which that led to~~ the judgment ~~was rendered~~ began and did not refuse to give the Government control of the defense ~~of the proceedings; and.~~

(5) The contractor ~~diligently~~ defended the suit diligently or, if the Government ~~assumed~~ took control of the defense ~~of the proceedings; rendered.~~ provided reasonable assistance when requested ~~by the Government.~~

(b) If ~~the not all~~ conditions in paragraphs (a)(1) through (5) of this section are ~~not all~~ met, the TCO may allow the contractor the part of the judgment considered fair for settling the subcontract ~~settlement~~ proposal, ~~giving due regard to.~~ The TCO must consider the policies in this part for settlement ~~of~~ proposals.

(c) When a contractor and ~~a~~ subcontractor submit the subcontractor's settlement proposal to arbitration under any applicable law or contract provision, the TCO ~~shall~~ must recognize the arbitration award as the cost of settling the contractor's proposal ~~of the contractor.~~ This applies to the same extent and under the same conditions as in paragraphs (a) and (b) of this section.

49.108-6 Delay in settling subcontractor settlement proposals.

When a prime contractor's inability to settle with a subcontractor delays ~~the settlement of the~~ prime contract settlement, the TCO may settle with the prime contractor. The TCO ~~shall~~ must ~~except~~ exclude the subcontractor settlement proposal from the settlement ~~in~~ whole ~~completely~~ or ~~part~~ partially and reserve the rights of the Government and ~~the~~ prime contractor ~~with respect to~~ regarding the subcontractor proposal.

49.108-7 ~~Government assistance in settling subcontracts.~~

~~In unusual cases the TCO may determine, with the consent of the prime contractor, that it is in the Government's interest to provide assistance to the prime contractor in the settlement of a particular subcontract. In these situations, the Government, the prime contractor, and a subcontractor may enter into an agreement covering the settlement of one or more subcontracts. In these settlements, the subcontractor shall be paid through the prime contractor as part of the overall settlement with the prime contractor.~~

49.108-8 Assignment of rights under subcontracts.

(a) ~~The~~ Termination for convenience clauses in 52.249- ~~(except the short-form clauses, obligate the)~~ require prime ~~contractor~~ contractors to assign to the Government, ~~as directed by the TCO,~~ all rights, titles, and ~~interest~~ interests under any subcontract terminated because of ~~termination of the~~ prime contract termination. The TCO ~~shall~~ directs this assignment. The TCO must not require ~~the~~ assignment unless it ~~is in~~ benefits the ~~Government's interest~~ Government.

(b) ~~The~~ Termination for convenience clauses (except ~~the~~ short-form clauses) also ~~provide~~give the Government the right, ~~in its discretion~~, to settle and pay any settlement proposal ~~arising out of the~~from a subcontract termination ~~of subcontracts at its discretion~~. This right does not obligate the Government to settle and pay subcontractor settlement proposals ~~of subcontractors. As a general rule. Generally~~, the prime contractor ~~is obligated to~~must settle and pay these proposals. However, when the TCO determines ~~that it is in~~benefits the ~~Government's interest~~Government, the TCO ~~shall, after notifying the contractor,~~must settle the subcontractor's proposal using ~~the prime contract settlement~~ procedures ~~for settlement of prime contracts. An example in which the Government's interest would be served is~~after notifying the contractor (e.g., when a subcontractor is ~~a sole~~the only source and ~~it appears that~~ a delay by the prime contractor in settlement or payment ~~of~~would hurt the subcontractor's ~~proposal will jeopardize the~~ financial position ~~of the subcontractor.~~). Direct settlements with subcontractors are not encouraged.

49.109 Settlement agreements.

49.109-1 General.

When a termination settlement has been negotiated and all required reviews have been obtained, the contractor and the TCO ~~shall~~must execute a settlement agreement ~~on~~. Use Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see 49.603). The settlement ~~shall~~must cover —

(a) Any ~~setoffs~~offsets that the Government has against the contractor that may be applied against the terminated contract; and

(b) All subcontractor settlement proposals ~~of subcontractors~~, except proposals that are specifically ~~excepted~~excluded from the agreement and reserved for separate settlement.

49.109-2 Reservations.

(a) The TCO ~~shall~~must —

(1) Reserve in the settlement agreement any rights or demands of the parties that are ~~excepted~~excluded from the settlement;

(2) Ensure ~~that the wording of the~~ reservation wording does not create ~~any~~ rights for the parties beyond those ~~in existence~~existing before ~~execution of~~executing the settlement agreement;

(3) Mark each applicable settlement agreement with "This settlement agreement contains a reservation" and ~~retain~~keep in the contract file until the reservation is removed;

(4) Ensure ~~that~~ sufficient funds are ~~retained~~kept to cover complete settlement of ~~the~~ reserved items; and

(5) At the appropriate time, prepare a separate settlement of reserved items and include it in a separate settlement agreement.

(b) A recommended format for settlement of reservations appears in 49.603-9.

49.109-3 Government property.

Before ~~execution of~~executing a settlement agreement, the TCO ~~shall~~must determine the accuracy of the Government property account for the terminated contract. If an audit ~~discloses~~reveals property ~~for which~~ the contractor cannot account for, the TCO ~~shall reserve in the settlement agreement the~~must either—

(a) Reserve the Government's rights ~~of the Government~~ regarding that property in the settlement agreement; or

(b) Make an appropriate deduction from the amount otherwise due the contractor.

49.109-4 No-cost settlement.

The TCO ~~shall~~must execute a no-cost settlement agreement (see 49.603-6 or 49.603-7, as applicable) if—

(a) The contractor has not incurred costs for the terminated ~~portion of the contract~~ portion; or

(b) The contractor is willing to waive the costs incurred; and

(c) No amounts are due the Government under the contract.

49.109-5 Partial settlements.

The TCO should ~~attempt~~try to settle ~~in one agreement~~ all rights and liabilities of the parties ~~under the contract in one agreement~~ except those ~~arising~~ from any ~~continued~~continuing contract ~~portion of the contract~~. Generally, the TCO ~~shall~~must not ~~attempt to~~ make partial settlements covering particular items of the prime contractor's settlement proposal. However, ~~when at the~~ TCO ~~cannot promptly complete settlement under the terminated contract~~, may make a partial settlement ~~may when complete settlement cannot~~ be ~~entered into~~ finished promptly if—

(a) ~~The~~Agreed upon issues ~~on which agreement has been reached~~ are clearly severable from other issues; and

(b) The partial settlement will not ~~prejudice~~hurt the Government's or contractor's interests in disposing of the unsettled part ~~of the settlement proposal~~.

49.109-6 Joint settlement of two or more settlement proposals.

(a) With ~~the consent of the~~ contractor consent, the TCO or ~~TCO's~~TCOs concerned may jointly negotiate ~~jointly~~ two or more termination settlement proposals ~~of~~with the same contractor under different contracts, even ~~though~~if the contracts are with different contracting offices or agencies. ~~In such cases,~~Consolidate accounting work ~~shall be consolidated to the greatest extent~~ as much as practical. The resulting settlement may be ~~evidenced~~shown by—

(1) One settlement agreement covering all contracts involved; or ~~by~~

(2) A separate agreement for each contract involved.

(b) When the settlement agreement covers more than one contract, it ~~shall~~must

(1) Clearly identify the contracts involved,

(2) Assign an amendment modification number to each contract,

(3) ~~Apportion~~Divide the total ~~amount of the~~ settlement amount among the ~~several~~ contracts on some reasonable basis;

(4) Have attached or incorporated a schedule showing the ~~apportionment~~division; and

(5) Be distributed and attached to each contract involved ~~in~~ the same ~~manner~~way as other contract modifications.

49.109-7 Settlement by determination.

(a) General. If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the TCO ~~shall~~must issue a determination of the amount due. This determination must be consistent with the termination clause, including any cost principles incorporated by reference. The TCO ~~shall~~must comply with 49.109-1 through 49.109-6 in making a settlement by determination and with 49.203 in making an adjustment for loss, if any. ~~Copies of determinations shall receive the same distribution as other contract modifications.~~

(b) Notice to contractor. Before issuing a determination of the amount due the contractor, the TCO ~~shall~~must give the contractor at least 15 ~~days~~days' notice by certified mail (return receipt requested) to submit written evidence, ~~so as to~~. The evidence must reach the TCO on or before a stated date, ~~substantiating and must support~~ the amount previously proposed.

(c) Justification of settlement proposal. ~~(1) The contractor has the burden of establishing, the~~ proposed amount by proof satisfactory to the TCO, ~~the amount proposed.~~

(2) The contractor may submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as desired. The TCO may request the contractor to submit additional documents and data, and may request appropriate accountings, investigations, and audits.

(3) The TCO may accept copies of documents and records without requiring original documents unless there is a question of authenticity.

(4) The TCO may hold any conferences considered appropriate—

(i) To confer with the contractor,

(ii) To obtain additional information from Government personnel or from independent experts, or

(iii) To consult persons who have submitted affidavits or reports.

(d) Determinations. After reviewing the information available, the TCO ~~shall~~must determine the amount due and ~~shall~~must transmit a copy of the determination to the contractor by certified mail (return receipt requested), or by any other method that provides evidence of receipt. The transmittal letter ~~shall~~must advise the contractor that the determination is a final decision from which the contractor may appeal under the Disputes clause, except as shown in paragraph (f) of this section. The determination ~~shall~~must specify the amount due the contractor and will be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in 49.602-1 and by additional information, schedules, and analyses as appropriate. The TCO ~~shall~~must explain each major item of disallowance. The TCO need not reconsider any other action relating to the terminated portion of the contract that was ratified or approved by the TCO or another contracting officer.

(e) Preservation of evidence. The TCO ~~shall~~must retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. The TCO ~~shall~~must return books of account, together with other original papers and documents, to the contractor within a reasonable time.

(f) Appeals. The contractor may appeal, under the Disputes clause, any settlement by determination, except when the contractor has failed to submit the settlement proposal within the time provided in the contract and failed to request an extension of time. The pendency of an appeal ~~shall~~will not affect the authority of the TCO to settle the settlement proposal or any part by negotiation with the contractor at any time before the appeal is decided.

(g) Decision on the contractor's appeal. The TCO ~~shall~~must give effect to a decision of the Claims Court or a board of contract appeals, when necessary, by an appropriate modification to the contract. When appropriate, the TCO should obtain a release from the contractor. ~~TCO's~~TCOs are authorized to modify the formats of settlement agreements in 49.603 to agree with this provision.

49.110 Settlement negotiation memorandum.

(a) The TCO ~~shall~~must, at the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities. Pricing aspects of the settlement ~~shall~~must be documented ~~in accordance with 15.406-3. The, and~~ memorandum ~~shall be~~ distributed, both in accordance with part 15.406-3.

(b) If the settlement was negotiated on the basis of individual items, the TCO ~~shall~~must specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually, but ~~shall~~must support the total amount of the recommended settlement in reasonable detail. The memorandum ~~shall~~must include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered. The TCO should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

49.111 Review of proposed settlements.

Each agency ~~shall~~must establish procedures, ~~when necessary,~~ for ~~the~~ administrative review of proposed termination settlements when necessary. When one agency provides termination settlement services for another agency, the agency providing the services ~~shall~~must also perform the settlement review function.

49.112 Payment.

49.112-1 Partial payments.

(a) General. If the contract authorizes partial payments on settlement proposals before settlement, a prime contractor may request them on the form prescribed in 49.602-4 at any time after submission of interim or final settlement proposals. The Government will process applications for partial payments promptly. A subcontractor ~~shall~~must submit its application through the prime contractor ~~which shall~~. The prime contractor must attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor ~~shall~~must be made only through the prime contractor and only after the prime contractor has submitted its interim or final settlement proposal. Except for undelivered acceptable finished products, partial payments ~~shall~~must not be made for profit or fee claimed under the terminated portion of the contract. In exercising discretion on the extent of partial payments to be made, the TCO ~~shall~~must consider the diligence of the contractor in settling with subcontractors and in preparing its own settlement proposal.

(b) Amount of partial payment. Before approving any partial payment, the TCO ~~shall~~must obtain any desired accounting, engineering, or other specialized reviews of the data submitted in support of the contractor's settlement proposal. If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, the TCO may authorize reasonable payments ~~may be authorized in the discretion of the TCO~~ up to ~~—~~

(1) 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO (see 49.205);

(2) 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO under 49.108-3(c) or was authorized under 49.108-4;

(3) 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) 90 percent of other allowable costs (including settlement expense and manufacturing and administrative indirect costs) allocable to the terminated portion of the contract and not included in paragraphs (b)(1), (2), or (3) of this section; ~~and~~or

(5) 100 percent of partial payments made to subcontractors under this section.

(c) Recognition of assignments. When an assignment of claims has been made under the contract, the Government ~~shall~~must not make partial payments to other than the assignee unless the parties to the assignment consent in writing (see ~~part 32.805(e))~~.

(d) Security for partial payments. If any partial payment is made for completed end items or for costs of termination inventory, the TCO ~~shall~~must protect the Government's interest. This ~~shall~~must be done by obtaining title to the completed end items or termination inventory, or by the creation of a lien in favor of the Government, paramount to all other liens, on the completed end items or termination inventory, or by other appropriate means.

(e) Deductions in computing amount of partial payments. The TCO ~~shall~~must deduct from the gross amount of any partial payment otherwise payable under 49.112-1(b)~~)~~—

(1) All unliquidated balances of progress and advance payments (including interest) made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property, the costs of which are included in the application for payment.

(f) Limitation on total amount. The total amount of all partial payments ~~shall~~must not exceed the amount that will, in the opinion of the TCO, become due to the contractor because of the termination.

(g) Effect of overpayment. If the total of partial payments exceeds the amount finally determined due on the settlement proposal, the contractor ~~shall~~must repay the excess to the Government on demand, together with interest. ~~The interest shall be computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2) from the date the excess payment was received by the contractor to the date of repayment.~~ However, interest will not be charged for any~~—~~

(1) Excess payment attributable to a reduction in the 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 TCO;~~2~~ or

(2) Overpayment under cost-reimbursement research and development contracts without profit or fee if the overpayments are repaid to the Government within 30 days after demand.

(h) Certification and approval of partial payments~~—(1)~~ The contractor ~~shall~~must place the following certification on vouchers or invoices for partial payments~~—:~~"The payment covered by this voucher is a partial payment on the Contractor's settlement proposal under contract No. _____ under part 49 of the Federal Acquisition Regulation~~—:~~"

(2) The TCO shall approve the invoice or voucher by noting on it the following:

"Payment of \$ _____ is approved~~—:~~"

49.112-2 Final payment.

(a) Negotiated settlement. After execution of a settlement agreement, the contractor ~~shall~~must submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The TCO ~~shall~~must attach a copy of the settlement agreement to the voucher or invoice and forward the documents to the disbursing officer for payment.

(b) Settlement by determination. If the settlement is by determination and-

(1) There is no appeal within the allowed time, the contractor ~~shall~~must submit a voucher or invoice showing the amount determined due, less any portion previously paid; or

(2) There is an appeal, the contractor ~~shall~~must submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

(c) Construction contracts. In the case of construction contracts, before forwarding the final payment voucher, the contracting officer ~~shall~~must ascertain whether there are any outstanding labor violations. If so, the contracting officer ~~shall~~must determine the amount to be withheld from the final payment (see ~~subpart~~part 22.4).

(d) Interest. The Government ~~shall~~must not pay interest on the amount due under a settlement agreement or a settlement by determination. The Government may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Disputes clause at 52.233-1.

49.113 ~~Cost principles~~Unsettled contract changes.

~~The cost principles and procedures in the applicable subpart of part 31 shall, subject to the general principles in 49.201-~~

~~(a) Be used in asserting, negotiating, or determining costs relevant to termination settlements under contracts with other than educational institutions, and~~

~~(b) Be a guide for the negotiation of settlements under contracts for experimental, developmental, or research work with educational institutions (but see 31.104).~~

49.114 ~~Unsettled contract changes~~.

(a) Before ~~settlement of~~settling a completely terminated contract, the TCO ~~shall obtain~~must get a list from the contracting office ~~a list of~~ all related ~~unsettled~~ contract changes that have not been settled. The TCO ~~shall~~must settle, ~~as part of final settlement,~~ all unsettled contract changes ~~after obtaining the~~as part of the final settlement. Get recommendations ~~of~~from the contracting office ~~concerning about~~ the changes before settling them.

(b) When ~~the only part of a~~ contract has been ~~partially~~ terminated, the contracting officer will usually handle any outstanding unsettled contract changes ~~will usually be handled by the contracting officer.~~ However, the contracting officer may delegate this ~~function~~job to the TCO.

49.115114 Settlement of terminated incentive contracts.

(a) Fixed-price incentive contracts. The TCO shall settle terminated fixed-price incentive (FPI) contracts under the provisions of paragraph (j) of the clause at 52.216-16, Incentive Price Revision-Firm Target., Incentive Price Revision-Firm Target, and 52.249-2, Termination for Convenience of the Government (Fixed-Price)., Termination for Convenience of the Government (Fixed-Price).

(1) Partial termination. Under a partially terminated contract, the TCO shall negotiate a settlement as provided in the termination clause of the contract, and paragraph (j) of the clause at 52.216-16, Incentive Price Revision-Firm Target., Incentive Price Revision-Firm Target, or paragraph (1) of the clause at 52.216-17, Incentive Price Revision-Successive Targets., Incentive Price Revision-Successive Targets. The contracting officer shall apply the incentive price revision provisions to completed items accepted by the Government, including any for which the contractor may request reimbursement in the settlement proposal. The TCO shall reimburse the contractor at target price for completed articles included in the settlement proposal for which a final price has not been established. The TCO shall incorporate in the settlement agreement an appropriate reservation as to final price for these completed articles.

(2) Complete termination. If any items were delivered and accepted by the Government, the contracting officer shall establish prices under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see 52.249-2, Termination for Convenience of the Government (Fixed-Price)., Termination for Convenience of the Government (Fixed-Price)) shall govern and the provisions of the incentive clause shall not apply. The TCO responsible for the termination settlement will ensure, on the basis of evidence considered proper (including coordination with the contracting officer), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) Cost-plus-incentive-fee contracts. The TCO shall settle terminated cost-plus-incentive-fee contracts under the clause at 52.249-6, Termination (Cost-Reimbursement)., Termination (Cost-Reimbursement).

(1) Partial termination. Under a partial termination, the TCO shall limit the settlement to an adjustment of target fee as provided in paragraph (e) of the clause at 52.216-10, Incentive Fee., Incentive Fee. The settlement agreement shall include a reservation regarding any adjustment of target cost resulting from the partial termination. The contracting officer shall adjust the target cost, if required.

(2) Complete termination. The parties shall negotiate the settlement under the provisions of subpart 49.3 and the clause at 52.249-6, Termination (Cost-Reimbursement)., Termination (Cost Reimbursement). The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

Subpart 49.2 - Additional Principles for Fixed-Price Contracts Terminated for Convenience
49.201 General.

(a) ~~A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of~~ involves judgment and ~~cannot be measured exactly. In a given case, various~~ has no exact measurement. Different methods ~~may be equally appropriate for arriving at~~ can determine fair compensation. ~~The use of~~ Business judgment, ~~as distinguished from not~~ strict accounting ~~principles, is the heart of a settlement.~~ rules, is most important when making settlements. Settlements should pay contractors fairly for—

(1) Work they have completed;

(2) Preparations they made for terminated portions of the contract; and

(3) A reasonable profit amount.

(b) The ~~primary objective~~ main goal is to ~~negotiate a reach an agreed~~ settlement ~~by agreement. The parties may. Parties can~~ agree upon a total payment amount ~~to be paid the contractor~~ without ~~agreeing on or segregating the particular elements of~~ breaking down specific costs or profit ~~comprising this amount~~ components.

(c) Cost and accounting ~~data may provide guides, information helps guide—~~ but ~~are not rigid measures, for ascertaining~~ does not strictly control— fair compensation. ~~In~~ decisions. When appropriate ~~cases, costs may—~~

(1) Costs can be estimated, ~~differences compromised;~~

(2) Preparations they made for terminated portions of the contract; and ~~doubtful questions settled by~~

(3) Uncertain matters can be resolved through agreement.

(d) Other data types ~~of data, criteria,~~ or standards ~~may furnish~~ might provide equally reliable ~~guides to fair compensation. The amount of~~ guidance. Keep recordkeeping, reporting, and accounting ~~related to the settlement of~~ for terminated contracts ~~should be kept~~ to a minimum ~~compatible with the reasonable protection of the~~ while protecting public interest.

49.202 Profit.

(a) The TCO ~~shall allow profit~~ can use any reasonable method to determine a fair profit.

(1) The TCO must pay profit to the contractor for—

(i) Work they did on the terminated part; and

(ii) Preparations made ~~and work done by the contractor for~~ for the terminated portion of ~~the contract but~~ work.

(2) Do not ~~on~~ pay profit for-

(i) Settlement costs (the ~~settlement expenses. Anticipatory profits and~~ costs of working out the final payment);

(ii) To cover the profit amount the contractor expected to make on work they never did; or

(iii) Consequential damages ~~shall not be allowed (but see 49.108-5). Profit for the contractor's efforts in settling.~~

(3) When the contractor helps settle subcontractor proposals ~~shall, do not be based~~ base their profit on the ~~dollar~~ amount of ~~the subcontract~~ those settlements. The effort involved in reaching settlement agreements but the contractor's efforts will may be considered ~~in determining the overall rate of profit allowed the contractor. Profit shall not be allowed the contractor for material.~~

(4) Do not pay profit for materials or services that, ~~as of the effective date of termination, have not been~~ subcontractors had not delivered by ~~a subcontractor~~ the termination date, regardless of the percentage of completion. ~~The TCO may use any reasonable method to arrive at a fair profit.~~

(b) ~~In negotiating or determining~~ When deciding on profit, ~~factors to be considered include~~ think about these things:

(1) ~~Extent~~ How much and ~~difficulty of~~ how hard was the work ~~done by the contractor as compared with to all the total work the contract required by the contract (-~~ Engineering estimates ~~of the percentage of completion ordinarily should not be~~ are not required, but should be considered if they are available ~~should be considered~~);

(2) Engineering work, ~~production scheduling~~, planning schedules, technical ~~study and~~ studies, supervision, and other ~~necessary~~ needed services;

(3) ~~Efficiency of~~ How well the contractor, ~~with particular regard to-~~ did, especially—

(i) ~~Attainment of quantity and~~ Making quality ~~production~~ products on time;

(ii) ~~Reduction of~~ Keeping costs down;

(iii) ~~Economic use of~~ Using materials, ~~facilities~~ buildings, and ~~manpower; and~~ workers economically; or

(iv) Disposition of termination inventory;

(4) ~~Amount~~ How much money the contractor put in and ~~source of capital and extent of~~ how much risk assumed; they took.

~~(5) Inventive and developmental contributions, and cooperation with~~ (5) New ideas and technical help the contractor gave to the Government and other contractors ~~in supplying technical assistance;~~

(6) ~~Character~~ The type of ~~the~~ business, including ~~the source and nature of~~ where materials come from and how complicated the ~~complexity of~~ manufacturing ~~techniques;~~ is.

(7) ~~The rate of~~ How much profit ~~that~~ the contractor would have ~~earned~~ made if they had finished the whole contract ~~been completed;~~

(8) ~~The rate of~~ How much profit both ~~parties contemplated at the time~~ sides expected when they made the contract ~~was negotiated; and~~

(9) ~~Character and difficulty of subcontracting~~ How hard it was to manage subcontractors, including ~~selection, placement~~ picking them, placing contracts with them, managing them, and ~~management of subcontracts, and effort in negotiating~~ working out settlements ~~of terminated subcontracts.~~ when their contracts were

~~(e) When computing profit on the terminated portion of a~~

(c) For construction ~~contract~~ contracts, the contracting officer ~~shall~~ must-

(1) ~~Comply with~~ Follow paragraphs (a) and (b) of this section;

(2) Allow profit on ~~the prime contractor's~~ settlements with construction subcontractors for actual work ~~in place~~ done at the job site; and

(3) Exclude profit on ~~the prime contractor's~~ settlements with construction subcontractors for materials they had on hand ~~and for~~ or preparations made to complete the work.

49.203 Adjustment for loss.

(a) ~~In the negotiation or determination of any settlement~~ When settling a terminated contract, the TCO ~~shall~~ must not allow profit if ~~it appears that~~ the contractor would have ~~incurred a loss~~ had lost money completing the ~~entire full~~ contract ~~been completed.~~ The TCO ~~shall negotiate or determine~~ must—

(1) Figure out how much the ~~amount of loss and make an adjustment in~~ contractor would have lost;

(2) Adjust the settlement payment accordingly using the ~~amount of settlement as specified methods~~ in paragraph (b) or (c) of this section. ~~In estimating the cost to complete, the TCO shall consider expected; and~~

(3) Consider factors like production ~~efficiencies and other factors affecting the cost to complete~~ efficiency when estimating completion costs.

(b) ~~If the settlement is on an~~ For inventory ~~basis (see 49.206-2(a)), the contractor shall not be paid more than the total of the amounts—~~ based settlements payment is limited to the sum of items in paragraphs (b)(1), (2), and (3) of this section, ~~less~~ minus all disposal credits and minus all unliquidated previous advance and progress payments previously made ~~under the contract:—~~

~~(1) The amount negotiated or determined for settlement expenses.~~

(1) The settlement expenses.

(2) The contract price, ~~as adjusted,~~ for acceptable completed ~~end~~ items ~~(see 49.205).~~

(3) The remainder of the settlement amount otherwise agreed upon or determined (including the allocable portion of initial costs (see part 31.205-42(e)), reduced by multiplying the remainder by the ratio of the total contract price to the total cost incurred before termination, plus the estimated cost to complete the entire contract.

(i) The total contract price to

(ii) The total cost incurred before termination plus the estimated cost to complete the entire contract.

(c) If the settlement is on a total cost basis (see 49.206-2(b)), the contractor ~~shall~~ must not be paid more than the total of the amounts in paragraphs (c)(1) and (2) of this section, ~~less~~ minus all disposal and other credits, all ~~advance~~ advanced and progress payments, and all other amounts previously paid under the contract:—

~~(1) The amount negotiated or determined for settlement expenses.~~

(1) The amount negotiated or determined for settlement expenses.

(2) The remainder of the total settlement amount otherwise agreed upon or determined (lines 7 and 14 of SF 1436, Settlement Proposal (Total Cost Basis)) reduced by multiplying the remainder ~~by~~ of the ratio of-

(i) The total contract price to

(ii) The remainder plus the estimated cost to complete the entire contract.

49.204 Deductions.

From the ~~amount payable to the contractor under a~~ settlement payment, the TCO ~~shall deduct-~~ must subtract—

(a) The ~~agreed price for~~ any ~~part of the termination~~ inventory ~~kept or~~ purchased ~~or retained~~ by the contractor, ~~and the~~ plus proceeds from ~~any materials sold that have~~ but not ~~been~~ yet paid or credited to the Government;

(b) The fair value, as determined by the TCO, of any ~~part of the termination~~ inventory that, ~~before transfer of title was lost, damaged beyond usability, or not delivered~~ to the Government ~~or to a buyer under part 45, is lost or so damaged as to become undeliverable~~ (normal spoilage is ~~excepted~~ expected), as is inventory for which the Government has expressly assumed the risk of loss); ~~and~~

(c) Any other ~~amounts as~~ appropriate ~~in the particular~~ amounts for that specific case.

49.205 Completed end items.

(a) ~~Promptly~~ Right after the ~~effective date of~~ termination date, the TCO ~~shall~~ must-

(1) Have all undelivered ~~completed end items~~ finished products inspected and accepted if they ~~comply with the~~ meet contract requirements; ~~;~~ and

(2) ~~determine~~ Decide which accepted ~~end items are to~~ products should be delivered under the contract.

(b) The contractor ~~shall invoice~~ must bill for accepted and delivered ~~end items~~ products at the contract price in the ~~usual manner and shall~~ normal way. Do not include ~~them~~ these in the settlement proposal.

(c) When ~~completed end items, though~~ finished products are accepted, ~~are~~ but will not ~~to be~~ delivered under the contract, the ~~contractor shall~~ TCO should include them in the settlement proposal at the contract price, ~~adjusted. The TCO should adjust~~ for any ~~saving of freight~~ savings in shipping or other ~~charges, together with costs, and include~~ any credits for ~~their purchase, retention~~ buying, keeping, or saleselling them.

~~(b)~~ Work in place accepted by the Government under a construction contract is not considered a completed item, even ~~though that work may have been~~ if the Government paid for it at unit prices specified in the contract. ~~.(d)~~

49.206 Settlement proposals.

49.206-1 Submission of settlement proposals.

(a) Subject to the ~~provisions of the~~ termination clause, the contractor should ~~promptly~~ quickly submit ~~to the TCO~~ a settlement proposal to the TCO for the amount claimed because of the termination. The final settlement proposal must be submitted within ~~one year~~ one year from the ~~effective date of the~~ termination date, unless the ~~period is extended by the~~ TCO. ~~Termination charges under~~ allows more time. If a single ~~prime~~ contract ~~involving~~ involves two or more divisions ~~or units~~ of the ~~prime~~ contractor ~~may be consolidated and included, they can combine~~ their termination costs in a single settlement proposal.

(b) The settlement proposal must cover all cost elements including settlements with subcontractors and any proposed profit. With the ~~consent of the TCO~~ TCO's agreement, proposals may be filed in ~~successive~~ steps covering separate ~~portions~~ parts of ~~the contractor's~~ costs. ~~Such interim~~ These step-by-step proposals ~~shall~~ must include all costs of a particular type, ~~except as unless~~ the TCO ~~may authorize~~ says otherwise.

(c) Settlement proposals must be on the forms prescribed in 49.602 unless ~~the those~~ forms ~~are inadequate~~ do not work for a particular contract. Settlement proposals must ~~be in~~ have reasonable detail supported by adequate accounting data. Actual costs, standard ~~(appropriately costs~~ (properly adjusted), or average costs may be used ~~in preparing settlement proposals if they are determined under if the contractor determines them based on~~ generally ~~recognized~~ accepted accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the TCO approves the estimation ~~method of arriving at the estimates is approved by the TCO.~~ Contractors ~~shall~~ do not ~~be required~~ have to maintain ~~unduly elaborate~~ overly complicated cost accounting systems ~~merely just~~ because their contracts ~~may subsequently~~ might be terminated.

(d) The contractor ~~may~~ should use ~~the~~ Settlement Proposal (Short Form), SF 1438 ~~(see 49.602-1(d) and 53.249),~~ when the total proposal is less than \$10,000, unless the TCO authorizes otherwise ~~instructed by the TCO.~~ Combine settlement proposals that would normally ~~be included in a single settlement proposal; e.g., go together whenever possible, such as~~ those based on a series of separate orders for the same item under one contract, ~~should be consolidated whenever possible and.~~ Do not ~~divided~~ split them up just to bring them below \$10,000.

(e) ~~The~~ Submit Schedule of Accounting Information, SF 1439, ~~must be submitted~~ for each termination ~~under a contract for which~~ requiring a settlement proposal ~~is submitted,~~ except when ~~the~~ using Standard Form 1438 ~~is used. Although. Even if~~ several ~~interim~~ step-by-step proposals ~~may be~~ are submitted, only one SF 1439 ~~needs~~ should be submitted ~~only once unless, subsequent to filing the original form,~~ major changes ~~occur~~ happen in the information ~~submitted after the original form is filed.~~

49.206-2 Bases for settlement proposals.

(a) Inventory basis.

(1) ~~Use of~~ The inventory basis is the preferred method for settlement proposals ~~is preferred. Under. With~~ this ~~basis~~ approach, the contractor may propose only costs allocable to the terminated portion of the contract, ~~and.~~ The settlement proposal must ~~itemize~~ separately ~~- list~~

(i) Metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling, at purchase or manufacturing cost;

(ii) Charges such as engineering costs, initial costs, and general administrative costs;

(iii) Costs of settlements with subcontractors;

(iv) Settlement expenses; and

(v) Other proper charges.

(2) An allowance for profit (49.202) or adjustment for loss (49.203(b)) must be ~~made~~added to complete the gross settlement proposal. All unliquidated advance and progress payments and all disposal and other known credits ~~known when the proposal is submitted~~ must then be ~~deducted~~subtracted.

(3) ~~This~~The inventory basis is also appropriate for ~~use under the following circumstances:~~ _____

(i) The partial termination of a construction or related professional services contract.

(ii) The partial or complete termination of supply orders under any terminated construction contract.

(iii) ~~The~~ Complete termination of a unit-price ~~(as distinguished from a lump-sum)~~ professional services contract: (not lump-sum contracts).

(b) Total cost basis.

(1) When ~~use of~~ the inventory basis is not ~~practicable~~practical or ~~will unduly delay settlement~~would cause delays, the total-cost basis (SF 1436) may be used if ~~approved~~the TCO approves it in advance ~~by the TCO as in~~. Examples include the following ~~examples:~~ _____

(i) ~~If~~When production has not ~~commenced~~started and ~~the accumulated~~ costs represent planning ~~and~~ preproduction, or "get ready" expenses.

(ii) ~~If, under~~When the contractor's accounting system, cannot easily establish unit costs for work in process and finished products ~~cannot readily be established~~.

(iii) ~~If~~When the contract does not specify unit prices.

(iv) ~~If~~When the termination is complete and involves a letter contract.

(2) ~~When the total cost basis is used under~~For a complete termination using the total-cost basis, the contractor must itemize costs incurred under the contract up to the effective date of termination. The costs of settlements with subcontractors and applicable settlement expenses must also be added. An allowance for profit ~~(49.202)~~ or adjustment for loss ~~(49.203(e))~~ must be made. The contract price for all end items delivered or to be delivered and accepted must be deducted. All unliquidated advance and progress payments and known disposal and other credits ~~known when the proposal is submitted~~ must also be deducted.

(3) ~~When the total cost basis is used under~~For a partial termination, using the ~~settlement proposal shall not be submitted~~total-cost basis, the contractor must wait until ~~completion of~~completing the continued portion of the contract: before submitting the proposal. The ~~settlement~~ proposal must ~~be prepared as in~~follow paragraph (b)(2) ~~of this section~~instructions, except ~~that~~it must include all

costs incurred up to the ~~date of~~ completion of the continued portion ~~of the contract must be included.~~

(4) ~~If~~ For a completely terminated construction contract or ~~a~~ lump-sum professional services contract ~~is completely terminated,~~ the contractor ~~shall~~ must

(i) Use the total cost basis of settlement;

(ii) Omit Line 10 "Deduct-Finished Product Invoiced or to be Invoiced" from Section II of SF 1436 Settlement Proposal (Total Cost Basis); and

(iii) Reduce the gross ~~amount of the~~ settlement amount by the total of all progress and other payments.

(c) Other basis. Settlement proposals ~~may not~~ cannot be submitted on any basis other than paragraph (a) or (b) of this section without ~~the~~ prior approval ~~off~~ from the chief of the contracting or contract administration office.

49.206-3 Submission of inventory disposal schedules.

Subject to the ~~terms of the~~ termination clause, ~~and whenever termination inventory is involved~~ terms, the contractor ~~shall submit complete~~ should prepare inventory schedules on Standard Form 1428, Inventory Disposal Schedule, listing inventory ~~disposal schedules to the TCO reflecting inventory that~~ which is allocable to the terminated portion of the contract. The ~~inventory disposal~~ schedules ~~shall~~ must be submitted within 120 days ~~from~~ of the effective date of termination unless ~~otherwise~~ extended by the TCO ~~based on a written justification to support the extension. The inventory schedules shall be prepared on Standard Form 1428, Inventory Disposal Schedule.~~

49.207 Limitation on settlements.

The total amount payable to the contractor for a settlement, before ~~deducting~~ subtracting disposal or other credits and ~~exclusive of~~ not counting settlement costs, must not ~~exceed~~ be more than the contract price ~~less~~ minus payments ~~otherwise~~ already made or to be made under the contract.

49.208 Equitable adjustment after partial termination.

Under the termination clause, after partial termination, a contractor ~~may~~ can request an equitable adjustment in the price ~~or prices~~ of the continued ~~portion~~ part of a fixed-price contract. The TCO ~~shall~~ must forward the proposal to the contracting officer except when ~~negotiation~~ the TCO has authority ~~is delegated to the TCO~~ negotiate. The contractor ~~shall~~ must submit the proposal using the format in the ~~format of Table~~ Uniform Contract Format shown in part 15-2 of 15.408.

(a) When the contracting officer ~~retains~~ keeps responsibility for negotiating the equitable adjustment and ~~executing~~ making a supplemental agreement, the contracting officer ~~shall ensure that~~ must make sure no ~~portion~~ part of ~~an~~ a price increase ~~in price~~ is included in a termination settlement made or in process.

(b) The TCO ~~shall~~ must also ~~ensure that~~ make sure no ~~portion~~ part of the costs included in the equitable adjustment are included in the termination settlement.

Subpart 49.3 - Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

49.301 General.

Cost-reimbursement contract termination clauses for cover both ~~cost-reimbursement contracts (see 49.503(a)) provide for the settlement of costs~~ and fee, if any settlements. The contract ~~clauses governing costs shall determine what~~ explains which costs are ~~allowable~~ allowed.

49.302 Discontinuance of vouchers.

(a) ~~When the~~ After complete contract ~~has been completely terminated~~ termination, the contractor shall ~~not use~~ stop using Standard Form 1034 (Public Voucher ~~for Purchases and Services Other than Personal~~) after the last day of the sixth month following the month ~~in which~~ of the termination ~~is effective~~. The contractor may elect to stop using ~~vouchers at~~ any time during the 6-month period. When the contractor has vouchered out all costs within the 6-month period, a proposal for fee, if any, may be submitted on SF 1437 ~~(see 49.602-1)~~ or by ~~letter appropriately~~ certified letter. The contractor must submit ~~a substantiated proposal for fee~~ proposals to the Termination Contracting Officer (TCO) within 1 year ~~from the effective date~~ of termination, unless the ~~period~~ deadline is extended by the TCO. When ~~the~~ use of vouchers is discontinued, the contractor ~~shall~~ must submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

(b) ~~When the contract is partially terminated,~~ For partial terminations, see section 49.304 ~~shall~~ apply.

49.303 Procedure after discontinuing vouchers.

49.303-1 Submission of settlement proposal.

~~The~~ Unless extended by the TCO, within 1 year of termination the contractor ~~shall~~ must submit a final ~~settlement~~ proposal covering for unvouchered costs and any ~~proposed fee to within 1 year from the effective date of termination, unless the period is extended by the TCO. The contractor shall use, using~~ the form ~~prescribed in 49.602-1, unless the TCO authorizes otherwise.~~ approves another format. The proposal ~~shall~~ must not include —

(a) Any costs ~~that have been~~

(a) ~~Finally~~ already disallowed by the ~~contracting officer~~ Government; or

(b) Previously ~~vouchered and formally~~ questioned ~~by the Government but not yet decided as to~~ allowability costs still under review.

49.303-2 Submission of inventory disposal schedules.

~~Subject to the terms of the termination clause, and whenever~~ For termination inventory ~~is involved, the contractor shall,~~ contractors must submit complete inventory disposal schedules to the TCO, only reflecting ~~inventory that is~~ items allocable to the terminated portion ~~of the contract. The inventory disposal. These~~ schedules ~~shall~~ must be submitted within 120 days ~~from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory disposal schedules shall~~ of termination and

be prepared on Standard Form 1428 ~~Inventory Disposal Schedule~~. TCO approval in writing is required for any time extensions.

49.303-3 Audit of settlement proposal.

The TCO ~~shall~~must submit the settlement proposal ~~to the appropriate for~~ audit ~~agency for~~ review (see 49.107). ~~However, if the settlement proposal is limited to an adjustment of~~ unless it only adjusts the fee, ~~no referral to the audit agency is required.~~

49.303-4 Adjustment of indirect costs.

(a) ~~If~~To avoid delays when the contract ~~contains~~has the ~~clause at 52.216-7,~~ clause (Allowable Cost and Payment, ~~and it appears that adjustment of indirect costs will unduly delay final settlement,~~), the TCO, ~~after obtaining information from the appropriate audit agency,~~ may agree with the contractor to—

(1) Negotiate ~~the amount of~~ indirect costs ~~for the contract period for which~~when final ~~indirect cost~~ rates have not been negotiated, ~~or to use;~~

(2) Use reasonable billing rates as final rates ~~for this period if the billing rates appear reasonable;~~
or

~~(2) Reserve any~~ Save the indirect cost adjustment ~~in for~~ the final settlement agreement, ~~pending establishment of negotiated rates under subpart 42.7,~~ when rates are established.(3)

(b) When ~~an amount of~~negotiating indirect ~~cost is negotiated under paragraph (a)(1) of this section,~~costs the contractor ~~shall eliminate the indirect cost~~must remove these costs and the related direct costs ~~on which it was based from the total pool and base used to compute indirect costs from calculations~~ for other contracts ~~performed during the~~ applicablesame accounting period.

49.303-5 Final settlement.

(a) The TCO ~~shall proceed with~~finalizes the settlement ~~and execution of a settlement agreement upon receipt of~~after receiving the audit report, ~~(if applicable, needed),~~ and the contract audit closing statement ~~covering for costs~~ vouchered costs.

(b) ~~The TCO shall adjust the fee as provided in~~ Fee adjustments follow 49.305.

(c) The final ~~settlement~~ agreement may ~~include~~resolve all ~~demands of the Government and proposals of the contractor under the terminated contract.~~ issues between both parties. However, ~~no amount shall be allowed for any item of cost~~—

(1) Costs disallowed by the Government, ~~nor for any other item of cost~~ are not allowable; and

(2) Costs of the same nature as those disallowed are not allowable.

(d) ~~If an overall settlement of~~ Parties can agree on total costs ~~is agreed upon, agreement without agreeing~~ on each ~~element of cost is not necessary. If appropriate, differences may~~ individual item.

Differences can be compromised, and ~~doubtful questions settled~~ uncertain issues can be resolved by agreement. However, an overall settlement ~~shall~~must not include costs that are ~~clearly not allowable~~unallowable under the terms of the contract.

49.304 Procedure for partial termination.

49.304-1 General.

(a) ~~In a~~For partial ~~termination~~terminations, the TCO ~~shall~~must limit ~~the~~ settlement to ~~an~~fee adjustment ~~of the fee, if any, and with the concurrence of the contracting office to a reduction in the~~reduced estimated cost. The TCO ~~shall~~must adjust ~~the~~ fee as provided in 49.304-2 and 49.305, unless—

(1) The terminated portion is clearly severable from the balance of the contract; ~~or~~and

(2) Performance of the contract is virtually complete, or ~~performance of any continued portion is~~when the remaining work involves only ~~on subsidiary~~minor items ~~or~~, spare parts, or is ~~otherwise~~ not substantial.

(b) ~~In the case of the~~For these exceptions ~~in paragraph (a), the procedures in, follow 49.302 and 49.303 ~~apply.~~~~

49.304-2 Submission of settlement proposal (fee only).

For fee-only proposals the contractor ~~shall~~must limit the settlement proposal to a proposed reduction in ~~the amount of~~ fee. The final settlement proposal ~~shall~~must be submitted to the TCO within ~~one year from the effective date~~one year of termination, ~~unless the period is extended by the TCO. The proposal may be submitted in~~using the form prescribed in 49.602-1 or ~~by letter~~appropriately a certified. ~~The contractor shall substantiate~~ letter. It must include proof supporting the fee amount ~~of fee claimed (see 49.305).~~

49.304-3 Submission of vouchers.

When ~~a~~only adjusting the fee in partial ~~termination settlement is limited to adjustment of fee,~~terminations the contractor ~~shall~~must continue to submit the SF 1034, Public Voucher for Purchases and Services Other than Personal, for ~~costs reimbursable under the contract.~~costs. The Government must not reimburse the contractor ~~shall not be reimbursed~~ for costs of settlements with subcontractors ~~unless~~without required approvals or ratifications ~~have been obtained (see 49.108).~~

49.305 Adjustment of fee.

49.305-1 General.

(a)(1) The TCO ~~shall~~must determine the ~~adjusted~~final fee ~~to be paid, if any, in the manner provided by the contract. The determination is generally based on a~~contract terms, typically using percentage of completion ~~of the contract or of the terminated portion. When this basis is used,~~

(2) Important factors ~~such as~~include-

(i) The extent and difficulty of the work performed by the contractor ~~(e.g., planning, scheduling, technical study, engineering work, production, and supervision, placing and supervising subcontracts, and~~

(ii) Work performed ~~by the contractor in (1—~~

(A) Stopping performance, ~~(2;~~

(B) Settling terminated subcontracts; ~~and (3~~

(C) Disposing of ~~termination~~ inventory) ~~shall.~~

(3) These costs must be compared with the total work required by the contract or ~~by~~ the terminated portion.

The contractor's adjusted fee ~~shall~~must not include an allowance for fee ~~for subcontract in~~subcontractor effort included in ~~subcontractors'~~subcontractor settlement proposals. ~~(4)~~

(b) ~~The ratio of~~Completion percentage is not only based on costs incurred ~~to the total estimated cost of performing the contract or the terminated portion is only one factor in computing the percentage of completion. This ratio. The~~ percentage ~~may~~might be ~~either greater~~higher or ~~less~~lower than ~~that indicated by~~ the ratio of costs incurred, depending ~~upon~~on the TCO's evaluation ~~by the TCO~~ of other ~~pertinent~~important factors.

49.305-2 Construction contracts.

(a) The percentage of completion basis ~~refers to the contractor's total~~includes all contractor effort ~~and~~ not ~~solely to~~just the actual construction work. ~~Generally, the effort of a contractor under a cost reimbursement construction or professional services contract can be segregated into~~
It includes such factors ~~such as—~~

(1) Mobilization including organization,

(2) Use of finances,

(3) ~~Contracting for~~Ordering and ~~receipt of~~receiving materials;

(4) ~~Placement of~~Placing subcontracts,

(5) ~~Preparation of~~Creating shop drawings;

(6) Performing work in place ~~performed by own forces;~~personnel;

~~(7) Supervision of subcontractors' work,~~

(7) Supervising subcontractors;

(8) ~~Job administration, and~~
Managing

~~(9) Demobilization.~~

~~(b) Each of the~~ job;

~~(9) applicable factors in paragraph (a) of this section shall be assigned~~ Closing down the project;

(b) Calculate the fee adjustment as follows—

(1) Assign a weighted value ~~depending to each factor based~~ on ~~its~~ importance and difficulty.

(2) The total ~~weight~~ weighted value ~~of all factors~~ should be easily divisible (e.g., by 100) to determine percentages.

(3) Determine the percentage ~~of completion~~ complete of each factor ~~must be established~~ based ~~upon the~~ on specific facts of each contract. ~~When totaled,~~

(4) Multiply the completion percentage ~~of completion of each factor applied to by~~ the ~~weighted importance~~ value ~~of for~~ each factor ~~results in the~~.

(5) Add these values for overall completion percentage ~~of contract completion. The~~.

Apply this percentage ~~of completion is then applied to~~ the total ~~contract fee or to the~~ fee applicable to the terminated portion of the contract to ~~arrive at an~~ calculate the equitable adjustment. (6)

Subpart 49.4 - Termination for Default 49.401 General.

(a) In a termination for default ~~is generally,~~ the ~~exercise of the Government's~~ contractual Government exercises its right to ~~completely or partially~~ terminate a contract because ~~of the contractor's actual~~ contractor failed or ~~anticipated failure is expected to fail~~ to perform its contractual obligations.

(b) If the contractor ~~can establish~~ establishes, or it is otherwise determined that, the contractor was not in default, or ~~that~~ the failure to perform ~~is was~~ excusable; ~~(i.e., arose out of causes beyond the contractor's control and without the fault or negligence of the contractor), then~~ the default clauses prescribed in at 49.503 ~~and located at 52.249~~ provide that ~~a termination for default will be considered to have been a~~ the termination ~~for the~~ will be treated as a termination for convenience ~~of the Government, and the~~. The parties' rights and obligations ~~of the parties~~ will be governed accordingly.

(c) The Government may, ~~in appropriate cases,~~ exercise termination or cancellation rights ~~in addition to~~ beyond those in the contract clauses (~~see~~ for example, paragraph (h) of the Default clause at 52.249-8).

(d) For default terminations of ~~orders under~~ Federal Supply Schedule orders, see GSA procedures for those contracts, ~~see subpart 8.4.~~

(e) ~~Notwithstanding~~ Despite the provisions of this ~~49.401~~ section, the contracting officer may, ~~with the written consent of the contractor,~~ reinstate ~~the~~ a terminated contract by amending the ~~notice of~~ termination, ~~after~~ notice if-

(1) The contractor provides written consent;

(2) The contracting officer makes a written determination ~~is made~~ that the supplies or services are still ~~required and reinstatement is advantageous to~~ needed; and

(3) Reinstatement benefits the Government.

49.402 Termination of fixed-price contracts for default.

49.402-1 The Government's right.

Under contracts ~~containing~~ with the Default clause at 52.249-8, the Government has the right, subject to the notice requirements of the clause, to terminate the contract completely or partially for default if the contractor fails to-

(a) ~~Make delivery of the~~ Deliver supplies or perform ~~the~~ services within the time specified in the contract; ~~;~~

(b) Perform any other provision of the contract; ~~;~~ or

(c) Make progress, and that failure ~~endangers~~ puts contract performance ~~of the contract~~ at risk.

49.402-2 Effect of termination for default.

(a) Under a default termination ~~for default~~, the Government-

(1) Is not ~~liable~~ responsible for the contractor's costs on undelivered work ~~and~~ ~~;~~

(2) Is entitled to ~~the~~ repayment of advance and progress payments, ~~if any, applicable to~~ for that work. ~~The Government may elect, under the Default clause, to; and~~

May require the contractor to transfer title and deliver ~~to the Government~~ completed supplies and manufacturing materials, ~~as directed by the contracting officer.~~ (3)

(b) The contracting officer ~~shall~~ must 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 provisions. The contracting officer ~~shall~~ should only acquire manufacturing materials ~~under the Default clause~~ for ~~furnishing to~~ another contractor ~~only~~ after considering ~~the~~ any difficulties the other contractor ~~may~~ might have ~~in using~~ the materials them.

(c) Subject to paragraph (d) ~~of this section,~~ the Government ~~shall~~must pay the contractor the contract price for any completed supplies; and the agreed 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~~ To protect against overpayment ~~that might result from failure to provide for the Government's potential liability to~~when laborers and material suppliers ~~for lien rights outstanding~~might have liens 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~~must take one or more of ~~the following~~these measures before payment:

(1) ~~Ascertain whether the~~ Verify that payment bonds, ~~if any, furnished by~~ from the contractor ~~are adequate to satisfy~~adequately cover all ~~lienors'~~ claims or ~~whether it is feasible to~~ obtain similar bonds to cover outstanding liens.

(2) Require the contractor to ~~furnish appropriate~~ provide statements from laborers and material suppliers ~~disclaiming~~giving up any lien rights they may have ~~to the supplies and materials.~~

(3) ~~Obtain appropriate~~ Create an agreement ~~by the Government, the contractor, and lienors ensuring release of~~ among all parties that releases the Government from ~~any~~ potential liability ~~to the contractor or lienors.~~

(4) Withhold appropriate amounts 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 payments when the above~~ measures ~~in paragraphs (d)(1), (2), and (3) of this section cannot be accomplished or are~~ considered inadequate.

(5) Take other ~~appropriate action considering~~ suitable actions based on the ~~circumstances~~ situation and the ~~degree of the~~ contractor's ~~solveney~~ financial condition.

(e) The contractor is ~~liable to the Government~~ responsible for any excess costs ~~incurred in acquiring the Government incurs buying similar~~ supplies and services ~~similar to those terminated for default (see 49.402-6), and, and for any other damages, whether or not repurchase is effected (see 49.402-7).~~ the Government buys replacement items.

49.402-3 Procedure for default.

(a) ~~When a~~ Before deciding on default termination ~~is being considered,~~ the Government ~~shall decide which type of termination action to take~~ must review the situation (i.e., default, convenience, or no-cost cancellation) ~~only after review by~~ with contracting and technical personnel, ~~and by~~ as well as legal counsel, to ensure the ~~propriety of the proposed~~ action is appropriate.

(b) The administrative contracting officer ~~shall not issue a show cause notice or cure notice without the~~ must get prior approval ~~of~~ from the contracting office, ~~which~~ before issuing a show

cause notice or cure notice. This approval should be obtained ~~by the most expeditious means~~quickly.

(c) ~~Subdivision (a)(1)(i) of the Default clause covers situations~~ When the contractor ~~has defaulted by failure~~fails to ~~make delivery of the~~deliver supplies or ~~to perform the services~~ within the specified time. ~~In these situations, (Default clause paragraph (a)(1)), no advance notice of failure or of the possibility of termination for default is required to be sent to the contractor before the actual notice of termination (but see paragraph (e) of this section).~~ However, if the Government has taken ~~any action~~actions that might ~~be construed as a waiver of~~suggest it waived the contract ~~delivery or performance date~~deadlines, the contracting officer ~~shall~~must send a notice ~~to the contractor setting a new date for the contractor to make delivery or complete performance. The notice shall reserve the Government's deadline. This notice must state that the Government reserves its~~ rights under the Default clause.

(d) ~~Subdivisions (a)(1)(ii) and (a)(1)(iii) of the~~ For failures covered under Default clause ~~cover situations when the contractor fails to perform some of the other provisions of the contract (paragraph (a)(1) - such as not furnishing~~providing a required performance bond) ~~or so fails to make progress as to endanger performance of the contract. If the termination is predicated upon this type of failure, or endangering contract performance -~~ the contracting officer ~~shall~~must-

(1) Give the contractor written notice specifying the failure~~and providing a period of;~~

(2) Allow 10 days (or longer ~~period as if~~ necessary) ~~in which~~ to cure the failure.;

(3) When appropriate, this notice may be made a part of the notice described in paragraph (e)(1) of this section. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless it is determined that the failure to perform has been cured. A format for a cure notice is in 49.607.include this notice in the show cause notice; and

(4) After the time period expires, decide whether to terminate the contract or accept the resolution.

(e) A sample cure notice format appears in 49.607.

(f) Show cause notice procedures are as follows:

(1) If default termination ~~for default appears~~ seems appropriate, the contracting officer should, ~~if practicable~~when practical, notify the contractor in writing ~~of the possibility of the~~about-

(i) The possible termination. ~~This notice shall call the contractor's attention to;~~

(ii) The contractual liabilities ~~if~~involved;

(iii) Why the contract ~~is~~might be terminated ~~for default, and request the contractor to show cause~~ ;

(iv) The opportunity to explain why ~~the contract~~termination should not ~~be terminated for default.~~
~~The notice may further state that failure of the contractor to present an explanation~~occur;

(v) That a lack of response may be taken as an admission by the contractor that no valid explanation exists; and

(vi) When appropriate, ~~the notice may invite the contractor to discuss the matter at a conference.~~
a suggested discussion.

(2) A ~~format for a~~sample show cause notice ~~is~~appears in 49.607.

~~(2)~~

(g)(1) When ~~a~~default termination ~~is likely, the contracting officer must notify the surety in writing. If the contractor is later terminated for default~~appears imminent, the contracting officer ~~shall provide a written notification to the surety. If the contractor is subsequently terminated for default,~~must send the surety a copy of the ~~notice of default~~ shall be sent to the suretynotice.

~~(3)(2)~~ If ~~requested by~~ the surety, requests it and ~~agreed to by~~ the contractor and any assignees agree, arrangements ~~may~~can be made to ~~have future~~send checks ~~mailed to the contractor in care of~~through the surety. ~~In this case,~~ The contractor must ~~forward~~submit a written request to the ~~designated~~ disbursing officer specifically directing at this change in payment address ~~for mailing checks.~~

~~(4) If the contractor is a~~ (h) For small business ~~firm, contractors-~~

(1) The contracting officer ~~shall~~must immediately ~~provide a copy~~send copies of any cure notice or show cause notice to the contracting office's small business specialist and ~~the~~ Small Business Administration Area Office nearest the contractor;.

(2) When possible, the contracting officer should, ~~whenever practicable,~~ consult with the small business specialist before proceeding with ~~a~~ default termination ~~(see also 49.402-4).~~;

~~(f)~~ The contracting officer ~~shall~~must consider ~~the following~~ these factors ~~in determining when deciding~~ whether to terminate a contract for default:

(1) The contract ~~for default~~:

~~(1) The~~ terms ~~of the contract~~ and ~~applicable~~relevant laws and regulations.

(2) The specific failure ~~of the contractor and the excuses for the failure~~and any explanations provided.

(3) ~~The availability of~~ Whether the supplies or services can be obtained from other sources.

(4) ~~The urgency of~~ How urgently the ~~need for the supplies or services~~ items are needed and ~~the period of time required~~ how long it would take to ~~obtain~~ get them from other sources, ~~as compared with the time delivery could be obtained from the delinquent~~ to the original contractor.

(5) ~~The degree of essentiality of~~ How essential the contractor ~~in the~~ is to Government acquisition ~~program~~ programs and ~~the effect of a~~ how termination ~~for default upon the contractor's capability as a supplier under~~ might affect their ability to supply other contracts.

(6) ~~The effect of a~~ How termination ~~for default on~~ might affect the contractor's ability ~~of the contractor to liquidate~~ repay guaranteed loans, progress payments, or advance payments.

(7) Any other ~~pertinent~~ relevant facts and circumstances.

~~(g) If, after compliance with the~~ (j) After following procedures in paragraphs (a) through ~~(f) of this 49.402-3,~~ i), if the contracting officer ~~determines that a~~ decides termination ~~for default is~~ proper, the contracting officer ~~shall~~ must issue a notice of termination stating-

(1) The contract number and date;

(2) ~~The acts~~ What specific actions or ~~omissions constituting~~ failures constitute the default;

(3) That the contractor's right to proceed ~~further under~~ with the contract (or a specified portion ~~of the contract~~) is terminated;

(4) That the Government may purchase similar supplies or services ~~terminated may be purchased against the contractor's account, and that the contractor will be held liable for~~ charge any excess costs to the contractor;

(5) If the ~~contracting officer has~~ failure is determined ~~that the failure to perform is~~ not excusable, that the notice ~~of termination constitutes such~~ serves as this decision, and ~~that the contractor has the right to~~ may appeal ~~such decision~~ under the Disputes clause;

(6) That the Government reserves all other legal rights and remedies ~~provided by law or under the contract, in addition to charging excess costs~~; and

(7) That ~~the~~ this notice ~~constitutes~~ is a decision that the contractor is in default ~~as specified and that the contractor~~ and has the right to appeal under the Disputes clause.

~~(h)k)~~ The contracting officer ~~shall make the same distribution of~~ must-

(1) Distribute the termination notice ~~as was made of~~ to all parties who received the original contract.;

(2) Send a copy ~~shall also be furnished~~ to the contractor's surety, ~~and ask if any, when the notice is furnished to the contractor. The surety should be requested to advise if it desires~~ they want to arrange for completion of the work. ~~In addition, the contracting officer shall notify; and~~

(3) Tell the disbursing officer to ~~withhold further~~stop payments under the terminated contract; ~~pending further advice, which should be furnished at the earliest practicable time~~ until further notice.

(i) ~~In the case of a~~(1) For construction ~~contract~~contracts, promptly after ~~issuance of~~issuing the termination notice, the contracting officer ~~shall~~must determine ~~the manner in which~~

(1) How the work ~~is to~~will be completed; and ~~whether the~~

(2) Whether materials, ~~appliances~~equipment, and plant that are on the site will be needed.

(j)m If the contracting officer determines before issuing the termination notice that the failure ~~to perform is~~was excusable, ~~the contract shall~~they must not ~~be terminated~~terminate for default. If termination is ~~still~~ in the Government's interest, ~~the contracting officer~~they may terminate ~~the contract~~ for ~~the convenience of the Government~~.

(k)n If the contracting officer ~~has not been able to~~cannot determine, before ~~issuance of~~issuing the notice ~~of termination~~whether the ~~contractor's failure to perform is~~was excusable, ~~the contracting officer shall~~they must-

(1) Make a written decision on ~~that point~~this issue as soon as ~~practicable~~possible after ~~issuance of~~issuing the notice ~~of termination~~;

(2) Deliver the decision ~~shall be delivered~~ promptly to the contractor ~~with a notification that the contractor has the right to appeal as specified in the Disputes clause~~; and

(3) Notify the contractor of their right to appeal under the Disputes clause.

49.402-4 Procedure in lieu of termination for default.

~~The following courses~~Instead of ~~action, among others, are available to~~terminating for default, the contracting officer ~~in lieu of termination for default~~may take these alternative actions when ~~in~~they serve the Government's ~~interest~~interests:

(a) ~~Permit~~Allow the contractor, ~~the~~surety, or ~~the~~guarantor, to continue performance ~~of the contract~~under a revised delivery schedule.

(b) Permit the contractor to continue performance ~~of the contract by means of~~through a subcontract or other business arrangement with an acceptable third party, ~~provided as long as~~ the Government's rights ~~of the Government~~are adequately ~~preserved~~protected.

(c) ~~If the requirement for the supplies and services in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in 49.402-7,~~(c) Execute a no-cost termination settlement agreement using the formats in 49.603-6 and 49.603-7 ~~as a~~ guide ~~when-~~

(1) The supplies or services are no longer needed; and

(2) The contractor is not liable for damages under 49.402-7.

49.402-5 Memorandum by the contracting officer.

When a contract is terminated for default or ~~a~~when an alternative procedure ~~authorized by~~from 49.402-4 is ~~followed~~used, the contracting officer ~~shall~~must prepare a memorandum for the contract file explaining the reasons for the action ~~taken~~.

49.402-6 Repurchase against contractor's account.

(a) ~~When the~~Generally, the contracting officer decides whether to repurchase before issuing the termination notice when supplies or services are still ~~required~~needed after termination, Guidelines for repurchasing are as follows:

(1) The contracting officer shall~~must~~ repurchase ~~the same or similar supplies or services~~items against the contractor's account as soon as ~~practicable. The contracting officer shall repurchase at~~ as practical.

(2) The price must be reasonable ~~a price as practicable,~~ considering ~~the~~ quality and delivery requirements.

(3) The contracting officer may ~~repurchase a quantity in excess of the undelivered quantity terminated for default when the excess quantity is needed, but excess cost may not be charged against the defaulting contractor for~~ buy more than the undelivered quantity ~~terminated for default if needed.~~

(4) Extra cost can only be charged to the contractor for the undelivered quantity (including ~~variations in quantity~~ permitted by the terminated contract). ~~Generally, the contracting officer will make a decision whether or not to repurchase before issuing the termination notice.~~variations).

(b) ~~If the repurchase is for a quantity not over the~~ For repurchases limited to the undelivered quantity ~~terminated for default,~~

(1) The Default clause ~~authorizes~~allows the contracting officer to use any terms and acquisition method ~~deemed appropriate for the repurchase. However,~~

(2) The contracting officer must maximize competition;

(3) The Default clause serves as the authority; and

For quantities exceeding the undelivered amount, treat the entire purchase as a new acquisition.(4)

(c) If the repurchase costs more than the terminated supplies or services, after completing the repurchase contract, the contracting officer ~~shall obtain competition to the maximum extent~~

~~practicable for the repurchase. The contracting officer shall cite the Default clause as the authority. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition.~~

~~(c) If repurchase is made at a price over the price of the supplies or services terminated, the contracting officer shall, after completion and final payment of the repurchase contract, make written~~must ~~demand on~~payment from ~~the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs such as~~excess amount. This calculation should account for changes in ~~transportation~~costs, discounts, etc. If the contractor ~~fails to make payment, the contracting officer shall~~does not pay, follow the procedures in ~~subpart-part~~32.6 for collecting contract debts ~~due the Government.~~

49.402-7 Other damages.

(a) If the ~~contracting officer terminates a~~ contract is terminated for default or ~~follows a course of an alternative~~ action instead of termination for default is taken (see 49.402-4), the contracting officer ~~promptly~~ must assess and demand any liquidated damages ~~to which~~ the Government is entitled to under the contract. Under the ~~contract~~ clause at 52.211-11, these damages are in addition to any excess repurchase costs.

(b) If the Government has suffered ~~any other~~ ascertainable measurable damages, including administrative costs, ~~as a result of the contractor's default,~~ the contracting officer must, based on ~~the basis of~~ legal advice, take appropriate action as prescribed outlined in ~~subpart-part~~32.6 to assert the Government's demand for ~~the~~these damages.

49.402-8 Reporting Information.

The contracting officer, ~~in accordance with~~ must follow agency procedures, ~~shall ensure that to~~ report information ~~relating to about~~ the termination for default notice ~~and a subsequent, any~~ withdrawal ~~or a of the termination, and any~~ conversion to a termination for convenience ~~is reported in accordance with~~. This report must comply with requirements in 42.1503(h).

49.403 Termination of cost-reimbursement contracts for default.

(a) The right to terminate a cost-reimbursement contract for default ~~is provided for incomes from~~ the Termination for Default or for Convenience of the Government clause at 52.249-6. ~~A 10-day notice to~~ The clause requires giving the contractor 10 days' notice before termination ~~for default is required in every case by the clause.~~

(b) ~~Settlement of~~Settling a cost-reimbursement contract terminated for default ~~is subject to follows~~ the same principles ~~in as termination for convenience~~ (subparts 49.1 and 49.3 ~~the same as when a contract is terminated for convenience,~~), ~~except that~~

(1) The costs of preparing the contractor's settlement proposal are not allowable (see paragraph (h)(3) of the clause); and

(2) The contractor ~~is reimbursed the~~ receives reimbursement for allowable costs, ~~and with~~ an appropriate reduction ~~is made~~ in the total fee, ~~if any~~, (see paragraph (h)(4) of the clause).

(c) The contracting officer ~~shall~~must use the procedures in 49.402 ~~to the extent~~when appropriate ~~in considering the termination for default of a~~for cost-reimbursement ~~contract~~contracts. However, ~~a cost-reimbursement contract does~~these contracts do not ~~contain any provision~~include provisions for ~~recovery of~~recovering excess repurchase costs after termination ~~for default~~ (but see paragraph (g) of ~~the clause at 52.246-3~~ with respect to regarding the contractor's failure ~~of the contractor~~ to replace or correct defective supplies).

49.404 Surety-takeover agreements.

(a) ~~The~~These procedures ~~in this section~~ apply ~~primarily~~mainly, but not ~~solely~~exclusively, to fixed-price construction contracts terminated for default.

(b) Since the surety ~~is liable~~must pay for damages resulting from the contractor's default, the surety has certain rights ~~and interests in the completion of~~completing the contract ~~work and application of any~~using undisbursed funds. ~~Therefore,~~ The contracting officer must ~~consider~~ carefully consider the surety's proposals ~~for completing the contract. The contracting officer must take action on the basis of the Government's interest, including the possible effect upon,~~ evaluating how they might affect the Government's rights against the surety.

(c) The contracting officer should ~~permit surety offers~~allow sureties to complete the contract, unless ~~the contracting officer believes that the persons~~

(1) The people or firms companies proposed by the surety ~~to complete the work~~ are not ~~competent and~~ qualified or competent; or

The proposal ~~is~~does not ~~inserve~~ the Government's best ~~interest of the Government.~~interests. (2)

(d) ~~There~~Multiple parties may ~~be conflicting demands for~~claim the defaulting contractor's assets, including unpaid ~~prior earnings (retained percentages and unpaid progress estimates).~~ ~~Therefore,~~ The surety may include a "takeover" agreement in its proposal, ~~fixing the surety's~~ to establish its rights to payment ~~from those funds.~~ The contracting officer may ~~(but not before the effective date of termination)~~ enter into a written agreement with the surety. ~~The contracting officer should (but not before the termination date).~~ Consider using a ~~tripartite~~three-way agreement among the Government, ~~the~~ surety, and ~~the~~ defaulting contractor to resolve ~~the defaulting contractor's residual~~remaining rights, including ~~assertions~~claims to unpaid ~~prior~~ earnings.

(e) Any takeover agreement must require the surety to complete the contract and the Government to pay the surety's costs ~~and expenses~~ up to the ~~balance of the~~unpaid contract price ~~unpaid at the time of default,~~ subject to ~~the following~~these conditions:

(1) Any unpaid earnings of the defaulting contractor, ~~including retained percentages and progress estimates for work accomplished before termination, must be subject to debts due the~~ may be used to pay Government ~~by~~claims against the contractor, except ~~to the extent that the unpaid~~when those earnings ~~may be used~~are needed to pay the ~~completing surety its~~surety's actual completion costs and expenses ~~incurred in the completion of the work, but (not including its bond payments and obligations under the payment bond given in connection with the contract.).~~

(2) The surety ~~is bound by~~ must meet contract ~~terms governing~~ requirements for liquidated damages for delays ~~in completion of the work,~~ unless the delays ~~are~~ qualify as excusable under the contract.

(3) If ~~the~~ contract proceeds ~~have been~~ were assigned to a financing institution, the surety ~~must not be paid~~ cannot receive payment from unpaid earnings, ~~unless~~ without the ~~assignee provides~~ assignee's written ~~consent~~ permission.

(4) The ~~contracting officer~~ Government must not pay the surety more than ~~the amount it expended~~ spent completing the work and ~~discharging~~ meeting its ~~liabilities under the defaulting contractor's~~ payment bond obligations. Payments to the surety ~~to reimburse it for discharging its liabilities under the its~~ payment bond ~~of the defaulting contractor must be only on authority of obligations require—~~

(i) ~~Mutual~~ Agreement among the Government, ~~the~~ defaulting contractor, and ~~the~~ surety;

(ii) ~~Determination of~~ A determination by the Comptroller General ~~as to payee~~ about who gets paid and ~~amount~~ how much; or

(iii) ~~Order of~~ A court order from a court of competent jurisdiction.

49.405 Completion by another contractor.

~~If the surety does not arrange for completion of~~ The contract, ~~the contracting officer normally will arrange for completion of the work by awarding a new contract based on the same plans and specifications. The new contract may be the result of sealed bidding or any other appropriate contracting method or procedure. The contracting officer shall exercise reasonable diligence to obtain the lowest price available for completion.~~

~~49.406 Liquidation of liability.~~

~~(1) The contract provides that~~ makes the contractor and ~~the~~ surety ~~are~~ liable to the Government for ~~resultant~~ resulting damages. The contracting officer ~~shall~~ must use all retained percentages of progress payments ~~previously made to the contractor~~ and any progress payments due for ~~work~~ completed ~~before the termination to liquidate~~ work to offset the contractor's and ~~the~~ surety's liability ~~to the Government. If the retained and unpaid. If these~~ amounts are ~~insufficient~~ not enough, the contracting officer ~~shall~~ must take steps to recover the additional ~~sum~~ amount from the contractor and ~~the~~ surety.

Subpart 49.5 - Contract Termination Clauses

49.501 General.

This subpart ~~prescribes the principal~~ describes which contract termination clauses to use. This subpart does not apply to contracts that use the clause at 52.213-4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Products and Commercial Services). In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter.

49.502 Termination for convenience of the Government.

(a) Fixed-price contracts that do not exceed the simplified acquisition threshold (short form)-

(1) General use. ~~The contracting officer shall~~ Insert the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when using a fixed-price contract ~~is contemplated~~ and the contract amount is not expected to exceed the simplified acquisition threshold, except if-

(i) ~~If use of~~ The clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is more appropriate;;

(ii) ~~In contracts~~ The contract is for research and development work with an educational or nonprofit institution on a no-profit basis;;

(iii) ~~In contracts~~ The contract is for architect-engineer services;; or

(iv) ~~If~~ One of the clauses prescribed or cited at 49.505(a) or (c);; is more appropriate.

(2) Dismantling and demolition. If the contract is for dismantling, demolition, or removal of improvements, ~~the contracting officer shall~~ use the clause with its ~~Alternate I~~ Alternate I.

(b) Fixed-price contracts that exceed the simplified acquisition threshold-

(1) ~~(i)~~ General use. ~~The contracting officer shall~~ Insert the clause at 52.249-2, Termination for Convenience of the Government (Fixed-Price), ~~in solicitations and contracts~~ when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold ~~except in contracts~~.

(ii) Exceptions. Do not use this clause for -contracts for the following:

(A) Dismantling and demolition;;

(B) Research and development work with an educational or nonprofit institution on a no-profit basis;; ~~or~~ ;

(C) Architect-engineer services; ~~it shall not be used~~ ;

(D) If the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), is more appropriate (see 49.502(c)), or if one of the clauses prescribed or cited at 49.505(a) or (c);; is appropriate.

(2) Construction. If the contract is for construction, ~~the contracting officer shall~~ use the clause with its ~~Alternate I~~ Alternate I.

(i) Partial payments. 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~~requiring interest payments on excess partial payments is inappropriate, ~~the contracting officer shall~~ use the clause with its ~~Alternate II. In such contracts~~ Alternate II. For construction, ~~the contracting officer shall~~ contracts with these same organizations, use the clause with its ~~Alternate III~~ Alternate III.

(ii) Dismantling and demolition. ~~The contracting officer shall~~ Insert the clause at 52.249-3, Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. 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, ~~the contracting officer shall~~ use the clause with its ~~Alternate I~~ Alternate I.

(c) Service contracts (short form). ~~The contracting officer shall~~

(1) Insert the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), in solicitations and contracts for services, regardless of value, when all of these conditions are met:

(i) A fixed-price contract is contemplated and (regardless of dollar value).

(ii) The contracting officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination. Examples of services where this clause may be appropriate are contracts for rental of unreserved parking space, laundry and dry cleaning, etc.

(iii) If terminated for the Government's convenience, the contractor would limit termination settlement charges to services rendered before the termination date.

(2) This clause may be appropriate in contracts for services such as rental of unreserved parking space, or laundry and dry cleaning.

(d) Research and development contracts. ~~The contracting officer shall~~ Insert the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), in solicitations and contracts when either a fixed-price or cost-reimbursement contract is contemplated, and the contract is for research and development work with an educational or nonprofit institution on a nonprofit or no-fee basis.

(e) Subcontracts ~~-(1)~~ General use. The prime contractor may find ~~the clause at these clauses~~ suitable for use in fixed-price subcontracts (except as noted in paragraph (e)(2) below): 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), or at 52.249-2,

Termination for Convenience of the Government (Fixed-Price), as appropriate, ~~suitable for use in fixed-price subcontracts, except as noted in paragraph (e)(2) of this section;~~ provided, ~~that~~ the relationship between the contractor and subcontractor is clearly indicated. ~~Inapplicable~~ Delete conditions ~~(e.g., that do not apply (for example, paragraph (d)))~~ in 52.249-2 ~~should be deleted and.)~~ Reduce the time periods ~~reduced~~ for submitting the subcontractor's termination settlement proposal ~~(e.g., for example, to 6 months);~~ and the time for requesting an equitable price adjustment ~~(e.g., for example, to 45 days);.~~

(2) Research and development. The prime contractor may find the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), suitable for use in subcontracts placed with educational or nonprofit institutions on a no-profit or no-fee basis; provided, that the relationship between the contractor and subcontractor is clearly indicated. ~~Inapplicable conditions~~ Conditions that do not apply (e.g., paragraph (h)) should be deleted, the period for submitting the subcontractor's termination settlement proposal should be reduced (e.g., 6 months), the subcontract should be placed on a no-profit or no-fee basis, and the subcontract should incorporate or be negotiated on the basis of the cost principles in part ~~31 of the Federal Acquisition Regulation~~ 31.

49.503 Termination for convenience of the Government and default.

(a) Cost-reimbursement contracts—~~(1)~~ General use. Insert the clause at 52.249-6, Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except ~~contracts for~~ in research and development contracts with ~~an~~ educational or nonprofit ~~institution on a~~ institutions that have no -fee basis.

(2) Construction. If the contract is for construction, ~~the contracting officer shall use~~ insert the clause with its ~~Alternate I~~ Alternate I.

(3) Partial payments. 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, ~~the contracting officer shall use~~ insert the clause with its ~~Alternate H~~ Alternate II. In such contracts for construction, ~~the contracting officer shall use~~ insert the clause with its ~~Alternate III~~ Alternate III.

(4) Time-and-material and labor-hour contracts. If the contract is a time-and-material or labor-hour contract, ~~the contracting officer shall use~~ insert the clause with its ~~Alternate IV~~ Alternate IV. 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, ~~the contracting officer shall use~~ insert the clause with its Alternate V.

(b) Insert the clause at 52.249-7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services; when a fixed-price contract is contemplated.

(c) Subcontracts. The prime contractor may ~~find~~ use and customize the clause at 52.249-6, Termination (Cost-Reimbursement), suitable for use in cost-reimbursement subcontracts; ~~provided, that, as long as~~ the relationship between the contractor and subcontractor is clearly

indicated. ~~Inapplicable~~ The contractor should delete conditions ~~(e.g., that do not apply (for example, paragraphs (e), (j)), and (n)) should be deleted and~~). Reduce the time period for submitting the subcontractor's subcontractor to submit their termination settlement proposal ~~should be reduced (e.g., (for example, to 6 months).~~

49.504 Termination of fixed-price contracts for default.

(a) ~~(1)~~ Supplies and services. ~~The contracting officer shall~~ Insert the clause at 52.249-8, Default (Fixed-Price Supply and Service), in solicitations and contracts when a fixed-price contract is contemplated, and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).

(2) Transportation. If the contract is for transportation or transportation-related services, ~~the contracting officer shall use~~ insert the clause with its ~~Alternate I~~ Alternate I.

(b) Research and development. ~~The contracting officer shall~~ Insert the clause at 52.249-9, Default (Fixed-Price Research and Development), in solicitations and contracts for research and development when a fixed-price contract is contemplated, and the contract amount is expected to exceed the simplified acquisition threshold, except ~~those for contracts~~ for contracts with educational or nonprofit institutions on a no-profit basis. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold; ~~if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be devoted to other programs).~~ if appropriate.

(c) ~~(1)~~ Construction. ~~The contracting officer shall~~ Insert the clause at 52.249-10, Default (Fixed-Price Construction), in solicitations and contracts for construction; when a fixed-price contract is contemplated, and the ~~contract~~ amount is expected to exceed the simplified acquisition threshold. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if completion dates are essential).

(2) Dismantling and demolition. If the contract is for dismantling, demolition, or removal of improvements, ~~the contracting officer shall use~~ insert the clause with its ~~Alternate I~~ Alternate I.

(3) National emergencies. If the contract is to be awarded during a period of national emergency, the contracting officer may use the clause-

(i) With its ~~Alternate II~~ Alternate II when a fixed-price contract for construction is contemplated; or

(ii) With its ~~Alternate III~~ Alternate III when a contract for dismantling, demolition, or removal of improvements is contemplated.

49.505 Other termination clauses.

(a) Personal service contracts. ~~The contracting officer shall insert the~~ Insert clause ~~at~~ 52.249-12, Termination (Personal Services), in solicitations and contracts for personal services (see part 37).

(b) Excusable delays. ~~The contracting officer shall insert the~~ Insert clause ~~at~~ 52.249-14, Excusable Delays, in

(1) Solicitations and contracts for supplies, services, construction, and research and development on a fee basis; when a cost-reimbursement contract is contemplated. ~~The contracting officer shall also insert the clause in time; and material contracts, and labor hour contracts.~~

Time and material and labor-hour contracts. (2)

(c) Communication service contracts. ~~This regulation does not~~ Agencies must prescribe a ~~clause and insert agency-specific clauses~~ for ~~the cancellation~~ canceling or ~~termination of terminating~~ orders under communication service contracts with common carriers ~~because of special agency requirements that apply to these services. An appropriate clause, however, shall be prescribed at agency level, within those agencies contracting for these services.~~

Subpart 49.6 - Contract Termination Forms and Formats

49.601 Notice of termination for convenience.

(See 49.402-3(g) for notice of termination for default.)

49.601-1 Electronic notice.

The contracting officer may provide expedited notice of termination by electronic means that includes a requirement for the contractor to confirm receipt. If the contractor does not confirm receipt promptly, the contracting officer ~~shall~~ must resend the notice electronically; and expedite the letter notice described in 49.601-2. ~~If confirmation~~ If the contractor confirms receipt of the electronic notice ~~is received~~, and the ~~electronic~~ notice includes contains all ~~content~~ information required in 49.601-2, the contracting officer does not need ~~not~~ to send the letter notice ~~described in 49.601-2.~~

(a) Complete termination: Use the following electronic notice ~~is suggested for use if~~ when completely terminating a supply contract ~~is being completely terminated~~ for convenience. ~~If appropriately modified, the~~ This notice may be ~~used~~ modified for other than supply contracts.

Date

XYZ Corporation New York, NY 12345

Contract No. is completely terminated under clause , effective [insert "immediately, (today's date)" or "on , 20 ," or "as soon as you have delivered, including prior deliveries, the following items:" (list)]. Immediately stop all work, terminate subcontracts, and place no further orders except to the extent [insert if applicable "necessary to complete items not terminated or"] that you or a subcontractor wish to retain and continue for your own account any work-in-process or other

materials. Provide by electronic means similar instructions to all subcontractors and suppliers. Detailed instructions follow.

—
(Contracting Officer)

(b) Partial termination: The following electronic notice is suggested for use if a supply contract is being partially terminated for convenience. If appropriately modified, the notice may be used for other than supply contracts.

Date _____

XYZ Corporation New York, NY 12345

Contract No. _____ is partially terminated under clause _____, effective _____ [insert "immediately, (today's date)" or "on _____, 20 ____"]. Reduce items to be delivered as follows: [insert instructions]. Immediately stop all work, terminate subcontracts, and place no further orders except as necessary to perform the portion not terminated or that you or a subcontractor wish to retain and continue for your account any work-in-process or other materials. Provide by electronic means similar instructions to all subcontractors and suppliers. Detailed instructions follow.

(Contracting Officer)

49.601-2 Letter notice.

The following letter notice of termination is suggested for use if a contract for supplies is being terminated for convenience. With appropriate modifications, it may be used in terminating contracts for other than supplies and in terminating subcontracts. This notice shall be sent by certified mail, return receipt requested, or electronically, provided evidence of receipt is received by the contracting officer. If no prior electronic notice was issued, or if no confirmation of an electronic notice was received, use the alternate notice that follows this notice.

Notice of Termination to Prime Contractors

[At the top of the notice, set out all special details relating to the particular termination; e.g., name and address of company, contract number of terminated contract, line items, etc.]

(a) Effective date of termination. This confirms the Government's electronic notice to you dated _____, 20____, terminating _____ [insert "completely" or "in part"] Contract No. _____ (referred to as "the contract") for the Government's convenience under the clause entitled _____ [insert title of appropriate termination clause]. The termination is effective on the date and in the manner stated in the electronic notice.

(b) Cessation of work and notification to immediate subcontractors. You shall take the following steps:

(1) Stop all work, make no further shipments, and place no further orders relating to the contract, except for-

(i) The continued portion of the contract, if any;

(ii) Work-in-process or other materials that you may wish to retain for your own account; or

(iii) Work-in-process that the Contracting Officer authorizes you to continue (A) for safety precautions, (B) to clear or avoid damage to equipment, (C) to avoid immediate complete spoilage of work-in-process having a definite commercial value, or (D) to prevent any other undue loss to the Government. (If you believe this authorization is necessary or advisable, immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.)

(2) Keep adequate records of your compliance with ~~paragraph~~[subparagraph](#) (b)(1) of this section showing the-

(i) Date you received the Notice of Termination;

(ii) Effective date of the termination; and

(iii) Extent of completion of performance on the effective date.

(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this termination. In the notice-

(i) Specify your Government contract number;

(ii) State whether the contract has been terminated completely or partially;

(iii) Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract, subject to the exceptions in ~~paragraph~~[subparagraph](#) (b)(1) of this section;

(iv) Provide instructions to submit any settlement proposal promptly; and

(v) Request that similar notices and instructions be given to its immediate subcontractors.

(4) Notify the Contracting Officer of all pending legal proceedings that are based on subcontracts or purchase orders under the contract, or in which a lien has been or may be placed against termination inventory to be reported to the Government. Also, promptly notify the Contracting Officer of any such proceedings that are filed after receipt of this Notice.

(5) Take any other action required by the Contracting Officer or under the Termination clause in the contract.

(c) Termination inventory.(1)As instructed by the Contracting Officer, transfer title and deliver to the Government all termination inventory of the following types or classes, including subcontractor termination inventory that you have the right to take: [Contracting Officer insert proper identification or "None"].

(2) To settle your proposal, it will be necessary to establish that all prime and subcontractor termination inventory has been properly accounted for. For detailed information, see part 45.

(d) Settlements with subcontractors. You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these settlement proposals as promptly as possible. For purposes of reimbursement by the Government, settlements will be governed by the provisions of part 49.

(e) Completed end items.(1) Notify the Contracting Officer of the number of items completed under the contract and still on hand and arrange for their delivery or other disposal (see 49.205).

(2) Invoice acceptable completed end items under the contract in the usual way and do not include them in the settlement proposal.

(f) Patents. If required by the contract, promptly forward the following to the Contracting Officer:

(1) Disclosure of all inventions, discoveries, and patent applications made in the performance of the contract.

(2) Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the contract.

(g) Employees affected.(1)If this termination, together with other outstanding terminations, will necessitate a significant reduction in your work force, you are urged to-

(i) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that the Service can take timely action in assisting displaced workers;

(ii) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local State Employment Service offices;

(iii) Advise affected employees to file applications with the State Employment Service to qualify for unemployment insurance, if necessary;

(iv) Inform officials of local unions having agreements with you of the impending reduction-in-force; and

(v) Inform the local Chamber of Commerce and other appropriate organizations which are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.

(2) If practicable, urge subcontractors to take similar actions to those described in ~~paragraph~~subparagraph (1) of this section.

(h) Administrative. The contract administration office named in the contract will identify the Contracting Officer who will be in charge of the settlement of this termination and who will, upon request, provide the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

(i) Please acknowledge receipt of this notice as provided below.

_____ (Contracting Officer)

_____ (Name of Office)

_____ (Address)

Acknowledgment of Notice

The undersigned acknowledges receipt of a signed copy of this notice on _____, 20____. Two signed copies of this notice are returned.

_____ (Name of Contractor)

By _____ (Name)

_____ (Title)

(End of notice)

Alternate notice. Substitute the following paragraph (a) for paragraph (a) of 49.601-2, Notice of Termination to Prime Contractors, if no prior electronic notice was issued, or if no confirmation of an electronic notice was received:

(a) Effective date of termination. You are notified that Contract No. _____ (referred to as "the contract") is terminated _____ [insert "completely" or "in part"] for the Government's convenience under the clause entitled _____ [insert title of appropriate termination clause]. The termination is effective _____ [insert either "immediately upon receipt of this Notice" or "on _____, 20____," or "as soon as you

have delivered, including prior deliveries, the following items:" (list)]. Reduce items to be delivered as follows: [insert instructions].

49.602 Forms for settlement of terminated contracts.

The standard forms listed below shall be used for settling terminated prime contracts. The forms at 49.602-1 and 49.601-2 may also be used for settling terminated subcontracts. A listing of the Standard forms is located in subpart 53.3.

49.602-1 Termination settlement proposal forms.

(a) Standard Form 1435, Settlement Proposal (Inventory Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on an inventory basis (see 49.206-2(a)).

(b) Standard Form 1436, Settlement Proposal (Total Cost Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on a total cost basis (see 49.206-2(b)).

(c) Standard Form 1437, Settlement Proposal for Cost- Reimbursement Type Contracts, shall be used to submit settlement proposals resulting from the termination of cost-reimbursement contracts (see 49.302).

(d) Standard Form 1438, Settlement Proposal (Short Form), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the total proposal is less than \$10,000 (see 49.206-1(d)).

49.602-2 Inventory forms.

Standard Form (SF) 1428, Inventory Disposal Schedule, and SF 1429, Inventory Disposal Schedule-Continuation Sheet, shall be used to support settlement proposals submitted on the forms specified in 49.602-1(b) and (d).

49.602-3 Schedule of accounting information.

Standard Form 1439, Schedule of Accounting Information, shall be filed in support of a settlement proposal unless the proposal is filed on Standard Form 1438, Settlement Proposal (Short Form) (see 49.206-1(e)).

49.602-4 Partial payments.

Standard Form 1440, Application for Partial Payment, shall be used to apply for partial payments (see 49.112-~~1~~).

49.602-5 Settlement agreement.

Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall be used to execute a settlement agreement (see 49.109-~~1~~).

49.603 Formats for termination for convenience settlement agreements.

The formats to be used for termination for convenience settlement agreements should be substantially as shown in this section (see 49.109). Termination contracting officers (TCO's)

may, however, modify the contents of these agreements to conform with special termination clauses prescribed or authorized by their agencies (e.g., see 49.501 and 49.505(c)).

49.603-1 Fixed price contracts-complete termination.

[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts completely terminated.]

(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 items delivered, under the completed portion of the contract. The Government confirms the right of the Contractor, subject to paragraph (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 \$ _____ [for proposals on an inventory basis insert gross amount of settlement; for proposals on a total cost basis, insert gross amount of settlement less amount shown in subdivision(6)(i) of this sub-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 (7) of this section."]

(iii) The net settlement of \$ _____ in subdivision(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 all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) of 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) 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)

49.603-2 Fixed-price contracts-partial termination.

[Insert the following in Block14 of SF 30 for settlements of fixed-price contracts partially terminated.]

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

(b) The parties agree to the following:

(1) The terminated portion of the contract is as follows: [specify the terminated portion clearly as to-

(i) Line item numbers,

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit price of items,

(v) Total price of terminated items, and

(vi) Any other explanation necessary to avoid uncertainty or misunderstanding].

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7)(i) 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 \$_____ [insert gross amount of settlement],

(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) applicable to the terminated portion of the contract and

(B) the amount of \$_____ for all applicable property disposal credits.

(ii) The net settlement of \$_____ in subdivision (b)(7)(i) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the terminated portion of the contract, except as provided in paragraph (b)(8) of this section.

(iii) Upon payment of the net settlement of \$_____, all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to take further payments or carry out other undertakings concerning the terminated portion of the contract shall cease; provided, that nothing in this agreement shall impair or affect any covenants, terms, or conditions of the contract relating to the completed or continued portion of this contract.

(8) 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 in 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, 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)

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)

49.603-4 Cost-reimbursement contracts-complete termination, with settlement limited to fee. [Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement is limited to fee.]

(a) This supplemental agreement settles the amount of fee due under the contract, terminated in its entirety by Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The Contractor has received \$_____ on account of its fee under the contract before the effective date of termination.

(2) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, \$_____ [insert net amount to be paid on account of fee]. This sum, with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor on account of its fee under the contract.

(3) The Contractor's allowable costs under the contract will be paid under the terms and conditions of the contract and parts 31 and 49 of the Federal Acquisition Regulation. [Insert

paragraph (a)(3) of this subsection only if there are costs to be vouchered out (see 49.302) or if there are costs to be covered later by a separate settlement agreement.]

(4) 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 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.]

(iii) 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.

(iv) 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.

(v) 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.

(vi) All rights and liabilities of the parties relating to Government property furnished to, or acquired by, the Contractor for the performance of the contract.

(vii) 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.

(viii) 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)

49.603-5 Cost-reimbursement contracts-partial termination.

[Insert the following in Block 14 of SF 30, Amendment of Solicitation/Modification of Contract, for settlement agreements for cost-reimbursement contracts as a result of partial termination.]

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

(b) The parties agree as follows:

(1) The contract is amended by deleting the terminated portion as follows: [specify the terminated portion clearly as to-

(i) Line item numbers,

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit and total price of terminated items, and

(v) Any other explanation necessary to avoid uncertainty or misunderstanding].

(2) The fee stated in the contract is decreased by \$____, from \$____ to \$____ [Insert, if appropriate,"(3) The estimated cost of the contract is decreased by \$____, from \$____ to \$____"].

(c) The Contractor's allowable costs and earned fee, if any, for the terminated portion of the contract will continue to be reimbursed on SF 1034, Public Voucher for Purchase and Services Other Than Personal, under the applicable provisions of the contract and part 31 of the Federal Acquisition Regulation.

(End of agreement)

49.603-6 No-cost settlement agreement-complete termination.

[Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under a complete termination, is to be executed.]

(a) This supplemental agreement [insert "modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated ____" or, if not previously terminated, "terminates the contract in its entirety"].

(b) The parties agree as follows:

The Contractor unconditionally waives any charges against the Government because of the termination of the contract and, except as set forth below, releases it from all obligations under the contract or due to its termination. The Government agrees that all obligations under the contract are concluded, except as follows: [List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).]

(End of agreement)

49.603-7 No-cost settlement agreement-partial termination.

[Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under partial termination, is to be executed.]

(a) This supplemental agreement modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated ____.

(b) The parties agree as follows:

(1) The terminated portion of the contract is as follows: [Specify-

(i) Line item numbers,

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit and total price of terminated items, and

(v) Any other explanation necessary to avoid uncertainty or misunderstanding.]

(2) The Contractor unconditionally waives any charges against the Government arising under the terminated portion of the contract or by reason of its termination, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings under the terminated portion of the contract. The Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries under the terminated portion of the contract. Nothing in this paragraph affects any other covenants, terms, or conditions of the contract. Under the terminated portion of the contract, the following rights and liabilities of the parties are reserved: [List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).]

(End of agreement)

49.603-8 Fixed-price contracts-settlements with subcontractors only.

[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts covering only settlements with subcontractors.]

(a) This agreement settles that portion of the settlement proposal of the contractor that is based upon termination of the following subcontracts entered into in performing this contract: [Insert a list of the terminated subcontracts included in this settlement.]

(b) The parties agree to the following:

(1) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by the 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.

(2) 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, ~~is~~ are

(i) Are properly allocable to the terminated portion of the contract; ~~is~~ are

(ii) Do not exceed the reasonable quantitative requirements of the terminated portion of the contract; ~~is~~ are 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.

(3) 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.

(4) 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.

(5) The Government agrees to pay the Contractor or its assignee, upon presentation of a proper invoice or voucher, \$_____ [insert net amount of settlement], which, together with the amount of \$_____ previously paid the Contractor as partial, progress, or advance payments, constitutes payment in full and complete settlement, except as provided in paragraph (b)(6) of this section,

of the amount due the Contractor for that portion of its settlement proposal that is based upon termination of the subcontracts listed above.

(6) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1 ~~(b)(7)-1~~.]

(End of agreement)

49.603-9 Settlement of reservations.

[Insert the following in ~~Block 14~~ Block 14 of SF 30 for settlement of reservations.]

(a) Supplemental Agreement No. _____, dated _____, was executed to reflect the settlement of the termination of this contract. The supplemental agreement excepted from the settlement certain items described in the agreement including the items described in paragraph (b) of this section. This supplemental agreement settles those items ~~listed in paragraph (b) of this section~~.

(b) The parties agree to the following:

(1) The Government agrees to pay the contractor \$_____ for the following reserved or excepted items:* [List items.]

(2) The Contractor releases and forever discharges the Government from all liability and from all existing and future claims and demands that it may have under this contract, insofar as it pertains to the contract, for the items described in ~~paragraph~~ subparagraph (1) of this section.*

*When payment is due the Government, reverse the words "Government" and "contractor" in ~~paragraphs~~ subparagraphs (b)(1) and (b)(2).

(End of agreement)

49.604 Release of excess funds under terminated contracts.

The following format shall be used to recommend the release of excess funds under terminated contracts, except if the contracting office retains responsibility for settlement of the termination:-

From: Termination Contracting Officer _____ [address]

To: Contracting office _____ [address]

Subj: Terminated Contract No _____ with _____ [Contractor]

Refs:

(a) [Cite termination notice and effective date.]

(b) [Cite prior letters releasing excess funds, if any.]

(1) Referenced termination notice, ____ [insert "completely" or "partially"] terminated contract ____.

(2) Based on the best information available, it is estimated that the gross settlement cost will be \$ ____ The amount available for release as excess to the contract is \$ _____. Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

[If prior letters recommending release of excess funds are cited, use the following as paragraph 2:

The estimated settlement costs previously reported by reference (b) in the amount of \$ ____ are revised. On the best evidence now available, it is estimated that the settlement costs will be \$ ____ The additional amount available for release is \$ _____.]

(3) The related appropriations and amounts involved are:

Appropriations	Allocated Amounts
_____	_____
_____	_____
_____	_____
_____	_____

Copies to: Paying Office Accounting and Finance Office Other: _____

49.605 Request to settle subcontractor settlement proposals.

Contractors requesting authority to settle subcontractor settlement proposals shall furnish applicable information from the list below and any additional information required by the contracting officer: _____

(a) Name of contractor and address of principal office: _____

(b) Name and location of divisions of the applicant's plant for which authorization is requested: _____

(c) An explanation of the necessity and justification for the authorization requested: _____

(d) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling proposals: _____

(e) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government agencies and the percentage applicable to each agency: _____

(f) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage applicable to each agency;

(g) The extent of the applicant's experience in termination matters, including the handling of proposals of subcontractors;

(h) The approximate amount and general nature of terminations of the applicant currently in process;

(i) A statement that no other application has been made for any division of the applicant's plant covered by the application or, if one has been made, a full statement of the facts;

(j) The limit of authorization requested.

49.606 Granting subcontract settlement authorization.

Contracting officers shall use the following format when granting subcontract settlement authorization:

Letter of Authorization

(a) Your request of ____ (date) is approved, and you are authorized, subject to the limitations of subsection 49.108-4 and those stated below, to settle, without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of a Government contract being terminated or modified-

(1) For the convenience of the Government or

(2) Under any other circumstances that may require the Government to bear the cost of their settlement.

(b) This authorization does not extend to the disposition of Government-furnished material or articles completed but undelivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government, except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed \$____ [insert limit of authorization being granted].

(c) This authorization is subject to the following conditions and requirements:

(1) The amount of the subcontract termination settlement does not exceed \$____ [insert limit of authorization being granted], computed as follows:

(i) Do not deduct advance or partial payments or credits for retention or other disposal of termination inventory allocated to the settlement proposal.

(ii) Deduct amounts payable for completed articles or work at the contract price or for the settlement of termination proposals of subcontractors (except those settlements that have not been approved by the Government).

(2) Any termination inventory involved has been disposed of under subsection 49.108-4, except that screening and Government approval of scrap and salvage determinations are not required.

(3) The Contracting Officer may incorporate into each Notice of Termination specific instructions about the disposition of specific items of termination inventory, or the Contracting Officer may, at any time before final settlement, issue specific instructions. These instructions will not affect any disposal action taken by you or your subcontractors before their receipt.

(4) The settlements made by you with your subcontractors and suppliers under this authorization, including sales, retention, or other dispositions of property involved in making these settlements, are reimbursable under part 49 and the Termination clause of the contract, and do not require approval of the Contracting Officer.

(5) Any number of separate settlements of \$_____ [insert limit of authorization granted] or less may be made with a single subcontractor. Settlement proposals that would normally be included in a single proposal; e.g., those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and shall not be divided to bring them within the authorization.

(6) This authorization does not apply if a subcontractor or supplier is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or if there is any common interest between you by reason of stock ownership, or otherwise, that is sufficient to create a reasonable doubt that the bargaining between you is completely at arm's length.

(7) A representative of this office will, from time to time, review the methods used in negotiating settlements with your subcontractors and will make a selective examination of the settlements made by you. If the review indicates that you are not adequately protecting the Government's interest, this delegation will be revoked.

(End of letter)

49.607 Delinquency notices.

The formats of the delinquency notices in this section may be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See ~~subpart~~ [part 42.13](#) for stop-work orders.)

(a) Cure notice. If a contract is to be terminated for default before the delivery date, a "Cure Notice" is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of "cure" remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not

sufficient to permit a realistic "cure" period of 10 days or more, the "Cure Notice" should not be issued. The "Cure Notice" may be in the following format:

Cure Notice

You are notified that the Government considers your ____ [specify the contractor's failure or failures] a condition that is endangering performance of the contract. Therefore, unless this condition is cured within 10 days after receipt of this notice [or insert any longer time that the Contracting Officer may consider reasonably necessary], the Government may terminate for default under the terms and conditions of the _____ [insert clause title] clause of this contract.

(End of notice)

(b) Show cause notice. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the following "Show Cause Notice" may be used. It should be sent immediately upon expiration of the delivery period.

Show Cause Notice

Since you have failed to ____ [insert "perform Contract No. ____ within the time required by its terms," or "cure the conditions endangering performance under Contract No. ____ as described to you in the Government's letter of ____ (date)"], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to ____ [insert the name and complete address of the contracting officer], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

(End of notice)