

## **Termination for Convenience**

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November 2016

The Government has the right to terminate a Federal Contract at any time, regardless of Contractor performance. The Federal Acquisition Regulations at FAR 52.249(a) provide “The Government may terminate performance of work under this contract in whole or in part, from time to time, if the Contracting Officer determines that a termination is in the Government’s interest.” This is a totally unilateral action by the Government without any opportunity by the Contractor to respond, other than to simply begin termination of the Federal Contract. No warning or prior notice is required, and frequently it is a complete surprise to the Contractor.

While this is a unilateral action on the part of the Government, it is not intended to punish or cause harm to the Contractors who were hired by the Federal Government. It simply reflects changing Federal needs in face of new circumstances (such as new technology or a war), or perhaps the ability of the Government to pay as Congress modifies resources available to the Agencies. Regardless of the reason for the Government’s termination, Contractors are entitled to “fair compensation” in a termination for convenience. A termination for convenience essentially converts a fixed price contract to a cost reimbursement contract. FAR Part 49 contains the Federal Regulations for contract terminations, and FAR 52.249 contains the FAR Contract Clauses for termination.

Termination for Convenience is ALWAYS a part of your Federal Contract. Even if it is not expressly included in your Contract, it is an implied clause. As with most Federal contract issues, deadlines are critical to Contractor recovery.

### **SUGGESTED CONTRACTOR ACTIONS**

What should a contractor do on receipt of the Notice of Termination for Convenience? Following are some suggestions. This is not intended be considered an exhaustive list, but a brief summary to begin your research.

- IMMEDIATELY begin termination response
- Locate, Identify and calendar all deadlines for responding to the Government
- Communicate to your company and all subcontractors
- Begin documentation for project shut down and recovery of termination costs
- Change project cost codes to clearly identify and ensure recovery of proper costs
- If the termination is partial, submit a request for equitable adjustment for the increased cost in performing the continuing work.
- Identify work in progress that cannot easily be shut down.
  - Avoid spoilage
  - Determine commercial value to company
- Communicate with Contracting Officer to let the Government make decisions about work shutdowns
- Be sure to submit a timely termination settlement proposal
- Contractors are entitled to “fair compensation” in a termination for convenience.
- Be sure to carefully consider any Government disallowance determination to ensure fairness.



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- If you used reasonable judgment in incurring costs, the Government's stance that they would have performed differently are not grounds for disallowance.

**Where the Contractor fails to submit a timely settlement proposal, they forfeit all rights to judicial review.** The Contracting Officer is not required to pay any of the requested costs proposed and submitted late by a contractor, and the contractor has no venue to challenge the Contracting Officer's decision.

### SUBCONTRACTOR ACTIONS

How should the Contractor handle subcontract issues?

Properly communicate notice of termination to all Subcontractors and Suppliers.

- a. If GC, Notify Subs and Suppliers and require they notify their subs and suppliers
- b. If Subcontractor or Supplier,
  1. Calendar deadlines
  2. Communicate to your subcontractors and suppliers.
  3. Require they notify their subs and suppliers
- c. The termination clause is not a mandatory pass through clause per Federal contracts.
- d. Subcontracts are governed by State law, not Federal contract law.
- e. If your subcontract does not provide for termination pursuant to your Federal contract, you could be liable to your subcontractors for lost profits, which you may not collect from the Government

An experienced Federal Contractor recognizes that there is always a possibility of a termination for convenience, and is prepared to respond quickly if they are terminated. As such, it is critical that the Contractor always perform a Federal Contract with the knowledge termination could occur at any point in the contract. Obviously the Contractor should always be prepared for termination to ensure proper recovery of allowable costs.

This information is a brief sampling of the information Contractors must be aware of when contracting with the Federal Government, or any public entity who have a termination for convenience clause in their Contract. For additional information on Terminations for Convenience, please contact Jim Krause at (904) 353-5533 or [jimkrause@krauselaw.net](mailto:jimkrause@krauselaw.net).



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