

August 11, 2025

An Introduction To Terminations For Convenience

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AMADEO LAW FIRM



Introductions

Mark A. Amadeo

- Over 20 years experience as government counsel & law firm counsel
- LL.M. Georgetown University Law Center; J.D. University of Wisconsin Law School; B.A. Boston College
- Founder & Managing Partner of Amadeo Law Firm, PLLC
- Focus on Government Contracting & Technology
 - Drafting/Negotiating: Teaming, Subcontract, Joint Ventures
 - Government Contract & FAR/DFARS Compliance & Terminations
 - Post-award Review and Negotiations
 - Technology: IP Preservation & Commercialization

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Terminations Under FAR

Termination for Default (T4D)

Termination for Convenience (T4C)

Challenging Terminations For Convenience

Bad faith

- Solely to get a better deal
- Animus or intent to injure

Abuse of discretion

- CO exercise no independent discretion
- Violates law or policy

Termination Clauses

- 52.249-1 Termination for Convenience (Fixed-Price) (Short Form)
- 52.249-2 Termination for Convenience (Fixed-Price)
- 52.249-3 Termination for Convenience (Dismantling, Demolition, or Removal of Improvements)
- 52.249-4 Termination for Convenience (Services) (Short Form)
- 52.249-5 Termination for Convenience (Educational and Other Nonprofit Institutions)
- 52.249-6 Termination (Cost-Reimbursement)
- 52.249-7 Termination (Fixed-Price Architect-Engineer)
- 52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services

Termination Notices

FAR 49.102, FAR 49.601

Specifies if T4D or T4C

Effective date of termination

Extent of termination – partial or complete

Special instructions

Steps to take if workforce reduction anticipated

Fixed-Price & Cost-Reimbursement Contracts

Contractor Duties

52.249-2 (T4C Fixed-Price) & 52.249-6 (T4C Cost-Reimbursement)

- Stop work
- Transfer title fabrics, works in progress, supplies materials, plans, jigs
- Complete work not terminated
- Submit termination inventory schedules
- Subcontracts
 - No further subcontracts/orders
 - Terminate all subcontracts
 - Assign to Government contractor's rights, titles and interests under subcontracts
 - Settle outstanding liabilities & settlement proposals submitted by subcontractors

Fixed-Price & Cost-Reimbursement Contracts

Compensation for Work Performed But Not Paid For

FAR 49.103

Termination Settlement

- **Settlement by negotiation**
- **Settlement by CO determination**
- **Continued submission of cost-vouchers (cost-reimbursement)**

Fixed-Price (Non-Commercial)

Compensation for Work Performed But Not Paid For FAR Subpart 49.2, 52.249-2 (T4C Fixed-Price)

Termination Settlement

General Principle (FAR 49.201)

- Fair compensation for work already done
- Fair compensation for preparations
- Reasonable profit

Fixed-Price (Non-Commercial)

Compensation for Work Performed But Not Paid For

FAR Subpart 49.2, 52.249-2 (T4C Fixed-Price)

Carveout For Delivered Completed work

- Agency must inspect and accept if meets contract req's
- Agency must decide whether to take delivery accepted items
 - If agency takes delivery – must pay at usual contract price
 - Item/work is **NOT INCLUDED** in settlement proposal
- If agency does not accept delivery – included in proposal at contract price with adjustments

Fixed-Price (Non-Commercial)

Compensation for Work Performed But Not Paid For

FAR Subpart 49.2, 52.249-2 (T4C Fixed-Price)

Settlement By Negotiation

Settlement Proposal

- Submit within 1 year of termination (unless extension)
- Include –
 - Completed items accepted not delivered – contract price
 - Reasonable profit (FAR 49.202) – or loss (FAR 49.203)
 - Unpaid cost elements (FAR 49.206-1) using Part 31 cost principles
 - Guidance: FAR 31.205-42 & FAR 52.249-2(g) –
 - Subcontractor settlement costs
 - Costs of the termination settlement
 - Termination inventory
 - Indirect costs - salary and wages related to the termination

Fixed-Price (Non-Commercial)

Compensation for Work Performed But Not Paid For

FAR Subpart 49.2, 52.249-2 (T4C Fixed-Price)

Settlement By Negotiation

Settlement Proposal

- **Cost**
 - **Inventory Basis – SF 1435**
 - **Total Cost Basis – SF 1436**

Fixed-Price (Non-Commercial)

Compensation for Work Performed But Not Paid For

FAR Subpart 49.2, 52.249-2 (T4C Fixed-Price)

Settlement By CO Determination (FAR 52.249-2(g))

If no agreement – CO must pay:

- Contract price for accepted items
- The sum of (applying Part 31 cost principles)
 - Costs incurred for performance – including initial & prep
 - Subcontract settlement costs
 - Reasonable profit (or deduction for loss)
 - Settlement expenses - including
 - Accounting, legal, clerical related to settlement
 - Settlement & termination of subcontracts
 - Termination inventory costs – storage, transportation, preservation

Cost Reimbursement (Non-Commercial)

Compensation for Work Performed But Not Paid For
FAR Subpart 49.3, 52.249-6 (T4C Cost-Reimbursement)

Termination Settlement

General Rule (FAR 49.301)

- Settlement - cost clauses determine what is allowable (Part 31)

Continued submission of vouchers (FAR 49.302)

- Can continue using SF 1034 vouchers for six months
- Unpaid fee - letter request or include in settlement proposal
- Unvouchered costs – include in settlement proposal

Cost Reimbursement (Non-Commercial)

Compensation for Work Performed But Not Paid For

FAR Subpart 49.3, 52.249-6 (T4C Cost-Reimbursement)

Settlement by negotiation

Settlement Proposal – SF 1437

- Submit within 1 year of termination (unless extension)
- Should include
 - Unvouchered reimbursable costs - Part 31
 - Unpaid fees (Guidance: FAR 52.249-6(h)(4))
 - Settlement expenses (Guidance: FAR 31.205-42(g) & FAR 52.249(h)(3))
 - Accounting, legal, clerical related to settlement
 - Settlement & termination of subcontracts
 - Termination inventory costs – storage, transportation, preservation
 - Indirect costs – salary & wages related to the termination

Cost Reimbursement (Non-Commercial)

Compensation for Work Performed But Not Paid For
FAR Subpart 49.3, 52.249-6 (T4C Cost-Reimbursement)

Settlement by negotiation

Settlement Agreement

- Total or Part
- After agreement contract is modified

Cost Reimbursement (Non-Commercial)

Compensation for Work Performed But Not Paid For

FAR Subpart 49.3, 52.249-6 (T4C Cost-Reimbursement)

Settlement By CO Determination (FAR 52.249-6(h))

If no agreement – CO must pay (using Part 31 rules):

- Reimbursable costs incurred for performance
- Subcontract settlement costs
- Unpaid fees - % = to work completed
- Settlement expenses – including
 - Accounting, legal, clerical related to settlement
 - Settlement & termination of subcontracts
 - Termination inventory costs – storage, transportation, preservation

Commercial Products and Commercial Services

Applicable Rules

FAR 12.403, 52.212-4(I)

Part 12 Rules Apply

- Requirements of FAR Part 49 do not apply
- May use Part 49 as guidance if no conflict

Commercial Products and Commercial Services

Termination Settlement

FAR 12.403, 52.212-4(I)

Settlement Agreement

- Generally, should agree on the proposal
- Balance need for documentation vs. simple and expeditious settlement
- May use Part 49 as guidance if no conflict

Commercial Products and Commercial Services

Termination Settlement

FAR 12.403, 52.212-4(I)

Settlement Payment

Contractor must be paid

- Fixed - Percentage of contract price reflecting percentage of work as of termination notice
- Labor-Hour - direct labor hours X hourly rate
- Plus termination charges: any directly resulted from termination
 - Standard record keeping system – not cost accounting or Part 31
- No right to audit

Release of Funds

TCO estimates funds required for settlement; within 30 days recommends release of excess

Initial deobligation should be timely

If release of excess funds causes shortage, funds reinstated within 30 days

Best Practices

- Engage outside help as soon as possible
- Send timely subcontractor termination notices
- Jump into cost-recovery mode

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THANKS!

Any questions?

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