

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3, 49, and 52

[FAR Case 2026–007, Docket No. FAR–2026–0007, Sequence No. 1]

RIN 9000–AO92

Federal Acquisition Regulation: Revolutionary Federal Acquisition Regulation Overhaul Parts 3 and 49

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB); Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council or FAR Council) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*. The E.O. directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The FAR Council is issuing twelve proposed rules that collectively will streamline the FAR in its entirety. This rule proposes revisions to FAR parts 3 and 49.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before July 23, 2026, to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2026–007 to the Federal eRulemaking portal at <https://www.regulations.gov>. Follow the instructions for sending comments.

Instructions: Please submit comments only and cite “FAR Case 2026–007” in all correspondence related to this case. Include your name, company name (if any), and “FAR Case 2026–007” on any attached document. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. Public comments may be submitted as

an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov/FAR-2026-007>.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact FARpolicy@gsa.gov or call 202–969–4075 and cite “FAR Case 2026–007.” For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite “FAR Case 2026–007.”

SUPPLEMENTARY INFORMATION:

I. Background

E.O. 14275, *Restoring Common Sense to Federal Procurement* (April 15, 2025), resets the foundation for Federal buying by requiring the FAR Council to produce a streamlined FAR that is simpler, clearer, and structured for speed. According to the E.O., the FAR has evolved from its original purpose (*i.e.*, to establish uniform procedures across executive departments and agencies), into an excessive and overcomplicated regulatory framework and bureaucracy. While meant to “deliver, on a timely basis, the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives,” the FAR has become an expensive barrier to achieving those objectives. As a result, the E.O. directed the FAR Council and OMB to create an agile, effective, and efficient regulation that contains only provisions required by statute or essential to sound procurement.

To implement E.O. 14275, OMB issued Memorandum M–25–26, *Overhauling the Federal Acquisition Regulation*, which announced the “Revolutionary FAR Overhaul” (RFO) and created a roadmap for producing simpler regulations aligned to statute, rewritten in plain language, and including nonstatutory requirements that are necessary to conducting a sound procurement. The memorandum described a new streamlined vision for the FAR, to be maintained alongside nonregulatory governmentwide guidance to provide a common-sense authoritative foundation for nimble

response and delivery of mission capability.

This new vision represents a paradigm shift where over-engineered regulations designed for paperwork and compliance are replaced with streamlined regulations focused on core stewardship principles and nonregulatory guidance that will be used in concert with the streamlined FAR focused on proven buying strategies, critical thinking, market awareness (including to expand awareness of goods, products, and materials offered in the United States), and risk literacy to enhance workforce problem-solving. The significant reduction of unnecessary mandates is intended to clarify and reinforce the contracting officer’s discretion to determine the best way to apply policies and practices. The newly established, nonregulatory guidance, which has been inspired by acquisition innovation advocates, category managers, other experienced practitioners, and many years of feedback from the contractor community—is expected to facilitate contracting officers’ use of their discretion more efficiently and effectively to make smarter buying decisions.

OMB Memorandum M–25–26 also directed the FAR Council to complete the regulatory overhaul in two phases, each with robust public input. The FAR Council conducted its phase one effort in fiscal year 2025 by issuing model class deviations to replace each part in the FAR until such time as formal rulemaking occurred. This proposed rule is one of a series that constitute the FAR Council’s phase two effort to obtain public comment through formal rulemaking.

II. Discussion and Analysis

A summary of proposed changes to existing FAR parts 3 and 49, and their corresponding provisions and clauses in part 52 are as follows:

A. General

1. General RFO Updates

This proposed rule generally reorganizes the FAR parts into phases of acquisition and simplifies the text into plain language, where possible. The plain language efforts include changes to active voice, edits to improve readability, and reorganization to present information more logically. None of the plain language edits are intended to change existing FAR requirements. The rewriting of the entire FAR also required edits to harmonize the changes being proposed such as updating the cross-references.

This aligns with the Federal plain language guidelines as directed by the Plain Writing Act of 2010 (5 U.S.C. 301 note).

2. Standardization of Prescriptions

This rule proposes revisions to standardize prescriptions for provisions and clauses. These changes are intended to provide better clarity around the applicability of provisions and clauses such as whether they apply to commercial products and commercial services.

3. Use of “Must” Instead of “Shall”

Additional revisions are being proposed throughout the FAR text and FAR provisions and clauses to replace the use of the term “shall” with “must” or “will,” as appropriate, to impose requirements.

4. Non-Statutory Requirements

Section 4 of the E.O. required amendments to the FAR to ensure it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security. The FAR Council reviewed all non-statutory requirements to determine if they are still relevant and essential to sound procurement in today’s contracting environment based on the criteria from section 4 of the E.O. The proposed rule retains non-statutory requirements that further one or more of the elements of sound procurements, including those requirements that serve as guardrails to protecting taxpayer interests and promote taxpayer confidence in the procurement system. Non-statutory requirements that were beneficial but not essential were retained in the non-regulatory guidance documents. Other non-statutory requirements that did not meet these standards, were removed. The Council considered the extent to which regulation is the most efficient means for capturing the benefit of the policy. For example, most “how to” requirements were found to be more appropriately suited for non-regulatory coverage which better enables a contracting officer to use discretion in determining the application of a strategy to a given situation and limits the risk of overapplication, which can create wasteful burden on the contracting parties.

As part of the RFO, the FAR Council has created a number of non-regulatory resources, including the FAR Companion, which provides insight from experienced practitioners across the government on using more

streamlined practices and processes. The migration of significant coverage to non-regulatory guidance is intended to ensure that the benefits of the policy are not outweighed by the compliance burden of a more rigidly written regulation that is prone to application in an overly broad manner. This approach was explained to the public in a set of “frequently asked questions” that were posted on the Revolutionary FAR Overhaul homepage shortly after the initiative was launched.

B. Summary of Proposed Changes to FAR Part 3, Improper Business Practices and Personal Conflicts of Interest

1. Retain Statutorily Based Requirements

FAR part 3 was reviewed comprehensively to distinguish provisions and clauses grounded in statute from those that were discretionary, duplicative, or informational in nature, consistent with the policy objectives of Executive Order No. 14275, *Restoring Common Sense to Federal Procurement*, 90 FR 16447 (2025). As a result of this review, this rule retains all statutory requirements governing improper business practices and personal conflicts of interest, including 10 U.S.C. 4651; 10 U.S.C. 4655; 41 U.S.C. 4704; 18 U.S.C. 208; 18 U.S.C. 218; 41 U.S.C. 2101 *et seq.*; 41 U.S.C. 3509; 41 U.S.C. 4712; 41 U.S.C. 8701 *et seq.*; and Executive Order No. 12731, *Principles of Ethical Conduct for Government Officers and Employees*; among others. These authorities ensure that the FAR continues to provide clear, stable, and enforceable ethical standards, advancing the objectives of Executive Order No. 14275, to promote regulatory discipline, usability, and common-sense procurement.

2. Remove Obsolete and Duplicative Sections

The revisions to FAR part 3 eliminate provisions that are obsolete, duplicative, or nonstatutory in nature. These revisions include removal of references to the superseded Executive Order No. 11222, *Prescribing Standards of Ethical Conduct for Government Officers and Employees*, 30 FR 6469 (1965), in subsection 3.101–3, *Agency Requirements*; removal of section 3.301, *General*, which was informational in nature; removal of agency guidance in section 3.406, *Records*; streamlining of section 3.700, *Scope of Subpart*; and removal of section 3.907, *Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009*, which is now obsolete because all funds appropriated under the Act are expired.

Additionally, outdated antitrust violation instructions were removed.

These changes do not deviate from existing statutory authorities or ethical standards. Instead, they streamline the regulatory text, improve internal consistency, and enhance clarity and usability for contracting officers and contractors by removing provisions that are obsolete, duplicative, or no longer applicable.

3. Clarification of Procedures for Reviewing Improperly Marked Information

This rule revises FAR 3.104–4 to modernize and clarify the procedures for protecting contractor bid or proposal information and source selection information. The revision updates cross-references to FAR sections 14.303(a), 14.301(c), 41.211–3(a)(3), and 15.108, and adds a new process for reviewing markings that appear to be improperly applied. The changes require contracting officers to notify the offeror or contractor and provide a written justification period before canceling or ignoring markings and allow agencies to adjust the response period based on the needs of the acquisition. The rule replaces outdated references to technical data procedures in FAR part 27 with language tailored to procurement integrity determinations under FAR part 3, including clarifying the appropriate dispute avenues under applicable protest and claims processes. Additionally, the rule codifies statutory Freedom of Information Act (FOIA) protections by stating that proposals remain exempt from disclosure under 41 U.S.C. 4702 regardless of marking disputes and clarifies when agencies must modify procedures to comply with agency FOIA regulations. Collectively, these changes reinforce statutory protections, align processes with procurement integrity requirements, and improve clarity and usability for contracting officers, offerors, and contractors.

C. Summary of Proposed Changes to FAR Part 49

1. Retain Statutorily Based Subparts

FAR part 49 was comprehensively reviewed to identify the portions of the termination framework that remain required to implement statutory authorities governing contract terminations. As a result of this review, this rule retains all statutory requirements, including 10 U.S.C. 3201 *et seq.*; 41 U.S.C. 3301 *et seq.*; 41 U.S.C. 3901; 40 U.S.C. 502; 41 U.S.C. 1303; 41 U.S.C. 3901; 41 U.S.C. ch 13; 41 U.S.C. 6502; 41 U.S.C. 7101–7109; 10 U.S.C.

3201 *et seq.*; among others. These authorities implement longstanding requirements, including the Government's right to terminate contracts for convenience, principles for determining fair compensation, statutory rights to recover excess costs following default, and the requirement to settle subcontractor claims in accordance with applicable statutes and judicial precedent. These subparts also incorporate statutory provisions governing the Government's ability to recover funds when contracts are voided or rescinded (49.700–49.705), and statutory accounting, payment, and property transfer requirements associated with termination actions. Preserving these statutory subparts ensures alignment with long-standing case law, maintains the integrity of the Government's termination authority, and continues to provide contracting officers and contractors with the legally required procedures for administering termination actions.

2. Remove Obsolete, Duplicative, or Nonstatutorily Based Sections

This rule removes or streamlines provisions in part 49 that are obsolete, duplicative of other FAR parts, or purely informational in nature and therefore unnecessary to retain in regulation. Several sections, including FAR 49.108–7 (Government Assistance in Settling Subcontracts), FAR 49.113 (Cost Principles), and FAR 49.405 (Completion by Another Contractor), contained narrative guidance or explanatory text that duplicated requirements addressed elsewhere in the FAR, such as cost principles in FAR part 31, property management in part 45, inspection and acceptance in FAR part 46, and Government claims and recovery authorities in FAR parts 1, 32, and 33. Additional outdated or duplicative material, including explanatory text related to termination inventory, settlement forms, and administrative practices now addressed through standardized processes or cross-referenced authorities, has been removed or consolidated into existing subparts. These revisions are consistent with the objectives of Executive Order No. 14275, *Restoring Common Sense to Federal Procurement*. Removing non-statutory and duplicative sections strengthens regulatory discipline, improves readability, reduces redundancy, and promotes consistent application of termination procedures while maintaining clear, stable, and enforceable requirements aligned with current statutes, case law, and modern acquisition practices.

3. Revise Audit of Prime Contractor and Subcontractor Termination Settlement Proposals From Mandatory to Permissive

This rule proposes revisions to FAR 49.107, Audit of Prime Contract Settlement Proposals and Subcontract Settlements, to replace the mandatory termination settlement proposal audit requirement with a permissive, risk-based approach. The revisions remove the certified cost or pricing data threshold as a trigger for audit and provide the termination contracting officer (TCO) discretion to determine whether audit support is appropriate based on the facts and risk of the settlement. These changes maintain appropriate oversight of risk associated proposals prepared in a noncompetitive environment, while improving flexibility in the administration of contract termination settlements, allowing audit resources to be applied where risk warrants and reducing unnecessary administrative burden for both the Government and contractors.

4. Revise Termination Settlement Proposal and Inventory Schedule Submission Timeframes

This rule proposes revisions to the timeframes for the submission of termination settlement proposals and inventory schedules in FAR sections 49.206–1, 49.206–3, 49.302(a), 49.303–1, 49.303–2, and 49.304–2, as well as the corresponding contract termination clauses at FAR 52.249–2, 52.249–3, 52.249–5, and 52.249–6. The revisions shorten the timeframe for submission of inventory schedules from 120 days to 60 days following termination and revises the timeframe for extension requests to within 30 days of termination notice rather than 120 days. The rule also revises the timeframe for submission of termination settlement proposals from 1 year to 90 days and revises the contractor extension request timeframe from 1 year to 60 days.

These changes are intended to improve the efficiency of the settlement process by addressing delays experienced under the current framework. The existing timeframes have, in practice, extended the overall resolution period for terminations, resulting in administrative inefficiencies for both contractors and the Government. The proposed reduction in required submission time is expected to support a more timely and orderly settlement process while maintaining flexibility where appropriate. Contractors may still request additional time when warranted by the complexity of a particular settlement, and

contracting officers retain the discretion to consider and approve such requests on a reasonable basis. The Council does not anticipate that these changes will impose additional burden; rather, they streamline the process and clarify the expectations for timely submission to support more efficient closeout of terminated contracts.

5. Streamline and Improve Readability and Organization

This rule also proposes revisions to FAR part 49 to improve clarity, organization, and usability while preserving existing statutory authorities and long-standing termination policy. The revisions reorganized and streamlined regulatory text across Section 49.000, *Scope of Part*, Subpart 49.1, *General Principles*; Subpart 49.2, *Additional Principles for Fixed-Price Contracts Terminated for Convenience*; Subpart 49.3, *Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience*; Subpart 49.4, *Termination for Default*; Subpart 49.5, *Contract Termination Clauses*; and Subpart 49.6, *Contract Termination Forms and Settlement Agreements*, without altering substantive rights or obligations.

This rule proposes to implement improved readability as a result of the plain-language edit. Sections 49.001, *Definitions*, and 49.002, *Applicability*, are retained and updated for plain language with a simpler structure. In addition, nonsubstantive comments were addressed through clarifying and corrective revisions. These included revising informal advisory language at 49.202, *Determining Profit*, with a plain-language edit stating that the TCO may use *any reasonable method* to determine a fair profit, taking into account specified factors; and restoring previously removed text specifying the interest rate computation for excess payments at 49.112–1, *Partial Payments*, to reflect applicable statutory requirements. Further nonsubstantive revisions corrected formatting, indentation, and spacing and reserved deleted sections to improve navigability and internal consistency.

6. Clarify Default Termination Procedures

This rule clarifies the organization and application of procedures in FAR subpart 49.4, *Termination for Default*, to ensure consistent use of cure notices and show-cause notices in accordance with long standing FAR practice. This rule refines the text to more clearly distinguish when a contracting officer should issue a cure notice versus when a show-cause notice is practicable, and

to preserve the established framework for determining the Government's rights following a contractor default. These revisions improve clarity, support consistent application of Default termination procedures, and reduce the potential for misinterpretation in administrative or judicial law.

D. Summary of Changes to FAR Part 52, Contract Clauses

1. Plain Language Update

As part of the broader plain language initiative, the term “shall” has been replaced with “must” throughout all affected clauses and prescriptions in this rulemaking to promote clarity and consistency. These updates will streamline contract drafting and compliance, reduce ambiguity, and save time for both contracting officers and contractors.

2. Clarification of FAR Clause Applicability to Commercial Products and Commercial Services

This rule clarifies the applicability of FAR part 52 clause prescriptions to commercial acquisitions to ensure consistent treatment across the FAR. Conforming revisions were made to prescriptions associated with FAR parts 3 and 49 to accurately reflect when clauses apply to commercial products and commercial services. Affected prescriptions include those at FAR 3.103–1, 3.104–9, 3.202, 3.404, 3.502–3, 3.503–2, 3.808, 3.906, 3.909–3, 3.1004, 3.1106, 49.502, 49.503, 49.504, and 49.505.

In addition, termination clauses at 52.249–2, 52.249–3, 52.249–5, 52.249–6, were revised to conform with timeframes for the submission of termination settlement proposals and inventory schedules, consistent with proposed changes at 49.206–3, 49.302(a), 49.303–1, 49.304–2, and 49.404–2. These conforming revisions ensure alignment between FAR part 49 and its associated clauses without introducing new termination rights or obligations.

3. Part 52 Renumbering

As a result of the RFO, the FAR Council is considering establishing a new FAR subpart in part 52 and relocating and renumbering all

provisions and clauses under this new subpart. This means, if subpart 52.4 was used, all provisions and clauses would begin with 52.4 instead of 52.2. This change is anticipated to prevent confusion and increase compliance by creating a clear distinction between versions of a provision or clause prior to the RFO. Other benefits include avoiding potential clause numbering conflicts and information system and data collection impacts. The FAR Council welcomes comments on the potential impact of such a change on contractors, government personnel, and other stakeholders.

III. Applicability to Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold and for Commercial Products, Commercially Available Off-The-Shelf Items, and Commercial Services

The following sections address the applicability of provisions and clauses prescribed in FAR parts 3 and 49 to solicitations and contracts valued at or below the simplified acquisition threshold (SAT) and those for the acquisition of commercial products, commercially available off-the-shelf (COTS) items, and commercial services. Prescriptions for provisions and clauses in these parts have been updated to reflect applicability to commercial acquisitions.

A. Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold

This proposed rule, if finalized, does not alter the prescriptions of provisions and clauses included in this proposed rule to change their applicability to contracts and subcontracts valued at or below the SAT.

B. Contracts and Subcontracts for Commercial Products, Commercially Available Off-The-Shelf Items, and Commercial Services

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and gives the FAR Council the authority to determine to apply a law to contracts or subcontracts for the acquisition of commercial products and commercial services. 41

U.S.C. 1907 exempts contracts for commercially available off-the-shelf (COTS) items from certain provisions of law unless the Administrator for Federal Procurement Policy determines that doing so would not be in the best interest of the Federal Government.

Section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) required the FAR Council and the Administrator of Federal Procurement Policy to review prior determinations under 41 U.S.C. 1906 and 41 U.S.C. 1907, as well as the applicability of provisions and clauses to contracts and subcontracts for commercial products, COTS items, and commercial services that do not implement statute or Executive order, and propose amendments to the FAR to eliminate or exempt such requirements from commercial acquisitions, unless there are specific reasons to retain particular requirements.

In accordance with section 839 of the NDAA for FY 2019 and their authorities under 41 U.S.C. 1906 and 1907, the FAR Council reviewed the applicability of the provisions and clauses associated with the FAR parts covered by this proposed rule.

The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposed determination regarding the applicability of the provisions and clauses to solicitations and contracts for commercial products, COTS items, and/or commercial services. In making proposed applicability determinations, the FAR Council considered factors such as whether the provision or clause advances national security or economic security, contributes to the resilience of contractors and subcontractors in the Federal marketplace, or advances uniformity and clarity in the performance of basic functions that are essential to sound procurement.

Accordingly, this proposed rule, if finalized, would revise provision and clause prescriptions to clearly reflect applicability to commercial acquisitions as outlined in the table. An “X” in the following table indicates the provision or clause will apply to that category of commercial acquisition, as prescribed:

Provision/clause no.	Title	Commercial products	Commercial services	COTS items
52.203–2	Certificate of Independent Price Determination			
52.203–3	Gratuities	X	X	X
52.203–5	Covenant Against Contingent Fees			
52.203–6	Restrictions on Subcontractor Sales to the Government	X	X	X
52.203–6 Alt I	Restrictions on Subcontractor Sales to the Government			
52.203–7	Anti-Kickback Procedures			

Provision/clause no.	Title	Commercial products	Commercial services	COTS items
52.203–8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	.....	.....	.....
52.203–10	Price or Fee Adjustment for Illegal or Improper Activity .....	.....	.....	.....
52.203–11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	X	X	X
52.203–12	Limitation on Payments to Influence Certain Federal Transactions ..	X	X	X
52.203–13	Contractor Code of Business Ethics and Conduct	X	X	X
52.203–14	Display of Hotline Poster(s) .....	.....	.....	.....
52.203–16	Preventing Personal Conflicts of Interest .....	.....	.....	.....
52.203–17	Contractor Employee Whistleblower Rights	X	X	X
52.203–18	Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation.	X	X	X
52.203–19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.	X	X	X
52.249–1	Termination for Convenience of the Government (Fixed Price) (Short Form).	.....	.....	.....
52.249–1 Alt I	Termination for Convenience of the Government (Fixed-Price) (Short Form).	.....	.....	.....
52.249–2	Termination for Convenience of the Government (Fixed-Price) .....	.....	.....	.....
52.249–2 Alt I	Termination for Convenience of the Government (Fixed-Price) .....	.....	.....	.....
52.249–2 Alt II	Termination for Convenience of the Government (Fixed-Price) .....	.....	.....	.....
52.249–2 Alt III	Termination for Convenience of the Government (Fixed-Price) .....	.....	.....	.....
52.249–3	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	.....	.....	.....
52.249–3 Alt I	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	.....	.....	.....
52.249–4	Termination for Convenience of the Government (Services) (Short Form).	.....	.....	.....
52.249–5	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	.....	.....	.....
52.249–6	Termination (Cost-Reimbursement) .....	.....	.....	.....
52.249–6 Alt I	Termination (Cost-Reimbursement) .....	.....	.....	.....
52.249–6 Alt II	Termination (Cost-Reimbursement) .....	.....	.....	.....
52.249–6 Alt III	Termination (Cost-Reimbursement) .....	.....	.....	.....
52.249–6 Alt IV	Termination (Cost-Reimbursement) .....	.....	.....	.....
52.249–7	Termination (Fixed-Price Architect-Engineer) .....	.....	.....	.....
52.249–8	Default (Fixed-Price Supply and Service) .....	.....	.....	.....
52.249–8 Alt I	Default (Fixed-Price Supply and Service) .....	.....	.....	.....
52.249–9	Default (Fixed-Price Research and Development) .....	.....	.....	.....
52.249–10	Default (Fixed-Price Construction) .....	.....	.....	.....
52.249–10 Alt I	Default (Fixed-Price Construction) .....	.....	.....	.....
52.249–10 Alt II	Default (Fixed-Price Construction) .....	.....	.....	.....
52.249–10 Alt III	Default (Fixed-Price Construction) .....	.....	.....	.....
52.249–12	Termination (Personal Services) .....	.....	.....	.....
52.249–14	Excusable Delays .....	.....	.....	.....

The FAR Council also reviewed subcontract flow down requirements in clauses associated with the FAR parts covered by this proposed rule. The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposal regarding

whether those clauses flow down to subcontracts for commercial products, COTS items, and/or commercial services. This proposed rule, if finalized, would revise the subcontract paragraphs in these clauses to clearly state whether the clause flows down to

commercial subcontracts, as outlined in the table. An “X” in the following table indicates the provision or clause will apply to subcontracts for that category of commercial subcontracts, as described in the clause:

Clause No.	Title	Commercial products	Commercial services	COTS items
52.203–6	Restrictions on Subcontractor Sales to the Government .....	.....	.....	.....
52.203–6 Alt I	Restrictions on Subcontractor Sales to the Government	X	X	X
52.203–7	Anti-Kickback Procedures .....	.....	.....	.....
52.203–12	Limitation on Payments to Influence Certain Federal Transactions ..	X	X	X
52.203–13	Contractor Code of Business Ethics and Conduct	X	X	X
52.203–14	Display of Hotline Poster(s) .....	.....	.....	.....
52.203–16	Preventing Personal Conflicts of Interest .....	.....	.....	.....
52.203–17	Contractor Employee Whistleblower Rights	X	X	X
52.203–19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.	X	X	X

IV. Expected Impact of the Rule

The intended impact of the RFO, as stated in E.O. 14275, is to restore the Government's ability to "deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives." Each of the RFO rulemakings is designed to contribute to this impact by emphasizing mission first, by aligning acquisition activities directly to achieving the agency's overarching objectives and serving the public interest and elevating the importance of fiscal responsibility. The proposed RFO rules focus on three goals in particular: (1) timely acquisition and delivery, (2) lower cost and accountability in all spending, and (3) increased competition.

Timeliness. Timely acquisition and delivery are essential for mission success. To this end, RFO rules propose to eliminate mandates that unnecessarily interfere with agency discretion to determine the best way to procure products and services. The proposed RFO rules highlight more clearly streamlined and simplified authorities that allow buyers to use their time more efficiently and are expected to reduce time between solicitation and award. The proposed RFO rules are expected to make it easier for contracting officers to leverage commercial practices that are familiar to the commercial marketplace. This is expected to make it easier for sellers to engage and respond to Government solicitations more rapidly.

Lower cost. E.O. 14271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracts (April 15, 2025), directs the Government to utilize, to the maximum extent practicable, the commercial marketplace and the innovations of private enterprise to provide better, more cost-effective services to taxpayers, as envisioned by the Federal Acquisition Streamlining Act. The procurement of custom products and services where a suitable or superior commercial solution would have fulfilled the Government's needs has resulted in avoidable waste to the detriment of American taxpayers.

To address these concerns, consistent with associated responsibilities in section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), the FAR Council reviewed prescriptions for provisions and clauses to ensure all prescriptions are clear regarding their applicability to acquisitions for commercial products and services. Currently, many

prescriptions do not specify applicability to commercial acquisitions and leave the applicability determination to contracting officer interpretation. By specifically stating when a provision or clause can be applied to commercial acquisitions, proposed RFO rules should decrease the likelihood of inclusion of provisions and clauses in commercial acquisitions that are not required by law and drive greater consistency in the terms and conditions used in these contracts. In turn, these changes should increase the participation of commercial sellers, who are unwilling or unable to manage the cost of complying with noncommercial requirements, and also improve taxpayer access to affordable commercial solutions.

Some RFO rules propose to delete requirements placed on commercial or noncommercial sellers that are not related to performance of the contract, drive up cost without attendant performance benefits, and may misdirect efforts away from innovation, investment and economic growth. Greater emphasis on timeliness should reduce bidders' carrying costs, enabling them to pass those savings on to customers through lower prices.

Increased competition. Since enactment of the Competition in Contracting Act of 1984 (Title VII of Pub. L. 98–369), competition has been the cornerstone of the Federal acquisition system. The benefits of competition are well established: competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. Competition also drives contractor resilience and positions the U.S. market to develop a strategic advantage for the nation.

According to data in the SAM Contract Award Management, roughly 45 percent of contract dollars were awarded in FY 2025 either without competition or with competition that received only one offer. Of equal concern, the Federal marketplace has seen a significant decline over the past 20 years in the number of businesses—especially small businesses—participating in the Federal supplier base. Studies suggest that high compliance costs lead to the misallocation of resources away from more profitable activities and discourage innovation, investment, and economic growth (Council of Economic Advisers, Executive Office of the President, June 2025. *The Economic Benefits of Current Deregulatory Policies*. [https://www.whitehouse.gov/wp-content/uploads/2025/03/The-Economic-Benefits-of-Current-](https://www.whitehouse.gov/wp-content/uploads/2025/03/The-Economic-Benefits-of-Current-Deregulatory-Efforts.pdf)

Deregulatory-Efforts.pdf). This may shelter incumbent contractors and stifle competition, reducing startup activity and job formation.

The RFO rules seek to increase participation in agency competitions and the resilience of the Federal supplier base, which includes commercial entities, small businesses, manufacturers, and nontraditional suppliers. The RFO will achieve this outcome by removing regulatory mandates that are not rooted in statute or essential to sound procurement, promoting greater reliance on practices that reduce transaction costs, and improving the quality of communications with offerors and potential offerors. Access to a broader range of solutions in a more dynamic marketplace will drive better return for each taxpayer dollar spent and increase taxpayer confidence in the Federal acquisition system.

The Government has conducted a regulatory impact analysis (RIA) for the RFO rulemaking inclusive of this proposed rule for FAR parts 3 and 49. The RIA includes a discussion of the anticipated effects of the rulemakings as follows:

1. FAR Part 3

This proposed rule streamlines FAR part 3 to improve clarity, consistency, and ease of use without altering statutory requirements or the substantive compliance environment for offerors and contractors. It removes obsolete and duplicative text (e.g., references to Executive Order 11222 and sections 3.301, 3.406, and 3.907), updates internal cross references, and adopts plain language edits to enhance readability and navigability for the acquisition workforce. The rule also clarifies procedures at FAR 3.104–4 for reviewing markings on contractor bid or proposal information and source selection information.

Benefits to the Government include a more coherent framework for protecting sensitive information and applying procurement integrity provisions, reduced time spent reconciling outdated cross references, and fewer procedural errors associated with inconsistent review practices. By presenting requirements in plain language and removing redundant narrative, the rule supports faster onboarding, more consistent training, and improved day to day application of ethical and integrity standards across agencies. Benefits to industry are indirect but meaningful. Clearer, more predictable processes for markings review, faster resolution of questions tied to proprietary or source selection information, and a FAR part

that is easier to navigate, especially for small businesses and commercial providers unfamiliar with legacy constructs. Associated burdens are negligible and one time in nature (e.g., familiarization and routine updates to agency guidance and training materials), as the rule does not introduce new reporting, recordkeeping, certifications, or contractor systems changes.

2. FAR Part 49

This proposed rule modernizes FAR part 49 to improve clarity, efficiency, and usability while preserving long-standing statutory rights and principles. Substantive revisions replace the mandatory audit trigger for termination settlement proposals with a permissive, risk-based approach; reduces the settlement proposal submission timeframe from one year to 90 days; revises the contractor extension request timeframe to 60 days; and shortens the inventory schedule submission timeframe from 120 days to 60 days, with extension requests due within 30 days of termination notice. The rule also removes duplicative or nonstatutory sections, clarifies default termination procedures, and reinstates standard termination case file documentation to support transparent, orderly closeout. Collectively, these changes establish clearer expectations, align oversight to risk, and streamline administration of both convenience and default terminations.

Benefits to the Government include better allocation of audit resources to higher-risk settlements, shorter termination durations, and faster contract closeout and funds reallocation. Benefits to industry include reduced administrative burden associated with automatic audits when risk does not warrant them, earlier resolution of termination actions that improves cash flow and reduces carrying costs, and more predictable documentation and interaction expectations under revised timelines. Associated burdens are minimal and primarily transitional. Contractors may need to front-load existing work earlier in the process, and agencies will update internal policies and provide targeted training to reinforce risk-informed judgment and revised timeframes. No new reporting, recordkeeping, or information collections are introduced by these changes, and substantive termination rights and settlement principles remain unchanged.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Executive Order 14192

This rule is subject to E.O. 14192, Unleashing Prosperity Through Deregulation. This proposed rule, if finalized as proposed, is anticipated to be an E.O. 14192 deregulatory action. See discussion in the “Expected Impact of the Rule” section of this preamble.

VII. Regulatory Flexibility Act

This proposed rule, if finalized, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601–612. However, an Initial Regulatory Flexibility Analysis (IRFA) is as follows:

1. Reasons for the action.

Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement, directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The E.O. directs the first comprehensive end-to-end overhaul of the FAR in its 40-year history. The E.O. establishes the policy that the FAR should “contain only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests.” In response to E.O. 14275, the Office of Management and Budget issued memorandum M–25–26, Overhauling the Federal Acquisition Regulation. The Memo directed the FAR Council to complete a “revolutionary overhaul” of the FAR. Therefore, the FAR Council is issuing twelve proposed rules that collectively will streamline the FAR in its entirety.

2. Objectives of, and legal basis for, the rule

The revolutionary FAR overhaul (RFO) rewrite represents a paradigm shift in Federal acquisition. It emphasizes streamlining, clarity, and accessibility, while ensuring that the regulation focuses only on statutory mandates and foundational procurement principles. The RFO is

designed to simplify compliance for contracting professionals, improve acquisition speed and agility, and reinforce mission outcomes over process formalities.

The basis for the RFO is E.O. 14275. The authority for promulgation of the FAR is 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

3. Description of and an estimate of the number of small entities to which the rule will apply

All small entity concerns who want to contract with the Federal Government will have to familiarize themselves with the reorganized, streamlined, and revised FAR, including the content of this rulemaking. As of January 2026, there are 401,196 entities registered in the System for Award Management (SAM) that were small for at least one North American Industry Classification System (NAICS) code they had selected.

FAR Part 3:

Proposed revisions to FAR part 3 apply broadly to all Federal offerors and contractors, including small entities across all sectors. In addition to nonsubstantive revisions that reorganize and streamline regulatory text, clarify existing requirements through plain-language edits, correct internal cross-references, and remove duplicative or outdated provisions, the rule includes a substantive revision aligning the procedures for reviewing improperly marked contractor information in FAR 3.104–4(b) and 3.104–4(d) with the procedures set forth in FAR 27.404–5.

Because these changes do not impose new reporting, recordkeeping, or compliance obligations on contractors, including small entities, and do not require changes to internal systems, ethics programs, or business practices, they are not expected to result in significant additional costs. The revisions do not affect contractor pricing, competition, or participation in Federal acquisitions; however, the revisions will make the FAR easier to navigate and reduce confusion for small entities by providing clearer guidance and standardized formats. While small entities may need to update internal procedures to align with the reorganized structure, the overall effect is expected to reduce administrative burden and improve transparency. Familiarization costs are anticipated to be minimal, primarily involving time spent reviewing the new structure.

FAR Part 49:

Proposed revisions to FAR Part 49 affect contractors whose contracts are terminated for convenience or default,

including small entities prime contractors across all sectors. The rule includes substantive revisions that revise audit practices for termination settlement proposals and adjust procedural timeframes for the submission of inventory schedules and termination settlement proposals, as well as nonsubstantive revisions that streamline and clarify termination procedures across multiple subparts and clauses.

The substantive revisions replace the mandatory termination settlement proposal audit requirement with a permissive, risk-based approach that allows TCOs to determine whether audit support is appropriate based on the facts and risk of the settlement. The revisions also remove the certified cost or pricing data threshold as a trigger for audit.

In addition, the rule revises default submission timeframes for inventory schedules and termination settlement proposals and revises the timing for requesting extensions, while retaining the ability for contractors to request additional time. These changes do not alter the scope or content of termination settlement proposals, inventory schedules, or subcontract settlements, and do not introduce new documentation, reporting, or audit requirements.

The nonsubstantive revisions reorganize and streamline regulatory text, remove nonstatutory requirements, improve consistency and usability as a result of the plain-language edit, while preserving long standing statutory authorities and established termination principles. These revisions do not change contractor rights or obligations.

Because the revisions are procedural in nature, preserve existing termination rights and settlement principles, and do not expand the information required from contractors or the documentation needed to support termination settlement proposals or inventory schedules, and do not impose new compliance, reporting, or recordkeeping requirements on small entities, the negative impact of the proposed revisions on small entities is not expected to be substantial.

The revisions retain contractor flexibility through extension request provisions for submission timeframes and shift audit practices to a risk-based and discretionary framework and adjust default submission timeframes without changing the substantive requirements applicable to termination settlement proposals or inventory schedules.

While the revised submission timeframes may require contractors to prepare and submit existing information earlier in the termination process, any

potential cost impacts are expected to be limited, administrative in nature, and offset by efficiencies gained through earlier engagement, reduced settlement durations, and a corresponding decrease in administrative costs once associated with prolonged termination actions. In addition, due to the infrequent occurrence of contract terminations, only a limited number of contractors will be minimally impacted at any given time. Accordingly, the revisions are not expected to result in a significant negative economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

FAR Part 52:

The changes in FAR part 52 clarify the applicability of provisions and clauses associated with updates to prescriptions in FAR parts 3 and 49. In addition to these clarifications, the rule includes plain language edits, such as improvements to readability, updates to active voice, and replacement of the term “shall” with “must,” to promote consistency across prescriptions and clauses. Any costs are negligible and limited to internal policy updates. Therefore, the changes are not expected to have a significant economic impact on a substantial number of small entities.

4. Description of projected reporting, recordkeeping, and other compliance requirements of the rule.

This proposed rule, if finalized, does not contain any new reporting, recordkeeping, or other compliance requirements.

FAR Part 3:

Revisions to FAR Part 3 do not introduce new reporting, recordkeeping, or information collection requirements for contractors, subcontractors, or offerors, including small entities. The changes are limited to organizational and editorial revisions, clarification of existing requirements through plain-language edits, correction of internal cross-references, and alignment of FAR part 3 with part 27. Contractors remain subject to the same ethical, procurement integrity, and conflict of interest obligations that existed prior to the rule, and no new certifications, disclosures, or documentation submissions are required.

The revisions do not impose new compliance obligations or require changes to contractor systems, staffing, training, or internal controls. Because the rule does not add or modify information collections, it does not result in increased paperwork burden under the Paperwork Reduction Act. The changes are intended to support clearer understanding and more

consistent application of existing requirements without creating new compliance responsibilities for contractors or the Government.

FAR Part 49:

Revisions to FAR Part 49 do not establish new reporting or recordkeeping requirements related to contract terminations, including termination settlement proposals or inventory schedules. Contractors are not required to submit additional information beyond what is already required under existing termination procedures. The revisions adjust procedural timeframes for the submission of termination settlement proposals and inventory schedules, clarify existing FAR text, and promote a risk-based approach to the administration of termination proposal audits, without expanding documentation or data submission requirements.

The rule does not require contractors to modify accounting systems, recordkeeping practices, or internal termination procedures, nor does it impose new compliance steps or documentation obligations. Because the revisions do not create new or revised information collections, they do not increase paperwork burden under the Paperwork Reduction Act. The changes are limited to improving clarity, promoting efficiency, and removing nonstatutory and outdated text, and do not introduce additional compliance requirements for contractors or the Government.

FAR Part 52:

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 52. The updates clarify the applicability of prescriptions and clauses to commercial acquisitions and make conforming revisions to clauses associated with FAR parts 3 and 49. These changes are editorial and organizational in nature and do not impose new compliance obligations.

5. Relevant Federal rules which may duplicate, overlap, or conflict with the rule.

The proposed rule, if finalized, would not duplicate, overlap, or conflict with other Federal rules.

6. Description of any significant alternatives to the rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact of the rule on small entities.

There are no significant alternatives that would minimize the impact of the rule on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the

Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. The FAR Council invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

The FAR Council will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite "5 U.S.C. 610 (FAR Case 2026-007)" in correspondence.

VIII. Paperwork Reduction Act

This rule includes information collections under the Paperwork Reduction Act (44 U.S.C. 3501-3521). Following are the specific collections associated with each FAR part in this rule as previously approved by OMB followed by how each collection would be affected by the proposed rule. If a FAR part is not listed below, then there are no information collections associated with the part.

Part 3

OMB Control No 9000-0018, Federal Acquisition Regulation Part 3: Improper Business Practices and Personal Conflicts of Interest—FAR sections affected: 52.203-2, 52.203-7, 52.203-13, and 52.203-16. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

Part 49

OMB Control No 9000-0012, Termination Settlement Proposal Forms (SFs 1435 through 1440); FAR Section Affected: SFs 1435 through 1440. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

IX. Severability

If any portion (e.g., section, clause, sentence) of this rule is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of this rule, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of this rule are independent and serve distinct purposes. Even if one

aspect were rendered invalid, the other benefits of the rule would still be applicable."

List of Subjects in 48 CFR Parts 3, 49, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, OFPP, DoD, GSA, and NASA propose amending 48 CFR parts 3, 49, and 52 as set forth below:

■ 1. Revise parts 3 and 49 to read as follows:

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

3.000 Scope of part.

Subpart 3.1—Safeguards

3.101 Standards of conduct.

3.101-1 General.

3.101-2 Solicitation and acceptance of gratuities by Government personnel.

3.101-3 Agency regulations.

3.102 [Reserved]

3.103 Independent pricing.

3.103-1 Solicitation provision.

3.103-2 Evaluating the certification.

3.104 Procurement integrity.

3.104-1 Definitions.

3.104-2 General.

3.104-3 Statutory and related prohibitions, restrictions, and requirements.

3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

3.104-5 Disqualification.

3.104-6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

3.104-7 Violations or possible violations.

3.104-8 Criminal and civil penalties, and further administrative remedies.

3.104-9 Contract clauses.

Subpart 3.2—Contractor Gratuities to Government Personnel

3.201 Applicability.

3.202 Contract clause.

3.203 Reporting suspected violations of the Gratuities clause.

3.204 Treatment of violations.

Subpart 3.3—Reports of Suspected Antitrust Violations

3.301 [Reserved]

3.302 Definitions.

3.303 Reporting suspected antitrust violations.

Subpart 3.4—Contingent Fees

3.400 Scope of subpart.

3.401 Definitions.

3.402 Statutory requirements.

3.403 Applicability.

3.404 Contract clause.

3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3.5—Other Improper Business Practices

3.501 Buying-in.

3.501-1 Definition.

3.501-2 General.

3.502 Subcontractor kickbacks.

3.502-1 Definitions.

3.502-2 Subcontractor kickbacks.

3.502-3 Contract clause.

3.503 Unreasonable restrictions on subcontractor sales.

3.503-1 Policy.

3.503-2 Contract clause.

Subpart 3.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3.601 Policy.

3.602 Exceptions.

3.603 Responsibilities of the contracting officer.

Subpart 3.7—Voiding and Rescinding Contracts

3.700 Scope of subpart.

3.701 Purpose.

3.702 Definition.

3.703 Authority.

3.704 Policy.

3.705 Procedures.

Subpart 3.8—Limitations on the Payment of Funds to Influence Federal Transactions

3.800 Scope of subpart.

3.801 Definitions.

3.802 Statutory prohibition and requirement.

3.803 Exceptions.

3.804 Policy.

3.805 Exemption.

3.806 Processing suspected violations.

3.807 Civil penalties.

3.808 Solicitation provision and contract clause.

Subpart 3.9—Whistleblower Protections for Contractor Employees

3.900 Scope of subpart.

3.901 Definitions.

3.902 Classified information.

3.903 Policy.

3.904 Complaints.

3.904-1 Procedures for filing complaints.

3.904-2 Procedures for investigating complaints.

3.905 Remedies and enforcement of orders.

3.905-1 Remedies.

3.905-2 Enforcement of orders.

3.906 Contract clause.

3.907 [Reserved]

3.908 [Reserved]

3.909 Prohibition on providing funds to an entity that requires certain internal confidentiality agreements or statements.

3.909-1 Prohibition.

3.909-2 Representation by the offeror.

3.909-3 Solicitation provision and contract clause.

Subpart 3.10—Contractor Code of Business Ethics and Conduct

3.1000 Scope of subpart.

3.1001 Definitions.

3.1002 Policy.

- 3.1003 Requirements.
- 3.1004 Contract clauses.

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

- 3.1100 Scope of subpart.
- 3.1101 Definitions.
- 3.1102 Policy.
- 3.1103 Procedures.
- 3.1104 Mitigation or waiver.
- 3.1105 Violations.
- 3.1106 Contract clause.

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

3.000 Scope of part.

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

Subpart 3.1—Safeguards

3.101 Standards of conduct.

3.101–1 General.

Government business must be conducted in a manner above reproach. Except as authorized by statute or regulation, business must be conducted with complete impartiality and without preferential treatment for anyone. Transactions involving public funds require the highest degree of public trust and impeccable standards of conduct. The general rule is to avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. Many Federal laws restrict Government personnel actions. Beyond these restrictions, official conduct must meet a standard where personnel would have no reluctance to fully disclose their actions to the public.

3.101–2 Solicitation and acceptance of gratuities by Government personnel.

(a) As a rule, and as required by Executive Order 12731, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who—

- (1) Has or is seeking to obtain Government business with the employee's agency;
 - (2) Conducts activities that are regulated by the employee's agency; or
 - (3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.
- (b) Certain limited exceptions are authorized in agency regulations.

3.101–3 Agency regulations.

(a) Agencies must prescribe *Standards of Conduct* as required by 5 CFR part 735. These agency standards contain—

- (1) Agency-authorized exceptions to 3.101–2; and
 - (2) Disciplinary measures for persons violating the standards of conduct.
- (b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are contained in Office of Personnel Management and agency regulations implementing Public Law 95–521, which amended 18 U.S.C. 207.

3.102 [Reserved]

3.103 Independent pricing.

3.103–1 Solicitation provision.

Insert the provision at 52.203–2, Certificate of Independent Price Determination, in solicitations, other than those for commercial products or commercial services, for firm-fixed-price contracts or fixed-price contracts with economic price adjustment, unless—

- (a) The purchase uses simplified acquisition procedures from part 13;
- (b) The solicitation only requests technical proposals under two-step sealed bidding; or
- (c) The solicitation is for utility services with rates established by law or regulation.

3.103–2 Evaluating the certification.

(a) *Evaluation guidelines.*

- (1) The following activities are not considered “disclosure” as used in paragraph (a)(2) of the Certificate of Independent Price Determination (the certificate):
 - (i) A firm has published price lists, rates, or tariffs for items the Government is buying.
 - (ii) A firm has told potential customers about upcoming new or revised price lists for items the Government is buying.
 - (iii) A firm has sold the same items to commercial customers at the same prices offered to the Government.
 - (iv) A firm participates in a reverse auction (explained in part 17).
- (2) For paragraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

- (i) The proposed contract is clearly within the scope of the authorization; and
- (ii) The person giving the authorization is responsible for determining the offered prices at the time the certification is made for that offer.

(3) For joint offers from multiple companies, each company's certification applies only to its own activities.

(b) *Rejecting potentially collusive offers.*

- (1) If an offeror removes or modifies paragraph (a)(1), (a)(3), or (b) of the certificate, the contracting officer must reject their bid or proposal.
- (2) If an offeror deleted or modified paragraph (a)(2) of the certificate—
 - (i) The offeror must furnish with its offer a signed explanation about how prices were disclosed;
 - (ii) The chief of the contracting office must review both the changed certificate and explanation;
 - (iii) The chief must determine in writing if the disclosure was made for the purpose or had the effect of limiting competition;
 - (iv) If the determination finds the disclosure was made for the purpose or had the effect of limiting competition, the bid must be rejected; and
 - (v) If the determination finds no competition issues, the bid or proposal may be considered for award.
- (3) When rejecting offers under paragraphs (b)(1) or (b)(2), or when suspecting false certification, the contracting officer must report the situation to the Attorney General in accordance with 3.303.
- (4) The determination in paragraph (2) does not prevent prosecution of criminal or civil actions involving the transactions to which the certificate relates.

3.104 Procurement integrity.

3.104–1 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.104 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.104(e), to whom authority under 3.104–6 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.104(d).

Compensation means wages, salaries, honoraria, commissions, professional fees, and any other form of payment, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

Contractor bid or proposal information means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal

agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 3701(1) with respect to procurements subject to that section, and 41 U.S.C. 3501(a)(1), with respect to procurements subject to that section).

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215–1(e).

Decision to award a subcontract or modification of subcontract means a decision to designate award to a particular source.

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovation research programs, each proposal received by an agency counts as a separate procurement for purposes of 41 U.S.C. chapter 21.

In excess of \$10,000,000 means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

Official means—

(1) An officer, as defined in 5 U.S.C. 2104;

(2) An employee, as defined in 5 U.S.C. 2105;

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3); or

(4) A special Government employee, as defined in 18 U.S.C. 202.

Participating personally and substantially in a Federal agency procurement means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) “Participating personally” means participating directly and includes the direct and active supervision of a subordinate’s participation in the matter.

(3) “Participating substantially” means that the official’s involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and recommend alternative technologies or approaches for broad agency-level missions or objectives.

(ii) General technical, engineering, or scientific work with broad application not directly tied to a specific procurement, even if that work later becomes part of a procurement.

(iii) Clerical functions supporting a particular procurement.

(iv) For OMB Circular A–76 procurements, participation in management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses,

or providing data or technical support for others to develop performance standards, statements of work, or specifications.

Source selection evaluation board means any board, team, council, or other group that evaluates bids or proposals.

3.104–2 General.

(a) This section implements 41 U.S.C. chapter 21, Restrictions on Obtaining and Disclosing Certain Information. The senior procurement executive of the agency must approve any agency supplementation to 3.104. This includes specific definitions identifying individuals who occupy positions specified in 3.104–3(d)(1)(ii), and any required clauses. A law may establish a higher level of approval for that agency.

(b) Agency officials need to remember that other statutes and regulations also address similar prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201 and 10 U.S.C. 4651. 5 U.S.C. 7353 and 5 CFR part 2635 prohibit accepting certain gifts;

(2) Contact with an offeror during an acquisition may constitute “seeking employment” (see 5 CFR part 2635 and 3.104–3(c)(2)). Government employees cannot participate personally and substantially in any matter that would affect the financial interests of a person with whom they are seeking employment, as prohibited by 18 U.S.C. 208 and 5 CFR part 2635. An employee negotiating or seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must follow the disqualification requirements in 5 CFR 2635.604 and 2635.606. The prohibition in 18 U.S.C. 208 may require employee disqualification from participation in the acquisition even if their duties are not considered “participating personally and substantially” as defined in 3.104–1;

(3) Post-employment restrictions under 18 U.S.C. 207 and 5 CFR part 2641 prohibit certain activities by former Government employees. This includes representing a contractor before the Government regarding any contract or other particular matter involving specific parties where the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for matters under an employee’s official responsibility;

(4) Parts 14 and 15 restrict the release of procurement information and other

contractor information that must be protected under 18 U.S.C. 1905;

(5) The Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws may prohibit releasing information both before and after award (see 3.104–4); and

(6) Using nonpublic information for an employee's private interest or another's benefit and engaging in financial transactions using nonpublic information are prohibited by 5 CFR 2635.703.

3.104–3 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (41 U.S.C. 2102).*

(1) A person described in paragraph (a)(2) of this subsection must not knowingly disclose contractor bid or proposal information or source selection information before a Federal agency awards the procurement contract to which the information relates. This restriction applies except when disclosure is allowed by law. (See 3.104–4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (41 U.S.C. 2102).* A person must not knowingly obtain contractor bid or proposal information or source selection information before a Federal agency awards the procurement contract to which the information relates. This restriction applies except when obtaining such information is allowed by law.

(c) *Actions required when an agency official contacts or is contacted by an offeror regarding non-Federal employment (41 U.S.C. 2103).*

(1) An agency official who participates personally and substantially in a Federal agency procurement for a contract over the simplified acquisition threshold must take specific actions if they contact or are contacted by an offeror in that Federal agency procurement about possible non-Federal employment for that official. The official must—

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104–5). This disqualification remains until the agency authorizes the official to resume participation in that procurement, according to the requirements of 18 U.S.C. 208 and applicable agency regulations, because—

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have ended without an agreement or arrangement for employment.

(2) A contact is any action included as “seeking employment” in 5 CFR 2635.603(b). Unsolicited communications from offerors regarding possible employment also count as contacts.

(3) Agencies must retain reports of employment contacts for 2 years from the date the report was submitted.

(4) Even if conduct complies with 41 U.S.C. 2103, other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch may prohibit it. See 3.104–2(b)(2).

(d) *Prohibition on former official's acceptance of compensation from a contractor (41 U.S.C. 2104).*

(1) A former official of a Federal agency must not accept compensation from a contractor as an employee, officer, director, or consultant for 1 year after the former official—

(i) Served, when the contractor was selected or awarded a contract, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement where that contractor received a contract in excess of \$10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency a decision to—

(A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) Establish overhead or other rates for that contractor's contracts valued in excess of \$10,000,000;

(C) Approve issuing a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date—

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) The prohibition in paragraph (d)(1) of this subsection does not prevent a former official from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services than the entity responsible for the contract referred to in paragraph (d)(1).

3.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) No person or entity may disclose contractor bid or proposal information or source selection information to any person other than those authorized to receive that information, in accordance with applicable agency regulations or procedures, by the agency head or contracting officer. This restriction applies except as specifically provided in this subsection.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure according to 14.303(a), 14.301(c), 14.211–3(a)(3), 15.207, applicable law, and agency regulations.

(c) Individuals who are unsure if specific information is source selection information, as defined in 2.101, should consult with agency officials. Individuals preparing material that may be source selection information as described in paragraph (10) of the “source selection information” definition in 2.101 must mark the cover page and each page they believe contains source selection information with this legend: “Source Selection Information—See FAR 2.101 and 3.104.” Although information in paragraphs (1) through (9) of the definition in 2.101 counts as source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) The contracting officer must notify the offeror or contractor in writing and follow the procedures in paragraphs (d)(1)-(3) of this section if the contracting officer believes proprietary information, contractor bid or proposal information, or information marked under 52.215-1(e) has been inappropriately marked.

(1) Agencies must not cancel or ignore markings unless they first provide a written request asking the offeror or contractor to submit a written justification substantiating the proprietary markings. The contracting officer must establish a reasonable response date that does not exceed 60 days.

(2) If the offeror or contractor either fails to respond or fails to provide a written justification substantiating the markings within the time afforded, the Government may cancel or ignore the markings.

(3) If the offeror or contractor provides a written justification substantiating the markings, consider the justification.

(i) Upon determining that the markings are authorized, notify the offeror or contractor in writing.

(ii) If the contracting officer determines that the markings are not authorized, obtain concurrence at one level above the contracting officer, and provide the offeror or contractor a written determination regarding the appropriateness of the markings. The determination must state that the Government will cancel or ignore the markings and that the information will no longer be subject to disclosure prohibitions, unless the offeror or contractor seeks relief through applicable remedies (e.g., filing a pre-award protest or, if after award, pursuing a claim under the Disputes clause or litigation in a court of competent jurisdiction). Do not cancel or ignore the markings until final resolution of the matter through these processes.

(iii) Modify the foregoing procedures in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) as necessary to respond to a request. Regardless of any dispute over markings, proposals in their entirety remain exempt from disclosure under 41 U.S.C. 4702 (see 24.202(a)).

(e) This section does not restrict or prohibit—

(1) An offeror or contractor from disclosing its own bid or proposal information or the recipient from receiving that information. During reverse auctions, agencies may reveal offered price(s) to all offerors, but must not reveal any offeror's identity except

for the awardee's identity after making an award resulting from the auction (see subpart 17.8);

(2) The disclosure or receipt of information, not otherwise protected, relating to a canceled Federal agency procurement before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) This section does not authorize—

(1) Withholding any information from a proper request by Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to a Federal agency procurement. The release must also notify the recipient that disclosure of the information is restricted by 41 U.S.C. chapter 21;

(2) Withholding information from, or restricting its receipt by, the Comptroller General during a protest against the award or proposed award of a Federal agency procurement contract;

(3) Releasing information after award of a contract or cancellation of a procurement if such information is offeror or contractor bid or proposal information or source selection information that relates to another procurement; or

(4) Disclosing, soliciting, or receiving bid or proposal information or source selection information after award if such actions are prohibited by law. (See 3.104-2(b)(5) and part 24.)

3.104-5 Disqualification.

(a) *Contacts through agents or other intermediaries.* Employment contacts between an employee and an offeror conducted through agents or other intermediaries may require disqualification under 3.104-3(c)(1). These contacts may also require disqualification under other statutes and regulations. (See 3.104-2(b)(2).)

(b) *Disqualification notice.* An agency official who must disqualify himself or

herself under 3.104-3(c)(1)(ii) must submit the contact report required by 3.104-3(c)(1). The official must also promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority (if different from the contracting officer), and the agency official's immediate supervisor. At a minimum, the notice must—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.*

(1) The official must remain disqualified until the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement according to 3.104-3(c)(1)(ii).

(2) After the conditions of 3.104-3(c)(1)(ii)(A) or (B) have been met, the head of the contracting activity (HCA), after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the procurement process integrity. When determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality. The HCA should document the reinstatement decision in writing.

(3) Government officers or employees must also comply with 18 U.S.C. 208 and 5 CFR part 2635 regarding resumed participation in procurement matters. A government officer or employee may not resume participating in a procurement matter affecting the financial interest of someone with whom they are seeking employment, unless the individual receives—

(i) A waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(ii) An authorization according to the requirements of subpart F of 5 CFR part 2635.

3.104-6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency may request advice from the appropriate agency ethics official before accepting compensation from a contractor. This applies when the individual does not know whether 41

U.S.C. 2104 (see 3.104–3(d)) prevents them from accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the—

(1) Procurement(s), or decision(s) on matters under 3.104–3(d)(1)(iii), involving the particular contractor. This includes contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) The agency ethics official should issue an opinion within 30 days after receiving a complete request, or as soon as practicable after that. The opinion should address whether the proposed conduct would violate 41 U.S.C. 2104.

(d)(1) If the request does not include complete information, the agency ethics official may ask the requester to provide more information. The ethics official may also request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) When issuing an opinion, the agency ethics official may rely on the accuracy of information provided by the requester or other agency sources. This applies unless the official has reason to believe the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester receives a written opinion from the agency ethics official stating they may accept compensation from a particular contractor and accepts such compensation in good faith reliance on that opinion, neither the requester nor the contractor will be found to have knowingly violated 41 U.S.C. 2104. However, if the requester or contractor has actual knowledge or reason to believe the opinion is based on fraudulent, misleading, or otherwise incorrect information, their reliance on the opinion will not be considered good faith.

3.104–7 Violations or possible violations.

(a) A contracting officer who receives information about a violation or

possible violation of procurement integrity laws (41 U.S.C. 2102, 2103, or 2104) must determine if this affects the pending award or contractor selection.

(1) If the contracting officer determines there is no impact on the procurement, the contracting officer must forward the information about the violation, including documentation supporting the “no impact” determination, and send these materials to the individual designated per agency procedures.

(i) If that individual agrees with the “no impact” assessment, the contracting officer may continue with the procurement.

(ii) If that individual disagrees, that person must promptly forward all information to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer determines the violation does impact the procurement, the contracting officer must promptly forward all information to the HCA.

(b) The HCA must review all available information and, following agency procedures, take appropriate action, such as—

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under 41 U.S.C. 2105, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated 41 U.S.C. chapter 21, the HCA may request information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that 41 U.S.C. chapter 21 has been violated, the HCA may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take other appropriate actions to protect Government interests.

(2) If a contract has been awarded—

(i) Apply appropriate contractual remedies, including profit recapture under the clause at 52.203–10 (Price or Fee Adjustment for Illegal or Improper Activity), or, if the contract has been rescinded, recovery of the amount expended under the contract.

(ii) Void or rescind the contract when:

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of 41 U.S.C. 2102 for the purpose of either—

(1) Exchanging the information for anything of value; or

(2) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The agency head has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under 41 U.S.C. 2105(a); or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspending and debarring official.

(e) The HCA should recommend or direct an administrative or contractual remedy that matches the severity and effect of the violation.

(f) If the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with agency procedures, may authorize the contracting officer to award the contract or execute the contract modification after notifying the agency head.

(g) The HCA may delegate authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

3.104–8 Criminal and civil penalties, and further administrative remedies.

Criminal penalties, civil penalties, and administrative remedies may apply to conduct that violates procurement integrity laws in 41 U.S.C. chapter 21 (see 3.104–3). For a special rule about bid protests see 41 U.S.C. 2106. For administrative remedies related to contracts, see 3.104–7.

(a) An official who knowingly fails to follow the requirements of 3.104–3 is subject to penalties and administrative action described in 41 U.S.C. 2105.

(b) An offeror who engages in employment discussion with an official subject to the restrictions of part 3, knowing that the official has not complied with part 3, is subject to the criminal, civil, or administrative penalties set forth in 41 U.S.C. 2105.

(c) An official who refuses to terminate employment discussions (see 3.104–5) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a

particular procurement interferes substantially with the individual's ability to perform assigned duties.

3.104-9 Contract clauses.

Insert the following clauses in solicitations and contracts, other than those for commercial products or commercial services, if the acquisition value exceeds the simplified acquisition threshold:

(a) 52.203-8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity; and

(b) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity.

Subpart 3.2—Contractor Gratuities to Government Personnel

3.201 Applicability.

This subpart applies to all executive agencies, except that coverage concerning exemplary damages applies only to the Department of Defense (10 U.S.C. 4651).

3.202 Contract clause.

Insert the clause at 52.203-3, Gratuities, in solicitations and contracts, including those for commercial products or commercial services, if the acquisition value exceeds the simplified acquisition threshold, except those—

(a) For personal services; or

(b) Between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense.

3.203 Reporting suspected violations of the Gratuities clause.

Agency personnel must report suspected violations of the Gratuities clause to the contracting officer or other designated official in accordance with agency procedures. The agency reporting procedures must be published as an implementation of this section and must clearly specify—

(a) What to report and how to report it; and

(b) The channels through which reports must pass, including the function and authority of each official designated to review them.

3.204 Treatment of violations.

(a) Before taking action against a contractor, the agency head or designee must determine, after notice and hearing under agency procedures, whether the contractor, its agent, or representative, under a contract containing the Gratuities clause:

(1) Offered or gave a gratuity (such as entertainment or a gift) to a Government officer, official, or employee; and

(2) Intended to use this gratuity to obtain a contract or favorable treatment under a contract (this intent typically must be inferred from circumstances).

(b) Agency procedures must give the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. The procedures should be as informal as practicable, while maintaining principles of fundamental fairness.

(c) When the agency head or designee determines that a violation has occurred, the Government may—

(1) Terminate the contractor's right to proceed;

(2) Initiate debarment or suspension measures described in part 9; and

(3) Assess exemplary damages, if the contract uses money appropriated to the Department of Defense.

Subpart 3.3—Reports of Suspected Antitrust Violations

3.301 [Reserved]

3.302 Definitions.

As used in this subpart—

Identical bids means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (e.g., discount or transportation cost).

3.303 Reporting suspected antitrust violations.

(a) Agencies are required by 41 U.S.C. 3707 and 10 U.S.C. 3307 to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by part 9.

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) of this section identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that may show violations of antitrust laws include—

(1) The existence of an *industry price list* or *price agreement* to which contractors refer in formulating their offers;

(2) A sudden change from competitive bidding to identical bidding;

(3) Simultaneous price increases or follow-the-leader pricing;

(4) Rotation of bids or proposals where each competitor takes turns being the low bidder, or where certain competitors bid low only on some sizes of contracts and high on other sizes;

(5) Division of the market, so that certain competitors bid low only for contracts awarded by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;

(6) Establishment by competitors of a collusive price estimating system;

(7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;

(8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and

(9) Statements by current employees, former employees, or competitors that an agreement to restrain trade exists.

(d) Contracting officers must report identical bids when the agency has reason to believe the bids resulted from collusion.

(e) For offers from foreign contractors on contracts to be performed outside the United States and its outlying areas, contracting officers may refer suspected collusive offers to the relevant foreign government authorities for appropriate action.

(f) Agency reports must be addressed to the Attorney General, U.S. Department of Justice, Washington, DC 20530, Attention: Assistant Attorney General, Antitrust Division, and must include—

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

Subpart 3.4—Contingent Fees

3.400 Scope of subpart.

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those permitted by 10 U.S.C. 3321(b)(1) and 41 U.S.C. 3901.

3.401 Definitions.

As used in this subpart—

Bona fide agency, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert

improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

Bona fide employee, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

Contingent fee, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

Improper influence, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

3.402 Statutory requirements.

Contractors' arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual improper influence. In 10 U.S.C. 3321(b) and 41 U.S.C. 3901, Congress affirmed this public policy but permitted certain exceptions. These statutes—

(a) Require every negotiated contract to include a warranty by the contractor against contingent fees;

(b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and

(c) Provide that if a contractor breaches or violates this warranty, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

3.403 Applicability.

This subpart applies to all contracts. Statutory requirements for negotiated contracts are, as a matter of policy, extended to sealed bid contracts.

3.404 Contract clause.

Insert the clause at 52.203–5, Covenant Against Contingent Fees, in solicitations and contracts, other than those for commercial products or commercial services, if the acquisition value exceeds the simplified acquisition threshold.

3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of any of the following must report the matter promptly to the contracting officer or appropriate higher authority according to agency procedures:

(1) Attempted or actual exercise of improper influence;

(2) Misrepresentation of a contingent fee arrangement; or

(3) Other violations of the Covenant Against Contingent Fees.

(b) When specific evidence or other reasonable basis exists to suspect one or more violations described in paragraph (a) of this section, the chief of the contracting office must review the facts and, if appropriate, take or direct one or more of the following actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the Government's right to annul the contract or to recover the fee.

(3) Initiate suspension or debarment action under part 9.

(4) Refer suspected fraudulent or criminal matters to the Department of Justice, as prescribed in agency regulations.

Subpart 3.5—Other Improper Business Practices

3.501 Buying-in.

3.501–1 Definition.

Buying-in, as used in this section, means submitting an offer below anticipated costs, expecting to—

(1) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or

(2) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

3.501–2 General.

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of—

(1) Change orders; or

(2) Follow-on contracts subject to cost analysis.

(b) The Government should minimize the opportunity for buying-in by seeking a price commitment covering as much of the entire program concerned as is practical by using—

(1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multiyear quantity; or

(2) Priced options for additional quantities that, together with the firm

contract quantity, equal the program requirements (see part 17).

(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses (e.g., amortization of nonrecurring costs (see 15.408, Table 15–2, paragraph A., column (2) under “Formats for Submission of Line Item Summaries”) and treatment of unreasonable price quotations (see part 15).

3.502 Subcontractor kickbacks.

3.502–1 Definitions.

As used in this section—

Kickback means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Person means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

Prime contract means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor means a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this section, means any officer, partner, employee, or agent of a prime contractor.

Subcontract means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor—

(1) Means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and

(2) Includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

3.502–2 Subcontractor kickbacks.

The Anti-Kickback Act of 1986 (now codified at 41 U.S.C. chapter 87, Kickbacks,) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly

obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Kickbacks statute—

(a) Prohibits any person from—

(1) Providing, attempting to provide, or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickbacks; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

(b) Imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in paragraph (a) of this section.

(c) Provides for the recovery of civil penalties by the United States from any person who knowingly engages in such prohibited conduct and from any person whose employee, subcontractor, or subcontractor employee provides, accepts, or charges a kickback.

(d) Provides that—

(1) The contracting officer may offset the amount of a kickback against monies owed by the United States to the prime contractor under the prime contract to which such kickback relates;

(2) The contracting officer may direct a prime contractor to withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against the prime contractor under paragraph (d)(1) of this section; and

(3) An offset under paragraph (d)(1) or a direction under paragraph (d)(2) of this section is a claim by the Government for the purposes of 41 U.S.C. chapter 71, Contract Disputes.

(e) Authorizes contracting officers to order that sums withheld under paragraph (d)(2) of this section be paid to the contracting agency, or if the sum has already been offset against the prime contractor, that it be retained by the prime contractor.

(f) Requires the prime contractor to notify the contracting officer when the withholding under paragraph (d)(2) of this section has been accomplished unless the amount withheld has been paid to the Government.

(g) Requires a prime contractor or subcontractor to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General any possible violation of the Kickbacks statute when the prime contractor or subcontractor has

reasonable grounds to believe such violation may have occurred.

(h) Provides that, for the purpose of determining whether there has been a violation of the Kickbacks statute on any prime contract, the Government Accountability Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of such agency if the agency does not have an inspector general, must have access to and may inspect the facilities and audit the books and records of any prime contractor or subcontractor under a prime contract awarded by the agency.

(i) Requires each contracting agency to include in each prime contract, other than for commercial products or commercial services, exceeding \$200,000, a requirement that the prime contractor must—

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Kickbacks statute in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

(2) Cooperate fully with any Federal agency investigating a possible violation of the Kickbacks statute.

(j) Notwithstanding paragraph (i) of this section, a prime contractor must cooperate fully with any Federal Government agency investigating a violation of 41 U.S.C. 8702 (see 41 U.S.C. 8703(b)).

3.502-3 Contract clause.

Insert the clause at 52.203-7, Anti-Kickback Procedures, in solicitations and contracts, other than those for commercial products or commercial services, if the acquisition value exceeds \$200,000 (see part 12).

3.503 Unreasonable restrictions on subcontractor sales.

3.503-1 Policy.

10 U.S.C. 4655 and 41 U.S.C. 4704 require that subcontractors not be unreasonably precluded from making direct sales to the Government of any supplies or services made or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

3.503-2 Contract clause.

Insert the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts including those for commercial products or commercial services if the acquisition value exceeds the simplified acquisition threshold. Use the clause with its Alternate I for acquisitions for other than commercial products or commercial services.

Subpart 3.6—Contracts With Government Employees or Organizations Owned or Controlled by Them

3.601 Policy.

(a) Except as specified in 3.602, a contracting officer must not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

(b) For purposes of this subpart, special Government employees (as defined in 18 U.S.C. 202) performing services as experts, advisors, or consultants, or as members of advisory committees, are not considered Government employees unless—

(1) The contract arises directly out of the individual's activity as a special Government employee;

(2) In the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract; or

(3) Another conflict of interest is determined to exist.

3.602 Exceptions.

The agency head, or a designee not below the level of the head of the contracting activity, may authorize an exception to the policy in 3.601 only if there is a compelling reason to do so,

such as when the Government's needs cannot reasonably be otherwise met.

3.603 Responsibilities of the contracting officer.

(a) Before awarding a contract, the contracting officer must obtain an authorization under 3.602 if—

(1) The contracting officer knows, or has reason to believe, that a prospective contractor is one to which award is otherwise prohibited under 3.601; and

(2) There is a most compelling reason to make an award to that prospective contractor.

(b) The contracting officer must comply with the requirements and guidance of the conflicts of interest subpart in part 9 before awarding a contract to an organization owned or substantially owned or controlled by Government employees.

Subpart 3.7—Voiding and Rescinding Contracts

3.700 Scope of subpart.

This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts.

3.701 Purpose.

This subpart provides—

(a) An administrative remedy with respect to contracts in relation to which there has been—

(1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A method to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

3.702 Definition.

Final conviction means a conviction, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which sentence has been imposed.

3.703 Authority.

(a) 18 U.S.C. 218 (*the Act*), gives the President, or the heads of executive

agencies acting under regulations prescribed by the President, the power to declare void and rescind contracts and other transactions listed in the Act. This applies when there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code (18 U.S.C. 201–224). Executive Order 12448, November 4, 1983, delegates the President's authority under the Act to the heads of the executive agencies and military departments.

(b) 41 U.S.C. 2105(c) requires Federal agencies, upon receiving information that a contractor or person has violated 41 U.S.C. 2102, to consider rescinding a contract when—

(1) The contractor or someone acting for the contractor has been convicted of an offense punishable under 41 U.S.C. 2105(a); or

(2) The agency head, or designee, has determined, based on a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

3.704 Policy.

(a) In cases with a final conviction for any violation of 18 U.S.C. 201–224 involving or relating to agency—awarded contracts, the agency head or designee must consider the available facts. If appropriate, they must declare contracts void and rescind them, and recover the amounts spent and property transferred by the agency according to the policies and procedures in this subpart.

(b) A final conviction under 18 U.S.C. 201–224 relating to a contract may also indicate the party is not presently responsible. The agency should consider starting debarment proceedings according to part 9, if debarment has not already begun or is not in effect when the final conviction occurs.

(c) If there is a final conviction for an offense punishable under 41 U.S.C. 2105, or if the agency head or designee has determined, based on a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in such conduct, then the head of the contracting activity must consider, in addition to any other penalty prescribed by law or regulation—

(1) Declaring contracts void and rescinding them, as appropriate, and recovering the amounts spent under the contracts by using the procedures at 3.705 (see 3.104–7); and

(2) Recommending the initiation of suspension or debarment proceedings according to part 9.

3.705 Procedures.

(a) *Reporting.* The facts concerning any final conviction for any violation of 18 U.S.C. 201–224 involving or relating to agency contracts must be reported promptly to the agency head or designee for consideration. The agency head or designee must promptly notify the Civil Division, Department of Justice, that an action is being considered under this subpart.

(b) *Decision.* Following an assessment of the facts, the agency head or designee may declare void and rescind contracts with respect to which a final conviction has been entered, and recover the amounts expended and the property transferred by the agency under the terms of the contracts involved.

(c) *Decision-making process.* Agency procedures governing the voiding and rescinding decision-making process must be as informal as is practicable, consistent with the principles of fundamental fairness. At a minimum, agencies must provide the following:

(1) A notice of the proposed action to declare void and rescind the contract must be made in writing and sent by certified mail, return receipt requested by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(2) A 30-calendar day period after receipt of the notice, for the contractor to submit pertinent information before any final decision is made.

(3) Upon request made within the period for submission of pertinent information, an opportunity must be afforded for a hearing at which witnesses may be presented, and any witness the agency presents may be confronted. However, no inquiry may be made regarding the validity of a conviction.

(4) If the agency head or designee decides to declare void and rescind the contracts involved, that official must issue a written decision which—

(i) States that determination;

(ii) Reflects consideration of the fair value of any tangible benefits received and retained by the agency; and

(iii) States the amount due, and the property to be returned, to the agency.

(d) Notice of proposed action. The notice of the proposed action, at a minimum must—

(1) Advise that consideration is being given to declaring void and rescinding contracts awarded by the agency, and recovering the amounts expended and property transferred therefor, under the provisions of 18 U.S.C. 218;

(2) Specifically identify the contracts affected by the action;

(3) Specifically identify the offense or final conviction on which the action is based;

(4) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be returned;

(5) Identify any tangible benefits received and retained by the agency under the contract, and the value of those benefits, as calculated by the agency;

(6) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing must be held at which witnesses may be presented and any witness the agency presents may be confronted; and

(7) Advise that action must be taken only after the agency head or designee issues a final written decision on the proposed action.

(e) *Final agency decision.* The agency head or designee must base the final decision on all available information, and any relevant information submitted in writing or presented during a hearing. If the agency decision declares void and rescinds the contract, the final decision must specify the amounts due and property to be returned to the agency and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision must be sent promptly by certified mail, return receipt requested. When contracts are rescinded under the Act's authority and the agency head demands recovery of amounts expended and property transferred, this is not considered a claim under 41 U.S.C. chapter 71, Contract Disputes or part 33. Therefore, the procedures required by the statute and the FAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart and must not be followed.

Subpart 3.8—Limitations on the Payment of Funds To Influence Federal Transactions

3.800 Scope of subpart.

This subpart prescribes policies and procedures implementing 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions."

3.801 Definitions.

As used in this subpart—

Agency means executive agency as defined in 2.101.

Covered Federal action means any of the following actions:

(1) Awarding any Federal contract.

(2) Making any Federal grant.

(3) Making any Federal loan.

(4) Entering into any cooperative agreement.

(5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph 3.802(a) and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph 3.802(a) and are permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State means a State of the United States, the District of Columbia, an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

3.802 Statutory prohibition and requirement.

(a) 31 U.S.C. 1352 prohibits recipients of Federal contracts, grants, loans, or cooperative agreements from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding covered Federal actions.

(1) For purposes of this subpart the term "appropriated funds" does not include profit or fee from a covered Federal action.

(2) If a person shows they have enough funds, other than Federal

appropriated funds, the Government must assume these other funds were used for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(b) 31 U.S.C. 1352 also requires offerors to submit a declaration that includes both certification and disclosure, with regular updates of the disclosure after contract award. These requirements appear in the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions.

3.803 Exceptions.

(a) The prohibition of paragraph 3.802(a) does not apply under the following conditions:

(1) *Agency and legislative liaison by own employees.*

(i) Payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action is permitted when the payment is for agency and legislative liaison activities not directly related to a covered Federal action. Providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions unrelated to a specific solicitation for any covered Federal action, is permitted when discussions concern—

(A) The qualities and characteristics (including demonstrations) of the person's products or services, sales terms, and service capabilities; or

(B) How the person's products or services might be adapted for agency use.

(iii) Providing information not specifically requested but necessary for an agency to make an informed decision about starting a covered Federal action is permitted before formal solicitation.

(iv) Participating in technical discussions about preparing an unsolicited proposal before its official submission is permitted.

(v) Making capability presentations before formal solicitation when seeking an award under the Small Business Act, as amended by Public Law 95–507 and later amendments, is permitted.

(2) *Professional and technical services.*

(i) Reasonable compensation to an officer or employee of a person requesting or receiving a covered Federal action is permitted when payment is for professional or technical services directly related to preparing, submitting, or negotiating bids,

proposals, or applications for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Reasonable payment to persons who are not officers or employees of a person requesting or receiving a covered Federal action is permitted when payment is for professional or technical services directly related to preparing, submitting, or negotiating bids, proposals, or applications for that Federal action, or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal Action. These persons may include consultants and trade associations.

(iii) In this section, “professional and technical services” means advice and analysis directly applying professional or technical expertise. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional or a technical person are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another, are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal action includes those in laws, regulations, and the actual award documents.

(b) Only the communications and services specifically authorized in paragraph (a) are permitted.

(c) The disclosure requirements in paragraph 3.802(b) do not apply to

reasonable compensation paid to regularly employed officers of a person.

3.804 Policy.

The contracting officer must obtain certifications and disclosures as required by the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, prior to the award of any contract exceeding \$200,000.

3.805 Exemption.

The Secretary of Defense may exempt, on a case-by-case basis, a covered Federal action from the prohibitions of this subpart whenever the Secretary determines, in writing, that such an exemption is in the national interest. The Secretary must transmit a copy of the exemption to Congress immediately after making the determination.

3.806 Processing suspected violations.

The contracting officer must report suspected violations of the requirements of 31 U.S.C. 1352 in accordance with agency procedures.

3.807 Civil penalties.

Agencies must impose and collect civil penalties according to the Program Fraud and Civil Remedies Act, 31 U.S.C. 3803 (except subsection (c)), 3804–3808, and 3812. These penalties apply when the Act's provisions do not conflict with the requirements of this subpart.

3.808 Solicitation provision and contract clause.

(a) Insert the provision at 52.203–11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, in solicitations, including those for commercial products or commercial services, if the acquisition value exceeds \$200,000.

(b) Insert the clause at 52.203–12, Limitation on Payments to Influence Certain Federal Transactions, in solicitations and contracts, including those for commercial products or commercial services, if the acquisition value exceeds \$200,000.

Subpart 3.9—Whistleblower Protections for Contractor Employees

3.900 Scope of subpart.

This subpart implements various statutory whistleblower programs. This subpart does not implement 10 U.S.C. 4701, which is applicable only to DoD, NASA, and the Coast Guard.

(a) 41 U.S.C. 4712 is implemented in 3.900 through 3.906. These sections do not apply to—

(1) DoD, NASA, and the Coast Guard; or

(2) Any element of the intelligence community, as defined in section 3(4) of

the National Security Act of 1947 (50 U.S.C. 3003(4)). Sections 3.900 through 3.906 do not apply to any disclosure made by an employee of a contractor or subcontractor of an element of the intelligence community if such disclosure—

(i) Relates to an activity of an element of the intelligence community; or

(ii) Was discovered during contract or subcontract services provided to an element of the intelligence community.

(b) Section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), is implemented in 3.909, which is applicable to all agencies.

3.901 Definitions.

As used in this subpart—

Abuse of authority means an arbitrary and capricious exercise of authority that is inconsistent with the mission of the executive agency concerned or the successful performance of a contract of such agency.

Authorized official of the Department of Justice means any person responsible for the investigation, enforcement, or prosecution of any law or regulation.

Inspector General means an Inspector General appointed under chapter 4 of title 5 of the United States Code and any Inspector General that receives funding from, or has oversight over contracts awarded for, or on behalf of, the executive agency concerned.

Internal confidentiality agreement or statement means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

Subcontract means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

3.902 Classified information.

41 U.S.C. 4712 does not provide any right to disclose classified information not otherwise provided by law.

3.903 Policy.

(a)(1) Contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing, to any of the entities listed at paragraph (b) of this section, information that the employee reasonably believes is—

(i) Evidence of gross mismanagement of a Federal contract;

(ii) A gross waste of Federal funds;

(iii) An abuse of authority relating to a Federal contract;

(iv) A substantial and specific danger to public health or safety; or

(v) A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract).

(2) A reprisal is prohibited even when requested by an executive branch official, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request.

(b) Disclosure may be made to the following entities:

(1) A Member of Congress or a representative of a committee of Congress.

(2) An Inspector General.

(3) The Government Accountability Office.

(4) A Federal employee responsible for contract oversight or management at the relevant agency.

(5) An authorized official of the Department of Justice or other law enforcement agency.

(6) A court or grand jury.

(7) A management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

(c) An employee who initiates or provides evidence of contractor or subcontractor misconduct in any judicial or administrative proceeding relating to waste, fraud, or abuse on a Federal contract must be deemed to have made a disclosure.

3.904 Complaints.

3.904–1 Procedures for filing complaints.

A contractor or subcontractor employee who believes that he or she has been discharged, demoted, or otherwise discriminated against contrary to the policy in 3.903 may submit a complaint with the Inspector General of the agency concerned. Procedures for submitting fraud, waste, abuse, and whistleblower complaints are generally accessible on agency Office of Inspector General hotline or

whistleblower internet sites or the complainant may directly contact the cognizant Office of the Inspector General for submission instructions. A complaint under 41 U.S.C. 4712 must be filed within three years from the date on which the alleged reprisal occurred.

3.904–2 Procedures for investigating complaints.

(a) Investigation of complaints will be conducted according to 41 U.S.C. 4712(b).

(b) After the investigation is complete, the head of the agency must ensure the Inspector General provides the report of findings to—

(1) The head of the agency;

(2) The complainant and any person acting on the complainant's behalf; and

(3) The contractor and/or subcontractor alleged to have committed the violation.

(c) The complainant, contractor, and/or subcontractor must have the opportunity to submit a written response to the report of findings. This response must be submitted to the head of the agency and the Office of Inspector General within a timeframe set by the agency that allows the agency head to take action within 30 days after receiving the report, as required by 3.905–1(a).

3.905 Remedies and enforcement of orders.

3.905–1 Remedies.

(a) *Agency response to Inspector General report.* Not later than 30 days after receiving a report pursuant to 3.904–2, the head of the agency must—

(1) Determine whether sufficient basis exists to conclude that the contractor or subcontractor has subjected the employee who submitted the complaint to a reprisal as prohibited by 3.903; and

(2) Either issue an order denying relief or take one or more of the following actions:

(i) Order the contractor or subcontractor to take affirmative action to abate the reprisal.

(ii) Order the contractor or subcontractor to reinstate the complainant employee to their previous position, with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply if the reprisal had not occurred.

(iii) Order the contractor or subcontractor to pay the complainant employee an amount equal to all costs and expenses (including attorneys' fees and expert witnesses' fees) reasonably incurred by the complainant for, or in connection with, bringing the complaint

regarding the reprisal, as determined by the head of the agency.

(iv) Consider disciplinary or corrective action against any executive agency official, if appropriate.

(b) *Complainant's right to go to court.*

(1) Paragraph (b)(2) of this section applies if—

(i) The head of the agency issues an order denying relief; or

(ii)(A) The head of the agency has not issued an order—

(1) Within 210 days after the submission of the complaint; or

(2) Within 30 days after the expiration of an extension of time granted in accordance with 41 U.S.C. 4712(b)(2)(B) for the submission of the report to those stated in 3.904–2(b); and

(B) There is no showing that such delay is due to the bad faith of the complainant.

(2) If the conditions in either paragraph (b)(1)(i) or (ii) of this section are met:

(i) The complainant must be deemed to have exhausted all administrative remedies with respect to the complaint; and

(ii) The complainant may bring a *de novo* action at law or equity against the contractor or subcontractor to seek compensatory damages and other relief available under 41 U.S.C. 4712 in the appropriate U.S. district court, which has jurisdiction regardless of the amount in controversy.

(A) Such an action must, at the request of either party to the action, be tried by the court with a jury.

(B) An action under this authority may not be brought more than 2 years after the date on which remedies are deemed to have been exhausted.

(c) *Admissibility in evidence.* An Inspector General determination and an agency head order denying relief under this section must be admissible in evidence in any *de novo* action at law or equity brought pursuant to 41 U.S.C. 4712.

(d) *No waiver.* The rights and remedies provided for in 41 U.S.C. 4712 may not be waived by any agreement, policy, form, or condition of employment.

3.905–2 Enforcement of orders.

(a) When a contractor or subcontractor fails to comply with an order issued under 3.905–1(a)(2), the head of the agency concerned must file an action to enforce the order in the U.S. district court for the district where the reprisal occurred. In any action brought under this authority, the court may grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney fees and costs.

The complainant employee upon whose behalf an order was issued may also file such an action or join an action filed by the head of the agency.

(b) Any person adversely affected or aggrieved by an order issued under 3.905–1(a)(2) may seek review of the order's compliance with 41 U.S.C. 4712 and its implementing regulations in the U.S. court of appeals for the circuit where the reprisal is alleged to have occurred. The petition for review must be filed within 60 days after the head of the agency issues the order. Filing such an appeal does not stop enforcement of the agency head's order unless the court specifically grants a stay.

3.906 Contract clause.

Insert the clause at 52.203–17, Contractor Employee Whistleblower Rights, in all solicitations and contracts, including those for commercial products or commercial services, except those solicitations and contracts of DOD, NASA, the Coast Guard, or elements of the intelligence community (see 3.900(a)).

3.907 [Reserved]

3.908 [Reserved]

3.909 Prohibition on providing funds to an entity that requires certain internal confidentiality agreements or statements.

3.909–1 Prohibition.

(a) The Government cannot use fiscal year 2015 and later fiscal year funds for contracts with entities that require employees or subcontractors to sign internal confidentiality agreements or statements that prohibit or restrict these employees or subcontractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information. This prohibition comes from section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and continues in subsequent appropriations acts (including continuing resolutions).

(b) The prohibition in paragraph (a) of this section does not conflict with requirements for Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other Federal government form governing nondisclosure of classified information.

3.909–2 Representation by the offeror.

(a) To be eligible for contract award, an offeror must represent that it will not require its employees or subcontractors to sign internal confidentiality

agreements or statements that prohibit or restrict them from lawfully reporting waste, fraud, or abuse related to Government contract performance to authorized Federal investigators (such as agency Office of the Inspector General). Any offeror that does not make this representation is ineligible for contract award.

(b) The contracting officer may rely on an offeror's representation unless there is reason to question it.

3.909–3 Solicitation provision and contract clause.

If using funding subject to the prohibitions in 3.909–1(a), the contracting officer must:

(a)(1) Insert the provision at 52.203–18, Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements—Representation, in all solicitations, including those for commercial products or commercial services, except as provided in paragraph (a)(2) of this section; and

(2) Not insert the provision in solicitations for personal services contracts with individuals if the individual will perform all services personally (rather than through contractor or subcontractor employees).

(b)(1) Include the clause at 52.203–19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements, in all solicitations and resulting contracts, including those for commercial products or commercial services, except those for personal services contracts with individuals.

(2) Modify existing contracts, other than personal services contracts with individuals, to include the clause before obligating FY 2015 or later funds that are subject to the same prohibition on internal confidentiality agreements or statements.

Subpart 3.10—Contractor Code of Business Ethics and Conduct

3.1000 Scope of subpart.

This subpart—

(a) Implements 41 U.S.C. 3509, Notification of Violations of Federal Criminal Law or Overpayments; and

(b) Prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct, and display of agency Office of Inspector General (OIG) fraud hotline posters.

3.1001 Definitions.

As used in this subpart—

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

United States means the 50 States, the District of Columbia, and outlying areas.

3.1002 Policy.

(a) Government contractors must conduct themselves with the highest degree of integrity and honesty.

(b) Contractors should have a written code of business ethics and conduct. To promote compliance with such code of business ethics and conduct, contractors should have an employee business ethics and compliance training program and an internal control system that—

(1) Are suitable to the size of the company and extent of its involvement in Government contracting;

(2) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts; and

(3) Ensure corrective measures are promptly instituted and carried out.

3.1003 Requirements.

(a) *Contractor requirements.*

(1) Although the policy at 3.1002 provides guidance for all Government contractors, the contract clauses at 52.203–13, Contractor Code of Business Ethics and Conduct, and 52.203–14, Display of Hotline Poster(s), become mandatory when contracts meet the conditions specified in 3.1004.

(2) A contractor may be suspended and/or debarred if a principal knowingly fails to promptly disclose to the Government credible evidence of Federal criminal law violations involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code, or Civil False Claims Act violations. This disclosure requirement applies whether or not clause 52.203–13 is applicable. Failure to timely disclose credible evidence of such violations remains grounds for suspension and/or debarment until 3 years after final contract payment (see part 9).

(3) The Payment clauses at FAR 52.212–4(i)(4), 52.232–25(d), 52.232–26(c), and 52.232–27(l) require contractors to return any contract financing or invoice overpayments they discover to the Government. A contractor may be suspended and/or debarred if a principal knowingly fails to timely disclose credible evidence of a significant overpayment, except for overpayments resulting from contract financing payments as defined in 32.001 (see part 9).

(b) *Notification of possible contractor violation.* If the contracting officer

learns of a possible contractor violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C., or a violation of the civil False Claims Act, the contracting officer must:

(1) Coordinate the matter with the agency Office of the Inspector General; or

(2) Take action according to agency procedures.

(c) *Fraud Hotline Poster.*

(1) Agency Offices of Inspector General (OIGs) determine the need for and content of their respective agency OIG fraud hotline poster(s).

(2) When requested by the Department of Homeland Security, agencies must ensure that contracts funded with disaster assistance funds require display of applicable fraud hotline posters. As established by the agency OIG, these posters may be displayed instead of, or in addition to, the agency's standard poster.

3.1004 Contract clauses.

(a) Insert the clause at FAR 52.203–13, Contractor Code of Business Ethics and Conduct, in solicitations and contracts, including those for commercial products or commercial services, if the acquisition value exceeds \$7.5 million and the performance period is 120 days or more.

(b)(1) Insert the clause at 52.203–14, Display of Hotline Poster(s), in solicitations and contracts other than those for commercial products or commercial services, or contracts performed entirely outside the United States, if—

(i) The contract exceeds \$7.5 million or a lesser amount established by the agency; and

(ii)(A) The agency has a fraud hotline poster; or

(B) The contract is funded with disaster assistance funds.

(2) In paragraph (b)(3) of the clause, the contracting officer must—

(i) Identify the applicable posters; and

(ii) Insert the website link(s) or other contact information for obtaining the agency and/or Department of Homeland Security poster.

(3) In paragraph (d) of the clause, if the agency has established policies and procedures for display of the OIG fraud hotline poster at a lesser amount, the contracting officer must replace “\$7.5 million” with the lesser amount that the agency has established.

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

3.1100 Scope of subpart.

This subpart implements policy on personal conflicts of interest by employees of Government contractors as required by 41 U.S.C. 2303.

3.1101 Definitions.

As used in this subpart—

Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

Covered employee means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

(1) An employee of the contractor; or

(2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A *de minimis* interest that would not “impair the employee's ability to act impartially and in the best interest of the Government” is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or

of other members of the covered employee's household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from—

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

3.1102 Policy.

The Government's policy is to require contractors to—

(a) Identify and prevent personal conflicts of interest of their covered employees; and

(b) Prohibit covered employees who have access to non-public information by reason of performance on a Government contract from using such information for personal gain.

3.1103 Procedures.

(a) By use of the contract clause at 52.203–16, Preventing Personal Conflicts of Interest, as prescribed at 3.1106, the contracting officer must require each contractor whose employees perform acquisition functions closely associated with inherently Government functions to—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest by—

(i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

(A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household.

(B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).

(C) Gifts, including travel.

(ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee—

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest that cannot be satisfactorily prevented or reduced in consultation with the contracting agency;

(ii) Prohibit use of non-public information (information not available to the public) accessed through Government contract work for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action when covered employees fail to comply with policies established pursuant to this section; and

(6) Report any personal conflict-of-interest violation by a covered employee to the contracting officer as soon as identified. This report must include—

(i) A description of the violation;

(ii) The proposed actions the contractor will take in response to the violation; and

(iii) Follow-up reports of corrective actions taken, as necessary.

(b) If a contractor reports a personal conflict-of-interest violation by a covered employee to the contracting officer according to paragraph (b)(6) of clause 52.203–16, Preventing Personal Conflicts of Interest, the contracting officer must—

(1) Review the actions taken by the contractor;

(2) Determine whether the contractor's actions have resolved the violation satisfactorily; and

(3) Take any appropriate action in consultation with agency legal counsel if the contracting officer determines that the contractor has not resolved the violation satisfactorily.

3.1104 Mitigation or waiver.

(a) In exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of the clause at 52.203–16, Preventing Personal Conflicts of Interest, the contractor may submit a request, through the contracting officer asking the head of the contracting activity to—

(1) Agree to a plan to mitigate the personal conflict of interest; or

(2) Waive the requirement to prevent personal conflicts of interest.

(b) If the head of the contracting activity determines in writing that such action is in the best interest of the Government, the head of the contracting activity may impose conditions that provide mitigation of a personal conflict of interest or grant a waiver.

(c) This authority must not be redelegated.

3.1105 Violations.

If the contracting officer suspects violation by the contractor of a requirement of paragraph (b), (c)(3), or (d) of the clause at 52.203–16, Preventing Personal Conflicts of Interest, the contracting officer must contact the agency legal counsel for advice and/or recommendations on a course of action.

3.1106 Contract clause.

(a) Except as provided in paragraph (b), insert the clause at 52.203–16, Preventing Personal Conflicts of Interest, in solicitations and contracts, other than those for commercial products and commercial services, if—

(1) The acquisition value exceeds the simplified acquisition threshold; and

(2) Contractor employee(s) will be required to perform acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.

(b) Do not insert the clause in solicitations or contracts with a self-employed individual if the acquisition functions closely associated with inherently governmental functions are to be performed entirely by the self-employed individual.

PART 49—TERMINATION OF CONTRACTS

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Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

49.000 Scope of part.

(a) This part covers the policy and procedures for terminating contracts early. The Government can terminate contracts for two main reasons:

- (1) For its own convenience.
- (2) Because the contractor failed to perform (called “default”).

(b) This part prescribes—

- (1) The contract clauses relating to termination and excusable delay; and
- (2) Instructions for using termination and settlement forms.

49.001 Definitions.

As used in this part—

Other work means Government and commercial work the contractor is doing now or plans to do later, which does not include work on the contract that was terminated.

Plant clearance period means a set time period that starts when the contract is completed or terminated and ends 90 days after the contracting officer receives acceptable inventory schedules for each property classification. The parties can agree to make this period longer if needed. The final phase starts after the contracting officer receives acceptable inventory schedules.

Settlement agreement means a written agreement in the form of a contract modification that settles all or part of a settlement proposal.

Settlement proposal means a contractor's or subcontractor's proposal for ending a contract terminated in whole or in part. The proposal must use the required forms and include supporting data from this part. Settlement proposals count as “claims” under false claims laws (see 18 U.S.C. 287 and 31 U.S.C. 3729).

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

49.002 Applicability.

(a)(1) This part applies to contracts that allow termination for Government convenience or contractor default. See part 13 for information on simplified acquisition contracts.

(2) This part does not apply to contracts for commercial products and commercial services awarded under part 12 procedures.

(b) Contractors must use this part to settle subcontracts terminated after a cost-reimbursement prime contract is modified, unless the contracting officer deems such a use inappropriate. The contracting officer must use this part as a guide when reviewing subcontract settlements. This applies when the contractor uses the subcontract settlement as basis for reimbursement under a cost-reimbursement contract.

(c) The contracting officer may use this part to determine equitable adjustments resulting from a modification to contracts other than cost-reimbursement contracts under the Changes clauses.

(d) When this part refers to the “amount” of a settlement proposal, calculate as follows:

(1) Start with the total settlement amount requested.

(2) Then subtract—

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

(ii) Amounts for settling subcontractor proposals.

(3) Do not subtract—

(i) Credits from keeping or selling termination inventory; and

(ii) Advance or partial payments already made.

Subpart 49.1—General Principles**49.100 Scope of subpart.**

(a) This subpart covers—

(1) The authority and duties of contracting officers to terminate contracts completely or partially for Government convenience or contractor default;

(2) What contractors and contracting officers must do after a termination notice;

(3) Basic procedures for settling terminated contracts; and

(4) Settlement agreements.

(b) More detailed rules are in other subparts. Subparts 49.2 and 49.3 cover convenience terminations and settlements for fixed-price and cost-reimbursement contracts. Subpart 49.4 covers default terminations.

49.101 Authorities and responsibilities.

(a) Contract termination clauses give contracting officers the authority to—

(1) Terminate contracts for convenience or default; and

(2) Enter into settlement agreements under this regulation.

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

(1) It is known that the contractor will accept it;

(2) Government property was not furnished; and

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

(c) Contracting officers should not terminate a contract for convenience when the remaining work is worth less than \$5,000.

(d) After the contracting officer 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 working out payment details with the contractor. Auditors and TCOs must work quickly on reviews, negotiations, and give special attention to small business settlements.

(e) When the same item is under contract with both large and small businesses, and the contracting officer needs to terminate some of the undelivered items for convenience, the contracting officer must give preference to continuing small business contracts unless it can be clearly shown that the small business will be unable to provide the item in a timely fashion.

(f) The contracting officer handles releasing extra funds from terminations. This responsibility can be given to the TCO if specified in writing.

49.102 Notice of termination.

(a) *General.* Contracting officers must terminate contracts only with a written notice to the contractor. See 49.601 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, use certified mail and request return receipt. If hand-delivering the notice, get written acknowledgment from the contractor. The notice must include the following:

(1) Why the contract is terminated (convenience or default) and the related contract clause.

(2) When the termination takes effect.

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

(4) Any special instructions.

(5) Steps the contractor should take to help employees if the termination, together with all other outstanding

terminations, will cause significant job losses. See 49.601–2, paragraph (g).

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

(c) *Amendment of termination notice.* The contracting officer can change a termination notice to—

(1) Fix minor mistakes;

(2) Add more information or instructions; or

(3) Rescind the notice if it is discovered that the terminated items were completed or shipped before the contractor received the notice.

(d) *Reinstatement of terminated contracts.* Upon written consent of the contractor, the contracting officer may reinstate 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 that the Government still needs the terminated items; and

(2) Reinstatement 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—

(1) Negotiated agreement;

(2) Determination by the TCO;

(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); or

(4) A combination of these methods.

(b) When possible, the TCO should negotiate a fair and prompt settlement with the contractor. The TCO 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 receiving a termination notice, the contractor is required to follow the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause for convenience terminations generally require the contractor to—

(a) Stop work immediately on the terminated portion of the contract and stop placing subcontracts for that work;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately tell the TCO about any special circumstances 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, 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. When directed by the TCO, deliver this property to the Government;

(f) Promptly notify the TCO in writing of any legal proceedings arising from any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle outstanding liabilities and proposals arising from termination of subcontracts. Get any approvals or ratifications 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) Following the termination clause and termination notice, the TCO must—

(1) Tell the prime contractor what actions to take;

(2) Review the prime contractor's settlement proposal and, when appropriate, subcontractor settlement proposals;

(3) Quickly negotiate settlement with the contractor and make a settlement agreement; and

(4) Quickly settle the contractor's settlement proposal by determination for portions on which agreement cannot be reached, if a complete settlement cannot be negotiated.

(b) To speed up settlement, the TCO may ask for specially trained personnel to—

(1) Assist in dealings with the contractor;

(2) Advise on legal and contract matters;

(3) Conduct accounting reviews and assist with accounting matters; and

(4) Handle the following termination inventory tasks (see subpart 45.6):

(i) Verify the inventory exists.

(ii) Decide what can be allocated and in what amounts.

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

(iv) Do necessary screening and redistribution.

(v) Help the contractor get rid of remaining items.

(c) The TCO should quickly hold a meeting with the contractor to make a

clear plan for completing the settlement. When appropriate, after talking with the contractor, major subcontractors should be asked to attend. Topics to be discussed and documented include the following:

(1) Basic rules for settling any settlement proposal, including what the contractor must do under the termination clause.

(2) How much of the contract is terminated, when work stops, and status of plans, drawings, and information that would have been delivered if the contract had been completed.

(3) Status of any continuing work;

(4) The contractor's duty to terminate subcontracts and basic rules for settling subcontractor settlement proposals.

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

(6) Contractor staff handling review and settlement of subcontractor settlement proposals and methods being used.

(7) Plans for transferring title and for delivering to the Government any materials the Government needs.

(8) Basic rules and procedures for protecting, preserving, and getting rid of contractor and subcontractor termination inventories, including preparing termination inventory schedules.

(9) Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information (49.602–3)).

(10) What form to use when submitting settlement proposals.

(11) Accounting review of settlement proposals.

(12) Any need for interim financing through partial payments.

(13) Rough timeline for negotiating the settlement, including when the contractor and subcontractors 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 reduce harm to employees hurt by the termination (see paragraph (g) of the letter notice in 49.601–2).

(15) Contractor's duty to provide accurate, complete, and current cost or pricing data, and to certify this data (see part 15 requirements for certified cost or pricing data) when the termination settlement amount, or partial termination settlement amount plus the estimated cost to complete the continued work, exceeds the cost or pricing data threshold in part 15.

49.105–1 Release of excess funds.

(a) The TCO must estimate funds needed for settlement and should

recommend release of excess funds within 30 days of receiving the termination proposal. When circumstances require additional time, the TCO may take up to, but no more than 120 days after receiving the termination proposal to make the recommendation. The contracting officer or TCO (if given the responsibility) should quickly deobligate excess funds and release them for other use. The TCO must not recommend releasing amounts under \$1,000 unless requested by the contracting officer.

(b) The TCO must continuously monitor funding requirements in order to release additional excess funds promptly. See 49.604 for a recommended format. If previous funding releases create a shortage for settlement, the TCO must tell the contracting officer immediately. The contracting officer must restore the funds within 30 days.

49.105–2 Cleanup of construction site.

For terminated construction contracts, the contracting officer must direct action to ensure the cleanup of the site, protection of usable materials, removal of hazards, and any other actions needed for a safe and healthy site.

49.105–3 Termination case file documentation.

The TCO responsible for negotiating the final settlement must establish a separate case file for each termination. This file will include memoranda and records of all actions relative to the settlement.

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 must discontinue negotiations and report the facts under agency procedures.

49.107 Review of prime contract settlement proposals and subcontract settlements.

(a) *Prime contractor settlement proposals.* The TCO must assess the need for audits of settlement proposals and refer to the audit agency for review based on risk.

(1) When referring proposals, include—

(i) Specific information the TCO considers relevant; and

(ii) Facts and circumstances to help the audit agency.

(2) The audit agency must—

(i) Develop requested information;

(ii) Make additional accounting reviews as appropriate; and

(iii) Submit written comments and recommendations to the TCO.

(3) For proposals that do not need formal examination, the TCO will do a desk review and include a written summary in the termination case file.

(b) *Subcontract settlement proposal.* The TCO must assess the risk associated with subcontract settlements and refer to the audit agency when the TCO decides a complete or partial accounting review is advisable. The audit agency must submit written comments and recommendations to the TCO. This review does not remove the prime contractor's or higher-tier subcontractor's responsibility to do their own accounting review.

(c) *Contractor responsibilities.*

(1) Prime contractors and subcontractors must perform accounting reviews and necessary field audits. However, the TCO should request a Government audit of a subcontractor's settlement proposal when—

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

(ii) The Government audit agency is already working at the subcontractor's location, or can do the audit more economically;

(iii) Government audit is needed for consistent treatment and orderly administration; or

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

(2) The audit agency should avoid duplicating reviews done by upper-tier contractors. However, this does not prevent additional Government reviews when appropriate.

(3) When contractors perform accounting reviews, the TCO should ask the audit agency to periodically examine the contractor's procedures and performance, and provide comments and recommendations to the TCO.

(d) *Using audit reports.* Audit reports are advisory only. The TCO uses them for negotiating settlements or making unilateral determinations. Government personnel handling audit reports must be careful not to reveal privileged information that could hurt the negotiation position of the Government, prime contractor, or higher-tier subcontractor. When appropriate and in the Government's best interest, the TCO may give audit reports to prime contractors and higher-tier subcontractors for settling subcontract proposals.

49.108 Settlement of subcontract settlement proposals.

49.108–1 Subcontractor's rights.

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

49.108–2 Prime contractor's rights and obligations.

(a) Termination for convenience clauses require prime contractors to terminate subcontracts related to terminated prime work unless the TCO directs otherwise. Prime contractors should include termination clauses in their subcontracts for their protection. See subpart 49.5 for suggestions on subcontract termination clauses.

(b) If a prime contractor fails to include proper termination clauses in subcontracts or fails to exercise clause rights, this does not—

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

(2) Increase Government obligations beyond what they would have been with proper clauses.

(c) Normally, the TCO should measure the reasonableness of prime contractor settlements with subcontractors by the total amount due under paragraph (f) of the subcontract termination clause suggested in 49.502(e). The TCO must allow reimbursement above that amount only in unusual cases and only when the subcontract terms did not unreasonably increase the subcontractor's rights.

49.108–3 Settlement procedure.

(a) Contractors must settle with subcontractors following the same policies and principles used for prime contract settlements in this subpart and subparts 49.2 or 49.3. However, 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 have enough accounting data and other information for the Government to adequately review it. The Government will never pay the prime contractor any amount for lost anticipated profits or consequential damages from terminating any subcontract (but see 49.108–5).

(b) Except as provided in 49.108–4, the TCO must require that—

(1) All subcontractor termination inventory be disposed of and accounted for following the procedures in paragraph (j) of clause 52.245–1, Government Property; and

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

(c) The TCO must quickly examine each subcontract settlement received to determine whether—

(1) The subcontract termination was necessary because of the prime contract termination (or because of a change order—see 49.002(c));

(2) The settlement was made in good faith;

(3) The settlement amount is reasonable; and

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

(d) When considering if any subcontract settlement is reasonable, the TCO must generally follow the provisions in this part for settling prime contracts. The TCO must also comply with any applicable requirements in 49.106 and 49.111 for accounting and other reviews. After the examination, the TCO must notify the contractor in writing of—

(1) Approval or ratification; and

(2) The reasons for disapproval.

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

(a)(1) The TCO may give written authorization to the prime contractor to complete settlements of subcontracts terminated in whole or in part without approval or ratification when the 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 keeping, selling, or otherwise disposing of termination inventory of the immediate and lower tier subcontractors. The TCO must obtain advice and recommendations from—

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

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

(ii) Any termination inventory included in determining the settlement amount will be disposed of as directed by the prime contractor, except that

disposing of the inventory 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 stated in paragraph (a)(4) of this section, authority granted to a prime contractor under paragraph (a)(1) of this section by any TCO must apply to all Executive agencies' prime contracts that are terminated or modified by change orders.

(3) Except as stated in paragraph (a)(4) of this section, the TCO must accept settlements of terminated lower tier subcontracts as part of the prime contractor's settlement proposal. This applies when the settlements 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 must not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise this authority when acting as a subcontractor for its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor must notify the purchaser.

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

(i) Be in writing; and

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

(b) Section 45.602 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 settlement amount does not exceed the amount authorized under this section.

(c) A TCO granting the authorization in paragraph (a)(1) of this section must periodically (at least annually) make a selective review of settlements and settlement procedures. This review

determines if the contractor is making adequate reviews and fair settlements, and whether the authorization should remain in effect. The TCO must obtain advice and recommendations from the appropriate audit agency and the cognizant plant clearance officer. The TCO 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 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, 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 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 49.108–4 do not authorize the settlement of requisitions or orders placed with any unit within the contractor's corporate entity.

49.108–5 Recognition of judgments and arbitration awards.

(a) When a subcontractor obtains a final judgment against a prime contractor, the TCO must treat 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 made reasonable efforts to include in the subcontract a termination clause described in 49.502(e), 49.503(c), or a similar clause that excludes payment of anticipatory profits or consequential damages.

(2) The subcontract provisions about termination rights of both parties are fair and reasonable and do not unreasonably increase the subcontractor's common law rights.

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

(4) The contractor promptly notified the contracting officer when the proceedings that led to the judgment began and did not refuse to give the Government control of the defense.

(5) The contractor defended the suit diligently or, if the Government took control of the defense, provided reasonable assistance when requested.

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

(c) When a contractor and subcontractor submit the subcontractor's settlement proposal to arbitration under any applicable law or contract provision, the TCO must recognize the arbitration award as the cost of settling the contractor's proposal. 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 prime contract settlement, the TCO may settle with the prime contractor. The TCO must exclude the subcontractor settlement proposal from the settlement completely or partially and reserve the rights of the Government and prime contractor regarding the subcontractor proposal.

49.108–7 Assignment of rights under subcontracts.

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

(b) Termination for convenience clauses (except short-form clauses) also give the Government the right to settle and pay any settlement proposal from a subcontract termination at its discretion. This right does not obligate the Government to settle and pay subcontractor settlement proposals. Generally, the prime contractor must settle and pay these proposals. However, when the TCO determines it benefits the Government, the TCO must settle the subcontractor's proposal using prime contract settlement procedures after notifying the contractor (*e.g.*, when a subcontractor is the only source and a delay by the prime contractor in

settlement or payment would hurt the subcontractor's financial position). 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 must execute a settlement agreement. Use Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see 49.603). The settlement must cover—

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

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

49.109–2 Reservations.

(a) The TCO must—

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

(2) Ensure reservation wording does not create rights for the parties beyond those existing before executing the settlement agreement;

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

(4) Ensure sufficient funds are kept to cover complete settlement of 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 executing a settlement agreement, the TCO must determine the accuracy of the Government property account for the terminated contract. If an audit reveals property the contractor cannot account for, the TCO must either—

(a) Reserve the Government's rights 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 must execute a no-cost settlement agreement (see 49.603–6 or

49.603–7, as applicable) if no amounts are due to the Government under the contract and if—

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

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

49.109–5 Partial settlements.

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

(a) Agreed upon issues are clearly severable from other issues; and

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

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

(a) With contractor consent, the TCO or TCOs concerned may jointly negotiate two or more termination settlement proposals with the same contractor under different contracts, even if the contracts are with different contracting offices or agencies. Consolidate accounting work as much as practical. The resulting settlement may be shown by—

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

(2) A separate agreement for each contract involved.

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

(1) Clearly identify the contracts involved;

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

(3) Divide the total settlement amount among the contracts on some reasonable basis;

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

(5) Be distributed and attached to each contract involved the same 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 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 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.

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

(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 must determine the amount due and 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 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 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 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 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 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 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 must give effect to a decision of the United States Court of Federal Claims 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. 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 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 must be documented, and memorandum distributed, both in accordance with part 15.

(b) If the settlement was negotiated on the basis of individual items, the TCO 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 must support the total amount of the recommended settlement in reasonable detail. The memorandum 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 must establish procedures for administrative review of proposed termination settlements when necessary. When one agency provides termination settlement services for another agency, the agency providing the services 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 must submit its application through the prime contractor. The prime contractor must attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor 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 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 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 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 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; 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 must not make partial payments to other than the assignee unless the parties to the assignment consent in writing (see part 32).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of termination inventory, the TCO must protect the Government's interest. This 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 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 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 must repay the excess to the Government on demand, together with interest. The interest must be computed at the rate established by the Secretary of the Treasury under 41 U.S.C. 7109 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; 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 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 must 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 must submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The TCO 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 must submit a voucher or invoice showing the amount determined due, less any portion previously paid; or

(2) There is an appeal, the contractor 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 must ascertain whether there are any outstanding labor violations. If so, the contracting officer must determine the amount to be withheld from the final payment (see part 22).

(d) *Interest.* The Government 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 Unsettled contract changes.

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

(b) When only part of a contract has been terminated, the contracting officer will usually handle any outstanding unsettled contract changes. However,

the contracting officer may delegate this job to the TCO.

49.114 Settlement of terminated incentive contracts.

(a) *Fixed-price incentive contracts.* The TCO must settle terminated fixed-price incentive contracts using the rules in paragraph (j) of clause 52.216–16, Incentive Price Revision-Firm Target, and clause 52.249–2, Termination for Convenience of the Government (Fixed-Price).

(1) *Partial termination.* When only part of a contract is terminated, the TCO must negotiate a settlement using the termination clause and the incentive price revision clause. The contracting officer must apply the incentive price rules to completed items the Government accepted, including any items the contractor may ask for payment in the settlement proposal. The TCO must pay the contractor the target price for completed items included in the settlement proposal that do not have a final price yet. The TCO must include in the settlement agreement an appropriate reservation about final pricing for these completed items.

(2) *Complete termination.* If any items were delivered and accepted by the Government, the contracting officer must set prices using the contract’s incentive provisions. For the terminated portion of the contract, the termination clause rules apply and the incentive clause rules do not apply. The TCO handling the termination settlement will make sure no costs from the incentive negotiations are included in the termination settlement. The TCO must coordinate with the contracting officer and use proper evidence to ensure this.

(b) *Cost-plus-incentive-fee contracts.* The TCO must settle terminated cost-plus-incentive-fee contracts using clause 52.249–6, Termination (Cost-Reimbursement).

(1) *Partial termination.* When only part of a contract is terminated, the TCO must limit the settlement to adjusting the target fee as provided in paragraph (e) of clause 52.216–10, Incentive Fee. The settlement agreement must include a note about any target cost adjustment from the partial termination. The contracting officer must adjust the target cost if needed.

(2) *Complete termination.* The parties must negotiate the settlement using the rules in subpart 49.3 and clause 52.249–6, Termination (Cost Reimbursement). The fee must be adjusted based on the target fee. Incentive provisions must not be applied or considered.

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

49.201 General.

(a) Fair compensation involves judgment and has no exact measurement. Different methods can determine fair compensation. Business judgment, not strict accounting 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 main goal is to reach an agreed settlement. Parties can agree on a total payment amount without breaking down specific costs or profit components.

(c) Cost and accounting information helps guide—but does not strictly control—fair compensation decisions. When appropriate—

- (1) Costs can be estimated;
- (2) Differences can be compromised; and
- (3) Uncertain matters can be resolved through agreement.

(d) Other data types or standards might provide equally reliable guidance. Keep recordkeeping, reporting, and accounting for terminated contracts to a minimum while protecting public interest.

49.202 Profit.

(a) The TCO 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 for the terminated portion of work.

(2) Do not pay profit for—

(i) Settlement costs (the costs of working out the final payment);

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

(iii) Consequential damages.

(3) When the contractor helps settle subcontractor proposals, do not base their profit on the amount of those settlements. The effort involved in reaching settlement may be considered.

(4) Do not pay profit for materials or services that subcontractors had not delivered by the termination date, regardless of the percentage of completion.

(b) The TCO can use any reasonable method to determine a fair profit, taking into account the following factors:

- (1) How much and how hard was the work compared to all the work the

contract required. Engineering estimates are not required but should be considered if they are available.

(2) Engineering work, planning schedules, technical studies, supervision, and other needed services.

(3) How well the contractor did, especially—

- (i) Making quality products on time;
- (ii) Keeping costs down;
- (iii) Using materials, buildings, and workers economically; or
- (iv) Disposition of termination inventory.

(4) How much money the contractor put in and how much risk they took.

(5) New ideas and technical help the contractor gave to the Government and other contractors.

(6) The type of business, including where materials come from and how complicated the manufacturing is.

(7) The rate of profit that the contractor would have earned if they had finished the whole contract.

(8) The rate of profit both parties expected when they made the contract.

(9) How hard it was to manage subcontractors, including picking them, placing contracts with them, managing them, and working out settlements when their contracts were terminated.

(c) For construction contracts, the contracting officer must—

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

(2) Allow profit on settlements with construction subcontractors for actual work done at the job site; and

(3) Exclude profit on settlements with construction subcontractors for materials they had on hand or preparations made to complete the work.

49.203 Adjustment for loss.

(a) When settling a terminated contract, the TCO must not allow profit if the contractor would have lost money completing the full contract. The TCO must—

(1) Figure out how much the contractor would have lost;

(2) Adjust the settlement payment accordingly using the methods in paragraph (b) or (c) of this section; and

(3) Consider factors like production efficiency when estimating completion costs.

(b) For inventory-based settlements payment is limited to the sum of items in paragraphs (b)(1), (2), and (3) of this section, minus all disposal credits and minus all unliquidated previous advance and progress payments previously made—

- (1) The settlement expenses;
- (2) The contract price for acceptable completed items;

(3) The remainder of the settlement amount otherwise agreed upon or determined (including the allocable portion of initial costs (see part 31), reduced by multiplying the remainder by the ratio of (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 must not be paid more than the total of the amounts in paragraphs (c)(1) and (2) of this section, minus all disposal and other credits, all advanced and progress payments, and all other amounts previously paid under the contract:

(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 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 settlement payment, the TCO must subtract—

(a) The price of any inventory kept or purchased by the contractor, plus proceeds from materials sold but not yet paid or credited to the Government;

(b) The fair value, as determined by the TCO, of any inventory that was lost, damaged beyond usability, or not delivered to the Government (normal spoilage is expected, as is inventory for which the Government has expressly assumed the risk of loss);

(c) Any other appropriate amounts for that specific case.

49.205 Completed end items.

(a) Right after the termination date, the TCO must—

(1) Have all undelivered finished products inspected and accepted if they meet contract requirements; and

(2) Decide which accepted products should be delivered under the contract.

(b) The contractor must bill for accepted and delivered products at the contract price in the normal way. Do not include these in the settlement proposal.

(c) When finished products are accepted but will not be delivered under the contract, the TCO should include them in the settlement proposal at the contract price. The TCO should adjust for any savings in shipping or other costs, and include any credits for buying, keeping, or selling them.

(d) Work in place accepted by the Government under a construction

contract is not considered a completed item, even if the Government paid for it at unit prices specified in the contract.

49.206 Settlement proposals.

49.206–1 Submission of settlement proposals.

(a) Subject to the termination clause, the contractor should quickly submit a settlement proposal to the TCO for the amount claimed because of the termination. The final settlement proposal must be submitted within 90 days from the termination date, unless the TCO allows more time. If a single contract involves two or more divisions of the contractor, 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 TCO's agreement, proposals may be filed in steps covering separate parts of costs. These step-by-step proposals must include all costs of a particular type, unless the TCO says otherwise.

(c) Settlement proposals must be on the forms prescribed in 49.602 unless those forms do not work for a particular contract. Settlement proposals must have reasonable detail supported by adequate accounting data. Actual costs, standard costs (properly adjusted), or average costs may be used if the contractor determines them based on generally 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. Contractors do not have to maintain overly complicated cost accounting systems just because their contracts might be terminated.

(d) The contractor should use Settlement Proposal (Short Form), SF 1438, when the total proposal is less than \$10,000, unless the TCO authorizes otherwise. Combine settlement proposals that would normally go together whenever possible, such as those based on a series of separate orders for the same item under one contract. Do not split them up just to bring them below \$10,000.

(e) Submit Schedule of Accounting Information, SF 1439, for each termination requiring a settlement proposal, except when using Standard Form 1438. Even if several step-by-step proposals are submitted, only one SF 1439 should be submitted unless major changes happen in the information after the original form is filed.

49.206–2 Bases for settlement proposals.*(a) Inventory basis.*

(1) The inventory basis is the preferred method for settlement proposals. With this approach, the contractor may propose only costs allocable to the terminated portion of the contract. The settlement proposal must 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 added to complete the gross settlement proposal. All unliquidated advance and progress payments and all disposal and other known credits must then be subtracted.

(3) The inventory basis is also appropriate for—

- (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) Complete termination of a unit-price professional services contract (not lump-sum contracts).

(b) Total cost basis.

(1) When the inventory basis is not practical or would cause delays, the total-cost basis (SF 1436) may be used if the TCO approves it in advance. Examples include the following:

- (i) When production has not started and costs represent planning, preproduction, or “get ready” expenses.
- (ii) When the contractor’s accounting system cannot easily establish unit costs for work in process and finished products.
- (iii) When the contract does not specify unit prices.

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

(2) 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 or adjustment for loss 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 must also be deducted.

(3) For a partial termination using the total-cost basis, the contractor must wait until completing the continued portion of the contract before submitting the proposal. The proposal must follow paragraph (b)(2) instructions, except it must include all costs incurred up to the completion of the continued portion.

(4) For a completely terminated construction contract or lump-sum professional services contract, the contractor 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 settlement amount by the total of all progress and other payments.

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

49.206–3 Submission of inventory disposal schedules.

Subject to the termination clause terms, the contractor should prepare inventory schedules on Standard Form 1428, Inventory Disposal Schedule, listing inventory which is allocable to the terminated portion of the contract. The schedules must be submitted within 60 days of the effective date of termination unless the deadline is extended by the TCO.

49.207 Limitation on settlements.

The total amount payable to the contractor for a settlement, before subtracting disposal or other credits and not counting settlement costs, must not be more than the contract price minus payments 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 can request an equitable adjustment in the price of the continued part of a fixed-price contract. The TCO must forward the proposal to the contracting officer except when the TCO has authority to negotiate. The contractor must submit the proposal using the format in the Uniform Contract Format shown in part 15.

(a) When the contracting officer keeps responsibility for negotiating the equitable adjustment and making a supplemental agreement, the contracting officer must make sure no part of a price increase is included in a

termination settlement made or in process.

(b) The TCO must also make sure no 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 cover both cost and fee settlements. The contract explains which costs are allowed.

49.302 Discontinuance of vouchers.

(a) After complete contract termination, the contractor must stop using Standard Form 1034 (Public Voucher) after the last day of the sixth month following the month of the termination. The contractor may elect to stop using the form 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 or by certified letter. The contractor must submit fee proposals to the TCO within 90 days of termination, unless the deadline is extended by the TCO. When use of vouchers is discontinued, the contractor must submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

(b) For partial terminations, see section 49.304.

49.303 Procedure after discontinuing vouchers.**49.303–1 Submission of settlement proposal.**

Unless extended by the TCO, within 90 days of the effective date of termination, the contractor must submit a final proposal for unvouchered costs and any fee, using the form in 49.602–1 unless the TCO approves another format. The proposal must not include—

- (a) Any costs already disallowed by the Government; or
- (b) Previously questioned costs still under review.

49.303–2 Submission of inventory disposal schedules.

For termination inventory, contractors must submit complete inventory disposal schedules to the TCO, only reflecting items allocable to the terminated portion. These schedules must be submitted within 60 days of termination and be prepared on Standard Form 1428. TCO approval in writing is required for any time extensions.

49.303-3 Audit of settlement proposal.

The TCO must submit the settlement proposal for audit review unless it only adjusts the fee.

49.303-4 Adjustment of indirect costs.

(a) To avoid delays when the contract has the 52.216-7 clause (Allowable Cost and Payment), the TCO may—

- (1) Negotiate indirect costs when final rates have not been negotiated;
- (2) Use reasonable billing rates as final rates; or
- (3) Save the indirect cost adjustment for the final settlement agreement when rates are established.

(b) When negotiating indirect costs the contractor must remove these costs and related direct costs from calculations for other contracts during the same accounting period.

49.303-5 Final settlement.

(a) The TCO finalizes the settlement after receiving the audit report (if needed), and the contract audit closing statement for costs vouchered.

(b) Fee adjustments follow 49.305.

(c) The final agreement may resolve all issues between both parties. However—

- (1) Costs disallowed by the Government are not allowable; and
- (2) Costs of the same nature as those disallowed are not allowable.

(d) Parties can agree on total costs without agreeing on each individual item. Differences can be compromised, and uncertain issues can be resolved by agreement. However, an overall settlement must not include costs that are unallowable under the terms of the contract.

49.304 Procedure for partial termination.**49.304-1 General.**

(a) For partial terminations, the TCO must limit settlement to fee adjustment and reduced estimated cost. The TCO must adjust fee as provided in 49.304-2 and 49.305, unless—

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

(2) Performance of the contract is virtually complete, or when the remaining work involves only minor items, spare parts, or is not substantial.

(b) For these exceptions, follow 49.302 and 49.303.

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

For fee-only proposals the contractor must limit the settlement proposal to a proposed reduction in fee. The final settlement proposal must be submitted to the TCO within 90 days of termination, using the form prescribed

in 49.602-1 or a certified letter. It must include proof supporting the fee amount.

49.304-3 Submission of vouchers.

When only adjusting the fee in partial terminations the contractor must continue to submit the SF 1034, Public Voucher for Purchases and Services Other than Personal, for reimbursable costs. The Government must not reimburse the contractor for costs of settlements with subcontractors without required approvals or ratifications.

49.305 Adjustment of fee.**49.305-1 General.**

(a)(1) The TCO must determine the final fee based on contract terms, typically using percentage of completion.

(2) Important factors include—

- (i) The extent and difficulty of the work performed by the contractor; and
- (ii) Work performed in—
 - (A) Stopping performance;
 - (B) Settling terminated subcontracts; and
 - (C) Disposing of inventory.

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

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

(b) Completion percentage is not only based on costs incurred ratio. The percentage might be higher or lower than the ratio of costs incurred, depending on the TCO's evaluation of other important factors.

49.305-2 Construction contracts.

(a) The percentage of completion basis includes all contractor effort, not just the actual construction work. It includes such factors as—

- (1) Mobilization including organization;
- (2) Use of finances;
- (3) Ordering and receiving materials;
- (4) Placing subcontracts;
- (5) Creating shop drawings;
- (6) Performing work in place by own personnel;
- (7) Supervising subcontractors;
- (8) Managing the job; and
- (9) Closing down the project (demobilization).

(b) Calculate the fee adjustment as follows:

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

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

(3) Determine the percentage complete of each factor based on specific facts of each contract.

(4) Multiply the completion percentage by the importance value for each factor.

(5) Add these values for overall completion percentage.

(6) Apply this percentage to the total fee applicable to the terminated portion of the contract to calculate the equitable adjustment.

Subpart 49.4—Termination for Default**49.401 General.**

(a) In a termination for default, the Government exercises its right to terminate a contract because the contractor failed or is expected to fail to perform its contractual obligations.

(b) If the contractor establishes, or it is otherwise determined that, the contractor was not in default, or the failure to perform was excusable (*i.e.*, beyond the contractor's control and without fault or negligence), then the default clauses prescribed at 49.503 provide that the termination will be treated as a termination for convenience. The parties' rights and obligations will be governed accordingly.

(c) The Government may exercise termination or cancellation rights beyond those in the contract clauses (for example, paragraph (h) of contract clause 52.249-8, Default (Fixed-Price Supply and Service)).

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

(e) Despite the provisions of this section, the contracting officer may reinstate a terminated contract by amending the termination notice if—

- (1) The contractor provides written consent;
- (2) The contracting officer makes a written determination that the supplies or services are still 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 with the 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) Deliver supplies or perform services within the time specified in the contract;

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

(c) Make progress, and that failure puts contract performance at risk.

49.402-2 Effect of termination for default.

(a) Under a default termination, the Government—

- (1) Is not responsible for the contractor's costs on undelivered work;
- (2) Is entitled to repayment of advance and progress payments for that work; and

(3) May require the contractor to transfer title and deliver completed supplies and manufacturing materials.

(b) The contracting officer must not use the clause at 52.249-8 to acquire completed supplies or manufacturing materials unless the Government does not already have title under other contract provisions. The contracting officer should only acquire manufacturing materials for another contractor after considering any difficulties the other contractor might have using them.

(c) Subject to paragraph (d), the Government must pay the contractor the contract price for any completed supplies and the agreed amount for manufacturing materials acquired by the Government under the clause.

(d) To protect against overpayment when laborers and material suppliers might have liens against the completed supplies or materials, the contracting officer must take one or more of these measures before payment:

(1) Verify that payment bonds from the contractor adequately cover all claims or obtain similar bonds to cover outstanding liens;

(2) Require the contractor to provide statements from laborers and material suppliers giving up any lien rights they may have;

(3) Create an agreement among all parties that releases the Government from potential liability;

(4) Withhold appropriate amounts from payments when the above measures are inadequate;

(5) Take other suitable actions based on the situation and the contractor's financial condition.

(e) The contractor is responsible for any excess costs the Government incurs buying similar supplies and services and for any other damages, whether or not the Government buys replacement items.

49.402-3 Procedure for default.

(a) Before deciding on default termination, the Government must determine the appropriate action (*i.e.*, default, convenience, or no-cost cancellation) with contracting and technical personnel, as well as legal counsel, to ensure the action is appropriate.

(b) The administrative contracting officer must get prior approval from the

contracting office before issuing a show cause notice or cure notice. This approval should be obtained quickly.

(c) When the contractor fails to deliver supplies or perform services within the specified time (Default clause paragraph (a)(1)(i)), no advance notice of termination is required. However, when practicable, the contracting officer should follow the show cause procedures in paragraph (f).

(d)(1) For failures covered under paragraph (a)(1)(ii), failing to make progress so as to endanger performance, or (a)(1)(iii), failing to meet a provision of the contract other than timely performance of the clause 52.249-8, such as not providing a required performance bond, the contracting officer must—

(i) Give the contractor written notice specifying the failure;

(ii) Allow 10 days (or longer if necessary) to cure the failure; and

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

(2) If both conditions described in paragraph (d)(1) exist, the contracting officer may combine a cure notice and a show cause notice into a single document to avoid duplicative correspondence.

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

(f) Show cause notice procedures are as follows:

(1) If default termination seems appropriate, the contracting officer should, when practical, notify the contractor in writing—

(i) That the contracting officer is considering terminating the contract for default;

(ii) Call attention to the potential liabilities to the contractor if the contract is terminated for default;

(iii) Explain why the contracting officer intends to terminate the contract;

(iv) Give the contractor an opportunity to explain why termination should not occur;

(v) Explain that a failure to respond may be taken as an admission by the contractor that no valid explanation exists; and

(vi) If appropriate, invite the contractor to a conference to discuss the situation.

(2) A sample show cause notice appears in 49.607.

(g)(1) When default termination is likely, the contracting officer must notify the surety in writing. If the contractor is later terminated for default, the contracting officer must send the surety a copy of the default notice.

(2) If the surety requests it and the contractor and any assignees agree,

arrangements can be made to send checks to the contractor through the surety. The contractor must submit a written request to the disbursing officer specifically directing this change in payment address.

(h) For small business contractors—

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

(2) When possible, the contracting officer should consult with the small business specialist before proceeding with default termination.

(i) The contracting officer must consider these factors when deciding whether to terminate a contract for default:

(1) The contract terms and relevant laws and regulations.

(2) The specific failure and any explanations provided.

(3) Whether the supplies or services can be obtained from other sources.

(4) How urgently the items are needed and how long it would take to get them from other sources compared to the original contractor.

(5) How essential the contractor is to Government acquisition programs and how termination might affect their ability to supply other contracts.

(6) How termination might affect the contractor's ability to repay guaranteed loans, progress payments, or advance payments.

(7) Any other relevant facts and circumstances.

(j) After following procedures in paragraphs (a) through (i), if the contracting officer decides termination is proper, the contracting officer must issue a notice of termination stating—

(1) The contract number and date;

(2) What specific actions or failures constitute the default;

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

(4) That the Government may purchase similar supplies or services and charge any excess costs to the contractor;

(5) If the failure is determined not excusable, that the notice serves as this decision, and the contractor may appeal under the Disputes clause;

(6) That the Government reserves all other legal rights and remedies; and

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

(k) The contracting officer must—

(1) Distribute the termination notice to all parties who received the original contract;

(2) Send a copy to the contractor's surety and ask if they want to arrange for completion of the work; and

(3) Tell the disbursing officer to stop payments under the terminated contract until further notice.

(l) For construction contracts, promptly after issuing the termination notice, the contracting officer must determine—

(1) How the work will be completed; and

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

(m) If the contracting officer determines before issuing the termination notice that the failure was excusable, they must not terminate for default. If termination is still in the Government's interest, they may terminate for convenience.

(n) If the contracting officer cannot determine before issuing the notice whether the failure was excusable, they must—

(1) Make a written decision on this issue as soon as possible after issuing the notice;

(2) Deliver the decision promptly to the contractor; and

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

49.402-4 Procedure in lieu of termination for default.

Instead of terminating for default, the contracting officer may take these alternative actions when they serve the Government's interests:

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

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

(c) Execute a no-cost termination settlement agreement using the formats in 49.603-6 and 49.603-7 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 when an alternative procedure from 49.402-4 is used, the contracting officer must prepare a memorandum for the contract file explaining the reasons for the action.

49.402-6 Repurchase against contractor's account.

(a) The contracting officer should consider repurchase requirements as soon as practicable after issuing the termination notice when supplies or services are still needed. Repurchase planning must not delay issuance of the termination notice. Guidelines for repurchasing are as follows:

(1) The contracting officer must repurchase similar items against the contractor's account as soon as practical.

(2) The price must be reasonable considering quality and delivery requirements.

(3) The contracting officer may buy more than the undelivered quantity if needed.

(4) Extra cost can only be charged to the contractor for the undelivered quantity (including permitted variations).

(b) For repurchases limited to the undelivered quantity—

(1) The Default clause allows the contracting officer to use any terms and acquisition method;

(2) The contracting officer must maximize competition;

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

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

(c) If the repurchase costs more than the terminated supplies or services, after completing the repurchase contract, the contracting officer must demand payment from the contractor for the excess amount. This calculation should account for changes in transportation costs, discounts, etc. If the contractor does not pay, follow the procedures in part 32 for collecting contract debts.

49.402-7 Other damages.

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

(b) If the Government has suffered other measurable damages, including administrative costs, the contracting officer must, based on legal advice, take appropriate action as outlined in part 32 to assert the Government's demand for these damages.

49.402-8 Reporting information.

The contracting officer must follow agency procedures to report information about the termination for default notice, any withdrawal of the termination, and

any conversion to a termination for convenience. This report must comply with requirements in 42.1103.

49.403 Termination of cost-reimbursement contracts for default.

(a) The right to terminate a cost-reimbursement contract for default comes from the contract clause at 52.249-6, Termination (Cost-reimbursement). The clause requires giving the contractor 10 days' notice before termination.

(b) Settling a cost-reimbursement contract terminated for default follows the same principles as termination for convenience (subparts 49.1 and 49.3), except—

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

(2) The contractor receives reimbursement for allowable costs, with an appropriate reduction in the total fee (see paragraph (h)(4) of the clause).

(c) The contracting officer must use the procedures in 49.402 when appropriate for cost-reimbursement contracts. However, these contracts do not include provisions for recovering excess repurchase costs after termination (but see paragraph (g) of clause 52.246-3 regarding the contractor's failure to replace or correct defective supplies).

49.404 Surety-takeover agreements.

(a) These procedures apply mainly, but not exclusively, to fixed-price construction contracts terminated for default.

(b) Since the surety must pay for damages resulting from the contractor's default, the surety has certain rights in completing the contract and using undisbursed funds. The contracting officer must carefully consider the surety's proposals, evaluating how they might affect the Government's rights against the surety.

(c) The contracting officer should allow sureties to complete the contract unless—

(1) The people or companies proposed by the surety are not qualified or competent; or

(2) The proposal does not serve the Government's best interests.

(d) Multiple parties may claim the defaulting contractor's assets, including unpaid earnings. The surety may include a "takeover" agreement in its proposal to establish its rights to payment. The contracting officer may enter into a written agreement with the surety (but not before the termination date). Consider using a three-way agreement ("tripartite agreement")

among the Government, surety, and defaulting contractor to resolve remaining rights, including claims to unpaid earnings.

(e) Any takeover agreement must require the surety to complete the contract and the Government to pay the surety's costs up to the unpaid contract price, subject to these conditions:

(1) Any unpaid earnings of the defaulting contractor may be used to pay Government claims against the contractor, except when those earnings are needed to pay the surety's actual completion costs and expenses (not including bond payments).

(2) The surety must meet contract requirements for liquidated damages for delays unless the delays qualify as excusable under the contract.

(3) If contract proceeds were assigned to a financing institution, the surety cannot receive payment from unpaid earnings without the assignee's written permission.

(4) The Government must not pay the surety more than it spent completing the work and meeting its payment bond obligations. Payments to the surety for its payment bond obligations require—

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

(ii) A determination by the Comptroller General about who gets paid and how much; or

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

49.405 Liquidation of liability.

The contract makes the contractor and surety liable for resulting damages. The contracting officer must use all retained percentages of progress payments and any progress payments due for completed work to offset the contractor's and surety's liability. If these amounts are not enough, the contracting officer must take steps to recover the additional amount from the contractor and surety.

Subpart 49.5—Contract Termination Clauses

49.501 General.

This subpart 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.* 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 and the contract amount does not exceed the simplified acquisition threshold, except if—

(i) The acquisition is for commercial products or commercial services;

(ii) The clause at 52.249–4, Termination for Convenience of the Government (Services) (Short Form) is more appropriate;

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

(iv) The contract is for architect-engineer services; or

(v) 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, use the clause with its Alternate I.

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

(1)(i) *General use.* Insert the clause at 52.249–2, Termination for Convenience of the Government (Fixed-Price), when a fixed-price contract is contemplated and the contract amount exceeds the simplified acquisition threshold.

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

(A) The acquisition of commercial products or commercial services.

(B) Dismantling and demolition.

(C) Research and development work with an educational or nonprofit institution on a no-profit basis.

(D) Architect-engineer services.

(E) 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, use the clause with its Alternate I.

(i) *Partial payments.* If the contract is with an agency of the Government or with State, local or foreign governments or their agencies, and the contracting officer determines that requiring interest payments on excess partial payments is inappropriate, use the clause with its Alternate II. For construction contracts with these same organizations, use the clause with its Alternate III.

(ii) *Dismantling and demolition.* 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 exceeds the simplified acquisition threshold. If the contract is with an agency of the 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, use the clause with its Alternate I.

(c) *Service contracts (short form).*

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

(i) A fixed-price contract is contemplated (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.

(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.* 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. Do not use this clause in solicitations and contracts for commercial products or commercial services.

(e) *Subcontracts*—

(1) *General use.* The prime contractor may find 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 52.249–2, Termination for Convenience of the Government (Fixed-Price), as appropriate, provided the relationship between the contractor and subcontractor is clearly indicated. Delete conditions that do not apply (for example, paragraph (d) in 52.249–2.) Reduce the time periods for submitting

the subcontractor's termination settlement proposal to the prime contractor to 30 days (or another reasonable period consistent with the prime contractor's 90-day deadline), and the time for requesting an equitable price adjustment 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. 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., 30 days), 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.

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 if a cost-reimbursement contract is contemplated, except in research and development contracts with educational or nonprofit institutions that have no fee. Do not use this clause in solicitations and contracts for commercial products or commercial services.

(2) *Construction.* If the contract is for construction, insert the clause with its 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, insert the clause with its Alternate II. In such contracts for construction, insert the clause with its Alternate III.

(4) *Time-and-material and labor-hour contracts.* If the contract is a time-and-material or labor-hour contract, insert the clause with its 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, insert the clause with its Alternate V.

(b) *Architect Engineer.* Insert the clause at 52.249–7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, other than those for commercial products or commercial services, if a fixed-price contract is contemplated.

(c) *Subcontracts.* The prime contractor may use and customize the clause at 52.249–6, Termination (Cost-Reimbursement), suitable for use in cost-reimbursement subcontracts, as long as the relationship between the contractor and subcontractor is clearly indicated. The contractor should delete conditions that do not apply (for example, paragraphs (e), (j), and (n)). Reduce the time period for the subcontractor to submit their termination settlement proposal (for example, to 30 days).

49.504 Termination of fixed-price contracts for default.

(a) *Supplies and services.*

(1) *Supplies and services.* Insert the clause at 52.249–8, Default (Fixed-Price Supply and Service), in solicitations and contracts, other than those for commercial products or commercial services, if 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, insert the clause with its Alternate I.

(b) *Research and development.* Insert the clause at 52.249–9, Default (Fixed-Price Research and Development), in solicitations and contracts for research and development if a fixed-price contract is contemplated, and the contract amount is expected to exceed the simplified acquisition threshold, except 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. Do not use this clause in solicitations and contracts for commercial products or commercial services.

(c) *Construction and related work.*

(1) *Construction.* Insert the clause at 52.249–10, Default (Fixed-Price Construction), in solicitations and contracts for construction if a fixed price contract is contemplated, and the 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, insert the clause with its 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 when a fixed-price contract for construction is contemplated; or

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

49.505 Other termination clauses.

(a) *Personal service contracts.* Insert the clause at 52.249–12, Termination (Personal Services), in solicitations and contracts for personal services, other than those for commercial products or commercial services.

(b) *Excusable delays.*

(1) Insert the clause at 52.249–14, Excusable Delays, in solicitations and contracts, other than those for commercial products or commercial services, when using—

(i) A cost reimbursement contract for supplies, services, construction, and research and development when a cost-reimbursement contract is contemplated; and

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

(c) *Communication service contracts.* Agencies must prescribe and insert agency-specific clauses for canceling or terminating orders under communication service contracts with common carriers. See subpart 1.2, Agency Acquisition Regulations.

Subpart 49.6—Contract Termination Forms and Formats

49.601 Notice of termination for convenience.

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 must resend the notice electronically and expedite the letter notice described in 49.601–2. If the contractor confirms receipt of the electronic notice, and the notice contains all information required in

49.601–2, the contracting officer does not need to send the letter notice.

(a) *Complete termination:* Use the following electronic notice when completely terminating a supply contract for convenience. This notice may be 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 must 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 must take the following steps:

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

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

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

(C) Work-in-process that the Contracting Officer authorizes you to continue—

(1) for safety precautions,

(2) to clear or avoid damage to equipment,

(3) to avoid immediate complete spoilage of work-in-process having a definite commercial value, or

(4) to prevent any other undue loss to the Government.

(ii) 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 (b)(1) of this notice 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 (b)(1) of this notice;

(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 (g)(1) of this notice.

(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 must be used for settling terminated prime contracts. The forms at 49.602–1 and 49.602–2 may also be used for settling terminated subcontracts.

49.602–1 Termination settlement proposal forms.

(a) Standard Form 1435, Settlement Proposal (Inventory Basis), must 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), must 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, must 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), must 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, must 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, must 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, must be used to apply for partial payments (see 49.112).

49.602–5 Settlement agreement.

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

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). TCOs 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 must, 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 agreement, 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 paragraph (b)(6)(i) of this agreement]—

(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 agreement”].

(iii) The net settlement of \$_____ in paragraph (b)(6)(ii) of this agreement,

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 agreement.

(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). 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 Block 14 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)(i) 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—

(A) Are properly allocable to the terminated portion of the contract,

(B) Do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and

(C) Do not include any items reasonably usable without loss to the Contractor on its other work.

(ii) 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 must, 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 paragraph (b)(7)(i) of this agreement, 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 agreement.

(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 must cease; provided, that nothing in this agreement must 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). 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 must, 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 agreement, 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 paragraph (b)(6)(i) of this agreement]—

(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 agreement.”]

(iii) The net settlement of \$_____ in paragraph (b)(6)(ii) of this agreement, 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 agreement.

(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). 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 must 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 41 U.S.C. 7109 must accrue and must 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 (b)(3) of this agreement 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). 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)(i) 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—

(A) Are properly allocable to the terminated portion of the contract;

(B) Do not exceed the reasonable quantitative requirements of the terminated portion of the contract; and

(C) Do not include any items reasonably usable without loss to the Contractor on its other work.

(ii) 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 must, 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 agreement, 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).]*

(End of agreement)

49.603-9 Settlement of reservations.

[Insert the following in 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 agreement. This supplemental agreement settles those items.

(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 (b)(1) of this agreement. *

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

(End of agreement)

49.604 Release of excess funds under terminated contracts.

The following format must 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. _____ *[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 must 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 must 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 49.109–4 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 must 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 part 42 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)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 3. Revise sections 52.203–2 and 52.203–3 to read as follows:

52.203–2 Certificate of Independent Price Determination.

As prescribed in 3.103–1, insert the following provision. If the solicitation is a Request for Quotations, the terms “Quotation” and “Quoter” may be substituted for “Offer” and “Offeror.”

Certificate of Independent Price Determination (DATE)

(a) The offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—

(i) Those prices;

(ii) The intention to submit an offer; or

(iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or

competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision _____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

52.203–3 Gratuities.

As prescribed in 3.202, insert the following clause:

Gratuities (DATE)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause must not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

■ 4. Revise sections 52.203–5 through 52.203–8 to read as follows:

52.203–5 Covenant Against Contingent Fees.

As prescribed in 3.404, insert the following clause:

Covenant Against Contingent Fees (DATE)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government has the right to annul this contract without liability or, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) *Bona fide agency*, as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

Bona fide employee, as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

Contingent fee, as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

Improper influence, as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

52.203–6 Restrictions on Subcontractor Sales to the Government.

As prescribed in 3.503–2, insert the following clause:

Restrictions on Subcontractor Sales to the Government (DATE)

(a) *Prohibition*. Except as provided in (b) of this clause, the Contractor must not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) *Rights*. The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial products or commercial services, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial product(s) and commercial service(s).

(c) *Subcontracts*. The Contractor must incorporate the substance of this clause, including this paragraph (c), in subcontracts at any tier under this contract, if the value of the subcontract exceeds the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award. Do not include this clause in subcontracts for commercial products or commercial services.

(End of clause)

Alternate I (DATE). As prescribed in 3.503–2, substitute the following paragraph in place of paragraph (b) of the basic clause:

(b) *Rights*. The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are

otherwise authorized by law or regulation.

52.203–7 Anti-Kickback Procedures.

As prescribed in 3.502–3, insert the following clause:

Anti-Kickback Procedures (DATE)

(a) *Definitions*.

Kickback, as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

Person, as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

Prime contract, as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

Prime Contractor, as used in this clause, means a person who has entered into a prime contract with the United States.

Prime Contractor employee, as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

Subcontract, as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

Subcontractor, as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

Subcontractor employee, as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) *Prohibition*. 41 U.S.C. chapter 87, Kickbacks, prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the

contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c) *Procedures*.

(1) The Contractor must have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor must promptly report in writing the possible violation. Such reports must be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor must cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order the monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor must notify the Contracting Officer when the monies are withheld.

(d) *Subcontracts*. The Contractor must include the substance of this clause, including this paragraph (d) but excepting paragraph (c)(1) of this clause, in all subcontracts at any tier under this contract, if the value of the subcontract exceeds the threshold specified in Federal Acquisition Regulation 3.502–2(i) on the date of subcontract award. Do not include this clause in subcontracts for commercial products or commercial services.

(End of clause)

52.203–8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.

As prescribed in 3.104–9(a), insert the following clause:

Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (DATE)

(a) If the Government receives information that a contractor or a person

has violated 41 U.S.C. 2102–2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

■ 5. Revise sections 52.203–10 through 52.203–14 to read as follows:

52.203–10 Price or Fee Adjustment for Illegal or Improper Activity.

As prescribed in 3.104–9(b), insert the following clause:

Price or Fee Adjustment for Illegal or Improper Activity (DATE)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause must be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract must be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price must be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor’s price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.203–11 Certification and Disclosure Regarding Payments To Influence Certain Federal Transactions.

As prescribed in 3.808(a), insert the following provision:

Certification and Disclosure Regarding Payments To Influence Certain Federal Transactions (DATE)

(a) *Definitions.* As used in this provision—“Lobbying contact” has the meaning provided at 2 U.S.C. 1602(8). The terms “agency,” “influencing or attempting to influence,” “officer or employee of an agency,” “person,” “reasonable compensation,” and “regularly employed” are defined in the FAR clause of this solicitation entitled “Limitation on Payments to Influence Certain Federal Transactions” (52.203–12).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled “Limitation on Payments to Influence Certain Federal Transactions” (52.203–12) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror must complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalties.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by 31 U.S.C. 1352. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this provision, is subject to civil penalties as provided in 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(End of provision)

52.203–12 Limitation on Payments To Influence Certain Federal Transactions.

As prescribed in 3.808(b), insert the following clause:

Limitation on Payments To Influence Certain Federal Transactions (DATE)

(a) *Definitions.* As used in this clause—

Agency means “*executive agency*” as defined in Federal Acquisition Regulation (FAR) 2.101.

Covered Federal action means any of the following actions:

- (1) Awarding any Federal contract.
- (2) Making any Federal grant.
- (3) Making any Federal loan.
- (4) Entering into any cooperative agreement.
- (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.

Indian tribe and “tribal organization” have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.

Influencing or attempting to influence means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

Local government means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

Officer or employee of an agency includes the following individuals who are employed by an agency:

(1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.

(2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.

(3) A special Government employee, as defined in section 202, Title 18, United States Code.

(4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

Person means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term

excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Reasonable compensation means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

Reasonable payment means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

Recipient includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

Regularly employed means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person must be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

State means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member

of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352, the Contractor must not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) *Agency and legislative liaison by Contractor employees.*

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—

(A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person's products or services for an agency's use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95–507, and subsequent amendments.

(2) *Professional and technical services.*

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in paragraph (c)(2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

(d) Disclosure.

(1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor must complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.

(2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a

change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor must, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause is subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(g) Subcontracts.

(1) The Contractor must obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract under this contract that exceeds the threshold specified in FAR 3.808 on the date of subcontract award. The Contractor or subcontractor that awards the subcontract must retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) must be forwarded from tier to tier until received by the prime Contractor. The prime Contractor must, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification must be retained in the subcontract file of the awarding Contractor.

(3) The Contractor must include the substance of this clause, including this paragraph (g), in any subcontract at any tier under this contract, if the value exceeds the threshold specified in FAR 3.808 on the date of subcontract award. Do not include this clause in subcontracts for commercial products or commercial services.

(End of clause)

52.203-13 Contractor Code of Business Ethics and Conduct.

As prescribed in 3.1004(a), insert the following clause:

Contractor Code of Business Ethics and Conduct (DATE)

(a) Definitions. As used in this clause—

Agent means any individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization.

Full cooperation—

(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;

(2) Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require—

(i) A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or

(ii) Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and

(3) Does not restrict a Contractor from—

(i) Conducting an internal investigation; or

(ii) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

Principal means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

Subcontract means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

Subcontractor means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

United States, means the 50 States, the District of Columbia, and outlying areas.

(b) Code of business ethics and conduct.

(1) Within 30 days after contract award, unless the Contracting Officer

establishes a longer time period, the Contractor must—

(i) Have a written code of business ethics and conduct;

(ii) Make a copy of the code available to each employee engaged in performance of the contract.

(2) The Contractor must—

(i) Exercise due diligence to prevent and detect criminal conduct; and

(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

(3)(i) The Contractor must timely disclose, in writing, to the agency Office of the Inspector General (OIG), with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed—

(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or

(B) A violation of the civil False Claims Act (31 U.S.C. 3729–3733).

(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.

(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor must notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.

(c) Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial product or

commercial service as defined at FAR 2.101. The Contractor must establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:

(1) An ongoing business ethics awareness and compliance program.

(i) This program must include reasonable steps to communicate periodically and in a practical manner the Contractor's standards and procedures and other aspects of the Contractor's business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.

(ii) The training conducted under this program must be provided to the Contractor's principals and employees, and as appropriate, the Contractor's agents and subcontractors.

(2) An internal control system.

(i) The Contractor's internal control system must—

(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and

(B) Ensure corrective measures are promptly instituted and carried out.

(ii) At a minimum, the Contractor's internal control system must provide for the following:

(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.

(B) Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor's code of business ethics and conduct.

(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor's code of business ethics and conduct and the special requirements of Government contracting, including—

(1) Monitoring and auditing to detect criminal conduct;

(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and

(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce

the risk of criminal conduct identified through this process.

(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.

(F) Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. or a violation of the civil False Claims Act (31 U.S.C. 3729–3733).

(1) If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.

(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor must notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.

(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.

(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) *Subcontracts.*

(1) The Contractor must include the substance of this clause, including this paragraph (d), in subcontracts at any tier under the contract, including those for commercial products and commercial services, if—

(i) The value of the subcontract exceeds the threshold specified in FAR 3.1004(a) on the date of subcontract award; and

(ii) The performance period of the subcontract is greater than 120 days.

(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law must be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(End of clause)

52.203–14 Display of Hotline Poster(s).

As prescribed in 3.1004(b), insert the following clause:

Display of Hotline Poster(s) (DATE)

(a) *Definition.*

United States, as used in this clause, means the 50 States, the District of Columbia, and outlying areas.

(b) *Display of fraud hotline poster(s).*

Except as provided in paragraph (c)—

(1) During contract performance in the United States, the Contractor must prominently display in common work areas within business segments performing work under this contract and at contract work sites—

(i) Any agency fraud hotline poster or Department of Homeland Security (DHS) fraud hotline poster identified in paragraph (b)(3) of this clause; and

(ii) Any DHS fraud hotline poster subsequently identified by the Contracting Officer.

(2) Additionally, if the Contractor maintains a company website as a method of providing information to employees, the Contractor must display an electronic version of the poster(s) at the website.

(3) Any required posters may be obtained as follows:

Poster(s)	Obtain from
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

[[Contracting Officer must insert—

(i) *Appropriate agency name(s) and/or title of applicable Department of Homeland Security fraud hotline poster*; and

(ii) *The website(s) or other contact information for obtaining the poster(s).*]]

(c) If the Contractor has implemented a business ethics and conduct awareness program, including a reporting mechanism, such as a hotline poster, then the Contractor need not display any agency fraud hotline posters as required in paragraph (b) of this clause, other than any required DHS posters.

(d) *Subcontracts.* The Contractor must include the substance of this clause,

including this paragraph (d), in subcontracts at any tier under this contract with a value that exceeds the threshold specified in Federal Acquisition Regulation 3.1004(b)(1) on the date of subcontract award, except when the subcontract—

(1) Is for the acquisition of a commercial product or commercial service; or

(2) Is performed entirely outside the United States.

(End of clause)

52.203–15 [Removed and Reserved]

■ 6. Remove and reserve section

52.203–15.

■ 7. Revise sections 52.203–16 through 52.203–19 to read as follows:

52.203–16 Preventing Personal Conflicts of Interest.

As prescribed in 3.1106, insert the following clause:

Preventing Personal Conflicts of Interest (DATE)

(a) *Definitions.* As used in this clause—

Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

Covered employee means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

(1) An employee of the contractor; or

(2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

Non-public information means any Government or third-party information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public and the Government has not yet determined whether the information can or will be made available to the public.

Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract. (A de minimis interest that would not "impair the employee's ability to act impartially and in the best interest of the Government" is not covered under this definition.)

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) For example, financial interests referred to in paragraph (1) of this definition may arise from—

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

(b) *Requirements.* The Contractor must—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest, by—

(i) Obtaining and maintaining from each covered employee, when the

employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:

(A) Financial interests of the covered employee, of close family members, or of other members of the covered employee's household.

(B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).

(C) Gifts, including travel; and

(ii) Requiring each covered employee to update the disclosure statement whenever the employee's personal or financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee—

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Contracting Officer any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report must include a description of the violation and the proposed actions to be taken by the Contractor in response to the violation. Provide follow-up reports of corrective actions taken, as necessary. Personal conflict-of-interest violations include—

(i) Failure by a covered employee to disclose a personal conflict of interest;

(ii) Use by a covered employee of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Failure of a covered employee to comply with the terms of a non-disclosure agreement.

(c) Mitigation or waiver.

(1) In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Contractor may submit a request through the Contracting Officer to the Head of the Contracting Activity for—

(i) Agreement to a plan to mitigate the personal conflict of interest; or

(ii) A waiver of the requirement.

(2) The Contractor must include in the request any proposed mitigation of the personal conflict of interest.

(3) The Contractor must—

(i) Comply, and require compliance by the covered employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or

(ii) Remove the Contractor employee or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) *Subcontracts.* The Contractor—

(1) Must include the substance of this clause, including this paragraph (d), in a subcontract at any tier under this contract that—

(i) Has a value that exceeds the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award; and

(ii) Will require subcontractor employees to perform acquisition functions closely associated with inherently governmental functions.

(2) Is not required to include this clause in—

(i) A subcontract with a self-employed individual if the acquisition functions closely associated with inherently governmental functions are to be performed entirely by the self-employed individual; or

(ii) A subcontract for commercial products or commercial services.

(End of clause)

52.203–17 Contractor Employee Whistleblower Rights.

As prescribed in 3.906, insert the following clause:

Contractor Employee Whistleblower Rights (DATE)

(a) *Applicability.* This contract and employees working on this contract will be subject to the whistleblower rights and remedies established at 41 U.S.C.

4712 and Federal Acquisition Regulation (FAR) 3.900 through 3.905.

(b) *Requirement.* The Contractor must inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in FAR 3.900 through 3.905.

(c) *Subcontracts.* The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier under this contract, including those for commercial products and commercial services.

(End of clause)

52.203–18 Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements or Statements-Representation.

As prescribed in 3.909–3(a), insert the following provision:

Prohibition on Contracting With Entities That Require Certain Internal Confidentiality Agreements or Statements-Representation (DATE)

(a) *Definition.* As used in this provision—

Internal confidentiality agreement or statement, subcontract, and subcontractor are defined in the clause at 52.203–19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

(b) *Prohibition.* In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use funds appropriated (or otherwise made available) for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(c) *Exception.* The prohibition in paragraph (b) of this provision does not contravene requirements applicable to Standard Form 312, (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d) *Representation.* By submission of its offer, the Offeror represents that it

will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(End of provision)

52.203–19 Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.

As prescribed in 3.909–3(b), insert the following clause:

Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (DATE)

(a) *Definitions.* As used in this clause—

Internal confidentiality agreement or statement means a confidentiality agreement or any other written statement that the contractor requires any of its employees or subcontractors to sign regarding nondisclosure of contractor information, except that it does not include confidentiality agreements arising out of civil litigation or confidentiality agreements that contractor employees or subcontractors sign at the behest of a Federal agency.

Subcontract means any contract as defined in subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

Subcontractor means any supplier, distributor, vendor, or firm (including a consultant) that furnishes supplies or services to or for a prime contractor or another subcontractor.

(b) *Prohibition.* The Contractor must not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

(c) *Notification.* The Contractor must notify current employees and subcontractors that prohibitions and restrictions of any preexisting internal

confidentiality agreements or statements covered by this clause, to the extent that such prohibitions and restrictions are inconsistent with the prohibitions of this clause, are no longer in effect.

(d) *Other agreements.* The prohibition in paragraph (b) of this clause does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(e) *Restrictions on use of funds.* In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015, (Pub. L. 113–235), and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions) use of funds appropriated (or otherwise made available) is prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(f) *Subcontracts.* The Contractor must include the substance of this clause, including this paragraph (f), in subcontracts at any tier under this contract, including those for commercial products and commercial services.

(End of clause)

■ 8. Revise sections 52.249–1 through 52.249–10, 52.249–12, and 52.249–14 to read as follows:

52.249–1 Termination for Convenience of the Government (Fixed-Price) (Short Form).

As prescribed in 49.502(a)(1), insert the following clause:

Termination for Convenience of the Government (Fixed-Price) (Short Form) (DATE)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, must be in accordance with part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

Alternate 1 (DATE). If the contract is for dismantling, demolition, or removal of improvements, designate the basic clause as paragraph (a) and add the following paragraph (b):

(b) Upon receipt of the termination notice, if title to property is vested in the Contractor under this contract, it must revert in the Government regardless of any other clause of the contract, except for property that the

Contractor disposed of by bona fide sale or removed from the site.

52.249–2 Termination for Convenience of the Government (Fixed-Price).

As prescribed in 49.502(b)(1)(i), insert the following clause:

Termination for Convenience of the Government (Fixed-Price) (DATE)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer must terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

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

(1) Stop work as specified in the notice.

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

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

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, so that the Government has the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government—

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

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

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting

Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

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

(c) The Contractor must submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within 60 days after the effective date of the termination.

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

(e) After termination, the Contractor must submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor must submit the proposal promptly, but no later than 90 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within 60 days after the effective date of the termination. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 90 days or any extension. If the Contractor fails to submit the proposal within the

time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and must pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, may not exceed the total contract price as reduced by the amount of payments previously made, and further reduced by the contract price of work not terminated. The contract must be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause does not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer must pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (g)(2)(i) of this clause; and

(iii) A sum, as profit on the amount described by paragraph (g)(2)(i) of this clause, determined by the Contracting Officer to be fair and reasonable under the version of section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer must allow no profit under this paragraph (g)(2)(iii) and must

reduce the settlement to reflect the indicated rate of loss.

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

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

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

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

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer must exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value as determined by the Contracting Officer, for the loss of the Government property.

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

(j) The Contractor has the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, the following must be deducted—

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

(2) The amount of any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

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

extended in writing by the Contracting Officer.

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

(2) If the total payments exceed the amount finally determined to be due, the Contractor must repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 41 U.S.C. 7109. Interest must be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest must not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor must maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor must make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

Alternate I (DATE). If the contract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer must pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (g)(1)(i) of this clause; and

(iii) A sum, as profit on the amount described by paragraph (g)(1)(i) of this clause, determined by the Contracting Officer to be fair and reasonable under the version of section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer must allow no profit under this paragraph (g)(1)(iii) and must reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

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

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

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

Alternate II (DATE). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) of the basic clause.

Alternate III (DATE). If the contract is for construction and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (g) for paragraph (g) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer must pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in paragraph (g)(1)(i) of this clause; and

(iii) A sum, as profit on the amount described by paragraph (g)(1)(i) of this clause, determined by the Contracting Officer to be fair and reasonable under the version of section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer must allow no profit under this paragraph (iii) and must reduce the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

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

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

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

52.249–3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

As prescribed in 49.502(b)(2)(ii), insert the following clause:

Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) (DATE)

(a) The Government may terminate performance of work under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest.

The Contracting Officer must terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in the Contractor under this contract, it must revert in the Government regardless of any other clause of this contract, except for property that the Contractor disposed of by bona fide sale or removed from the site.

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

(1) Stop work as specified in the notice.

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

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

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, so that the Government has the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government—

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

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

(7) Complete performance of the work not terminated.

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

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

(c) The Contractor must submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless

extended in writing by the Contracting Officer upon written request of the Contractor within 30 days after the effective date of termination.

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

(e) After termination, the Contractor must submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor must submit the proposal promptly, but no later than 90 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within 60 days after the effective date of the termination. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 90 days or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and must pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of settlement costs, may not exceed the total contract price as reduced by the amount of payments previously made, and further reduced by the contract price of work not terminated. The contract must be amended and the Contractor paid the agreed amount. Paragraph (g) of this clause does not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer must pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract, if not included in paragraph (g)(1)(i) of this clause; and

(iii) A sum, as profit on the amount described by paragraph (g)(1)(i) of this clause, determined by the Contracting Officer to be fair and reasonable under the version of section 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer must allow no profit under this paragraph (iii) and must reduce the amount of the settlement to reflect the indicated rate of loss.

(2) The reasonable costs of settlement of the work terminated, including—

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

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

(iii) Preservation and protection of property under paragraph (b)(8) of this clause.

(h) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer must exclude from the amounts payable to the Contractor under paragraph (g) of this clause, the fair value, as determined by the Contracting Officer, for the loss of the Government property.

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

(j) The Contractor has the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within

the time provided in paragraph (e) or (l) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g), or (l) of this clause, the Government must pay the Contractor—

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

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, there must be deducted—

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

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

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

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

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

(2) If the total payments exceed the amount finally determined to be due, the Contractor must repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 41 U.S.C. 7109. Interest must be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest must not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined

by the Contracting Officer because of the circumstances.

(n) Unless otherwise provided in this contract or by statute, the Contractor must maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. The Contractor must make these records and documents available to the Government, at the Contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

(End of clause)

Alternate I (DATE). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) from the basic clause.

52.249-4 Termination for Convenience of the Government (Services) (Short Form).

As prescribed in 49.502(c), insert the following clause:

Termination for Convenience of the Government (Services) (Short Form) (DATE)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the Government is liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

As prescribed in 49.502(d), insert the following clause:

Termination for Convenience of the Government (Educational and Other Nonprofit Institutions) (DATE)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer must terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by

the Contracting Officer, the Contractor must immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

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

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, so that the Government has the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including—

(i) Materials or equipment produced, in process, or acquired for the work terminated; and

(ii) Completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

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

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

or paid in any other manner directed by the Contracting Officer.

(c) The Contractor must submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within 30 days after the effective date of termination.

(d) After termination, the Contractor must submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor must submit the proposal promptly but no later than 90 days from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within 60 days after the effective date of the termination. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and must pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract must be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in subpart 31.3 of the Federal Acquisition Regulation (FAR), Contracts with Educational Institutions (defined as institutions of higher education in the OMB Uniform Guidance in 2 CFR part 200, subpart A, and 20 U.S.C. 1001), as in effect on the date of the contract, must govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution and is a nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200), the cost principles and procedures in subpart 31.7 of the FAR, Contracts with Nonprofit Organizations, must apply; unless the Contractor is a nonprofit institution listed in the OMB Uniform Guidance at 2 CFR part 200, appendix VIII, as exempted from the cost principles in subpart E, in which case the cost principles at FAR 31.2 for

commercial organizations must apply to such contractor.

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

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

52.249–6 Termination (Cost-Reimbursement).

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

Termination (Cost-Reimbursement) (DATE)

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

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

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

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

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

(1) Stop work as specified in the notice.

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

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

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, so that the Government has the right to settle or to pay any termination settlement proposal arising out of those terminations.

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

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

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

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

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

(7) Complete performance of the work not terminated.

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

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

Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor must submit complete termination inventory schedules no later than 60 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within 30 days after the effective date of termination.

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

(f) After termination, the Contractor must submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor must submit the proposal promptly, but no later than 90 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within 60 days after the effective date of the termination. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after the 90 day period or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and must pay the amount determined.

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

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting

Officer must determine, on the basis of information available, the amount, if any, due the Contractor, and must pay that amount, which must include the following:

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

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

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

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

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

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

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

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

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

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

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

(j) The Contractor has the right of appeal, under the Disputes clause, from

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

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

(2) The amount finally determined on an appeal.

(k) In arriving at the amount due the Contractor under this clause, the following must be deducted—

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

(2) The amount of any claim which the Government has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of materials, supplies, or other things acquired by the Contractor or sold under this clause and not recovered by or credited to the Government.

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

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

(2) If the total payments exceed the amount finally determined to be due, the Contractor must repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 41 U.S.C. 7109. Interest must be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest must not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

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

(End of clause)

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

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

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

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

Alternate II (DATE). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) from the basic clause.

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

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

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

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

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

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer must determine,

on the basis of information available, the amount, if any, due the Contractor and must pay the amount determined as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of price(s) for the continued portion of the contract. The Contracting Officer must make any equitable adjustment agreed upon. Any proposal

by the Contractor for an equitable adjustment under this clause must be requested within 90 days from the effective date of termination, unless extended in writing by the Contracting Officer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52.249–7 Termination (Fixed-Price Architect-Engineer).

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

Termination (Fixed-Price Architect-Engineer) (DATE)

(a) The Government may terminate this contract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer must terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor must—

(1) Immediately discontinue all services affected (unless the notice directs otherwise); and

(2) Deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Government, the Contracting Officer must make an equitable adjustment in the contract price but must allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the Contractor to fulfill the contract obligations, the Government may complete the work by contract or otherwise and the Contractor is liable

for any additional cost incurred by the Government.

(d) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor did not fail, the rights and obligations of the parties are the same as if the termination had been issued for the convenience of the Government.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.249–8 Default (Fixed-Price Supply and Service).

As prescribed in 49.504(a)(1), insert the following clause:

Default (Fixed-Price Supply and Service) (DATE)

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under paragraphs (a)(1)(ii) and (1)(iii) of this clause may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor must continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor is not liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

(1) Acts of God or of the public enemy,

(2) Acts of the Government in either its sovereign or contractual capacity,

(3) Fires,

(4) Floods,

(5) Epidemics,

(6) Quarantine restrictions,

(7) Strikes,

(8) Freight embargoes, and

(9) Unusually severe weather.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor must not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed supplies, and partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor must also protect and preserve property in its possession in which the Government has an interest.

(f) The Government must pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer must agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties must be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

Alternate I (DATE). If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under paragraphs (a)(1)(ii) and (iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor must, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer must agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

52.249-9 Default (Fixed-Price Research and Development).

As prescribed in 49.504(b), insert the following clause:

Default (Fixed-Price Research and Development) (DATE)

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under paragraphs (a)(1)(ii) and (iii) of this clause may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. However, the Contractor must continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor must not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include:

(1) Acts of God or of the public enemy,

(2) Acts of the Government in either its sovereign or contractual capacity,

(3) Fires,

(4) Floods,

(5) Epidemics,

(6) Quarantine restrictions,

(7) Strikes,

(8) Freight embargoes, and

(9) Unusually severe weather.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor is not liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule or other performance requirements.

(e)(1) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any—

(i) Completed or partially completed work not previously delivered to, and accepted by, the Government, and

(ii) Other property, including contract rights, specifically produced or acquired for the terminated portion of this contract.

(2) Upon direction of the Contracting Officer, the Contractor must also protect and preserve property in its possession in which the Government has an interest.

(f)(1) The Government must pay the contract price, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for—

(i) Completed work for which no separate price is stated,

(ii) Partially completed work,

(iii) Other property described above that it accepts, and

(iv) The protection and preservation of the property.

(2) Failure to agree will be a dispute under the Disputes clause.

(3) The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss from outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties must be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.249-10 Default (Fixed-Price Construction).

As prescribed in 49.504(c)(1), insert the following clause:

Default (Fixed-Price Construction) (DATE)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties are liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed must not be terminated nor the

Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer must ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work must be extended. The findings of the Contracting Officer must be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

Alternate I (DATE). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has

been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it will revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties are liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

Alternate II (DATE). If the contract is to be awarded during a period of national emergency, paragraph (b)(1) below may be substituted for paragraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

Alternate III (DATE). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following paragraph (b)(1) may be substituted for paragraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may,

by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it will revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties are liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed must not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers.

Alternate IV (DATE). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following paragraph (b)(1) may be substituted for paragraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may,

by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it will revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties are liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed must not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers.

52.249–12 Termination (Personal Services).

As prescribed in 49.505(a), insert the following clause:

Termination (Personal Services) (DATE)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

(End of clause)

52.249–14 Excusable Delays.

As prescribed in 49.505(b), insert the following clause:

Excusable Delays (DATE)

(a) Except for defaults of subcontractors at any tier, the Contractor will not be deemed to be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. “Default” includes failure to make progress in the work so as to endanger performance. Examples of these causes are—

(1) Acts of God or of the public enemy,

(2) Acts of the Government in either its sovereign or contractual capacity,

(3) Fires,

(4) Floods,

(5) Epidemics,

(6) Quarantine restrictions,

(7) Strikes,

(8) Freight embargoes, and

(9) Unusually severe weather.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor will not be deemed to be in default, unless.

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer must ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule, or completion time for construction, must be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

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