

## 249.105

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36471, July 31, 1991, unless otherwise noted.

## Subpart 249.1—General Principles

### 249.105 Duties of termination contracting officer after issuance of notice of termination.

#### 249.105-1 Termination status report.

When the contract administration office receives a termination notice, it will, under Report Control Symbol DD-AT&L(AR)1411—

- (i) Prepare a DD Form 1598, Contract Termination Status Report;
- (ii) Within 30 days, send one copy to the purchasing office and one copy to the headquarters office to which the contract administration office is directly responsible;
- (iii) Continue reporting semiannually to cover the 6 month periods ending March and September. The semiannual reports must be submitted within 30 days after the end of the reporting period; and
- (iv) Submit a final report within 30 days after closing the termination case.

[56 FR 36471, July 31, 1991, as amended at 59 FR 27674, May 27, 1994; 64 FR 51077, Sept. 21, 1999; 65 FR 39706, June 27, 2000]

#### 249.105-2 Release of excess funds.

The DD Form 1598, Contract Termination Status Report, may be used to recommend the release of excess funds. The final recommendation to release

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excess funds should include the appropriations and allocated amounts.

### 249.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct, the TCO must report the facts in accordance with the procedures at 209.406-3 or 209.407-3.

[64 FR 62986, Nov. 18, 1999]

### 249.108 Settlement of subcontract settlement proposals.

#### 249.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1)(ii) Industrial plant equipment included in the inventory—

(1) Is subject to the screening requirements in FAR 45.608.

(2) Shall not be disposed of until screening is completed when the cost of that equipment is used in determining the amount of the claim.

### 249.109 Settlement agreements.

#### 249.109-7 Settlement by determination.

(a)(i) Use a Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, to settle a convenience termination by determination—

(A) When the contractor has lost its right of appeal because it failed to submit a timely settlement proposal; and

(B) To confirm the determination when the contractor does not appeal the termination contracting officer's decision.

(ii) The effective date of the SF 30 shall be the same as the date of the letter of determination. Do not assign a supplementary procurement instrument number to the letter of determination. Send a copy of the SF 30 to the contractor by certified mail return receipt requested.

### 249.110 Negotiation memorandum.

(a)(i) *Fixed price contracts.* Use the format in Table 49-1, Settlement Memorandum-Fixed Price Contracts, for the termination contracting officer's settlement memorandum for fixed price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to

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use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(ii) *Cost-reimbursement contracts*. Use Part I of the format in Table 49-1 and Part II of the format in Table 49-2, Set-

tlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

**TABLE 49-1—SETTLEMENT MEMORANDUM-FIXED PRICE CONTRACTS**

**Part I—General Information**

1. Identification. (Identify memorandum as to its purpose and content.)
  - a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.
  - b. Names and titles of both contractor and Government personnel who participated in the negotiation.
2. Description of terminated contract.
  - a. Date of contract and contract number.
  - b. Type of contract (e.g., fixed price, fixed price incentive).
  - c. General description of contract items.
  - d. Total contract price.
  - e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).
3. Termination notice.
  - a. Reference termination notice and state effective date of termination.
  - b. Scope and nature of termination (complete or partial), items terminated, unit price and total price of items terminated.
  - c. State whether termination notice was amended, and explain any amendment.
  - d. State whether contractor stopped work on effective termination date. If not, furnish details.
  - e. State whether the contractor promptly terminated subcontracts.
  - f. Statement as to the diversion of common items and return of goods to suppliers, if any.
  - g. Furnish information as to contract performance and timeliness of deliveries by the contractor.
4. Contractor's settlement proposal.
  - a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnish information for each claim.)
  - b. Basis of claim. State whether claim was filed on inventory, total cost or other basis. Explain rationale for approval when claim is filed on other than inventory basis.
  - c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

**Part II—Summary of Contractor's Claim and Negotiated Settlement**

Prepare a summary substantially as follows:

Item claimed	Contractor's proposal	Dollars accepted	Costs questioned	Unresolved items	TCO negotiated amount
1. Contractor's costs as set forth on settlement proposal. Metals, raw materials, etc.. Total.					
2. Profit.					
3. Settlement expenses.					
4. Total.					
5. Settlement with subs.					
6. Acceptable finished product.					
7. Gross Total.					
8. Disposal and other credits.					
9. Net settlement.					
10. Partial, progress & advance payments.					
11. Net payments requested.					

**Part III—Discussion of Settlement**

1. Contractor's cost.
  - a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.
  - b. In the case of a lump sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included.
  - c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
  - d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.
  - e. Comment on any unadjusted contractual changes which are included in the settlement.
  - f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
  - g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.
2. Profit. Explain the basis and factors considered in arriving at a fair profit.
3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.
4. Subcontractor's settlements. Include the number of no costs settlements, settlements concluded by the contractor under delegation of authority and those approved by the termination contracting officer, as well as the net amount of each.
5. Partial payments. Furnish the total amount of partial payments, if any.
6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.
7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, which the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.
8. Assignments. List any assignments, giving name and address of assignee.
9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.
10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.
11. Government property. State whether all Government property has been accounted for.
12. Special tooling. If involved, furnish comment on disposition.
13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

**Tabular Summary for Complete or Partial Termination**

	Amount claimed	Amount allowed
Prime contractors charges (before disposal credits).		
Plus: Subcontractor charges (after disposal credits).		
Gross settlement:		
Less: disposal credits—Prime.		
Net settlement—Less:		
Prior payment credits (this settlement).		
Previous partial settlements.		
Other credits or deductions.		
Net payment:		
Total contract price (complete termination).		
Contract Price of Items Terminated (for partial termination)—Less:		
Total payments to date.		
Net payment from this settlement.		
Fund reserved for reservations.		
Reduction in contract price.		

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.
15. Include statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-2—SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

**Part II—Summary of Settlement**

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49-3 and 49-4. Partial settlements may be summarized on Table 49-4.
2. Comments. Explain tabular summaries.
  - a. Summary of final settlement (see Table 49-3).
    - (1) Explain why the auditor's final report was not available for consideration, if applicable.
    - (2) Explain how the fixed fee was adjusted. Identify basis used such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors which may be given consideration are outlined in FAR 49.305.
    - (3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.
    - (4) Identify reservations included in the settlement that are other than standard reservations required by regulations and which are concerned with pending claims and refunds.
    - (5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.
    - (6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
    - (7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
    - (8) If auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
    - (9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.
    - (10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
    - (11) Show number and amounts of settlements with subcontractors.
    - (12) Use the following summary where settlement includes costs and fixed fee in a complete termination:

Gross settlement .....		\$ _____
Less: Disposal credits .....		_____
Net settlement .....		_____
Less: Prior payments .....		_____
Other credits or deductions .....		_____
Total .....		_____
Net payment .....		\$ _____
Total contract estimated cost plus fixed fee .....		_____
Less: Net settlement .....		_____
Estimated reserve for exclusions .....		_____
Final contract price:		
(Consisting of \$ _____ for reimbursement of costs and		
\$ _____ for adjusted fixed fee) .....		_____
Reduction in contract price (credit) .....		_____

- (13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).
- (14) Government property. State whether all Government property has been accounted for.
- (15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-3—SUMMARY OF SETTLEMENT

		Amount claimed	Amount allowed
1. Previous reimbursed costs—Prime and Subs .....	\$	\$	\$
2. Previous unreimbursed costs .....			
3. Total cost settlement .....	\$	\$	\$
4. Previous fees paid—Prime .....	\$	\$	\$
5. Previous fees unpaid—Prime .....			

TABLE 49-3—SUMMARY OF SETTLEMENT—Continued

		Amount claimed	Amount allowed
6. Total fee settlement .....		\$ _____	\$ _____
7. Gross settlement .....		\$ _____	\$ _____
Less: Deductions not reflected in Items 1-7.			
a. Disposal credits .....	\$ _____		
b. Other charges against contractor arising from contract .....	\$ _____		
8. Net settlement .....			\$ _____
Less: Prior payment credits .....			
9. Net payment .....			\$ _____
10. Recapitulation of previous settlements (insert number of previous partial settlements effected on account of this particular termination):			
Aggregate gross amount of previous settlements .....			\$ _____
Aggregate net amount of previous partial settlements .....			\$ _____
Aggregate net payment provided in previous partial settlements .....			\$ _____
Aggregate amount allowed for prime contractor acquired property taken over by the Government in connection with previous partial settlements.			\$ _____

TABLE 49-4—UNREIMBURSED COSTS SUBMITTED ON SF 1437 \*

Costs	Amounts claimed by contractor's proposal	Auditor's recommendation		TCO's computation
		Cost questioned	Unresolved items	
1. Direct material.				
2. Direct labor.				
3. Indirect factory expense.				
4. Dies, jigs, fixtures and special tools.				
5. Other costs.				
6. General and administrative expenses.				
7. Fee.				
8. Settlement expense.				
9. Settlement with subs.				
10. Total costs (Items 1-9).				

\* Expand the format to include recommendations of technical personnel as required.

[56 FR 36471, July 31, 1991, as amended at 62 FR 34128, June 24, 1997]

**Subpart 249.5—Contract Termination Clauses**

**249.501 General.**

**249.501-70 Special termination costs.**

(a) The clause at 252.249-7000, Special Termination Costs, may be used in an incrementally funded contract when its use is approved by the agency head.

(b) The clause is authorized when—

(1) The contract term is 2 years or more;

(2) The contract is estimated to require—

(i) Total RDT&E financing in excess of \$25 million; or

(ii) Total production investment in excess of \$100 million; and

(3) Adequate funds are available to cover the contingent reserve liability for special termination costs.

(c) The contractor and the contracting officer must agree upon an amount that represents their best estimate of the total special termination costs to which the contractor would be entitled in the event of termination of the contract. Insert this amount in paragraph (c) of the clause.

(d)(1) Consider substituting an alternate paragraph (c) for paragraph (c) of the basic clause when—

(i) The contract covers an unusually long performance period; or

(ii) The contractor's cost risk associated with contingent special termination costs is expected to fluctuate extensively over the period of the contract.

(2) The alternate paragraph (c) should provide for periodic negotiation and adjustment of the amount reserved for special termination costs. Occasions for periodic adjustment may include—