

DEPARTMENT OF THE ARMY
Omaha District, Corps of Engineers
215 North 17th Street
Omaha, Nebraska 68102-4978

DM 1180-1-5

CEMRO-CT

Memorandum
No. 1180-1-5

15 August 1990

Contracts
TERMINATION FOR CONVENIENCE

1. Purpose. This memorandum prescribes a standing operating procedure for the settlement of contracts terminated for convenience of the Government. It does not deal with contracts terminated for default, except when such termination has been determined to have been improper and it is converted to a termination for convenience.

2. Applicability. It is applicable to all elements of the Omaha District.

3. References:

a. FAR Part 49, as supplemented by DOD, Army, and Engineer supplement thereto.

b. MRD-R 415-1-7, establishment of Contract Termination Team.

4. Authority for Termination. The Contracting Officer may, after consultation with the requiring activity, terminate a contract for convenience of the Government if the action is \$500,000 or less. Any action in excess of \$500,000 requires the approval of the Commander, Missouri River Division prior to issuing the termination notice. Termination of contract awarded as the result of Military Interdepartmental Purchase Request shall be in accordance with DFARS 8.7012.

5. Procedures. Upon receipt of confirmed instructions to terminate a contract for convenience of the Government or upon decision to terminate within original authority, Contracting Officers will take the following actions:

a. Discontinue any pricing negotiations with the contractor which are in process, whether with respect to claims, change orders, progress payments or otherwise, unless the negotiations are concerned solely with changes in the work to be continued on a partially terminated contract. In such event the negotiations should be restricted to pricing the change, exclusive of any consideration of the affect of the partial termination.

DM 1180-1-5
15 Aug 90

b. Dispatch a telegraphic or telefax notice of termination to the contractor. The appropriate form of telegraphic notice set forth in FAR 49.601-1 will be used but may be modified in minor details as necessary to fit special cases. If the status of the work is such that there can be reasonable doubt as to whether or not the contractor will file a claim for costs in settlement of the terminated contract, the following sentence shall be added to the telegram:

"Advise within ten days whether or not you intend to file a termination claim."

A copy of this notice will be furnished the Finance & Accounting Branch with instructions to reduce obligations to an amount equal to earnings to date plus estimated settlement costs.

6. Contractor's Acceptance at no Cost to Government. If the reply indicates that the termination will be accepted at no cost to the Government, a no-cost settlement agreement (FAR 49.603-6 or 49.603-7, as applicable) will be prepared, executed by the parties and distributed in the same manner as other supplemental agreement.

7. Contractor's Request for Compensation. In all other cases, the Contracting Officer will proceed as follows:

a. Issue SF-30 confirming the telegraphic notice of termination (DFARS 249.102).

b. As soon as practicable after acknowledgment and return of SF-30 notice of termination, the following papers and information should be forwarded to the Chairman, Contract Termination Team.

(1) One copy of each of the pertinent drawings, marked to show as-built conditions on completed work related to the terminated portion. (It is not necessary at this stage to delineate precisely the status of the work at the time of termination, unless the nature of the job lends itself to convenient showing of these conditions).

(2) One copy of notice of termination.

(3) One copy of the last payment estimate pertaining to the terminated contract. In case of a partially terminated contract, one copy of the last payment estimate prior to the effective date of partial termination.

(4) A statement of the names and addresses of assignees or creditors of record, if any.

(5) A statement as to the status of completion, status of progress payments, the total amount considered to have been earned by the contractor and payable under the terms of the contract (if termination had not intervened) to the effective date of termination and the amount retained by the Government from sums earned by the contractor. (Such sums, withheld by the Contracting Officer pursuant to a contract right, will not be paid, as such, since all sums determined to be owing to the contractor will be included in the final negotiated settlement).

(6) Information as to any claims or appeals from decisions of the Contracting Officer which have not been settled as of the date of the notice of termination.

(7) A list of Government property furnished to the contractor with notation showing which has been incorporated into the work.

8. Termination Team. A Contract Termination Team has been established within the Omaha District to settle terminated contracts. The chairman of that team is in the Contracting Division.

9. Action by Contract Termination Team. After receipt of the documents and information identified above, the Contract Termination Team will proceed with settlement of the terminated contract. The team will individually and as a group represent and assist the Contracting Officer in the individual and specialized fields involved in the settlement of contracts terminated in whole or in part for the convenience of the Government. The Contract Termination Team will be responsible for taking the following specific steps leading to final settlement of a terminated contract:

a. Hold an initial conference with the contractor to develop a definite program for effecting settlement (FAR 49.105(c)).

b. Furnish the contractor with appropriate forms for submission of settlement proposal (FAR 49.602-1), together with advice as to the completion of the forms.

c. Physically inspect the termination inventory and determine its allocability to the terminated contract (FAR 49.105(b)(4)).

d. Arrange for disposition of the inventory by the procedure prescribed in FAR 49.105(b)(4).

e. Obtain approval of proposed property disposal when required.

f. Forward the Settlement Proposal when it exceeds \$25,000 to the authorized Government audit agency for review and recommendation. The responsible organization for performing the audit reviews will be the Defense Contract Audit Agency for military contracts and the Resident Auditor for civil contracts. Whether claims less than \$25,000 should be submitted for review is a matter for determination in light of the facts in each instance. Every subcontract settlement proposal submitted as a part of the prime contractor's settlement proposal shall be forwarded for audit review in each case where audit of the prime contractor's proposal is desired. However, it is not necessary to specifically request audit of the sub-contractors' proposals unless audit of one or more is particularly desired. With the request for audit, the following papers should be forwarded to the auditor:

(1) Two copies of settlement proposals of prime contractors and sub-contractors (see above) with related papers.

(2) A copy of the contract with modifications unless previously forwarded in compliance with other regulations.

g. Negotiate a final settlement of the termination claim subject to such approvals as are required by regulation. Promptly after negotiation of final settlement, request additional funds, if required, pending preparation and submission of the negotiator's report.

h. Prepare a Memorandum for the Record setting forth in reasonable detail the principal elements of the settlement and the basis therefor (FAR 49.105(c)). This report shall indicate the cost chargeable to the respective line items where more than one exist. This report is to be submitted to the Contracting Officer for approval. The report will be filed with all other pertinent records and documents supporting the termination (FAR 49.105-3).

i. Upon approval of the report by the Contracting Officer, prepare the final settlement agreement (SF30) and submit three copies of it to the contractor for signature. The various formats of final settlement agreement are set forth in FAR 49.603. The contractor will be instructed to sign all three copies and return them to the Contracting Division who will prepare them for signature of the Contracting Officer. The contractor will also be instructed to submit its invoice or voucher pursuant to requirement of the settlement agreement.

10. Execution of Settlement. After receipt of settlement agreement signed by the contractor and presentation of the properly certified invoice or voucher, the Contracting Officer will execute the settlement agreement (which incorporates the settlement as previously approved) and make final payment under the instrument. The final settlement agreement should be distributed in the same manner as any other supplemental agreement to the same contract. The executed copy should have attached to it a copy of the voucher evidencing final payment, and will complete the contract termination file. An authenticated copy will be forwarded to the applicable audit organization with a copy of the negotiator's report attached. The contract termination file will be retained in the official contract files for the period prescribed by regulation.

FOR THE COMMANDER:


DONALD E. NEEDHAM
LTC, EN
Deputy Commander

DISTRIBUTION:
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