

TERMINATIONS FOR CONVENIENCE

Government Budget Concerns May Cause an Increase in Contract Terminations

INTRODUCTION

All Government contracts are subject to the Termination for Convenience Clause ([FAR 49.502](#)). This clause allows the Government to terminate a contract whenever "...it is in the Government's interest." ([FAR 52.249-1](#)). What this means is that the Government has an exit strategy, in the event that it needs to discontinue a contract because of technological developments that make continued work on the contract outmoded, lack of funding due to budgetary restrictions, or in some instances, because the work is simply no longer needed (i.e. work during war-time that is no longer necessary). This clause effectively **avoids liability for a Breach of Contract** action against the Government.

WHAT THIS MEANS FOR THE CONTRACTOR

Contractors should be aware that a Termination for Convenience is not the same as a Breach of Contract. As such, recoverable costs are not the same under a Termination for Convenience ([FAR 52.249-2\(1-3\)](#)). When the government terminates a contract for its convenience, a contractor is **entitled to recover** the following costs associated with the Termination:

- Costs incurred for work completed and accepted at the time of the Termination;
- Costs that are considered allowable, allocable, and reasonable;
- Profit on the above costs incurred; and
- Close-out, demobilization, and settlement proposal costs associated with preparing a final cost proposal for submission to the government.

Alternatively, under a Breach of Contract by the government, recoverable costs (also commonly referred to as damages) may include monetary costs such as forecasted profits, overhead, and damages for time lost or otherwise needed to perform the work as required by the contract ([Recovery](#)). These types of costs (damages) are not recoverable under a Termination for Convenience.

Typically, a government contract contains a Termination for Convenience clause indicating that the government has the right to terminate the contract if necessary. I say typically because although the clause is mandatory in government procurement contracts, it can be unwittingly omitted. Consequently, contractors should be aware that the government may terminate a contract for Convenience whether or not the Termination for Convenience clause is actually included in the contract. This is according to the "[Christian Doctrine](#)," which states that:

"...where governing regulations require inclusion of various clauses into government contracts, ...several decisions have read into contracts missing but mandatory procurement provisions, treating mandatory contract clauses as part of the contract even if not expressly stated in the contract itself."

Government contractors may continue to see a rise in the number of Terminations for Convenience due to government budgetary restrictions that ultimately result in lack of funding for projects (see [NCMA analysis here](#)). The government may, at that point, deem the project no longer necessary and simply request that a contractor cease work on the project. Once this occurs, a contractor will most likely be notified by the Contracting Officer that he or she intends to issue a Termination for Convenience and sets forth the next steps that the contractor should follow.

It is important to note that a Termination for Convenience is intended to protect the government's interests, and not necessarily a contractor's interests. Contractors should become educated and informed about the different contract termination costs available so that the proper procedures are followed to ensure a reasonable and fair resolution upon a Termination for Convenience proposal.

CONCLUSION

Excell Consulting International has been highly successful in aiding in the recovery of costs associated with Terminations for Convenience. The experienced professionals at Excell Consulting understand the procedures necessary to guide your company through a Termination for Convenience.

Retaining the assistance of a professional consultant should be seriously considered to protect a contractor's interests properly and thoroughly. The experts at Excell Consulting International, Inc. stand ready to assist and evaluate your company's position and provide valuable and cost-effective guidance for your business.

In the end, you will be glad you made the call; by the way, it's a FREE CALL.

EXCELL CONSULTING: "HERE TODAY FOR YOUR TOMORROW."

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