



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Termination for Convenience

Contracts Directorate
OPR: DCMA-AQ

DCMA-INST 101
October 10, 2014

SUMMARY OF CHANGES. *This revision adds references and text for DFARS PGI, replaces Electronic Document Workflow references, includes the DCMA FAR 49.107 class deviation, adds a definitions page, deletes unnecessary language, adds required language, and moves the flow chart to the resource Web page.*

1. PURPOSE. This Instruction:

- a. ***Revises*** DCMA Instruction (DCMA-INST) 101 “Termination for Convenience” (Reference (a)).
- b. Updates ~~DCMA~~ policy, assigns roles and responsibilities ~~for personnel involved~~, and provides procedures for contracts terminated for convenience.
- c. ~~Implements DCMA policy pursuant to the references on page 3.~~
- c. Complies with DoD Directive (DoDD) 5105.64, ***“Defense Contract Management Agency (DCMA)”*** (Reference (b)).
 - a. ~~Was developed based on guidance from various sources including Federal Acquisition Regulations (FAR), Defense Federal Acquisition Regulation Supplements (DFARS), and associated content located on the Procedures, Guidance and Information (PGI) Web site. See the References page for a comprehensive list of guidance used during development of this Instruction.~~

2. APPLICABILITY. This Instruction applies to all DCMA activities ~~unless higher level regulations, policy, guidance, or agreements take precedence (e.g., International Directorate (DCMAI) and Special Programs Directorate (DCMAS) activities).~~ ***that prepare, manage, review, validate, approve, and use DCMA policies.***

3. MANAGERS’ INTERNAL CONTROL PROGRAM. This Instruction contains managers’ internal control provisions that are subject to evaluation and testing as required by DCMA-INST 710 “Managers’ Internal Control Program” (Reference (c)). The process flowchart is located ~~at Appendix A.~~ ***on the resource Web page for this Instruction.***

4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. RESOURCE PAGE. <http://home.dcma.mil/policy/101r>

6. PLAS CODES. Process Codes:

- a. Process 172 – Termination for Convenience.
- b. Programs: ACAT/Other Customers (when applicable).
- c. Other National: Training and Travel, Local Programs (when applicable).

7. EFFECTIVE DATE. By order of the Director, DCMA, this revised Instruction is effective October 10, 2014, and all applicable activities shall be fully compliant within 60 days from this date.


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REFERENCES

- (a) DCMA-INST 101, "Termination for Convenience," *September 23, 2013 (hereby canceled)*
- (b) DoDD 5105.64, "Defense Contract Management Agency (DCMA)," January 10, 2013
- (c) DCMA-INST 710, "Managers' Internal Control Program," *April 21, 2014*
- (d) *DCMA-INST 552, "Information Security Program," October 29, 2013*
- (e) *FAR 49.105, Duties of Termination Contracting Officer after Issuance of Notice of Termination*
- (f) *DFARS PGI 249.105-1 Termination status reports*
- (g) FAR 49.601, Notice of Termination for Convenience
- (h) FAR 49, Termination of Contracts
- (i) DFARS 249, Termination of Contracts
- (j) FAR 12.4, Unique Requirements Regarding Terms and Conditions for Commercial Items
- (k) FAR 12, Acquisition of Commercial Items
- (l) FAR 49.105(c), Duties of Termination Contracting Officer after Issuance of Notice of Termination
- (m) FAR 49.105(a), Duties of Termination Contracting Officer after Issuance of Notice of Termination
- (n) FAR 49.105-2, Release of Excess Funds
- (o) FAR 49.206-3, Submission of Inventory Schedules
- (p) FAR 49.303-2, Submission of Inventory Disposal Schedules
- (q) FAR 49.109-4, No-Cost Settlement
- ~~(r) FAR 49.105, Duties of Termination Contracting Officer after Issuance of Notice of Termination~~
- (r) FAR 49.206-1, Submission of Settlement Proposals
- (s) FAR 49.303-1, Submission of Settlement Proposal
- (t) FAR 49.107, Audit of Prime Contract Settlement Proposals and Subcontract Settlements
- (u) *DCMA FAR 49.107, Class Deviation*
- (v) DCMA-INST 120, "Pricing and Negotiation Contracts," *April 1, 2014*
- (w) FAR 15.406-1, Prenegotiation objectives
- (x) DFARS PGI 215.406-1, Prenegotiation objectives
- (y) DCMA-INST 134, "Boards of Review," *November 4, 2013*
- (z) DFARS 249.110, Settlement negotiation memorandum
- (aa) FAR 49.110, Settlement Negotiation Memorandum
- (ab) *DFARS PGI 249.110, Settlement negotiation memorandum*
- (ac) FAR 49.109, Settlement Agreements
- (ad) FAR 49.109-7, Settlement by Determination
- (ae) *DFARS PGI 249.109-7, Settlement by determination*
- (af) DCMA-INST 905, "Contract Claims and Disputes," *December 17, 2013*
- (ag) DFARS 249.70, *Special Termination Requirements*
- (ah) DCMA-INST 135, "Contract Closeout," *August 6, 2013*
- (ai) *FAR 49.001, Definitions*

CHAPTER 1

POLICY

1.1. POLICY. It is DCMA policy to:

1.1.1. Settle contract terminations for convenience as delegated by the procuring contracting officer (PCO) in a timely manner and coordinate with the required functional *and technical* specialists *and assigned DCMA legal counsel*.

1.1.2. Communicate with all parties for a successful settlement that ensures the contractor is fairly compensated on a timely basis while protecting the rights and interests of the Government.

1.1.3. Ensure post-termination conferences are conducted, if necessary.

CHAPTER 2

RESPONSIBILITIES

2.1. ADMINISTRATIVE CONTRACTING OFFICER (ACO). The ACO is responsible for:

2.1.1. Forwarding a copy of termination notice and necessary documentation to the termination contracting officer (TCO) *via the Terminations Inbox, except for DCMA Special Programs (see paragraph 2.3.1).*

2.1.2. Uploading completed termination files into the official contract administration file located within ~~Electronic Document Workflow (EDW)~~ *the Enterprise Record Management System* upon conclusion of the termination settlement. Classified documents will be maintained in the official contract file in accordance with ~~security regulations~~ *DCMA-INST 552, "Information Security Program" (Reference (d))* and not input into ~~(EDW)~~ *the Enterprise Record Management System.*

2.2. ADMINISTRATIVE GRANTS OFFICER (AGO). The AGO acts as TCO for other transaction (OT) agreements, including technology investment agreements, and is responsible for performing termination actions, to the extent delegated, in accordance with the terms of each agreement.

2.3. TERMINATION CONTRACTING OFFICER (TCO). The TCO is responsible for:

2.3.1. Executing the duties of a TCO in accordance with FAR 49.105, Duties of Termination Contracting Officer After Issuance of Notice of Termination (Reference (e)). DCMA Special Programs retains the authority to negotiate and settle terminations for convenience.

2.3.2. Establishing initial contact with contractor within 3 working days of receiving termination notice/modification.

2.3.3. Negotiating termination settlements with the contractor, including no-cost settlements if appropriate.

2.3.4. Ensuring DD Form 1598, Contract Termination Status Report, is sent to the PCO within 30 days after receipt of the termination notice *in accordance with DFARS PGI 249.105-1, Termination status reports (Reference (f))*.

CHAPTER 3

PROCEDURES

3.1. REVIEW TERMINATION FOR CONVENIENCE NOTICE. Once a decision to terminate a contract is made, the PCO issues a written notice *to the contractor* in accordance with FAR 49.601, *Notice of Termination for Convenience* (Reference (g)). ~~to the contractor.~~

NOTE: All actions on a termination for default, from the decision to terminate to closing of the contract file, remain the responsibility of the PCO. In the event termination for default is converted to a termination for convenience, the TCO/AGO may accept settlement responsibility if delegated by the PCO.

3.1.1. The ACO forwards a copy of the Termination for Convenience notice and all documents related to the termination to the TCO *via the Terminations Inbox, except for DCMA Special Programs (see paragraph 2.3.1.)*.

3.1.1.1. TCO/AGO shall review the Termination for Convenience notice in accordance with FAR 49, *Termination of Contracts (Reference (h))*, DFARS 249, *Termination of Contracts (Reference (i))*; or FAR 12.4, *Unique Requirements Regarding Terms and Conditions for Commercial Items* (Reference (j), ~~(f)~~, ~~or (g)~~), or the terms of the OT. During initial review of contract file, the TCO/AGO shall review the termination for convenience clause within the contract to determine if it is a termination as identified within FAR 49 (Reference (h)), or a termination of a commercial item as identified within FAR 12, *Acquisition of Commercial Items* (Reference (k)). The TCO/AGO shall review files forwarded by the ACO to determine completeness. In the event additional files are needed, the TCO shall request the ACO to forward the files identified. If termination for convenience is for a commercial item, the TCO shall review the procedures set forth at FAR 12.4 (Reference (j)) and applicable commercial item clauses in the contract concerning termination.

3.2. CONDUCT POST-TERMINATION CONFERENCE. The TCO ~~may~~ *should* conduct a post-termination conference (FAR 49.105(c), *Duties of Termination Contracting Officer after Issuance of Notice of Termination* (Reference (l))) and direct action required of the prime contractor (FAR 49.105(a), *Duties of Termination Contracting Officer After Issuance of Notice of Termination* (Reference (m))). During the post-termination conference, the TCO will:

3.2.1. Request the contractor to provide an estimate of reimbursable termination costs, estimate the funds required to settle termination, and within 30 days *after receipt of the termination notice* (FAR 49.105-2, *Release of Excess Funds* (Reference (n))), recommend release of excess funds to the PCO/AGO.

3.2.2. Emphasize to the contractor that complete inventory schedules are due within 120 days of date of the termination (FAR 49.206-3, *Submission of Inventory Schedules* (Reference (o)) or FAR 49.303-2, *Submission of Inventory Disposal Schedules* (Reference (p))) for cost contracts, or for OTs, within an appropriate timeframe, as determined by the AGO.

3.2.3. Issue a no-cost bilateral modification reflecting the settlement agreement *in accordance with* FAR 49.109-4, *No-Cost Settlement* (Reference (q)).

3.2.3.1. If during the post-termination conference the TCO/AGO and contractor mutually agree that the contractor/recipient has not incurred significant costs allocable to the terminated portion of the contract and the contractor accepts a no-cost settlement, the TCO/AGO issues a bilateral modification reflecting the settlement agreement.

3.2.3.2. If the contractor does not accept a no-cost settlement, the contractor must submit a termination settlement proposal *to the TCO* within 1-year of the date of the termination notice ~~to the TCO~~, unless extended by the TCO and the applicable clause in contract (FAR 49.206-1, *Submission of Settlement Proposals* (Reference (r)) and FAR 49.303-1, *Submission of Settlement Proposal* (Reference (s))).

NOTE: Prior to entering into a no-cost settlement, the TCO shall insure no money is due to the Government under the contract (i.e., overpayment made to contractor, unliquidated progress payment).

3.3. INITIATE REQUEST FOR PLANT CLEARANCE ACTION.

3.3.1. Within 120 days from date of termination, the contractor is required to submit complete termination inventory schedules unless otherwise extended by the TCO (FAR 49.206-3, (Reference (o)) or FAR 49.303-2 (Reference (p))) for cost contracts.

3.3.1.1. The TCO ensures copies of the contractor's complete inventory schedules are included with the request for plant clearance. The AGO must coordinate plant clearance actions with the plant clearance officer for OTs.

3.4. REVIEW SETTLEMENT PROPOSAL. When the contractor submits a timely settlement proposal, the TCO/AGO reviews the proposal and refers proposals greater than \$100,000 to Defense Contract Audit Agency (DCAA) *or to the appropriate audit agency (e.g., Host Nation)* for review and ~~appropriate~~ recommendations (FAR 49.107, *Audit of Prime Contract Settlement Proposals and Subcontract Settlements* (Reference (t))),. See *paragraph 3.5.1.* regarding a DCMA FAR 49.107 Class Deviation.

3.5. OBTAIN FIELD REVIEWS. After review of contractor's settlement proposal, the TCO/AGO may request assistance from other functional or technical specialists, ~~Office of Counsel~~ *assigned legal counsel*, and DCAA *or the appropriate audit agency (e.g., Host Nation)* (FAR 49.105 (Reference (f))). In accordance with FAR 49.107 (Reference (t)), all proposals that exceed \$100,000, at either the prime or subcontract level shall be referred by the DCMA TCO to the appropriate audit agency for review and recommendation. The TCO should coordinate with the DACO/ACO to obtain current indirect rate information.

3.5.1. DCMA issued a Class Deviation for FAR 49.107 (Reference (t)) effective for 1-year from September 10, 2014 (DCMA FAR 49.107, Class Deviation (Reference (u))). The signed deviation located on the resource Web page for this Instruction increases the audit threshold from \$100,000 to the Truth in Negotiations Act threshold.

3.5.2. For a complete termination of a cost-reimbursable contract and upon receipt of completion voucher from contractor, the TCO initiates a request for a Contract Audit Closing Statement from DCAA.

NOTE: The AGO determines the appropriate source for audit assistance for OTs.

3.6. PREPARE PRENEGOTIATION POSITION.

3.6.1. Prior to entering into negotiation, the negotiator shall establish prenegotiation objectives. The prenegotiation objectives shall be:

3.6.1.1. Prepared in accordance with DCMA-INST 120, "Pricing and Negotiation," (Reference (v)).

3.6.1.2. Documented in the prenegotiation objectives memorandum (PNOM) template with the appropriate level of review and approval (FAR 15.406-1, *Prenegotiation Objectives* (Reference (w)) and DFARS PGI 215.406-1, *Prenegotiation Objectives* (Reference (x))).

NOTE 1: Prior to entering into negotiation, the audit report from DCAA and the Inventory Disposal Report from the Plant Clearance Group must be obtained.

NOTE 2: For a proposed settlement amount greater than or equal to \$10 million, a Board of Review (BoR) is required in accordance with DCMA-INST 134, "Boards of Review" (Reference (y)).

3.6.2. The TCO/AGO must include results from DCMA field support and the DCAA audit into the prenegotiation position as applicable (refer to DFARS 249.110, *Settlement negotiation memorandum* (Reference (z))) or to OT provisions.

3.6.3. The TCO/AGO must resolve all DCAA Form 1 costs, including those not resolved by the ACO.

3.7. NEGOTIATE SETTLEMENT AND ISSUE BILATERAL MODIFICATION.

3.7.1. Upon completion of negotiation, the TCO shall:

3.7.1.1. Prepare a settlement memorandum supporting the amount, if any, due the contractor/recipient (FAR 49.110, *Settlement Negotiation Memorandum* (Reference (aa))). *See DFARS PGI 249.110, Settlement negotiation memorandum (Reference (ab)) for guidance regarding fixed-price and cost-reimbursement contracts.*

3.7.1.2. Issue a modification if agreement can be reached (FAR 49.109, *Settlement Agreements* (Reference (ac))).

3.7.2. If the TCO/AGO and contractor/recipient cannot reach an agreement, the TCO/AGO issues the contractor/recipient a 15-day notice giving contractor/recipient the opportunity to

submit additional information. After considering the additional information provided, if any, the TCO/AGO issues a determination (*see* FAR 49.109-7, ***Settlement by Determination*** (Reference *(ad)*) ***and DFARS PGI 249.109-7 Settlement by determination (Reference (ae)) for use of Standard Form 30, "Amendment of Solicitation/Modification of Contract"***).

NOTE 1: A contract BoR action may be required prior to executing the settlement agreement or when the TCO and contractor cannot reach an agreement on settlement ~~costs~~ ***amount*** (see DCMA-INST 134 (Reference *(y)*)). The TCO should consider alternative dispute resolution (ADR) methods prior to issuing a final determination/decision. Prior to issuing a final determination or decision, the TCO/AGO shall consult with the ~~esignant Office of Counsel~~ ***assigned DCMA legal counsel***. Guidance pertaining to issuance of Unilateral Determinations and Final Decisions is found at DCMA-INST 905, "Contract Claims and Disputes" (Reference *(af)*).

NOTE 2: For OTs, disputes are resolved in accordance with the terms of the agreement.

NOTE 3: See DFARS 249.70, Special Termination Requirements (***Reference (ag)***), for terminated contracts with the Canadian Commercial Corporation.

3.8. CLOSE DOCKET.

3.8.1. Once the TCO closes the docket, all files are forwarded to the ACO for incorporation into the official contract file (see DCMA-INST 135, "Contract Closeout" (Reference *(ah)*)). ***The TCO will submit a final contract termination report within 30 days after closing the termination case in accordance with DFARS PGI 249.105-1 (Reference (f)).***

3.8.2. The TCO may, with PCO approval, deobligate excess funds prior to returning the docket to the ACO for closeout. Absent PCO authority, the TCO will send a closed termination docket to the ACO advising there are excess funds to be deobligated. A deobligation is the downward adjustment of the obligation recorded in a contract document. It is caused by factors such as (1) termination of a part of the project, (2) reduction in material prices, (3) cost under-run, or (4) correction of recorded amounts. The ACO will proceed with normal administration activities on the balance of the remaining contract or coordinates with the PCO to ensure funds are deobligated.

NOTE: If the termination is partial, the documents are included in the contract file. If the termination is complete, the ACO should proceed with closeout of the contract. If the termination is complete for a contract administered by DCMAI, the TCO should forward all files to the DCMAI Contract Closeout Center so they can proceed with closeout of the contract.

3.9. AGO ACTIONS ON OT TERMINATIONS.

3.9.1. OT terminations are processed in accordance with terms and conditions contained in the agreement document and in coordination with the awarding officer. Terminations may be partial or complete.

3.9.2. When the AGO is delegated authority to negotiate the termination settlement, the AGO shall:

- Negotiate settlement with the recipient
- Issue a settlement modification covering all outstanding issues
- Identify any excess funds to awarding Agreements Officer
- Document the agreement file with a settlement memorandum addressing actions taken to accomplish settlement

3.9.3. As early in the settlement process as possible, the AGO provides the agreements officer with status of any excess funds and takes prompt action to deobligate excess funds as directed by the agreements officer.

3.9.4. If the termination is a complete termination, the agreement is closed in accordance with procedures contained in DCMA-INST 135 (Reference (*ah*)).

GLOSSARY

DEFINITIONS

Settlement agreement. A settlement agreement means a written agreement in the form of a contract modification settling all or a severable portion of a settlement proposal. (FAR 49.001, Definitions (Reference (ai))).

Settlement proposal. A settlement proposal means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by FAR Part 49 (Reference (h)). A settlement proposal is included within the generic meaning of the word “claim” under false claims acts. (FAR 49.001 (Reference (ai))).

ACRONYMS

ACO	administrative contracting officer
AGO	administrative grants officer
BoR	board of review
DCAA	Defense Contract Audit Agency
DCMA-INST	Defense Contract Management Agency Instruction
DCMAI	DCMA International Directorate
DFARS	Department of Defense Federal Acquisition Regulation Supplement
DoDD	DoD Directive
EDW	Electronic Document Workflow
FAR	Federal Acquisition Regulation
PCO	procuring contracting officer
PGI	procedures, guidance, and information
PLAS	Performance Labor Accounting System
PNOM	prenegotiation objectives memorandum
OPR	office of primary responsibility
OT	other transaction
TCO	termination contracting officer