



## DCMA Manual 2501-06

### Terminations

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**Office of Primary Responsibility**

**Contract Maintenance**

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October 10, 2014

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Process flow and key controls are located on the Resource Page

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Located on the Resource Page

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<https://360.intranet.dcma.mil/Sites/Policy/CM/SitePages/2501-06r.aspx>

**Approved by:**  
**Change 1 Approved by:**

David H. Lewis, VADM, USN, Director  
David G. Bassett, LTG, USA, Director

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**Purpose:** This issuance, in accordance with the authority in DoD Directive 5105.64:

- Implements DCMA-INST 2501, "Contract Maintenance"
- Defines procedures for negotiating settlements of contracts terminated for the convenience of the Government that were previously covered in DCMA-INST 101, "Termination for Convenience"

## **SUMMARY OF CHANGES**

The changes to this issuance are substantive. The most notable changes are:

- Clarify Termination Contracting Officer responsibilities
- Clarify Administrative Contracting Officer responsibilities
- Define Termination forms used
- Changed the Manual to active voice, where applicable
- Administrative updates

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

**1.1. APPLICABILITY.** This issuance applies to all DCMA activities that perform contract maintenance activities.

**1.2. POLICY.** This Manual expands on the contract administration policies established in DCMA-INST 2501. It is DCMA policy to:

- a. Settle contract terminations for convenience as delegated by the Procurement Contracting Officer (PCO) in a timely manner and coordinate with the required functional and technical specialists and assigned DCMA legal counsel.
- b. 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.
- c. Execute this Manual in a safe, efficient, effective, and ethical manner.

## **SECTION 2: RESPONSIBILITIES**

**2.1. TERMINATIONS GROUP DIRECTOR.** The Terminations Group Director must:

- a. Plan and direct Terminations Group mission accomplishments.
- b. Evaluate and resolve operational issues.
- c. Provide technical expertise as the senior government expert for all terminations for convenience actions.
- d. Foster teamwork and provide resource management.
- e. Ensure group compliance with regulatory requirements and guidance.
- f. Review termination settlement proposals in excess of \$5 million.
- g. Ensure Boards of Review are conducted in accordance with (IAW) Agency policy.
- h. Approve or disapprove submitted partial payments.
- i. Accept or reject work IAW DCMA Manual 4502-02, "Workload Acceptance."

**2.2. TERMINATIONS TEAM SUPERVISOR.** The Terminations Team Supervisor must:

- a. Monitor the terminations inbox for timely workload assignment.
- b. Provide guidance and assistance to Termination Contracting Officers (TCO) and Termination Contracts Specialists.
- c. Oversee and manage TCO workload as assigned.
- d. Ensure group compliance with regulatory requirements and guidance.
- e. Review proposed settlements in excess of \$1 million.
- f. Oversee TCO compliance with required annual and functional training.

**2.3. TERMINATION CONTRACTING OFFICER.** The TCO will:

- a. Execute the duties of a TCO IAW Federal Acquisition Regulation (FAR) 49.105 (a); and ensure that all training requirements are met.
- b. Maintain the termination contract file.

- c. Prepare and distribute the DD Form 1598, "Contract Termination Status Report," to the Administrative Contracting Officer (ACO) and PCO. The DD Form 1598 must be uploaded to Integrated Workload Management System (IWMS) contract file.
- d. Review the notice of termination.
- e. Establish initial contact and conduct post termination conference with contractor within 3 working days of receipt of docket assignment.
- f. Notify PCO and ACO of excess funds eligible for release, or request additional funding if required.
- g. Check for canceling funds.
- h. Coordinate plant clearance action(s).
- i. Review and accept the contractor's inventory schedule.
- j. Review contractor's settlement proposal for adequacy.
- k. Request Defense Contract Audit Agency (DCAA) audit of contractors' proposal(s) and assist audits of subcontractor(s) settlement proposal(s), as applicable.
- l. Update Contract Audit Follow-Up (CAFU) eTool IAW DCMA Manual 2201-04 "Contract Audit Follow Up."
- m. Request technical review as applicable.
- n. Ratify subcontractor settlement proposals.
- o. Execute a Pre-negotiation Objective Memorandum.
- p. Negotiate termination settlement.
- q. Execute Settlement Negotiation Memorandum.
- r. Execute a settlement modification.
- s. Send final termination settlement package(s) to the ACO and PCO.

**2.4. ADMINISTRATIVE CONTRACTING OFFICER.** The ACO must:

- a. Review Termination for Convenience (T4C) and ensure that DCMA has contract administration rights

b. Complete a DCMA Form 1797 “Request for MOCAS Action/Information,” to update and move terminated contract to section 3, and ensure Reason Code TERM-C is added in Mechanization of Contract Administration Services (MOCAS).

c. Provide the T4C package to the Terminations Inbox (located on the Resource Page) for TCO assignment, to include: contract award, T4C modification and/or termination notice, PCO and contractor contact information (name, email, phone number).

d. Review the notice and notify the TCO of any outstanding issues and claims.

e. Coordinate with TCO regarding cancelling funds.

f. Perform contract close out functions.

g. Issue inventory transfer modifications when applicable (prior to issuance, the ACO must coordinate with the assigned PCO).

h. Coordinate with functional specialists to support technical report request submitted by TCO.

**2.5. PLANT CLEARANCE OFFICER.** The Plant Clearance Officer (PLCO) must:

a. Accept termination inventory schedules submitted into the Plant Clearance Automated Reutilization Screening System (PCARSS), only after receiving concurrence from the TCO. Upon acceptance, provide the TCO with the Plant Clearance Case number.

b. Ensure inventory verification and allocability reviews are completed and documented on Standard Form (SF) 1423, “Inventory Verification Survey.” Provide the TCO with a copy of the SF 1423 upon completion.

c. Coordinate disposal plan with the TCO prior to issuing disposition instructions to the contractor. Provide a copy of the SF 1424, “Inventory Disposal Report,” to the TCO immediately upon closure of Plant Clearance cases associated with the termination inventory.

d. Inventory schedules for Special Program terminations are manually created documents; PCARSS is not used.

**2.6. DCMA INTERNATIONAL.** The ACOs of DCMA International must coordinate with Host Nation partners as applicable.

**2.7. DCMA SPECIAL PROGRAMS.** The ACOs of the DCMA Special Programs retains the authority to negotiate and settle terminations for convenience.

## **SECTION 3: TERMINATION FOR CONVENIENCE PROCEDURES**

**3.1. OVERVIEW.** FAR Part 49, Termination of Contracts and the FAR clauses that apply the Government's termination rights to contractors provide authorization for contracting officers to terminate contracts and to enter into settlement agreements. Termination authority resides with the PCO. After termination, the PCO delegates settlement administration to TCOs. Upon receipt of a termination case, the TCO provides cradle-to-grave settlement services to buying commands. The TCO advises the PCO of any excess funds that can be released from the contract and provides status reports when the termination case is initially established, semiannually by 30 April and 30 October, and upon final settlement. The TCO contacts the contractor advising on the settlement process, settlement forms, instructions on creating a settlement proposal, and guidelines on termination inventory, if applicable. The TCO evaluates settlement proposals for adequacy, obtains the appropriate field reviews, if required, coordinates the return of government furnished property, disposes of termination inventory, and issues the final settlement modification. After final settlement, the TCO returns the termination file to the assigned ACO for inclusion in the contract file and for close out of the contract. A termination case may be returned to the appropriate PCO if, after three requests for assistance or additional information, a response is not provided to the TCO. The responsibility for settling Terminations for Default remains with the PCO and is not delegated to the TCO. This Manual provides guidance for executing the termination settlement process.

**3.2. RECEIVE THE TERMINATION NOTIFICATION.** The PCO issues a written termination notice to the contractor. The executed notice is distributed to the contractor and ACO. Upon receipt, the ACO shall upload the termination notice and all documents related to the termination into the Agency system of record for termination files. (In some instances, termination notices are submitted directly to the Terminations Group from the PCO via email or the termination inbox. The terminations inbox email address is located on the Resource Page of this Manual). If the notification is received via the inbox, the TCO must provide notice to the ACO of the termination. When received by the Terminations Group, a termination supervisor creates a termination case and assigns to the TCO.

a. The TCO must review the termination notice to ensure compliance with the requirements of FAR Part 49 (non-commercial items), FAR Part 12 (commercial items), and, if FAR Part 49 applies, Defense Federal Acquisition Regulations Supplement (DFARS) Part 249. The TCO must review the notice to ensure it contains the requirements outlined in FAR 49.102, Notice of Termination. If the notice is not in compliance, the TCO must notify the PCO. The termination notice must state:

- (1) The contract is being terminated for the convenience of the Government under the contract clause authorizing the termination;
- (2) The effective date of termination;
- (3) The extent of termination; and
- (4) Any special instructions.

b. The TCO must review the notice for applicability with the termination for convenience clause to determine if it is a termination as identified within FAR Part 49, and applicable to the contractor through FAR 52.249 clause; or a termination of a commercial item as identified within FAR Part 12, and applicable to the contractor through FAR 52.212-4(1).

c. Review the notice to ensure the PCO has not included settlement language (i.e., “no cost cancellation, canceled in its entirety or is authorized to invoice”). If settlement language is included in the termination notice, the TCO must return the termination to the PCO for final processing.

d. Review the notice to confirm the date of termination.

e. Review the notice to determine if the contract was completely or partially terminated.

**3.3. CONDUCT POST-TERMINATION CONFERENCE.** The TCO must conduct a post-termination conference as outlined in FAR 49.105 and direct the action required of the prime contractor. The TCO will:

a. Provide the PCO with an initial release of excess funds notification within 30 days after receipt of the termination notice. Once the proposal is received, the TCO must provide the PCO an interim release of funds notification. This notice is sent via email and a copy is uploaded to the termination case file.

b. Notify the contractor that complete inventory schedules, to include termination inventory located at subcontractor(s) facilities, after complete inventory schedules are due within 120 days of the effective date of the termination notice (FAR 49.206-3 or FAR 49.303-2) for cost contracts. Advise on general principles and procedures to be followed in the protection, preservation, and disposition of the contractor’s and subcontractors’ termination inventories, including the preparation of termination inventory schedules. Contracts awarded after 2010 are required to submit inventory in PCARSS.

c. Notify the contractor of the forms required to submit a settlement proposal.

d. Advise the contractor of the timeline requirement for submission of termination settlement proposal. Non-commercial termination proposals must be submitted to the TCO within 1-year of the effective date of the termination notice, unless extended by the TCO, and the applicable clause is in the contract (FAR 49.206-1 and FAR 49.303-1). In the instance of a Commercial contract that is terminated for the convenience of the government, the settlement proposal must be submitted within 6 years from the effective date of the termination notice.

e. Obtain a list of subcontractors and the date subcontractor termination notices were issued.

f. Review contract to determine existence of first article testing requirements. If identified, obtain information on whether approval was issued by the Contracting Officer.

g. Determine if there are any government claims or claims against the government.

h. Coordinate with Host Nation Partners, as applicable, when the termination involves DCMA International.

**3.4. TERMINATION CASE FILE.** The TCO responsible for negotiating the final settlement must maintain a separate case file for each termination. The files should be uploaded into the Agency system of record Termination case file. The file will include:

- a. Memoranda and records of all actions relative to the settlement.
- b. Copy of the termination notice.
- c. Opening letters to PCO, ACO, and contractor.
- d. All applicable DD Form 1598s, "Contract Termination Status Report" (initial, semiannual(s), and final).
- e. Funding documents (MOCAS).
- f. Contractor Proposal.
- g. Subcontractor Proposal, if applicable.
- h. Audit Report/correspondence.
- i. Technical Reports.
- j. Negotiation Memorandum(s).
- k. Inventory Schedules/Disposal Report.

**3.5. ISSUE DD FORM 1598.**

- a. The TCO will:
  - (1) Prepare the initial DD Form 1598.
  - (2) Send one copy to the PCO and one copy to the ACO within 30 days of receipt of docket assignment.
  - (3) 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.
  - (4) Submit a final report within 30 days after closing the termination case.

b. The TCO distributes the reports via email to the PCO and a copy will be uploaded in the Agency system of record termination case file. The DD Form 1598 is located in Agency system of record for terminations under termination forms.

**3.6. RELEASE OF EXCESS FUNDS.** The TCO must notify the PCO and the ACO, within 3 working days after receipt of the termination notice, the amount of excess funds that can be removed from the contract. This notification is completed via letter and a copy of the notice must be filed in the termination case file in the Agency system of record for terminations. The notification letter is found in the Agency system of record under termination forms.

**3.7. REVIEW SETTLEMENT PROPOSAL.** The contractor must submit a final settlement proposal covering unvouchered costs and any proposed fee within 1 year from the effective date of termination, unless the period is extended by the TCO. The contractor must use the form(s) prescribed in FAR 49.602-1 unless it is a commercial contract as stated in FAR 49.002(a)(2). The proposal should not include costs that have been disallowed by the contracting officer or previously vouchered and formally questioned by the government. When the contractor submits a settlement proposal, the TCO must review the proposal for adequacy. The TCO must:

- a. Review the proposal to ensure the appropriate proposal form(s) was utilized.
- b. Ensure the proposal contains all required contractor information (i.e., signature and date).

**3.8. OBTAIN FIELD REVIEWS.** The TCO must obtain the appropriate field review for each prime contractor settlement proposal, if applicable. After review of contractor's settlement proposal, the TCO may request assistance from other functional or technical specialists. The TCO will:

a. Refer all settlement proposals that exceed \$100,000 or any applicable threshold deviations, at either the prime or subcontract level to the appropriate audit agency for review and recommendation. The referral should indicate any specific information or data that the TCO desires and should include facts and circumstances that will assist the audit agency in performing the evaluation function. The TCO will utilize the Audit Request memorandum located in the Agency system of record when requesting an audit. The TCO must also include a completed adequacy checklist when submitting a request for audit to DCAA. The TCO will determine the appropriate branch office by inquiring through the DCAA web page. The audit request is submitted to DCAA via email (the email address for DCAA can be located on the Resource Page of this Manual). The TCO must:

(1) Check for any current audit threshold deviations on the Resource Page of this Manual.

(2) Request an agreed-upon procedures audit from DCAA for complete termination of a cost-reimbursable contract and upon receipt of final voucher from contractor.

b. Ensure the contractor submits the complete inventory disposal schedules in PCARSS, reflecting inventory that is allocable to the terminated portion of the contract. The inventory

schedules must be submitted within 120 days from the effective date of the termination unless otherwise extended by the TCO based on written justification to support the extension. The TCO must request plant clearance for terminations requiring disposition of termination inventory. The TCO must:

(1) Ensure the contractor submits complete inventory schedules in the Agency system of record, PCARSS.

(2) Complete a request for Plant Clearance Memorandum and a DD Form 1640, "Request for Plant Clearance." The request is then submitted to the appropriate PLCO via email. The request will include the contract number and the Inventory Schedule number (if known). The TCO will identify the assigned PLCO by emailing the plant clearance inbox or accessing the Contract Management Team eTool module on the DCMA Homepage. The DD Form 1640 is located in the Agency system of record under termination Forms.

(3) Classified inventory/data. The TCO must request that the contractor prepare a listing of all classified inventory/data. Classified inventory cannot be submitted in PCARSS. The listing must be coordinated with the security office of the buying command, the contractor, and the DCMA Special Programs Property Center.

c. Notify the PLCO if the contract contains a First Article requirement by annotating the DD Form 1640, "This contract has a first article testing requirement. Please contact the TCO prior to inventory verification/allocability review."

d. Request Technical assistance through the assigned ACO to:

(1) Obtain the contract percentage of completion for commercial contract terminations.

(2) Obtain percent complete for partial terminations.

(3) Support a request from DCAA in support of a termination proposal audit.

**3.9. PREPARE PRE-NEGOTIATION OBJECTIVES MEMORANDUM.** Prior to entering into negotiation, the TCO must establish pre-negotiation objectives. The TCO must resolve and disposition all contract audit and technical findings. The pre-negotiation objectives must include results from DCMA field support and the DCAA audit as applicable (refer to DFARS 249.110). The contractor proposed amounts, audit recommendation amounts, and the TCO's position must also be included in the pre-negotiation position. The Pre-Negotiation Objectives Memorandum (PNOM) should also include evidence that sufficient funding is available.

**3.10. OBTAIN APPROPRIATE CLEARANCE.** The TCO must obtain the appropriate level of review prior to entering negotiations:

a. Supervisor review is required for a proposed settlement amount in excess of \$1 million.

b. Termination Group Director's review required for a proposed settlement amount in excess of \$5 million.

c. DCMA-INST 134, "Boards of Review," requires a Board of Review for a proposed settlement amount greater than \$10 million.

**3.11. NEGOTIATE SETTLEMENT AND ISSUE SETTLEMENT MODIFICATION.** The TCO should proceed with the settlement and execution of a settlement agreement upon completion of required reviews. At the completion of negotiation and if agreement is reached, the TCO must:

a. Prepare a Settlement Negotiation Memorandum supporting the amount, if any, that is due to the contractor (FAR 49.110, Settlement Negotiation Memorandum). See DFARS Procedures, Guidance, and Information (PGI), 249.110, Settlement negotiation memorandum for guidance regarding fixed-price and cost-reimbursement contracts.

b. The final settlement agreement may include all demands of the Government and proposals of the contractor under the terminated contract. However, no amount will be allowed for any item of cost disallowed by the Government, nor for any other item of cost of the same nature.

c. The TCO may, with PCO approval, deobligate excess funds as part of the final settlement modification.

d. Issue a final settlement modification if an agreement can be reached IAW FAR 49.109. Modifications are completed through the Agency system of record for modifications (identified on the Resource Page). If the TCO does not have access to the terminated contract in the Agency system of record for modifications, the termination file is returned to the buying command for issuance of the settlement modification.

e. Issue a Contracting Officer's Final Decision when the contractor and the TCO cannot agree on a termination settlement. Before the issuance of a final decision, the TCO must issue a 15-day notice giving the contractor the opportunity to submit additional information. The 15-day notice must be sent by certified mail (return receipt requested). The TCO must coordinate the issuance of the 15-day letter and any final decisions with the Office of General Counsel before release. The 15-day notice is located in the Agency system of record under termination forms.

(1) After considering the additional information provided, if any, and an agreement is reached, the TCO must issue the final settlement modification.

(2) If, after considering the additional information an agreement is not reached, the TCO will use Alternate Dispute Resolution, when appropriate, prior to issuing a final decision. If an agreement cannot be reached, the TCO will then issue a final decision (see FAR 49.109-7, Settlement by Determination, and DFARS PGI 249.109-7, Settlement by Determination, for use of SF 30, "Amendment of Solicitation/ Modification of Contract"). All Settlement by Determinations require review of the Office of General Counsel before release. The TCO should

retain file until the appeal period for a final decision has passed and the TCO is sure contractor has not appealed its determination.

f. Issue the final DD Form 1598. The TCO will submit a final contract termination report within 30 days after closing the termination case (DFARS PGI 249.105-1). A copy of the final DD Form 1598 must be filed in the Agency system of record for termination case file.

**3.12. RETURN TERMINATION FILE TO ACO FOR CLOSE OUT.** Once the TCO executes the final settlement modification, all files will be forwarded to the ACO for incorporation into the official contract file.

a. The TCO must send the termination file to the ACO advising if 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.

b. If the termination is partial, the documents are included in the active contract file. If the termination is complete, the ACO will be notified to proceed with close out of the contract.

## **SECTION 4: UNILATERAL AND NO COST SETTLEMENT PROCEDURES**

**4.1. UNILATERAL SETTLEMENTS.** If the TCO does not receive the settlement proposal within the 1-year time requirement as stated in FAR 49.206-1, the TCO will issue a unilateral determination settlement modification.

a. Prior to issuing the unilateral modification, the TCO is responsible for the collection of any unliquidated progress payments remaining on the contract or debts owed to the government (i.e., overpayment made to contractor).

b. The TCO must also obtain from the Property Administrator or the contracting officer, a confirmation indicating the status of government furnished property or contractor acquired under the contract, if applicable.

c. The TCO shall issue a unilateral modification and the modification is created in the Agency system of record for modifications.

### **4.2. NO-COST SETTLEMENTS.**

a. The TCO will issue a no cost agreement when:

(1) The contractor has not incurred costs for the terminated portion of the contract.

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

(3) No amounts are due to the government under the contract.

b. When the TCO determines that a no-cost settlement is appropriate, the TCO will ensure the collection of any unliquidated progress payments remaining on the contract or debts owed to the government (i.e., overpayment made to contractor) are processed prior to issuance.

c. The TCO must also obtain confirmation, if applicable, indicating the status of government furnished property or material furnished to, or acquired by the contract from the Property Administrator, the contracting officer, or the PLCO.

d. The TCO shall issue a bilateral no cost modification reflecting the settlement agreement.

**4.3. RETURN TERMINATION FILE TO ACO FOR CLOSE OUT.** Once the TCO executes the final settlement modification, all files are forwarded to the ACO for incorporation into the official contract file. The TCO will advise the ACO of any excess funds to be deobligated and to proceed with close out functions.

## GLOSSARY

### G.1. DEFINITIONS.

**Complete Termination.** A contract terminated in its entirety, regardless of contract performance prior to termination. No additional work is to be done on the contract after the termination effective date.

**First Article.** A preproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

**Partial Termination.** Termination of a severable portion of a contract. (i.e., a line item or a modification). When a contract is partially terminated, work continues on the remainder of the contract requirement.

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

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

**Termination for Convenience.** The exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

**Termination Inventory.** Property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition

## **G.2 ACRONYMS**

ACO	Administrative Contracting Officer
CAFU	Contract Audit Follow-Up
DCAA	Defense Contract Audit Agency
DCMA Form 1797	Request for MOCAS Action/Information
DCMA-INST	DCMA Instruction
DD Form 1598	Contract Termination Status Report
DD Form 1640	Request for Plant Clearance
DFARS	Department of Defense Federal Acquisition Regulation Supplement
FAR	Federal Acquisition Regulation
IAW	in accordance with
MOCAS	Mechanization of Contract Administration Services
PCARSS	Plant Clearance Automated Reutilization Screening System
PCO	Procuring Contracting Officer
PGI	Procedures, Guidance, and Information
PLCO	Plant Clearance Officer
PNOM	Pre-Negotiation Objectives Memorandum
SF	Standard Form
SF 30	Amendment of Solicitation/Modification of Contract
SF 1423	Inventory Verification Survey
SF 1424	Inventory Disposal Report
TCO	Termination Contracting Officer
T4C	Termination for Convenience

## **REFERENCES**

DCMA Instruction 134, "Boards of Review," October 15, 2012, as amended  
DFARS Part 249, Termination of Contracts  
DFARS PGI 249.105, Duties of the termination contracting officer after issuance of notice of termination  
DFARS PGI 249.110, Settlement negotiation memorandum  
DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," January 10, 2013  
FAR Part 12, Acquisition of Commercial Items  
FAR Part 49, Termination of Contracts