

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Part 49**[FAR Case 2009–031; Docket 2010–0090,
Sequence 1]

RIN 9000–AL56

**Federal Acquisition Regulation; FAR
Case 2009–031, Terminating Contracts****AGENCIES:** Department of Defense (DoD),
General Services Administration (GSA),
and National Aeronautics and Space
Administration (NASA).**ACTION:** Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to provide clarification to the prescription for the FAR clause at 52.249–1, Termination for Convenience of the Government (Fixed Price) (Short Form), located in FAR 49.502(a), to apprise contracting officers that there are alternative clauses that can be used for terminations up to the simplified acquisition threshold. In addition, references to the FAR clauses at 52.212–4 and 52.213–4 are added in the prescription for FAR 52.249–1 at FAR 49.502(a) and in FAR 49.002, Applicability.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before July 19, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR Case 2009–031 by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–031” under the heading “Enter Keyword or ID” and selecting “Search”. Select the link “Submit a Comment” that corresponds with “FAR Case 2009–031”. Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–031” on your attached document.

- Fax: 202–501–4067.
- Mail: General Services

Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR Case 2009–031, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082 for clarification of content. Please cite FAR case 2009–031. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755.

SUPPLEMENTARY INFORMATION:**A. Background**

The Defense Contract Management Agency (DCMA) submitted a request for revisions to FAR part 49 and the associated FAR clauses in 52.549 regarding termination of contracts. As a result, the Councils are proposing to amend FAR 49.502(a) to clarify when the FAR clause at 52.249–1, Termination for Convenience of the Government (Fixed Price) (Short Form), is used.

The Councils believe that clarification is needed in the prescription for the clause, to apprise contracting officers that there are alternative clauses that can be used for terminations up to the simplified acquisition threshold. The language in FAR 49.002 is revised to include a reference to FAR 12.403 and the language at FAR 49.502(a) is revised to include references to the FAR clauses at 52.212–4, Contract Terms and Conditions—Commercial Items, and at 52.213–4, Terms and Conditions—Simplified Acquisitions (Other than Commercial Items). These clauses should be used for the majority of simplified acquisition terminations. However, the FAR clause at 52.249–1 may be appropriate in certain situations where these two clauses are not applicable.

The FAR clauses at FAR 52.212–4 (basic clause) and 52.213–4 allow for the contractor to be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination for convenience, plus reasonable charges the contractor can demonstrate to the satisfaction of the Government using its standard record keeping system have resulted from the termination. There is no need for partial payments under these circumstances.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and

Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this proposed rule merely clarifies existing FAR policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in parts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009–031) in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 49.

Government procurement.

Dated: May 14, 2010.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 49 as set forth below:

**PART 49—TERMINATION OF
CONTRACTS**

1. The authority citation for 48 CFR part 49 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

49.002 Applicability.

2. Amend section 49.002 by removing from paragraph (a) “(see also 13.302–4)” and adding “(see also 12.403 and 13.302–4)” in its place.

3. Amend section 49.502 by revising paragraph (a)(1) to read as follows:

49.502 Termination for convenience of the Government.

(a) *Fixed-price contracts that do not exceed the simplified acquisition threshold (short form)*—(1) *General use.* The contracting officer shall insert the clause at 52.249–1, Termination for

Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed the simplified acquisition threshold, except—

(i) If use of the clause at 52.249–4, Termination for Convenience of the

Government (Services) (Short Form) is appropriate;

(ii) In contracts for research and development work with an educational or nonprofit institution on a no-profit basis;

(iii) In contracts for architect-engineer services;

(iv) If one of the clauses prescribed or cited at 49.505(a) or (c), is appropriate; or

(v) When the clause at 52.212–4 or 52.213–4 is used. (See 12.403(a) or 13.302–5(d)(1)).

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