



Federal Contract Terminations & Frozen Payments: How to Protect Your Company

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Agenda

- Trump Administration's Federal Contracting Landscape
- Accounting Best Practices in Times of Uncertainty
- Contractor Rights When Faced with Non-Payment
- Terminations for Convenience
- Certified Claims

Trump Presidential Action Tracker

- **In 2 months since 1/20/25 Inauguration, the President has:**
 - Issued 123 Executive Orders, Proclamations, and Memoranda
 - Rescinded 94 Executive Orders and Presidential Memoranda

- **Legal Challenges**
 - 103 lawsuits filed challenging various actions
 - Of those:
 - 27 have been Successful Challenges
 - 19 have been Unsuccessful Challenges

Executive Orders Impacting Contractors

1. EO 14222 - Implementing the President's "Department of Government Efficiency" Cost Efficiency Initiative

- Each agency must:
 - Justify contract & grant payments in centralized IT system;
 - Review/terminate contracts & grants and issue guidance;
 - Freeze contracting officer credit cards;
 - Dispose of real estate

2. EO 14151 – Ending Radical and Wasteful Government DEI Programs and Preferencing

- Agencies must terminate equity-related contracts and grants

Operative Executive Orders

3. EO 14154 – Unleashing American Energy

- Agencies must pause disbursement of Inflation Reduction Act and Infrastructure Investment and Jobs Act funds to review consistency with the law and the Trump Administration's policy objectives, like elimination of clean energy

4. EO 14169 – Reevaluating and Realigning United States Foreign Aid

- Required a 90-day pause on foreign development assistance to review for consistency with Trump Administration's policy objectives

Terminations as a Result of EOs and DOGE

Government Contracts and Grants have been terminated on an unprecedented scale thus far in 2025.

Pace of spending retrenchment is not anticipated to slow in the near term.

Thus far, USAID contract terminations dwarf those of other agencies. USAID represents 2/3 of terminations to date.

Other top agencies impacted by the retrenchment include:

- Dept. of Energy
- Social Security Administration
- General Services Administration
- Dept. of Health & Human Services



What Should Contractors Do Today?

Determine What's Mission Critical

- Proactively review award portfolios to identify awards at risk of termination.
 - Perform risk assessment based on EOs and current DOGE cost cutting activities.
 - Focus on entire federal business, including all departments and agencies.
 - Update frequently as cost cutting efforts are fast moving and unpredictable.
- Evaluate current overall business continuity and develop scenarios whereby material amounts of government contract business is terminated.
- “DOGE YOURSELF” - Look for cost optimization areas.
- Forego planned capital outlays or capital investment projects based on risk assessment.

Contractor Rights re Non-Payment

- FAR 52.233-1 includes duty to continue performance
- Prompt Payment Act provides interest on late payments
- No clear time at which a contractor is entitled to stop working
- Material breach by the government = performance excused
 - Fact-dependent
 - Likely months of non-payment
 - Phase of project

Contractor Rights re Non-Payment

- Notice to government of late or incomplete payment
- Notice to subcontractors of same
- Evaluate impact to cost and schedule
- Consider filing a certified claim

What Is Termination for Convenience?

- “[G]ives the Government the broad right to terminate without cause and limits the contractor's recovery to costs incurred, profit on work done, and costs of preparing the termination settlement proposal.” *Enron Fed. Sols., Inc. v. United States*, 80 Fed. Cl. 382, 406 n.21 (2008) (quoting Ralph C. Nash, Jr. & John Cibinic, Jr., *Administration of Government Contracts* at 1073 (3d ed.1995)).
- Developed as a means to end the massive procurement efforts that accompanied major wars. *See Nash & Cibinic* at 941.
- “As early as 1863, Rule 1179 of the Army Regulations provided that contracts for subsistence stores, ‘shall expressly provide for their termination at such time as the Commissary-General may direct.’” *Id.*

What Is Termination for Convenience?

- Implemented through eight T4C contract clauses in the FAR
- FAR 52.249-2 (Termination for Convenience of the Government (Fixed Price)). Subsection (a) states: “The Government *may* terminate performance of work under this contract in whole, or from time to time, in part if the *Contracting Officer* determines that a termination is in the Government’s interest.”

Termination for Convenience Settlement

- FAR 49.201(a): “A settlement should compensate the contractor fairly for work done and the preparations made for terminated portions of the contract, including a reasonable allowance for profit. ***Fair compensation is a matter of judgment and cannot be measure exactly.*** In a given case, various methods may be equally appropriate for arriving at fair compensation. ***The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.***”
- FAR 49.201(b): “The primary objective is to negotiate a settlement by agreement.”

Termination for Convenience Settlement

- Business judgment is great, but FAR 52.249-2(h)(i) expressly states that the Cost Accounting Principles of FAR 31 apply
- 49.206-2 identifies two bases for settlement proposals:
 - Inventory Basis. 49.206-2(a) (**Preferred**)
 - Total Cost Basis. 49.206-2(b)

Termination for Convenience – Recoverable Costs

- Costs incurred and not paid up to that portion of the Contract
 - FAR 52.249-2(g)(1)
- Profits on costs incurred
 - FAR 52.249-2(f)
- Costs of preparing the T4C Settlement Proposal – Legal, Accounting, Experts
 - FAR 52.249-2(g)(3)

Termination for Convenience – Recoverable Costs

Indirect and Other Direct Costs	Personnel & Products Costs	Facilities & Equipment	Termination Settlement Costs
Overhead costs. G&A costs. Indirect costs that are charged as direct costs (i.e., supervisory personnel, freight charges, equipment repairs, small tools, travel, telephone, office expenses, quality assurance, engineering, manufacturing management, production control, material control, purchasing, etc.).	Employee compensation that cannot be reasonably discontinued.	Idle facility or idle capacity costs despite unsuccessful efforts to discontinue them, up to a reasonable period of time.	Reasonable settlement costs. Such costs may include costs incurred internally by the contractor as part of the settlement process and costs of counsel, and costs of outside consultants. In-house personnel should keep time sheets tracking settlement related efforts.
	Severance payments when reasonably required.	Facilities capital cost of money.	
	Costs for items the contractor cannot use or hold without incurring a loss.	Unexpired lease costs if a reasonably necessary lease for performance cannot be terminated. Any alterations to leased property.	
Pre-contract costs, if necessary under the circumstances and Subcontractor claims		Loss of useful value of special tools, machinery, and equipment.	Other prep (production planning, initial arrangements).

FAR 49.104 (Duties of Prime Contractor Upon Receipt of Notice of Termination)

- Stop work immediately on the terminated portion of the contract;
- Terminate all subcontracts;
- Advise the TCO if you cannot stop work;
- Perform the unterminated portions of the contract;
- Protect and preserve property in the contractor's possession in which the Government has or may acquire an interest and, as directed by the TCO, deliver the property to the Government

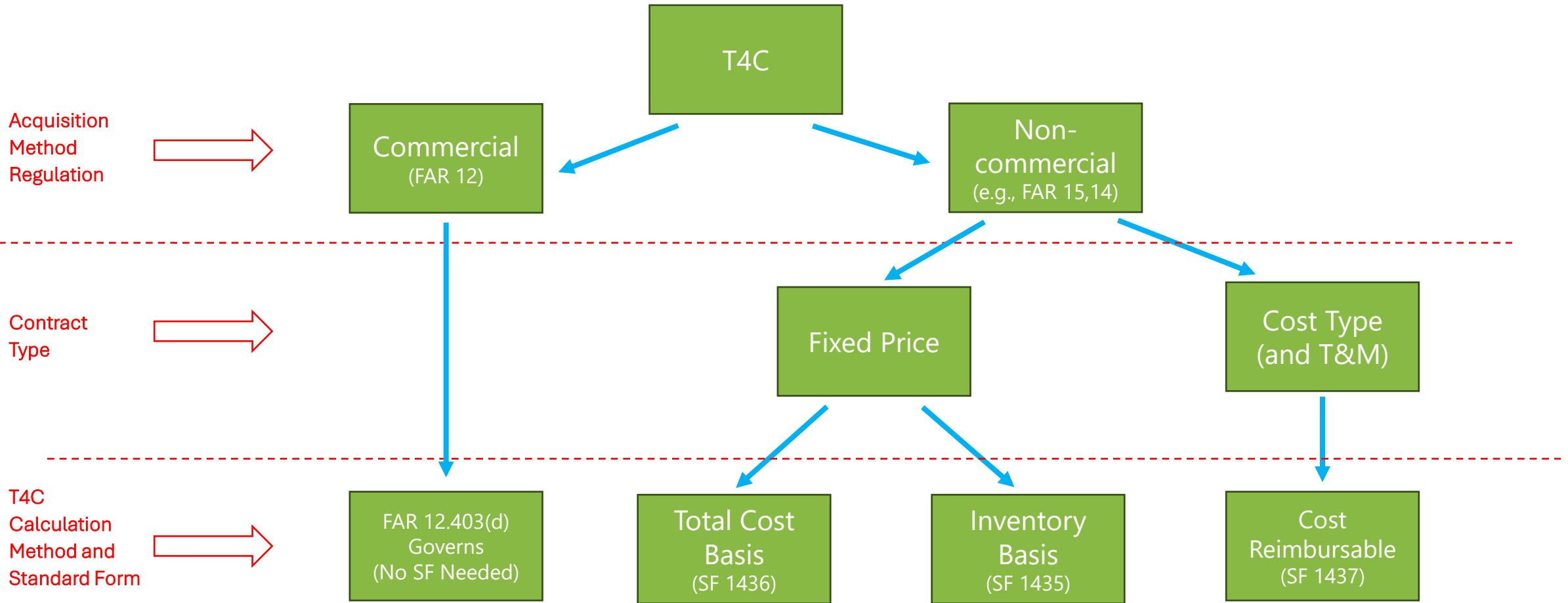
FAR 49.104 (Duties of Prime Contractor Upon Receipt of Notice of Termination)

- Notify the TCO of any legal proceedings related to the terminated portion of the contract;
- Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;
- Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and
- Dispose of termination inventory, as directed or authorized by the TCO

FAR 49.206-1 (Submission of Settlement Proposals)

- The contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination.
- Settlement proposals must be on the prescribed forms:
 - SF 1436 (Settlement Proposal (Total Cost Basis) & Certificate of Current Cost or Pricing Data)
 - SF 1439 (Schedule of Accounting Information)
 - SF 1440 (Application for Partial Payment)

Termination Standard Forms



FAR 49.104 (Duties of TCO After Issuance of Notice of Termination)

- Direct the action required of the prime contractor;
- Examine the settlement proposal and, when appropriate the settlement proposals of the subcontractors, including accounting review of the settlement proposal by DCAA/DCMA/OIG;
- Promptly negotiate settlement with the contractor and enter into a settlement agreement

FAR 49.104 (Duties of TCO After Issuance of Notice of Termination)

- Promptly settle the contractor's settlement proposal by determination of the elements that cannot be agreed on, if unable to negotiate a complete settlement
- Issue a unilateral decision, which is appealable under the Contract Disputes Act

Government Audits of TSPs

What the contractor should expect will be audited in a negotiated contract TSP.

- Prime contractor settlement proposals over \$2 million are required to be submitted for audit.
- Agency staff reductions will likely impact the timeliness audits.
- Audits of FAR 15 settlement proposals includes an evaluation of the contractor's accounting and termination policies, practices, and internal controls.

Contract data and supporting files that will be examined as part of a TSP audit:

Price Proposal	Cost Estimates	Bills of Material	Production schedules and Records	Shipping Documents	Purchase Orders
Cost and Profit Forecasts	Audited Financial Statements	Tax Returns	Contract Reporting	Communication with Govt Tech Resources	Managerial Information

TSP Preparation Best Practices

- Ensure Costs Are Reasonable
- Reject Impractical Proof Requirements
- Claim All Allowable Costs
- Charge Indirect Costs Directly
- Avoid Loss Adjustments
- Submit A Timely Proposal
- Obtain Professional Assistance

Certified Claims

- Contract Disputes Act Background
- Why Certified Claims Are Important Right Now
- Claim Strategy – When and Why to Submit a Claim for Non-Payment

Wrap Up/ Questions





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