



FAR FACTS
SEASON 2023, EPISODE TWENTY-FIVE
FAR PART 49

1. Note that FAR Part 49 does not apply to commercial item contracts. **FAR 49.002(a)(2)**. Commercial item contractors and subcontractors should instead insist on including the termination provisions set forth at 52.212-4. *See, e.g., FAR 52.212-4(l) (firm fixed price) and FAR 52.212-4 (Alt. 1), subsections (l) and (m) (T&M).*
2. Prime contractors are required to use guidance in FAR Part 49 to settle subcontracts terminated as a result of modification of a prime contract. **FAR 49.002(b)**.
3. Only a contracting officer has the authority to terminate a federal government contract. All termination notices must be in writing. **FAR 49.102(a)**.
4. Upon receiving a termination notice, a prime contractor is required to immediately stop work and terminate all subcontracts related to the terminated portion of the prime contract. **FAR 49.104(a) and (b)**.
5. A subcontractor has no contractual rights against the Government upon the termination of a prime contract. **FAR 49.108-1**.
6. The TCO usually must ratify or approve a prime contractor's settlement agreement with its subcontractor. **FAR 49.108-3(c)**. However, in some cases, if the prime requests it in writing, the TCO may authorize the prime to settle with subs without ratification or approval from the TCO. **FAR 49.108-4(a)(1)**.
7. The Government is strictly prohibited from paying for anticipatory profits and consequential damages as part of a termination settlement agreement. **FAR 49.202(a)**.
8. The Government is required to pay for profit on preparations made and work performed by the contractor for the terminated portion of the contract but not on settlement expenses. **FAR 49.202(a)**. However, the Government is not permitted to pay for such profit if it appears that the contractor would have incurred a loss had the contract been completed. **FAR 49.203**.
9. In the event of a partial termination, the contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. **FAR 49.208**.
10. A contracting officer must obtain the prior approval of his/her contracting office prior to issuing a show cause or cure notice to a contractor. **FAR 49.402-3(b)**.

11. The “Excusable Delays” clause set forth at **FAR 52.249-14** is not required to be included in a firm-fixed-price type contract. **FAR 49.505(b)**.
12. Sample cure notices, show cause notices, termination notices, and termination settlement agreements can all be found at **FAR 49.6**.