

Termination/Cancellation Guideline - 4.7.G (09/27/04)

[Last Update: \(09/27/04\) ABachicha:kma - 4.7.G.0](#)

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This guideline was extensively revised to address administrative changes throughout the document.

Termination Procedures - 4.7.G.1

The following procedures shall be followed when termination for convenience, default, or cancellation is being contemplated:

- Before initiating a termination, the Sandia Contracting Representative (SCR) is responsible for reviewing the applicable contract smf excusable delay clauses because these clauses vary depending upon the type of contract.
- The SCR, after discussions with the requesting organization, shall determine whether the termination shall be partial or complete and whether it shall be for convenience or default.
- The SCR shall notify the Contract Auditing Department when contemplating a termination if the SCR anticipates a requirement for immediate assistance.

- If a contract has recently been awarded and no costs have been incurred, the SCR should negotiate a bilateral contract revision to cancel/rescind the contract at no-cost to Sandia.
- In some cases, if the Contractor has started to perform, a Stop Work Order could be issued at the SCR's discretion and a change to the contract could be negotiated to downscope the Statement of Work (SOW), costs, performance period, etc. This alternative to a termination would amend the contract to cover the work done and any additional work that may remain that Sandia wants performed.

All termination/cancellation orders must be authorized by the requesting organization via a requisition approved at the level which authorized the procurement. All terminations/cancellations for default on contracts exceeding \$100K shall be approved by the Director of Procurement and Logistics, prior to initiating any action to terminate/cancel for default.

Reviews - 4.7.G.1.a

With all contract terminations/cancellations, both for convenience and default, the Department of Energy/National Nuclear Security Administration (DOE/NNSA) shall be informed of the negotiated termination/cancellation settlement **prior** to issuing a definitive contract termination/cancellation revision.

The SCR shall submit the complete package to the Procurement Policies and Procedures Team (PPPT) for coordination with DOE/NNSA. The complete package shall include:

- transmittal memo to DOE/NNSA, Albuquerque Operations Office (AL) through DOE/NNSA, Sandia Site Office (SSO);
- written notification requesting termination/cancellation from the requesting line organization;
- contract documents;
- related notices, negotiated termination/cancellation settlement;
- a succinct statement of the reasons for the action being taken; and
- any supporting data/documentation.

SCR Responsibilities - 4.7.G.1.b

Upon notification from the requesting organization that contract termination/cancellation should be considered, the SCR shall:

- investigate the situation with the Requester to determine if it is appropriate to downscope the effort or to terminate/cancel the contract partially or completely;
- secure written authorization from requesting organization authorizing contract termination/cancellation discussions;

- follow the specific steps outlined in the balance of the guidelines for the applicable type of termination/cancellation; and
- provide thorough documentation in the contract file.

Determination Factors - 4.7.G.1.c

The following will assist the SCR in determining whether to terminate for convenience, for default or to effect a no-cost settlement. Prior to making a final decision, the SCR shall consult Legal.

If...	Then the SCR may...
<ul style="list-style-type: none"> - a determination is made that there is no longer a need for all or part of the contracted item or service; or - sufficient funding is not available to finance contract performance; or - after issuance of a notice of termination for default, a determination is made that the Contractor was not in default or that the default was excusable. 	<p>descope or terminate the contract for convenience.</p>
<ul style="list-style-type: none"> - Contractor has failed to fulfill contractual obligations, - or has failed to make progress to the extent that there is actual or anticipated failure to perform on the part of the Contractor, - or has failed to meet the provisions of a cure notice, and/or show cause notice within the specified time, - Contractor has stated that Contractor can not perform the contract, - Contractor has repudiated the contract. 	<p>terminate/cancel the contract for default.</p> <p>Note: Cancellation applies to contracts for commercial items when SF 6432-CI is used.</p>
<ul style="list-style-type: none"> - known that the Contractor will accept a no-cost settlement, and - government property, if any, will be properly returned to Sandia, - and there are no outstanding payments debts due Sandia, or other contractual obligations, - and the Contractor is not in default, 	<p>effect a no-cost settlement.</p>

Terminating a Contract for Convenience - 4.7.G.2

If a default termination/cancellation is later determined to have been improper (e.g., the Contractor's default was excusable) it shall be converted to a termination for convenience by authority of the Termination Clause. A defaulted contract, mistakenly terminated for

convenience, may not be converted to a default termination. The SCR shall consult with Legal prior to taking action to terminate a contract for convenience if a termination/cancellation for default may be warranted. In addition, DOE/NNSA/AL through DOE/NNSA/SSO must review all termination settlement proposals prior to issuing a definitive contract termination amendment.

The SCR shall take the following action when a decision has been made to terminate a contract for convenience.

Step	Action
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| 1 | Notify the Contractor and request the following information be provided without delay: <ul style="list-style-type: none">- preliminary estimate of termination charges, and- any other information required by the SCR. |
| 2 | Evaluate the preliminary estimate upon receipt from the Contractor and advise the Requester what action would be most practical and/or economical to the government; that is, whether the contract should be: <ul style="list-style-type: none">- allowed to continue in force, then the SCR shall advise the Contractor of the decision, or- allowed to expire (if an unfunded limitation of obligation exists), then the SCR shall advise the Contractor of the decision, or- terminated completely or in part, then the SCR shall go to Step 3. |

Caution: Before proceeding with a termination for convenience, the SCR should evaluate the cost effectiveness of a termination.

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| 3 | Prepare a Notice of Termination to be sent to the Contractor after securing the appropriate approvals and settlement reviews. |
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Note: The notice is a Stop Work Order document preventing further accumulation of costs by the Contractor. It does not contain all the instructions the Contractor must receive to complete his obligations under the contract termination clause.

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| 4 | Secure approvals on the Procurement file copy of the Notice of Termination and transmit to Contractor. |
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Note: Approvals shall be through the highest procurement levels as previously obtained for the procurement. (If approval is required by the Director of Procurement and Logistics for contracts at Sandia/CA, it may be provided via telephone to be followed with written approval.)

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| 5 | If the termination involves: <ul style="list-style-type: none">- cost settlement (not reached), - Sandia property (if any, will be properly returned |
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to Sandia), and

- no outstanding payments, debts due the government, or other contractual obligations,

then the SCR shall:

- effect a no-cost settlement by:

- preparing a revision,

- securing approvals at highest levels previously obtained,

- route termination settlement package for DOE/NNSA review through PPPT, and

- issue a revision to Contractor after receipt of settlement package from DOE/NNSA/AL through DOE/NNSA/SSO, or

if the termination involves charges to Sandia, then the SCR shall:

- forward the appropriate termination forms to the Contractor for completion and return, and

- proceed to Step 6.

Note: Termination forms:

- 2 copies SF 6430-S - Instructions

- 3 copies SF 6430-SA - Inventory

- 3 copies SF 6430-SB - Settlement Proposal

- 3 copies SF 6430-SC - Certificate

6 Review and evaluate the Contractor's settlement proposal and termination inventories. This action requires the assistance and/or coordination with the line organization Requester and if needed:

- the Property Coordinator or Development Support Team (Sandia/CA),

- Auditing, and/or

- Legal.

Note: The determination of the actual costs incurred is the responsibility of Auditing. Negotiating the contract termination settlement is the responsibility of the SCR.

7 Retain copies of the Termination Settlement Proposal for use in final settlement negotiations.

- 8 Forward a copy of the Termination Inventory to the Requester for use in checking the propriety of the items and cost applied to the termination inventory material and review for purposes of possible application to current or anticipated requirements.
- 9 Forward a copy of the Termination Inventory to the Property Coordinator. (In Sandia/CA retain information in the Procurement Services Department for use in accountability and final disposition of unneeded material.)

Note: Procedures covering disposition of property are specified in Guideline 6.13 – Property.

- 10 Negotiate a final settlement in accordance with the termination clauses applicable to the contract being terminated.

If negotiations result in an agreement being reached with the Contractor in accordance with the applicable termination clauses, then the SCR shall prepare a revision which:

- reflects final settlement, and
- states that it constitutes full and complete settlement due the Contractor by reason of the termination of work and all other claims of the Contractor under the contract,
- secure proper approvals (i.e., the highest levels previously obtained for the procurement),
- route negotiated termination settlement package for DOE/NNSA review through PPPT, and
- issue revision to Contractor after review and receipt of the settlement package from DOE/NNSA/AL through DOE/NNSA/SSO and secure Contractor's Release Under Contract, Form SF 6432-J, executed by the Contractor.

If negotiations fail to result in an agreement with the Contractor, then the SCR shall:

- prepare a settlement determination in accordance with the termination clause of the contract,
 - secure proper approvals (i.e., the highest levels previously obtained for the procurement),
 - route negotiated termination settlement package for DOE/NNSA review through PPPT, and
 - issue revision to contract after review and receipt of the settlement package from DOE/NNSA/AL through DOE/NNSA/SSO.
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Terminating/Canceling a Contract for Default - 4.7.G.3

Since it is important to assure that a proper basis for default action exists, the SCR shall review Contractor performance with their Department Manager, the Requester, Legal, and the Director of Procurement and Logistics prior to initiating a default action and during subsequent steps leading to a default termination/cancellation. All terminations/cancellations for default on contracts (not Purchase Orders) must be approved by the Director of Procurement and Logistics and reviewed by DOE/NNSA/AL through DOE/NNSA/SSO prior to proceeding with the action.

Termination/Cancellation of Fixed-Price Pricing Arrangements - 4.7.G.3.a

Under a fixed-price contract the following situations need to be considered and addressed.

If...	Then the SCR...
<p>the Contractor has failed to:</p> <ul style="list-style-type: none">- make delivery of the supplies, or- perform the services within the time specified by the contract or any extension thereof, and- the SCR has determined that Sandia is without fault in causing the nonperformance,	<ul style="list-style-type: none">- is not required to send an Advance Notice giving the Contractor an opportunity to cure this failure before an actual notice of termination/cancellation.- is not required to send an advance notice telling the Contractor of their failure, or of the possibility of termination/cancellation for default.
<p>Sandia has taken any action which may be construed as a waiver of contract delivery or performance date,</p>	<p>-is required to send a preliminary notice to the Contractor setting a new date by which they may make delivery or complete performance to reserve Sandia's rights under the Default/Cancellation clause.</p>
<p>Note: In determining what constitutes waiver, the SCR should consult the SCR's Department Manager, and where significant reprocurement cost will be an issue, consult Legal.</p>	
<p>the SCR, in consultation with Legal, deems it advisable to issue a letter about the possibility of termination/cancellation for default,</p>	<p>-may do so before sending an actual Notice of Termination/Cancellation to the Contractor.</p>

the Contractor has failed to:

- perform any provisions of the contract other than those concerning the delivery schedule of supplies and services, e.g., technical reports, or

make progress to the extent that there is actual or anticipated failure to perform on the part of the Contractor,

-shall send the following to the Contractor prior to terminating/canceling for default:

- a Cure Notice providing the Contractor with reasonable time (usually ten (10) working days) to cure the failure.

- a Show Cause Notice if default appears appropriate.

Note: A Show Cause Notice normally follows a Cure Notice.

Delivery Extension - 4.7.G.3.b

Normally, the SCR should not grant delivery extensions when a Contractor is in default with respect to delivery unless adequate consideration is obtained for the extension.

Example(s) of adequate consideration:

- a reduction in the contract price (fixed-price), or fee (cost-reimbursement) or disallowance of hours worked (Time and Materials/Labor-Hour/Fixed-Rate);
- a change in the method of shipment from normal to premium at the Contractor's expense, (Exception: Items shipped from a foreign country); or
- a change in shipment charges from FOB Shipper's Dock to FOB Destination.

Caution: The SCR should not take any action or nonaction which might be considered to be a waiver of the contract delivery or performance date or any other contract provisions. Consultation with Legal is required prior to contacting a Contractor, if they are in default for any reason, to determine that course of action least likely to be considered a waiver.

Termination of Other than Fixed-Price Pricing Arrangements - 4.7.G.3.c

If the Contractor has...

- failed to perform the contract in accordance with its terms, or
- failed to make progress so as to endanger the performance of the contract in accordance with its terms,

Then the SCR...

shall send the following to the Contractor prior to terminating/canceling for default:

- a Cure Notice providing the Contractor with reasonable time (usually ten (10) working days) to cure the failure.

- a Show Cause Notice if default

appears appropriate.

Note: A Show Cause Notice normally follows a Cure Notice.

Contractor's Failure to Meet Provisions of Cure Notices - 4.7.G.3.d

In the event the Contractor does not cure the failure or satisfactorily explain the failure (i.e., show that the progress failure resulted from causes beyond Contractor's/subcontractor's control and without their fault or negligence within the meaning of the default clause), the SCR may completely or partially terminate/cancel the contract for default by sending a notice to this effect after securing the appropriate approvals and settlement reviews.

Steps to Terminate - 4.7.G.3.e

The SCR shall use the following procedure to completely or partially terminate/cancel a contract for default.

Step	Action
1	<p>Prepare a Notice of Termination/Cancellation for Default to be sent to the Contractor after securing the appropriate approvals.</p> <p>Note: This notice is an abbreviated document and does not contain all the instructions the Contractor must receive. Therefore, the SCR shall confirm the notice of termination/cancellation by letter.</p>
2	<p>Prepare formal letter notice of termination/cancellation. Each letter must be tailored to fit the default situation. The format suggested should be used as a basis for consulting with Legal.</p> <p>Note: Alternatively, if the SCR deems it practical or advisable, a show cause notice about the possibility of termination/cancellation for default should be sent.</p>
3	<p>Negotiate a final settlement in accordance with the termination/cancellation procedures in the clauses applicable to the particular contract.</p> <p>Note: No profit is allowed in the negotiated final settlement.</p>
4	<p>Route proposed termination/cancellation settlement package for DOE/NNSA review through PPPT.</p>
5	<p>Prepare and issue a contract revision confirming Notice of Termination/Cancellation for Default.</p>

Approvals and Reviews - 4.7.G.3.f

Approvals and reviews shall be documented on the Procurement file copy of the following documents prior to issuance.

Document	Approval	Review
Notice of Termination/Cancellation for Default	Director of Procurement and Logistics	N/A
Letter Notice	SCR	N/A
Contract Revision	Director of Procurement and Logistics	DOE/NNSA/AL and DOE/NNSA/SSO

Amendment of Termination Notice Revision - 4.7.G.3.g

The SCR may revise a Notice of Termination/Cancellation to:

- correct nonsubstantive mistakes in the notice,
- add supplemental data or instructions, or
- rescind the notice if it is determined that items terminated had been completed or shipped before the Contractor's receipt of the notice.

References - 4.7.G.4

- Guideline 5.5 - Contracting for Construction
- Guideline 6.13 - Property

Send feedback on ideas and information on this page to the Process Expert, Adolph Bachicha.

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