

**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)).

\* \* \* \* \*

[FR Doc. 2010-12136 Filed 5-19-10; 8:45 am]

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