

# **TERMINATION FOR CONVENIENCE REFERENCE AND OVERVIEW**

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## **Future Combat Systems (FCS) Manned Ground Vehicle (MGV) Subcontractor Review**

**Supply Chain Management  
29 July 2009**

# TERMINATION FOR CONVENIENCE - DISCLAIMER

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**The material in this presentation is not legal advice. The material presented is for reference only and is intended for use as guidelines by General Dynamics Land Systems' Subcontractors when responding to this Termination For Convenience.**

**All subcontractors are strongly encouraged to seek competent independent legal advice when complying with the requirements of this Termination For Convenience**

# TERMINATION FOR CONVENIENCE

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## THE BASICS

# Applicable Law - Subcontracts

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- **State Law (federal law and FAR may preempt)**
- **UCC**
- **Common Law (state court decisions)**
- **Federal Courts (diversity, federal question)**
- **Choice of law**

# Government Right to Terminate

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- **Inherent Authority**
  - ☑ **Concept existed since after Civil War**
  - ☑ **Based on principle that government should not have to buy when need no longer exists**
  - ☑ **Government needs this flexibility**
  
- **Contractual Authority**
  - ☑ **Inherent authority regularized in contract language**
  - ☑ **Permits orderly discontinuance of contract**
  - ☑ **Limits contractor recovery**

# Authority

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- **Under convenience termination clause, government may terminate without cause**
  - ☑ **Standard: whether termination for convenience is in the government's best interest**
  - ☑ **Consideration: government agrees to pay reasonable, allocable costs plus profits on those costs (subject to important limitations)**

# Clauses

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- **Standard Clause (Fixed price over \$100K)**
  - ☑ **FAR 52.249-2**
- **Short Form (Fixed Price under \$100K)**
  - ☑ **FAR 52.249-1**
- **Service Contracts**
  - ☑ **FAR 52.249-4**
- **Cost Reimbursement**
  - ☑ **FAR 52.249-6**
- **Commercial Items (per Part 12)**
- **Others**

# The Mechanics of the Termination

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- **Written Notice**
- **Effective Date**
- **Work Stoppage**
- **Audit and Disposition of Inventory**
- **Settlement Proposal**
  - ☑ **Timing**
  - ☑ **Basis (Inventory/Total Cost/No Cost)**
- **Accounting Audit**
- **Consequences of No or Late Proposal**



# What Does the Subcontractor Receive?

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- **Costs incurred to point of termination**
  - ☑ **Fairness principle on costs**
- **Profit on those incurred costs**
- **Limitations**
  - ☑ **Cost Principles**
  - ☑ **Total Contract Price**
  - ☑ **Funding Limitations**
  - ☑ **Anticipatory Profits/Consequential Damages**
- **Special Termination Costs**

# What Costs are Allowed?

- **Basic test for cost recovery**
  - ☑ **Reasonableness**
  - ☑ **Allowability**
  - ☑ **Allocability**
- **Separate Account**
- **Recoverable Costs**
  - ☑ **Caps on Overhead**
  - ☑ **Distinguish between continuing productive and continuing non-productive costs**
    - **Continuing productive costs generally recoverably**
- **Limited to Obligated Funds, BUT**

# Pre-Termination Costs

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- **Remedies under the Termination For Convenience clause for Pre-Termination Expenses**
  - ☑ **Completed inventory**
  - ☑ **Reasonable cost incurred**
    - **Allowability**
  - ☑ **Initial Costs**
  - ☑ **Termination Inventory**

# Post-Termination Costs

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- **Remedies under the Termination For Convenience clause for Post-Termination Expenses**
  - ☑ **Those which the supplier cannot discontinue immediately despite reasonable efforts**
  - ☑ **Costs the supplier incurs on account of the termination**

# Post-Termination Costs

- **Costs continuing after termination**
  - ☑ **Mitigation of Costs**
    - Reasonable efforts to discontinue
  - ☑ **Continuing Salaries**
    - Standby Status
    - Relocating employees
  - ☑ **Severance Pay**
  - ☑ **Work in Progress / Costs of Completion**
  - ☑ **Settlements with lower tier subcontractors**
  - ☑ **Facilities and Equipment**
- **Overhead Costs**
  - ☑ **Normal Overhead and G & A**
  - ☑ **Unabsorbed Overhead**

# Settlement Costs

- **Settlement Expenses**
  - ☑ **Claim Preparation / Prosecution**
  - ☑ **Preparation of Termination Settlement**
    - **Presentation/Negotiation/Continuation**
  - ☑ **Allocability**
  - ☑ **Separate Accounting**
  - ☑ **Reasonableness**
    - **Outside consultants**
    - **Inside expenses**
  - ☑ **Inventory Disposition**
  - ☑ **Indirect Costs Relating to Settlement**

# Settlement Costs

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- **Limitations**

- Overall contract price (ceiling)**

- **Plus valid claims**

- **Plus settlement expenses**

- No Anticipatory Profits**

- No full recovery for “useable items”**

- Costs must be reasonable, allowable, allocable and kept IAW GAAP.**

# Contract Termination Forms & Formats

## Subcontract Termination Forms & Formats

Form	Form Number	Cost Type	Short Form	Fixed Price Inventory Basis	Total Cost Basis
Inventory Schedule B	SF 1428/29	X		X	X
Inventory Schedule E for Use With Short Form Settlement	SF 1434		X		
Inventory Basis Settlement Proposal	SF 1435			X	
Total Cost Basis Settlement Proposal	SF 1436				X
Cost/Reimbursement Settlement Proposal	SF 1437	X			
Short Form Settlement Proposal	SF 1438		X		
Schedule of Accounting Informaion	SF 1439	X		X	X
Partial Payment Request	SF 1440	X	X	X	X



# Termination For Convenience Directions

- **Subcontractor Responsibilities**
  - ☑ **Stop Work Immediately**
  - ☑ **Terminate All Subcontracts/Subcontractors**
  - ☑ **Advise GDLS of Special Circumstances Precluding Work Stoppage**
  - ☑ **Perform Continued Portion of the Subcontract**
  - ☑ **Protect & Preserve Government Property**
  - ☑ **Notify GDLS of any Legal Proceedings**
  - ☑ **Settle with Subcontractors/Suppliers (Subject to US Govt. Approval)**
  - ☑ **Submit a Termination Settlement Proposal (TSP)**
  - ☑ **Dispose of Termination Inventory**

# Termination For Convenience Directions

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- **Additional Termination Activities**
  - ☑ **Cost Accumulation**
  - ☑ **Budgeting / Forecasting**
  - ☑ **Inventory Identification and Classification**
  - ☑ **Data Management**
  - ☑ **Reduction in Force**
  - ☑ **Training / Reassignment**
  - ☑ **Any Other Tasks Requested by GDLS, LSI or US Govt.**

# Termination For Convenience Timeline

TERMINATION FOR CONVENIENCE TIMELINE	
TASK	DATE COMPLETE
Issuance of Termination For Convenience Letter	22-Jul-09
GDLS Accounting Audit Authorization	27-Jul-09
Conduct Supplier Termination For Convenience Review	29-Jul-09
Initial Termination Settlement Proposals From Suppliers Due	20-Aug-09
Inventory Disposal Schedules Due Due	20-Aug-09
Request For Equitable Adjustment Due	20-Aug-09
Negotiations, Fact Finding and Audits Complete	3-Nov-09
Final Termination Settlement Proposal From Supplier Due	18-Nov-09
Submission of GDLS Rolled-Up Termination Settlement Proposals to LSI	22-Jan-10

# Supplier Questions & Answers

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**Information, up-dates and answers to supplier submitted questions concerning the FCS MGV Termination For Convenience will be posted on the GDLS procurement web site [www.gdls.com/procurement](http://www.gdls.com/procurement).**

**Supplier questions should be sent to GDLS via Email at [scmbusin@gdls.com](mailto:scmbusin@gdls.com).**