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BLOG

What to Do After Receiving a Stop-Work Order or Termination of Your Federal Contract or Grant: A Practice Guide for Government Contractors and Recipients

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The early days of the Trump Administration have caused nothing less than a complete shake-up of the federal procurement system, with impacts on federal contractors, subcontractors, and recipients of federal financial assistance, such as grants and loans. Through a series of Executive Orders and Agency Memoranda issued by the heads of the Office of Management and Budget (OMB), General Services Administration (GSA), Department of State, and others, the government is suspending work and, and in some cases, terminating federal awards. For example, GSA issued a complete "Acquisition Pause," the State Department issued a pause on U.S. foreign assistance funded by or through the State Department and U.S. Agency for International Development (USAID) and is actively terminating contracts and grants, and other agencies, including Department of Energy, Veterans' Affairs, Department of Housing and Urban Development, and National Institute of Health are issuing stop-work orders and/or termination of contracts and grants, in whole or in part.

These terminations and suspensions are in direct response to President Trump's Executive Orders, including Ending Radical and Wasteful Government DEI Programs and Preferencing; Ending Discrimination and Restoring Merit-Based Opportunity; Unleashing American Energy; and Reevaluating and Realigning United States Foreign Aid. Separately, the OMB issued a memorandum on January 27, 2025, pausing all agency grant, loan, and financial assistance programs. The OMB later limited and ultimately rescinded the memorandum, but the OMB's requirement that all agencies evaluate each funding program to determine whether it aligns with President Trump's policies all but guarantees that more contract and grant terminations and suspensions are sure to follow. Our team has written in more detail about some of the Executive Orders, relating to restrictions on DEI and the government-wide freeze on all federal financial assistance—the latter of which is currently enjoined by court order.

To equip contractors and grant recipients that may be affected by these Suspension of Work, Stop-work Orders, or Termination Notices, we have provided the following primer to help entities understand their rights and legal remedies. Note that while precedent exists for contract terminations for the government's convenience, the concept of non-default grant terminations is relatively new—the government only recently amended the Uniform Grant Regulations in 2020 to provide agencies with the authority to terminate grant agreements without finding the grant recipient to be in default. There is no government-wide guidance on grant terminations; rather, the specifics of grant terminations are addressed at an agency and/or programmatic level. Therefore, the available remedies for an affected grant recipient must be evaluated at an individual level.

A. THE FEDERAL GOVERNMENT MAY ISSUE SUSPENSION OF WORK AND STOP-WORK ORDERS ON FEDERAL CONTRACTS

The government may at any time unilaterally require a contractor to stop all, or any part, of the work called for by a contract. Pursuant to FAR Subpart 42.13, the government has the ability to issue either a Suspension of Work or Stop-Work Order. The government may issue a suspension of work under a construction or architect-engineer contract for a reasonable period of time. If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit. FAR 42.1302.

Stop-work orders may be used, when appropriate, in any negotiated fixed-price or cost-reimbursement supply, research and development, or service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programs. FAR 42.1303(a). It is the latter—realignment of programs—that is being used by the Trump administration to justify the "pauses" in contract work and funding. Stop-work orders should be in writing and include: (1) a clear description of the work to be suspended; (2) instructions concerning the contractor's issuance of further orders for materials or services, including what a contractor should do regarding pending material orders, permits, services, and scope of work; (3) guidance to the contractor on action to be taken on any subcontracts; and (4) other suggestions to the contractor for minimizing costs.

Similarly, the government uses suspensions and "pauses" in funding for contracts and grants when it determines it is in the government's interest. There is limited regulatory guidance for contractors and recipients as to what a notice of a suspension or pause must include, but upon receiving notice, contractors and grant recipients should clarify the scope of the suspension or pause with the contracting officer if necessary. Grant recipients in particular should pay attention to the terms of the grant to determine the agency's rights to pause, suspend, or terminate the grant, and whether the grant identifies specific rights and obligations of the grant recipient.

B. THE FEDERAL GOVERNMENT HAS THE AUTHORITY TO TERMINATE CONTRACTS FOR ITS CONVENIENCE

Unlike commercial contracting, the government has the unilateral right to terminate all or part of a federal contract for its own convenience without any finding of default of the contractor. FAR 49.100-102. When terminating a federal contract for convenience, the contracting officer must provide written notice to the contractor, including notice that:

- The contract is being terminated for the convenience of the government under the contract clause authorizing the termination;
- The effective date of termination;
- The extent of termination;
- Any special instructions; and
- The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force.

While the government's authority to terminate for its convenience is extremely broad, it is not unlimited. The Federal Circuit and the Boards of Contract Appeals have upheld contractors' challenges to a termination for convenience in limited circumstances, such as a finding of bad faith by the contracting official or abuses of its discretion. *See Krygoski Constr. Co. Inc. v. United States*, 94 F.3d 1537 (Fed. Cir. 1996); *TigerSwan v. United States*, 110 Fed. Cl. 336, 345 (2013); *see also NVS Tech. Inc. v. Dep't Homeland Sec.*, CBCA 4775, 20 BCA P 37541 (2020). If a contractor can show that the agency acted in bad faith, it may be able recover additional damages, such as anticipatory profits. *See BTR Enters. of SC, LLC v. United States*, 2019 WL 4102586 (Fed. Cl. Aug. 29, 2018) (citing *TigerSwan v. United States*, 110 Fed. Cl. 336, 345 (2013)). However, there is an extremely high burden to establish that contracting officials acted in bad faith to terminate a contract for convenience. "To that end, a party alleging that a government official acted in bad faith must overcome the presumption of good faith with "well-nigh irrefragable" proof, meaning that the evidence of bad faith cannot be refuted or disproved and the evidence is incontrovertible,

incontestable, indisputable, irrefutable, and undeniable." *Id*. The Court of Federal Claims has found examples of bad faith in the following scenarios:

- the government terminates a contract for convenience in order to get a better price for itself
- the government executes a contract without intending to allow the awardee to perform it
- where the government has engaged in improper self-dealing for its own benefit or to benefit another contractor

With regard to abuse of discretion, the contractor must demonstrate that the decision was so arbitrary or capricious as to constitute an abuse of discretion, and can present evidence of subjective bad faith on the part of the government official; that there was no reasonable, contract-related basis for the official's decision; whether the decision fell within the contracting official's discretion; and whether the action violated an applicable statute or regulation.

Generally, after receiving notice of termination for convenience, the contractor must immediately stop work on the contract. Even if the contractor does not have the grounds to appeal the termination as improper, as described in more detail below, the contractor has the right to obtain payment for certain costs if the contract is terminated for convenience, as FAR 49.201 entitles contractors to a settlement that "compensate[s] the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit." A contractor may appeal a settlement determination made by the agency to the Board of Contract Appeals, but cannot do so until after the contracting officer has made a final contract settlement decision in writing.

C. CONTRACTOR ACTIONS UPON RECEIPT OF A NOTICE OF SUSPENSION OF WORK, STOP-WORK ORDER, OR TERMINATION NOTICE

After a contractor or grant recipient receives a Notice of Suspension of Work or Stop-Work Order, there are steps that contractors and grant recipients may need to take immediately. These steps include, in addition to any specific steps laid out by the government in the notice:

- **Cease Work:** Contractors and grant recipients must immediately cease all work being done in relation to the contract, as specified by the suspension, stop-work order, or termination notice. If necessary, contractors and grant recipients should clarify whether the suspension or termination is partial.
    - For contracts, costs that cannot be discontinued immediately after the effective date of termination are generally allowable if the contractor exercises reasonable efforts to discontinue such costs. FAR Part 31.205-42.
    - For grants, costs incurred during a suspension or after a termination are not allowable unless the suspension notice or termination expressly authorizes that cost. 2 C.F.R. § 200.343.
- **Halt Supply Orders:** Contractors should place no further orders for materials, services, or facilities (except as necessary to complete a continued portion of the contract) that were ordered in order to perform the contract. To the extent possible, outstanding orders for supplies should be cancelled.
- **Stop work on Subcontracts/Subgrants:** All subcontracts and subgrants must be stopped or terminated to the extent the subcontracts or subgrants relate to the work on the primary contract or grant that was stopped or terminated. After a contractor terminates a subcontract, the contractor will transfer all rights under the subcontracts to the government, and settle all outstanding liabilities arising from termination of the subcontracts.
- **Deliver the Work Not Terminated:** Contractors must complete performance of the work not terminated, and deliver to the government the completed work, work in progress, supplies, parts, and other material produced or required for the work terminated, as well as the completed or partially completed plans, drawings, information, and other property that the contractor would be required to furnish to the government had the contract been completed.
- **Submit an Inventory Schedule:** In cases of termination, contractors must submit an inventory schedule, detailing the quantity, condition, and disposal method for the government property provided to a contractor,

within 120 days of termination.

- **Document Costs:** Contractors and grant recipients should document all costs incurred in connection with the suspension, stop-work order, or termination, including the cost of labor, attorneys' fees, and the wind-down of work. This documentation should also include maintaining records of communication related to the cessation of work under the contract. The contractor should segregate costs attributable to the suspension or work stoppage, and prepare to submit a claim upon resumption of the work.
- **Mitigate Losses:** Contractors and grant recipients have a responsibility to mitigate costs association with the stop-work or termination, and as a result, contractors are unlikely to recover losses that could have been prevented by taking reasonable steps. For example, contractors should consider whether the inventory obtained can be used elsewhere or sold. Mitigation measures may involve furloughing or laying off employees that are only hired for the performance of the contract or award. However, contractors should consider legal obligations to employees under the federal Worker Adjustment and Retraining Notification Act (WARN Act), state or local laws, host nation laws for overseas work, or collective bargaining agreements.

D. RIGHTS AVAILABLE TO CONTRACTORS EXPERIENCING A STOP-WORK ORDER OR A TERMINATION

Following a termination or stop-work order, contractors and grant recipients have certain rights they can exercise to protect their interests.

First, if the contract is not terminated after the Suspension of Work or Stop-Work Order, but rather work is resumed, the contractor has the ability to file either a Request for Equitable Adjustment or a Claim. If work is suspended under FAR 52.242-14, a contractor may submit a claim for an equitable adjustment for any increased costs caused by the suspension incurred within 20 days of notice that the work is suspended, delayed, or interrupted for an unreasonable amount of time by the contracting officer. If a contract is suspended for more than 20 days under FAR 52.242-14, a contractor may be able to recover costs incurred during the suspension period, but they must notify the contracting officer in writing within 20 days of suspension to be eligible for cost adjustments. Failure to notify the contracting officer for expenses incurred after 20 days may result in costs not being allowable under the contract. The contractor must submit a claim for cost adjustments as soon as practicable after the suspension ends, and must do so before the final payment on the contract.

If work is paused by a stop-work order under FAR 52.242-15, a contractor may be entitled to an equitable adjustment in the delivery schedule and/or contract price if the stop-work order results in an increase in the time required for or allocable cost of the performance of the contract. If the government ends the stop-work order and allows the work to continue, the contract or delivery order is open to negotiation for an equitable adjustment to both price and delivery terms. The contractor may submit a claim for an equitable adjustment for any increased costs and/or fees associated with fulfilling the contract caused by the work stoppage, such as additional labor costs or material price increases. In order to receive an equitable adjustment, the contractor must assert its right to the adjustment within 30 days after the end of the work stoppage, and submit an equitable adjustment proposal. While profit lost due to a *contract suspension* is not recoverable, profit lost because of a *stop work order* is recoverable and may be claimed as part of the equitable adjustment.

Second, if the contract is terminated for convenience, as described above, there are certain limited scenarios in which the contractor can challenge the termination as either in bad faith or an abuse of the contracting officer's discretion. Additionally, and without regard to the ability of the contractor to appeal the decision, the contractor is entitled to payment for work performed prior to the effective date of termination, as well as costs incurred by the contractor as a result of the termination. The contractor's specific entitlement to costs varies based on whether the contract was fixed-price or a cost-reimbursement contract.

To initiate the process, the contractor will submit a termination settlement proposal request for payment to recover costs already spent by the contractor in relation to a terminated contract. The termination settlement proposal must include a Contract Disputes Act (CDA) certification. Following the termination of the contract, a contractor must submit a final termination settlement proposal to the contracting officer within one year from the effective date of termination.

In a **fixed-price contract**, the contractor is entitled to recover compensation for the work performed up to the date of termination, a reasonable allowance for profit on the preparations made and work done by the contractor for the terminated portion of the contract, and the reasonable costs associated with termination of the contract. Costs incurred with settlement include accounting, legal, and clerical expenses associated with preparing the settlement proposal, as well as the termination and settlement of subcontracts, and hard costs such as storage, transportation, and other costs needed for the preservation, protection, or disposition of inventory. A contractor cannot claim costs exceeding the price of the contract (including the payments already received), nor can it claim anticipatory profits or consequential damages.

Under a **cost-reimbursement contract**, the contractor can also submit a settlement proposal, which may include all unpaid costs reimbursable under the contract properly incurred prior to the effective date of termination, and those that may continue for a reasonable period of time as directed by the agency, as well as the costs associated with termination.

After a proposal has been submitted, most settlements are achieved through a negotiated agreement. As part of the settlement proposal process, contractors must submit documentation and certifications, and should take care to ensure that documentation is correct to avoid false claims liability. FAR Part 49.206. Once the settlement proposal has been submitted, the contractor and contracting officer will attempt to negotiate a settlement. If the parties are unable to reach agreement, the agency will issue a final decision, which the contractor may appeal to the Boards of Contract Appeals (BCA) or Court of Federal Claims. The Armed Services Board of Contract Appeals has explained that, once the contracting officer has issued a final decision on a termination settlement proposal, the claim is ripe and the contractor need not appeal it back to the contracting officer so long as the proposal contained a CDA certification.

E. TERMINATION OF FEDERAL GRANTS

After the Uniform Grant Regulations were amended in 2020 to allow termination of grant agreements without default by the grant recipient, the OMB added 2 C.F.R. § 200.340(a)(4), which provides:

> The Federal award may be terminated in part or its entirety as follows: By the Federal agency or pass-through entity *pursuant to the terms and conditions of the Federal award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities*.

Under grant regulations, grant recipients and subgrant recipients are entitled to written notice of termination, which should include the reasons for termination, the effective date, and the portion of the Federal award to be terminated. 2 C.F.R. § 200.341.

However, the agency's authority is subject to the particular terms of the grant agreement:

> The Federal agency or pass-through entity must clearly and unambiguously specify all termination provisions in the terms and conditions of the Federal award.

2 C.F.R. § 200.340(b). Given this language, one could argue that absent clear language in a grant agreement providing the agency with the express right to terminate the agreement for its convenience, the agency lacks such authority. For example, the Department of Commerce Federal Financial Assistance Manual, dated October 1, 2024, expressly precludes terminations for convenience under Section 200.340:

> All termination actions must be documented in the official award file. *See* 2 CFR § 200.340 (Termination). The Federal Government may not terminate an award unilaterally for the convenience of the government.

Along the same lines, the EPA General Terms and Conditions, dated October 1, 2024, lists two bases upon which the agency may terminate pursuant to Section 200.340, including the recipient's failure to comply with the grant award and upon mutual consent of the parties. Absent is the language in Section 200.340(a)(4) allowing the government to terminate based on a change in program goals or agency priorities. The enforceability of these contractual and agency policies on the agency is a concept that will need to be tested and decided by the Court of Federal Claims.

OMB provided little other guidance on the rights or remedies of recipients affected by such a no-fault termination. Instead, it instructs each federal agency to "maintain written procedures for processing objections, hearings, and appeals." 2 C.F.R. § 200.340(b). Further, "[t]he Federal agency or pass-through entity must comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient or subrecipient is entitled under any statute or regulation applicable to the action involved." Thus, the timing, location, and specific requirements for filing an appeal of a termination pursuant to Section 200.340(b) will need to be compliant with the awarding agency's regulations as well as the grant terms and conditions. For example, the Department of Energy's dispute-resolution procedures are set forth in its agency supplement to the Uniform Grant Regulation. 2 C.F.R. § 910.128. Grant recipients will need to review the requirements of the granting agency as well as their individual grant terms and conditions to determine their ability to challenge a termination.

In the event that a grant recipient is terminated pursuant to Section 200.340, **t**hrough the closeout process, the grant recipient can seek reimbursement for all allowable costs incurred. The Uniform Guidance specifically allows for termination and standard closeout costs, which includes "the incurrence of costs or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated." C.F.R. § 200.472. As in federal contracting, the grant recipient is required to mitigate related losses by making reasonable efforts to immediately discontinue costs after the effective termination date. Costs that are generally reimbursable include:

- Accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation of the terminated part of the award, and termination and settlement of subawards;
- Reasonable costs for storage, transportation, protection, and disposition of property provided by the federal government or produced or acquired for the federal award;
- Claims under the subaward, including allocable portion of claims common to the federal award and other work of the recipient or subrecipient;
- Salaries of personnel preparing final reports;
- Publication and printing costs;
- Rental costs under unexpired leases if reasonably necessary for the performance of the award, subject to mitigation efforts; and
- Costs of special equipment that cannot be reasonably usable for the recipient's other work.

In order to complete a closeout, recipients must submit the final financial, performance, and other reports required by the grant, and meet other award conditions, within 120 days after the grant award is terminated.

CONCLUSION

As federal funding circumstances continue to rapidly evolve with the new presidential administration, it is important to know your rights and obligations under the applicable regulations as well as the specific terms of your contract or grant agreement. Because your ability to recover contract and grant costs is highly dependent on timing, it is imperative that you quickly take appropriate actions to discontinue unallowable costs and assert your legal rights. The Government Contracts and Grants team at Winston & Strawn is available to advise affected entities on potential obligations and available remedies.

10+ Min Read

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