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Bradley Arant Boult Cummings LLP

CONSTRUCTION AND PROCUREMENT LAW NEWSLETTER

IN THIS ISSUE

IRA UPDATE: RECENT REGULATIONS POTENTIALLY AT RISK IN SECOND TRUMP ADMINISTRATION

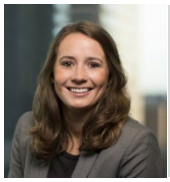
Ben Colalillo, Monica Wilson Dozier, & Christopher A. Bowles

With the inauguration of President Donald Trump and the Republican Party taking control of both houses of Congress, the renewable energy industry is faced with great uncertainty, including the potential for immediate impacts on the regulatory environment based on recent executive action.

On January 20, 2025, President Trump issued a memorandum instructing federal agencies to freeze pending rulemaking activity and consider postponing the effective date of new or pending rules until a member of the Trump administration has reviewed such rules. The issuance of this memorandum was widely expected, and similar actions have been taken by incoming administrations going back to at least the George W. Bush administration. The memorandum defines "rules" broadly to not only include those issued through the Administrative Procedures Act, but also (1) "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including *notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking*" and (2) "any agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue."

SAFETY MOMENT FOR THE CONSTRUCTION INDUSTRY

Earlier this year, OSHA issued an updated directive related to recordkeeping policies and procedures governing workplace injuries and illnesses. This directive became effective on January 13, 2025 and introduces enhanced enforcement guidance under OSHA's injury and illness recordkeeping regulation (29 CFR Part 1904). According to OSHA, the alignment of its policies with modern practices and regulatory requirements will improve clarity and bring greater consistency to the reporting of workplace incidents. The update provides additional guidance to compliance officers and incorporates advancements in technology, among other things. The directive is an important resource for construction safety professionals and organizations seeking to maintain compliance with recordkeeping policies.



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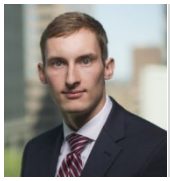

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In particular, the memorandum instructs federal agencies to:

Not propose or issue, or send for publication in the Federal Register, any rule until it has been reviewed and approved by a member of the Trump administration (subject to limited carveouts for emergencies, urgent circumstances, or statutory or judicial deadlines);

Withdraw any rules that have been sent for publication in the Federal Register but have not been published (subject to the same limited carveouts described above); and

Consider postponing for 60 days the effective date for any published rules or any other rule that has been issued in any manner but not yet taken effect.

In addition to the regulatory freeze described above, recently finalized rules can be made ineffective through a fast-tracked act of Congress under the Congressional Review Act. While since its enactment in 1996, the Congressional Review Act has rarely been used, it is notable that according to the Government Accountability Office, roughly 75% of regulations nullified under the Congressional Review Act were those finalized during the last months of the Obama administration and nullified in the first months of the first Trump administration. Although determining the lookback window for finalized rules that can be overturned requires a detailed review of the House and Senate calendars, the Congressional Research Service estimates the period likely began around August 1, 2024.

As described further below, some major regulations and guidance related to the Inflation Reduction Act may be subject to the regulatory freeze and/or the Congressional Review Act.

Perhaps pursuant to the regulatory freeze, the following items of sub-regulatory guidance have not yet been published in the Internal Revenue Bulletin, which could limit their precedential value.

1. IRS Notice 2025-08 (regarding the first updated elective safe harbor for the domestic content bonus).

2. Rev. Proc. 2025-14 (regarding greenhouse gas emission rates for 45Y and 48E credits).

While the plain text of the regulatory freeze memorandum arguably does not cover currently effective guidance, such as the above, some industry participants believe the freeze has blocked their publication, which may limit their precedential value. However, as of this post, we are still in the relatively normal delay period between the release of guidance and publication in the IRB. If the above is not published next week in the IRB, practitioners may need to consider the limited precedential value of unpublished sub-regulatory guidance. Interested parties should continue to monitor the IRB (posted online each Friday and printed the following week) to check if the above have been published.

The following published and effective final rules are subject to potential nullification pursuant to the Congressional Review Act:

1. Election To Exclude Certain Unincorporated Organizations Owned by Applicable Entities From Application of the Rules on Partners and Partnerships (direct pay guidance), published in the Federal Register at Vol. 89, Page 91552, and effective on January 19, 2025.

2. Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit, published in the Federal Register at Vol. 90, Page 4006, and effective on January 15, 2025.

3. Guidance on Clean Electricity Low-Income Communities Bonus Credit Amount Program, published in the Federal Register at Vol. 90, Page 2482, and effective on January 13, 2025. Note that the additional guidance published in Rev. Proc. 2025-11 *may* also be subject to the Congressional Review Act. This area of the law is undeveloped.

4. Credit for Production of Clean Hydrogen and Energy Credit, published in the Federal Register at Vol. 90, Page 2224, and effective on January 10, 2025.

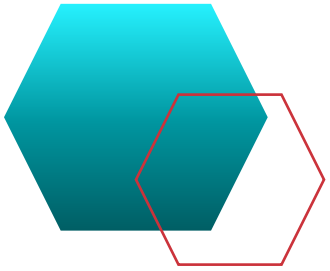
5. Advanced Manufacturing Production Credit, published in the Federal Register at Vol. 89, Page 85798, and effective on December 27, 2024.

6. Definition of Energy Property and Rules Applicable to the Energy Credit, published in the Federal Register at Vol. 89, Page 100598, and effective on December 12, 2024.

In addition to the above, the change in administrations is likely to impact proposed rules, including the Section 45W Credit for Qualified Commercial Clean Vehicles rule, which remains open for comment through March 17, 2025.

Further, while this post only covers regulations related to the Inflation Reduction Act, readers should check the Federal Register for other rules that may have been delayed pursuant to the regulatory freeze (including some regulations issued by the EPA). Additionally, the Trump administration's broad spending freeze, which has caused widespread confusion, has significant broader impacts. While the OMB memorandum announcing the spending freeze has been withdrawn, as of publication, there is continued confusion over current policy, as the White House announced that the withdrawal of the memo "is NOT a rescission of the federal funding freeze." Of note, as of publication, Solar for All funding appears to be frozen.

Note: Following publication of this article, on February 18, 2025, IRS Notice 2025-08 was published in Internal Revenue Bulletin 2025-8.



FEDERAL CONTRACTOR MINIMUM WAGE EXECUTIVE ORDER REVOKED

Aron C. Beezley & Patrick R. Quigley

On March 14, 2025, President Donald Trump issued an executive order rescinding several policies from the previous administration, including Executive Order 14026, which had increased the minimum wage for federal contractors.

Background on Executive Order 14026

Signed on April 27, 2021, by then-President Joe Biden, Executive Order 14026 mandated that federal contractors pay a minimum wage of $15 per hour. This policy aimed to improve the livelihoods of workers on federal contracts and was set to adjust annually with inflation. By January 1, 2025, the minimum wage under this order had risen to $17.75 per hour.

Implications of the Rescission

The revocation of Executive Order 14026 means that federal contractors are no longer required to adhere to the previously mandated minimum wage rates. Instead, they will revert to using wage determinations provided under existing laws such as the Service Contract Act and the Davis-Bacon Act. This change could lead to variations in wages across different federal contracts, depending on the specific stipulations of each agreement.

Conclusion

The rescission of Executive Order 14026 marks a significant shift in federal labor policy, reflecting the current administration's priorities. As this policy change unfolds, its full impact on the federal contracting landscape and the workforce involved remains to be seen.

BRADLEY LAWYER ACTIVITIES AND NEWS

Bradley is pleased to announce that the firm's Government Contract Practice Group has been selected as a winner of *Law360*'s "**Practice Group of the Year**" for the third time. The firm's practice group also earned this recognition in 2023 and in 2021.

Robert Symon was named co-chair of the Public Contracts Committee for the American College Of Construction Lawyers.

Aron Beezley and **John Mark Goodman** were honored as "Top Authors" by *JD Supra* in its 2025 Readers' Choice Awards. Additionally, the firm was recognized with a "Top Firm Award" for Construction.

Charley Sharman has been named one of the recipients of the Houston Bar Association's (HBA) 2025 President's Award, which recognizes outstanding service to the organization.

Ryan Beaver was recognized in the 2025 *North Carolina Super Lawyers List.*

Debbie Cazan was recognized in the 2025 Georgia *Super Lawyers List.*

Jared Caplan's article "Navigating the Dilemma: How OSHA's Multi-Employer Citation Policy Impacts Civil Liability for Texas General Contractors" was published in the Winter-Spring 2025 edition of the *Construction Law Journal.*

The Bradley Construction Group will hold **Construction 101 Seminars: Managing Risk on a Construction Project** during the months of June and August across our offices. A list of dates and registration for our events can be found ***here***.

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OSHA'S NEW PPE FIT REQUIREMENTS FOR THE CONSTRUCTION INDUSTRY

Jared B. Caplan

Effective December 12, 2024, the Occupational Safety and Health Administration (OSHA) finalized an update to its personal protective equipment (PPE) standard for the construction industry, emphasizing the importance of ensuring PPE fits properly.

Clarifying the Need for Proper Fit

The revised rule amends 29 CFR 1926.95, which outlines the criteria for PPE in the construction industry. Specifically, OSHA updated Section 1926.95(c) to state that:

Employers must ensure that all personal protective equipment:

Is of safe design and construction for the work to be performed; and

Is selected to ensure that it properly fits each affected employee.

While this revision does not introduce a new requirement, it clarifies the existing obligation and brings the construction standard in line with OSHA's standards for general industry (29 CFR 1910.132(d)(1)(iii)) and shipyards (29 CFR 1915.152(b)(3)), both of which already specify that PPE must fit properly.

The updated rule specifies that all PPE — whether provided by the employer or purchased by the employee — must fit properly. This includes universal-fit items, like adjustable helmets and gloves, as well as non-universal-fit items that may need to be tailored for individual workers.

Guidance from Manufacturers and Consensus Standards

While OSHA encourages employers to refer to manufacturers' instructions for proper fit, it is not a requirement. Employers have flexibility in selecting PPE that meets the specific needs of their workers. If the manufacturer's instructions are not available, employers can look to consensus standards or select PPE with available fit guidance.

Enforcement and Employer Expectations

OSHA's revised rule makes it clear that properly fitting PPE is enforceable. However, the agency does not expect PPE to be perfect, but rather properly designed and sized to protect workers without introducing new risks. OSHA's definition of "proper fit" remains flexible, allowing employers to select PPE that suits their workforce while maintaining safety.

Although uncomfortable PPE is not grounds for a citation, employers must ensure PPE is worn as required under 29 CFR 1926.28. Uncomfortable PPE may lead to non-compliance if workers choose not to use it, so employers should take employee comfort seriously to ensure that PPE is used effectively.

As OSHA enforces stricter PPE requirements, employers in the construction industry should understand their legal obligations. In cases where PPE does not fit properly due to size or design limitations, legal counsel can help navigate potential liabilities and advise on how to meet OSHA's standards.

FEDERAL COURT EMPHASIZES STRICT ADHERENCE TO MECHANIC'S LIEN STATUTE

John Mark Goodman

A federal judge in New York served up a good reminder last week about the importance of dotting your i's and crossing your t's when it comes to perfecting a mechanic's lien. The case involves a payment dispute between a subcontractor and general contractor on a police station renovation project in the Bronx.

The subcontractor liened the job and brought suit to foreclose its lien (among other claims). The New York lien law at issue for public improvement works provides that a lien "shall not continue for a longer period than one year from the time of filing the notice of such lien, unless an action is commenced to foreclose such lien within that time, and a notice of the pendency of such action is filed with the comptroller of the state or the financial officer of the public corporation with whom the notice of such lien was filed." N.Y. Lien Law Section 18 (emphasis added). The subcontractor had filed its lien and a lawsuit to enforce it within one year but had failed to file the notice of pendency. The subcontractor's lien had therefore automatically expired after one year. The subcontractor argued that the notice of pendency was unnecessary because the contractor had bonded off the lien. The court rejected that argument and dismissed the subcontractor's lien claim. The case is *J&A Concrete Corp. v. Dobco Inc.*, 2025 WL 605252 (S.D.N.Y. Feb. 24, 2025). A copy of the court's opinion is located here.

THE GOVERNMENT CONTRACTOR'S GUIDE TO TERMINATION FOR CONVENIENCE

Aron C. Beezley & Nathaniel J. Greeson

The Trump administration, as part of its efforts to reshape the federal government, began terminating federal contracts for the convenience of the government almost immediately after coming back to town. These contract terminations show no signs of slowing in the near term. Accordingly, government contractors need to know their rights and obligations so that they can be best positioned if one or more of their contracts are terminated. This article provides a user-friendly guide for government contractors on these important rights and obligations.

General

"Termination for convenience means the exercise of the Government's right to completely or partially terminate performance of work under a contract when it is in the Government's interest" (Federal Acquisition Regulation (FAR) 2.101). The right to terminate for convenience is made a part of almost all government contracts by inclusion of the standard Termination for the Convenience of the Government clauses in FAR 52.249-1 through -5. The Termination for Convenience clause in commercial item contracts issued under FAR Part 12 can be found in paragraph (l) of FAR 52.212-4. For government contracts that do not contain a termination for convenience clause, such a clause nonetheless is generally read into the contract by operation of law under the "*Christian* Doctrine." See *G.L. Christian & Assoc. v. United States*, 312 F.2d 418 (Ct. Cl. 1963).

Procedures

Once a government contract has been terminated for the convenience of the government, a series of duties for both the prime contractor and the contracting officer are triggered under FAR 49.104 and FAR 49.105, respectively. These duties are discussed in turn below.

Duties of Prime Contractor

FAR 49.104 (Duties of Prime Contractor After Receipt of Notice of Termination) states that, "[a]fter receipt of the notice of termination, the contractor shall comply with the notice and the termination clause of the contract, except as otherwise directed by the TCO [Termination Contracting Officer]."

FAR 49.104 states that "the notice and clause applicable to convenience terminations" generally require that the contractor:

1. Stop work immediately on the terminated portion of the contract and stop placing subcontracts thereunder;

2. Terminate all subcontracts related to the terminated portion of the prime contract;

3. Immediately advise the TCO of any special circumstances precluding the stoppage of work;

4. Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;

5. Take necessary or directed action to protect and preserve property in the contractor's possession in which the government has or may acquire an interest and, as directed by the TCO, deliver the property to the government;

6. Promptly notify the TCO in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract;

7. Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;

8. Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and

9. Dispose of termination inventory, as directed or authorized by the TCO.

Accordingly, government contractors who have had a contract terminated for convenience need to be mindful of the duties that the FAR imposes upon them and should adequately document their compliance with these duties.

Duties of Contracting Officer

FAR 49.105 (Duties of Termination Contracting Officer After Issuance of Notice of Termination), in turn, states that "[c]onsistent with the termination clause and the notice of termination, the TCO shall":

1. Direct "the action required of the prime contractor;"

2. Examine the prime contractor's termination settlement proposal and, when appropriate, the settlement proposals of subcontractors;

3. Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

4. Promptly settle the contractor's settlement proposal "by determination for the elements that cannot be agreed on, if unable to negotiate a complete settlement" (see FAR 49.105(a)).

Next, FAR 49.105(b) states that, "[t]o expedite settlement, the TCO may request specially qualified personnel to":

1. Assist in dealings with the contractor;

2. Advise on legal and contractual matters;

3. Conduct accounting reviews and advise and assist on accounting matters; and

4. Perform the following functions regarding termination inventory (see FAR subpart 45.6): verify its existence; determine qualitative and quantitative allocability; make recommendations concerning serviceability; undertake necessary screening and redistribution; and assist the contractor "in accomplishing other disposition."

Moreover, FAR 49.105(c) states that the TCO "should promptly hold a conference with the contractor to develop a definite program for effecting the settlement." In addition, the FAR states that, "[w]hen appropriate in the judgment of the TCO, after consulting with the contractor, principal subcontractors should be requested to attend."

FAR 49.105(c) goes on to state that "[t]opics that should be discussed at the conference and documented include":

1. General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;

2. Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;

3. Status of any continuing work;

4. Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;

5. Names of subcontractors involved and the dates termination notices were issued to them;

6. Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;

7. Arrangements for transfer of title and delivery to the government of any material required by the government;

8. General "principles and procedures to be followed in the protection, preservation, and disposition of the contractors and subcontractors' termination inventories, including the preparation of termination inventory schedules;"

9. Contractor accounting practices and preparation of SF 1439 (Schedule of Accounting Information (FAR 49.602-3);

10. Accounting review of settlement proposals;

11. Any requirement for interim financing in the nature of partial payments;

12. Tentative "time schedule for negotiation of the settlement, including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules (see [FAR] 49.206-3 and [FAR] 49.303-2)";

13. Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph (g) of the letter notice in FAR 49.601-2); and

14. The "[o]bligation of the contractor to furnish accurate, complete, and current cost or pricing data, and to certify to that effect in accordance with [FAR] 15.403-4(a)(1) when the amount of a termination settlement agreement, or a partial termination settlement agreement plus the estimate to complete the continued portion of the contract exceeds the threshold in [FAR] 15.403-4."

Although the duties set forth under FAR 49.105 are generally directed to the contracting officer, contractors should keep an eye on these obligations and do their best to make sure that the contracting officer is adhering to them.

Termination Settlement Proposals

In exchange for the government retaining the right to terminate most federal contracts for the convenience of the government, the FAR allows contractors to submit a convenience termination settlement proposal in which the terminated contractor may seek recovery of certain costs. FAR 49.201(a) states that such a settlement "should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit."

There are two basic approaches to convenience termination settlement proposals: the "inventory basis" and the "total cost" basis. The submission requirements under these two approaches are discussed in turn below. In addition, we discuss unique

convenience termination rules for commercial item contracts under FAR 12.403, as well as the general timing requirements for submitting convenience termination settlement proposals.

Inventory Basis

FAR 49.206-2(a) states that "[u]se of the inventory basis for settlement proposals is preferred." Under the inventory basis, "the contractor may propose only costs allocable to the terminated portion of the contract, and the settlement proposal must itemize separately" the following: (1) "[m]etals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling, at purchase or manufacturing cost;" (2) charges such as engineering costs, initial costs, and general administrative costs; (3) costs of settlements with subcontractors; (4) settlement expenses; and (5) other "proper charges."

FAR 49.206-2(a) additionally states that "[a]n allowance for profit ([FAR] 49.202) or adjustment for loss ([FAR] 49.203(b)) must be made to complete the gross settlement proposal." In addition, "[a]ll unliquidated advance and progress payments and all disposal and other credits known when the proposal is submitted must then be deducted."

FAR 49.206-2(a) goes on to state that the "inventory basis is also appropriate for use under the following circumstances."

1. The "partial termination of a construction or related professional services contract;"

2. The "partial or complete termination of supply orders under any terminated construction contract;" and

3. The "complete termination of a unit-price (as distinguished from a lump-sum) professional services contract."

Total Cost Basis

Concerning the "total cost" basis of settlement, FAR 49.206-2(b) states: "When use of the inventory basis is not practicable or will unduly delay settlement, the total-cost basis (SF-1436) may be used if approved in advance by the TCO as in the following examples":

1. If production has not commenced and the accumulated costs represent planning and preproduction or get ready expenses;

2. If, under the contractor's accounting system, unit costs for work in process and finished products cannot readily be established;

3. If the contract does not specify unit prices; and

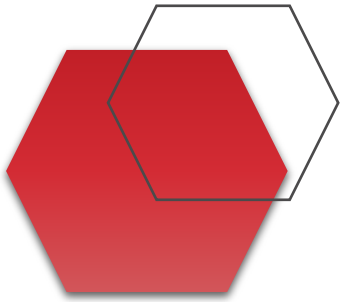
4. If the termination is complete and involves a letter contract.

Accordingly, contractors seeking to use the "total cost" basis should confirm in writing with the TCO in advance that the "total cost" basis is acceptable.

"When the total-cost basis is used under a complete termination, the contractor must itemize all costs incurred under the contract up to the effective date of termination." FAR 49.206-2(b)(2). Further, "[t]he costs of settlements with subcontractors and applicable settlement expenses must also be added," "[a]n allowance for profit ([FAR] 49.202) or adjustment for loss ([FAR] 49.203(c)) must be made," and "[t]he contract price for all end items delivered or to be delivered and accepted must be deducted." "All unliquidated advance and progress payments and disposal and other credits known when the proposal is submitted must also be deducted."

With respect to the use of the total-cost basis under a partial termination, the FAR states that the "settlement proposal shall not be submitted until completion of the continued portion of the contract." FAR 49.206-2(b)(3). The FAR also states that the settlement proposal "must be prepared as in [FAR 49.206-2(b)(2)], except that all costs incurred to the date of completion of the continued portion of the contract must be included."

If, however, "a construction contract or a lump-sum professional services contract is completely terminated, the contractor shall":



1. Use the total cost basis of settlement;

2. Omit line 10 "Deduct-Finished Product Invoiced or to be Invoiced" from Section II of Standard Form-1436 Settlement Proposal (Total Cost Basis); and

3. "Reduce the gross amount of the settlement by the total of all progress and other payments" (see FAR 49.206-2(b)(4)).

FAR 49.602, in turn, outlines the standard forms used to prepare settlement proposals under both the inventory and total cost basis.

Generally speaking, a convenience termination settlement proposal should seek costs that would otherwise be allowable under FAR Part 31 (see e.g., FAR 52.249-2(i)). FAR 31.205-42 (Termination Costs) sets out specific cost principles applicable to certain unique termination situations. Notably, "settlement expenses," including the costs incurred in the preparation and presentation of convenience termination settlement proposals, may be allowable costs (see FAR 31.205-42(g)). Finally, in instances in which the prime contract allows for partial payments, "a prime contractor may request [partial payments] on the form prescribed in [FAR] 49.602-4 at any time after submission of interim or final settlement proposals," and "[t]he Government will process applications for partial payments promptly" (see FAR 49.112-1(a)).

Commercial Item Terminations

Unique termination for convenience procedures apply to commercial item contracts covered by FAR Part 12. Specifically, FAR 12.403(d) provides that, when the contracting officer terminates a contract for commercial items for the government's convenience, the contractor shall be paid:

The "percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination for fixed-price or fixed-price with economic price adjustment contracts;" or

An "amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule;" and

Any "charges the contractor can demonstrate directly resulted from the termination."

FAR 12.403(d) goes on to state that the "contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in [FAR] part 31." Importantly, the government "does not have any right to audit the contractor's records solely because of the termination for convenience."

Finally, FAR 12.403(d) provides that the parties generally "should mutually agree upon the requirements of the termination proposal," and that the parties "must balance" the government's "need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement." Thus, unlike settlement proposals submitted under FAR Part 49, there is no standard form for submitting a settlement proposal under FAR Part 12.

Timing Requirements

FAR 52.249-2 (Termination for Convenience of the Government (Fixed-Price)), which is the most common convenience termination clause, states in relevant part:

(c) The Contractor shall submit complete termination inventory schedules *no later than 120 days from the effective date of termination*, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

* * *

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, *but no later than 1 year from the effective date of termination*, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined (*emphasis added).*

Notably, the timing requirements for submitting convenience termination settlement proposals are generally consistent across FAR clauses for traditional government contracts (see e.g., FAR 52.249-3 (Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements)) (containing similar timing requirements under subparagraphs (c) and (e)); FAR 52.249-5 (Termination for Convenience of the Government (Educational and Other Nonprofit Institutions)) (same). Generally, commercial item convenience termination submissions under FAR Part 12 do not contain similar timing requirements.

That said, each contract and set of facts should be analyzed on a case-by-case basis to ensure that the contractor is complying with applicable submission deadlines, and submission deadlines should be calculated conservatively regardless of which FAR clause applies.

Notably, the FAR does not impose a time limit by which the TCO must complete settlement negotiations with a terminated contractor. However, for small business concerns, the FAR dictates that auditors and the TCO "shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements involving small business concerns" (see FAR 49.101(d)).

Claims and Appeal Rights

In *Gardner Machinery Corp. v. United States*, 14 Cl. Ct. 286 (1988), the U.S. Claims Court — which is the predecessor to the U.S. Court of Federal Claims — distinguished settlement proposals from Contract Disputes Act (CDA) claims as follows:

[A] Settlement proposal is contemplated under the regulations as a request for opening negotiations. It is not contemplated by the regulations that settlement proposals be used for the submission of final demand, final decision requested CDA claims. That is not to say that CDA claims may not grow out of the settlement proposal process or be converted to a CDA claim. It simply means that at the point of impasse in the negotiation process, the contractor must submit or resubmit its written claim, now in dispute for a finite amount of money, to the contracting officer and request a final decision thereon.

While the foregoing summary may seem straightforward, the rules in this area can actually be quite tricky. Thus, it is important to seek guidance from experienced legal counsel when seeking to convert a convenience termination settlement proposal to a formal "claim" under the CDA.

Once a contracting offer issues a final decision on a contractor's claim, a dissatisfied contractor may generally appeal that decision to the cognizant agency board of contract appeals within *90 days* of receipt of the decision or bring suit on the claim in the U.S. Court of Federal Claims within *12 months* (see 41 U.S.C. § 7104).

Conclusion

In light of the recent uptick in federal contract terminations, contractors should be prepared to properly account for and timely submit recoverable costs in a convenience termination settlement proposal, as discussed in this guide.

BRADLEY LAWYER ACTIVITIES AND NEWS CONTINUED…

The CLSA International Conference and Induction of Fellows will be held September 17-19, 2025. **Carly Miller** will be presenting "Mid-Project Adjudication, Settlement, or Arbitration of Claims"

On May 7th, **David Taylor** and **Kyle Doiron** presented at the 23rd Annual Tennessee Commercial Real Estate Seminar regarding Tennessee Lien and Retainage Law for Tenant Buildouts.