

8.406-3

48 CFR Ch. 1 (10-1-06 Edition)

(4) Unless otherwise provided in the schedule contract, acceptance is conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(b) *Services.* The ordering activity has the right to inspect all services in accordance with the contract requirements and as called for by the order. The ordering activity shall perform inspections and tests as specified in the order's quality assurance surveillance plan in a manner that will not unduly delay the work.

8.406-3 Remedies for nonconformance.

(a) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering activity shall take appropriate action in accordance with the inspection and acceptance clause of the contract, as supplemented by the order.

(b) If the contractor fails to perform an order, or take appropriate corrective action, the ordering activity may terminate the order for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate). Ordering activities shall follow the procedures at 8.406-4 when terminating an order for cause.

8.406-4 Termination for cause.

(a)(1) An ordering activity contracting officer may terminate individual orders for cause. Termination for cause shall comply with FAR 12.403, and may include charging the contractor with excess costs resulting from repurchase.

(2) The schedule contracting office shall be notified of all instances where an ordering activity contracting officer has terminated for cause an individual order to a Federal Supply Schedule contractor, or if fraud is suspected.

(b) If the contractor asserts that the failure was excusable, the ordering activity contracting officer shall follow the procedures at 8.406-6, as appropriate.

(c) If the contractor is charged excess costs, the following apply:

(1) Any repurchase shall be made at as low a price as reasonable, considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all re-

purchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of _____
[insert contractor's name] under Order _____
[insert number] under Contract _____ [insert
number].

(2) When excess costs are anticipated, the ordering activity may withhold funds due the contractor as offset security. Ordering activities shall minimize excess costs to be charged against the contractor and collect or set-off any excess costs owed.

(3) If an ordering activity is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the contractor.

(i) The notice shall include the following information about the terminated order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) The notice shall also include the following information about the purchase contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(d) Only the schedule contracting officer may modify the contract to terminate for cause any, or all, supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any supplies or services covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor, unless terminated for the convenience of the Government by the ordering activity contracting officer.