



# Termination of Contracts

Minimize the Risks and Cost

Presented by

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# Termination of Contracts -- Overview

- Do We Have a Right to Terminate?
- Should We Terminate?
- What's the Best Procedure?
- Tips to Optimize the Termination Tool
- Common Termination Scenarios

# Do We Have a Right to Terminate?

- Termination Clause in Agreement
- Statutory Situations
  - UCC – Applies only to Goods
  - VPPA – Certain Upheld Protests
  - COIA – Prohibited Contracts
- Material Breach

# Should We Terminate?

- **Assess Legal Risk**
  - Betting Too Much on “Materiality” of Breach?
  - Potential for Discrimination/Retaliation Claim?
- **Effective Alternative Available?**
  - Letting Contract Expire or Go Fallow
  - Letting Breach/Short-Pay Occur
  - Notifying Surety (if Performance Bond Exists)
- **Assess Re-Procurement Feasibility**

# What's the Best Procedure?

- Follow Termination Clause Exactly
- Examples
  - DGS's 60-Day Clause
  - DGS's Termination For Convenience Clause
  - Due Oral or Written Notice
- Get Legal Advice If a Dispute Is Expected
  - Use Termination For Convenience as Back-Up
  - Act Promptly to Avoid Waiver of Termination Right
  - Get Legal Advice re Leveraging Claims Process

# Tips to Optimize Termination Tool

- During Contract Development
  - Expressly allow desired termination
  - Use T4C as automatic back-up
  - Tune clause to fit agency's "Plan B"
  - Use objective factors, or ...
  - Restructure "off-ramp" as "on-ramp"



# Tips to Optimize Termination Tool

- During Performance (As Project Slips)
  - Confirm feasibility & timing of Plan B
  - Get legal advice at first slippage to
    - Avoid waiving requirements/schedule
    - Avoid waiving termination right

# Common Termination Scenarios

- Goods Not Delivered By Due Date
- Faulty Goods Delivered – Spot Purchase
- Faulty Goods Delivered – Term Contract
- Service Agreement – Simple Contract
- Service Agreement – Complex Contract



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# Questions?