

# Ramish and Maroulis in *The Procurement Lawyer*: Limitations on the Government's Right to Terminate Government Contracts for Convenience

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Haynes Boone Partner [Dan Ramish](#) and Associate [Michael Maroulis](#) authored an article for *The Procurement Lawyer* from the American Bar Association examining the overlapping bases for challenging a termination for convenience.

Read an excerpt below.

A longstanding and fundamental principle of federal government contracting is that agencies have the right to unilaterally terminate contracts for the convenience of the government. Convenience termination authority is thought to have evolved during the Civil War to allow the government to avoid “proceeding with wartime contracts after an end to hostilities.” Nearly all government contracts include a termination for convenience clause authorizing the government to terminate the contract without incurring liability for breach of contract. Government contract convenience termination rights apply to both cost-type contracts (FAR 52.249-6) and fixed-price contracts (see, e.g., FAR 52.249-2) and extend to contracts for commercial products and services (FAR 52.212-4(l)). A convenience termination clause may even be read into a government contract if one is not expressly included.

The government has broad latitude to terminate contracts for convenience. The contracting officer generally need only determine that termination is “in the Government’s interest.” Moreover, the contracting officer enjoys a presumption of regularity: With regard to the official acts of public officers, “in the absence of clear evidence to the contrary, it must be presumed that they have properly dis-charged their official duties.”<sup>5</sup> The government also enjoys a further presumption of acting in good faith. Together, the flexible termination standard and presumptions of proper action taken in good faith make it difficult for contractors to challenge convenience terminations.

In 2025, encouraged by the Department of Government Efficiency (DOGE), federal agencies terminated an unusual volume of government contracts in a brief timeframe. Through early January 2026, DOGE reported terminating 13,440 government contracts valued at approximately \$61 billion. This widespread and rapid termination of contracts warrants closer ex-amination of the limitations that courts and boards of contract appeals have placed on the government’s termination authority, and the circumstances in which contractors are entitled to breach damages, including lost anticipatory profits.

Courts and boards have long recognized that a convenience termination can be challenged based on government bad faith or abuse of discretion. *Kalvar Corp. v. United States* was a landmark case articulating this formulation.<sup>8</sup> There, because the plaintiff did not distinguish between bad faith and abuse of discretion, the court treated them as equivalent for purposes of its decision. Since *Kalvar*, the case law has not always clearly distinguished the two concepts, even though abuse of discretion is substantially broader than bad faith, as reflected in other government contracts decisions outside of the convenience termination context.

In 1982, the U.S. Court of Claims, the predecessor to the U.S. Court of Appeals for the Federal Circuit, issued an en banc decision in *Torncello v. United States*. A sharply divided court produced a plurality opinion that added a further restriction: A convenience termination requires a change in “the circumstances of the bargain or the expectations of the parties.”

In the wake of *Torncello*, courts and boards of contract appeals struggled to determine which elements of the split decision constituted binding precedent. Ultimately, in *Krygoski Constr. Co. v. United States*, a Federal Circuit panel characterized the “changed circumstances” doctrine as dicta, stating that “*Torncello* applies only when the Government enters a contract with no intention of fulfilling its promises.” At the same time, the court acknowledged that terminating a contract for convenience “simply to acquire a better bargain from another source” can amount to bad faith. Since *Krygoski*, many courts and boards have applied the rule prohibiting convenience termination to obtain a better bargain.

Post-*Krygoski* termination-for-convenience cases have not fully addressed the concern that animated the plurality in *Torncello*: that without any constraint beyond bad faith or abuse of discretion, the government’s convenience termination right undermines consideration in government contracts.

This article examines the overlapping bases for challenging a termination for convenience, including (1) bad faith, (2) abuse of discretion, (3) the *Torncello* and *Krygoski* tests; and (4) post-*Krygoski* challenges. The article then considers (5) how these principles might apply in practice across a range of scenarios.

To read the full article from *The Procurement Lawyer*, click [here](#).