Federal Acquisition Regulation

49.105 Duties of termination contracting officer after issuance of notice of termination.

(a) Consistent with the termination clause and the notice of termination, the TCO shall—
   (1) Direct the action required of the prime contractor;
   (2) Examine the settlement proposal of the prime contractor 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.

(b) To 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 subpart 45.6):
      (i) Verify its existence.
      (ii) Determine qualitative and quantitative allocability.
      (iii) Make recommendations concerning serviceability.
      (iv) Undertake necessary screening and redistribution.
   (5) Assist the contractor in accomplishing other disposition.
   (6) The TCO should promptly hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the TCO, after consulting with the contractor, principal subcontractors should be requested to attend. Topics 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 contractor’s and subcontractors’ termination inventories, including the preparation of termination inventory schedules;
      (9) Contractor accounting practices and preparation of SP 1439 (Schedule of Accounting Information (49.602–3);
49.105–1 Termination status reports.

When the TCO and contracting officer are in different activities, the TCO will furnish periodic status reports on termination actions to the contracting officer upon request. The contracting officer shall specify the information required.

49.105–2 Release of excess funds.

(a) The TCO shall estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the contracting officer. The initial deobligation of excess funds should be accomplished in a timely manner by the contracting officer or the TCO, if delegated the responsibility. The TCO shall not recommend the release of amounts under $1,000, unless requested by the contracting officer.

(b) The TCO shall maintain continuous surveillance of required funds to permit timely release of any additional excess funds (a recommended format for release of excess funds is in 49.604). If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO shall promptly inform the contracting officer, who shall restate the funds within 30 days.

49.105–3 Termination case file.

The TCO responsible for negotiating the final settlement shall establish a separate case file for each termination. This file will include memoranda and records of all actions relative to the settlement (see 4.801).

49.105–4 Cleanup of construction site.

In the case of terminated construction contracts, the contracting officer shall direct action to ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other action necessary to leave a safe and healthful site.

49.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts under agency procedures.

49.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) The TCO shall refer each prime contractor settlement proposal of $100,000 or more to the appropriate audit agency for review and recommendations. The TCO may submit settlement proposals of less than $100,000 to the audit agency. Referrals shall indicate any specific information or data that the TCO desires and shall include facts and circumstances that will assist the audit agency in performing its function. The audit agency shall develop requested information and may make any further accounting reviews it considers appropriate. After its review, the audit agency shall submit written comments and recommendations to the TCO. When a formal examination of settlement proposals under $100,000 is not warranted,