

49.108-4 Authorization for subcontract settlements without approval or ratification.

(a)

(1) The TCO *may*, upon written request, give written authorization to the prime contractor to conclude settlements of subcontracts terminated in whole or in part without approval or ratification when the amount of settlement (see [49.002\(d\)](#)) is \$100,000 or less, if-

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling *settlement proposals*, including proposals for retention, sale, or other disposal of *termination inventory* of the immediate and lower tier subcontractors (the TCO *shall* obtain the advice and recommendations of-

(A) The appropriate audit agency relating to the adequacy of the contractor's audit administration, including personnel, and

(B) The cognizant *plant clearance officer* relating to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters);

(ii) Any *termination inventory* included in determining the amount of the settlement will be disposed of as directed by the prime contractor, except that the disposition of the inventory *shall* not be subject to-

(A) Review by the TCO under [49.108-3\(c\)](#); or

(B) The screening requirements in [45.602-3](#); and

(iii) A certificate similar to the certificate in the *settlement proposal* form in [49.602-1\(a\)](#) will accompany the settlement.

(2) Except as provided in paragraph (a)(4) of this section, authority granted to a prime contractor under paragraph (a)(1) of this section by any TCO *shall* apply to all *Executive agencies'* prime contracts that are terminated, or modified by *change orders*.

(3) Except as provided in paragraph (a)(4) of this section, the TCO *shall* accept, as part of the prime contractor's *settlement proposal*, settlements of terminated lower tier subcontracts concluded by any of the prime contractor's immediate or lower tier subcontractors who have been granted authority as prime contractors to settle subcontracts; provided, that the settlement is within the limit of the authority. Authorization to settle proposals of lower tier subcontractors *shall* not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements *may* also exercise this authority in its capacity as a subcontractor, with respect to its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor *shall* notify the purchaser.

(4) The provisions of paragraphs (a)(1), (2), and (3) of this section *shall* not apply to contracts under the administration of any *contracting officer* if the *contracting officer* so notifies the prime contractor concerned. This notice *shall*

(i) Be *in writing*, and

(ii) If paragraph (a)(3) of this section is involved, specify any subcontractor affected.

(b) Section 45.602 shall apply to disposal of completed end items allocable to the terminated subcontract. However, these items may be disposed of without review by the TCO under 49.108-3 and without screening under 45.602-3, if the items do not require demilitarization and the total amount (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this subsection.

(c) A TCO granting the authorization in paragraph (a)(1) of this section shall periodically (at least annually) make a selective review of settlements and settlement procedures to determine if the contractor is making adequate reviews and fair settlements, and whether the authorization should remain in effect. The TCO shall obtain the advice and recommendations of the appropriate audit agency and the cognizant *plant clearance officer*. When it is determined that the contractor's procedures are not adequate, or that improper settlements are being made, or when the authority has not been used in the preceding 2 years, the TCO shall revoke the authorization by written notice to the contractor, effective on the date of receipt.

(d) The contractor may make any number of separate settlements with a single subcontractor but shall not divide *settlement proposals* solely to bring them under an authorization limit. Separate *settlement proposals* that would normally be included in a single proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated whenever possible.

(e) Upon written request of the contractor, the TCO may increase an authorization granted under paragraph (a)(1) of this subsection to authorize the contractor to conclude settlements under a particular prime contract. The TCO may limit the increased authorization to specific subcontracts or classes of subcontracts.

(f) Authorizations granted under this 49.108-4 shall not authorize the settlement of requisitions or orders placed with any unit within the contractor's corporate entity.

(g) Recommended formats for a request to settle subcontractor *settlement proposals* and the TCO's letter of authorization to the contractor are in 49.605 and 49.606, respectively.

Parent topic: 49.108 Settlement of subcontract settlement proposals.