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upon its termination are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor made reasonable efforts to settle the settlement proposal of the subcontractor;

(4) The contractor gave prompt notice to the contracting officer of the initiation of the proceedings in which the judgment was rendered and did not refuse to give the Government control of the defense of the proceedings; and

(5) The contractor diligently defended the suit or, if the Government assumed control of the defense of the proceedings, rendered reasonable assistance requested by the Government.

(b) If the conditions in subparagraphs (a)(1) through (5) above are not all met, the TCO may allow the contractor the part of the judgment considered fair for settling the subcontract settlement proposal, giving due regard to the policies in this part for settlement of proposals.

(c) When a contractor and a subcontractor submit the subcontractor's settlement proposal to arbitration under any applicable law or contract provision, the TCO shall recognize the arbitration award as the cost of settling the proposal of the contractor to the same extent and under the same conditions as in paragraphs (a) and (b) above.

49.108-6 Delay in settling subcontractor settlement proposals.

When a prime contractor's inability to settle with a subcontractor delays the settlement of the prime contract, the TCO may settle with the prime contractor. The TCO shall except the subcontractor settlement proposal from the settlement in whole or part and reserve the rights of the Government and the prime contractor with respect to the subcontractor proposal.

49.108-7 Government assistance in settling subcontracts.

In unusual cases the TCO may determine, with the consent of the prime contractor, that it is in the Government's interest to provide assistance to the prime contractor in the settlement of a particular subcontract. In these situations, the Government, the prime

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contractor, and a subcontractor may enter into an agreement covering the settlement of one or more subcontracts. In these settlements, the subcontractor shall be paid through the prime contractor as part of the overall settlement with the prime contractor.

49.108-8 Assignment of rights under subcontracts.

(a) The termination for convenience clauses in 52.249, except the short-form clauses, obligate the prime contractor to assign to the Government, as directed by the TCO, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract. The TCO shall not require the assignment unless it is in the Government's interest.

(b) The termination for convenience clauses (except the short-form clauses) also provide the Government the right, in its discretion, to settle and pay any settlement proposal arising out of the termination of subcontracts. This right does not obligate the Government to settle and pay settlement proposals of subcontractors. As a general rule, the prime contractor is obligated to settle and pay these proposals. However, when the TCO determines that it is in the Government's interest, the TCO shall, after notifying the contractor, settle the subcontractor's proposal using the procedures for settlement of prime contracts. An example in which the Government's interest would be served is when a subcontractor is a sole source and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's proposal will jeopardize the financial position of the subcontractor. Direct settlements with subcontractors are not encouraged.

49.109 Settlement agreements.

49.109-1 General.

When a termination settlement has been negotiated and all required reviews have been obtained, the contractor and the TCO shall execute a settlement agreement on Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see 49.603). The settlement shall cover (a) any

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setoffs that the Government has against the contractor that may be applied against the terminated contract and (b) all settlement proposals of subcontractors, except proposals that are specifically excepted from the agreement and reserved for separate settlement.

49.109-2 Reservations.

(a) The TCO shall—

(1) Reserve in the settlement agreement any rights or demands of the parties that are excepted from the settlement;

(2) Ensure that the wording of the reservation does not create any rights for the parties beyond those in existence before execution of the settlement agreement;

(3) Mark each applicable settlement agreement with “This settlement agreement contains a reservation” and retain the contract file until the reservation is removed;

(4) Ensure that sufficient funds are retained to cover complete settlement of the reserved items; and

(5) At the appropriate time, prepare a separate settlement of reserved items and include it in a separate settlement agreement.

(b) A recommended format for settlement of reservations appears in 49.603-9.

49.109-3 Government property.

Before execution of a settlement agreement, the TCO shall determine the accuracy of the Government property account for the terminated contract. If an audit discloses property for which the contractor cannot account, the TCO shall reserve in the settlement agreement the rights of the Government regarding that property or make an appropriate deduction from the amount otherwise due the contractor.

49.109-4 No-cost settlement.

The TCO shall execute a no-cost settlement agreement (see 49.603-6 or 49.603-7, as applicable) if (a) the contractor has not incurred costs for the terminated portion of the contract or (b) the contractor is willing to waive the costs incurred and (c) no amounts are due the Government under the contract.

49.109-5 Partial settlements.

The TCO should attempt to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, the TCO shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a TCO cannot promptly complete settlement under the terminated contract, a partial settlement may be entered into if (a) the issues on which agreement has been reached are clearly severable from other issues and (b) the partial settlement will not prejudice the Government's or contractor's interests in disposing of the unsettled part of the settlement proposal.

49.109-6 Joint settlement of two or more settlement proposals.

(a) With the consent of the contractor, the TCO or TCO's concerned may negotiate jointly two or more termination settlement proposals of the same contractor under different contracts, even though the contracts are with different contracting offices or agencies. In such cases, accounting work shall be consolidated to the greatest extent practical. The resulting settlement may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved.

(b) When the settlement agreement covers more than one contract, it shall (1) clearly identify the contracts involved, (2) assign an amendment modification number to each contract, (3) apportion the total amount of the settlement among the several contracts on some reasonable basis, (4) have attached or incorporated a schedule showing the apportionment, and (5) be distributed and attached to each contract involved in the same manner as other contract modifications.

49.109-7 Settlement by determination.

(a) *General.* If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the TCO shall issue a determination of the