49.108-5 Recognition of judgments and arbitration awards.

(a) When a subcontractor obtains a final judgment against a prime contractor, the TCO *shall*, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the contractor, to the extent the judgment is properly allocable to the terminated portion of the prime contract, if-

(1) The prime contractor has made reasonable efforts to include in the subcontract a termination clause described in 49.502(e), 49.503(c), or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties 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 paragraphs (a)(1) through (5) of this section 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) of this section.

Parent topic: 49.108 Settlement of subcontract settlement proposals.