Subpart 749.1—General Principles

Parent topic: PART 749—TERMINATION OF CONTRACTS

749.100 Scope of subpart.

The Foreign Aid and Related Agencies Appropriation Act, 1963, and subsequent appropriation Acts, have imposed the following requirement:

None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, as amended, may be used for making payments on any contract for procurement to which the United States is a party entered into after the date of enactment of this Act which does not contain a provision authorizing the termination of such contract for the convenience of the United States.

See, for example, section 110 of the Foreign Assistance and Related Agencies Appropriation Act, 1965.

749.111 Review of proposed settlements.

749.111-70 Termination settlement review boards.

(a) The USAID Settlement Review Board shall be composed of the following members or their delegates (except as provided under 749.111-71(b)):

(1) M/OAA Director;

(2) Controller;

(3) General Counsel.

(b) The M/OAA Director or his/her delegate shall be designated as chairman of the board. Delegate members of the board shall have broad business and contracting experience and shall be senior USAID officials. Each member or his/her delegate must be in attendance in order to conduct business, and the board shall act by majority vote. No individual shall serve as a member of a board for the review of a proposed settlement if he/she has theretofore reviewed, approved or disapproved or recommended approval, disapproval or other action with respect to any substantive element of such settlement proposal.

(c) The chairman shall appoint a nonvoting recorder who shall be responsible for receiving cases, scheduling and recording the proceedings at meetings, maintaining a log of all cases received by him/her for the board, and other duties as assigned by the board.

749.111-71 Required review and approval.

(a) *When required*. The USAID Settlement Review Board shall receive and approve all USAID/W and Mission proposed settlements or determinations if:

(1) The amount of settlement, by agreement or determination, involves $100,000 or more;

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and:

(i) In the case of complete termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $100,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $100,000 or more;

(3) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or

(4) The contracting officer, in his/her discretion, desires review by the board.

(b) *Level of review.* Proposed settlements in excess of $5 million shall be reviewed and approved by a board consisting of the M/OAA Director, the General Counsel, and the Controller, without power of redelegation.

(c) *Submission of information.* The contracting officer shall submit to the board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

(1) The contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, and (4) the contracting officer's memorandum explaining the settlement. The board may, in its discretion, require the submission of additional information.