

Part 849 - Termination of Contracts

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AUTHORITY: 40 U.S.C. 121(c); 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301-1.304.

Subpart 849.1 - General Principles

849.101 Authorities and responsibilities.

(a) While legal review and concurrence of the General Counsel is required prior to a default termination, in some cases where a quick response is necessary, this review can be expedited by express mailing or faxing the default letter and related documents which are required to make an evaluation directly to General Counsel (025). The default termination letter should contain, at a minimum, the following:

(1) The proposed termination ([FAR 49.102](#));

(2) An explanation of what necessitated the default, including the reasons why the contracting officer considers the contractor to be in default;

(3) A statement that the factors set forth in [FAR 49.402-3\(f\)](#) have been fully considered; and

(4) Final decision language and appeal rights.

(b) Contracts containing a mutual termination clause may be terminated without reference to the General Counsel.

849.106 Fraud or other criminal conduct.

(a) If the contracting officer suspects fraud or other criminal conduct related to the settlement of a terminated contract, the contracting officer must do the following:

(1) Immediately discontinue all negotiations.

(2) Submit all of the pertinent facts necessary to support the suspicions to either of the following:

(i) The DSPE.

(ii) The Director, Office of Construction and Facilities Management, in the case of contracting officers from the Office of Construction and Facilities Management.

(3) Follow procedures as provided in [809.406-3](#) and [809.407-3](#).

(b) The DSPE or the Director, Office of Construction and Facilities Management, must review the submission and fully develop the facts.

(c) If the evidence indicates fraud or other criminal conduct, the DSPE or the Director, Office of Construction and Facilities Management, must forward the submission with recommendations through channels (to include OGC, if appropriate), to the Office of the Inspector General (OIG) for referral to the Department of Justice.

(d) The DSPE or the Director, Office of Construction and Facilities Management, will advise the contracting officer as to any further action to be taken. Pending receipt of this advice, no VA employee may discuss the matter with the contractor.

(e) VA will not initiate a collection, recovery or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through OIG.

(f) If the contractor makes an inquiry, the contracting officer will advise only that the proposal has been forwarded to higher authority.

849.111 Review of proposed settlements.

849.111-70 Required review.

(a) [FAR 49.111](#) requires each agency to establish procedures, when necessary, for the administrative review of proposed termination settlements. Contracting officers shall submit proposed termination settlements or determinations of amounts due the contractor under a terminated contract that involve the expenditure of \$100,000 or more of Government funds to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, for technical and legal review (see 801.602-72(i)). Contracting officers shall not execute the settlement agreement or determination prior to receipt of the technical and legal review. The legal review of contracts awarded by or on behalf of the VA OIG will be conducted by the Counselor to the Inspector General.

(b) If the contracting officer declines to implement one or more of the recommendations or comments contained in the review memorandum, the contracting officer shall submit a written response to the Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, as appropriate, explaining why the recommendations or comments were not followed. For contracts awarded by or on behalf of the VA OIG, the response shall be submitted to the Counselor to the Inspector General.

849.111-71 Submission of information.

(a) The contracting officer shall submit to the appropriate Acquisition Program Management Division or Acquisition Assistance Team office a copy 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 disposed report and any required approvals in connection therewith,

(4) The contracting officer's memorandum explaining the settlement, and

(5) Any other relevant material that will assist the procurement analyst in the review. The procurement analyst may, at his or her discretion, require the submission of additional information.

(b) The Director, Acquisition Program Management Division, or the Director, Acquisition Assistance Team, will obtain the concurrence or comments of OGC prior to forwarding the review to the contracting officer, except that the concurrence or comments will be obtained from the Counselor to the Inspector General for contracts awarded by or on behalf of the VA Office of Inspector General.

Subpart 849.5 - Contract Termination Clauses

849.504 Termination of fixed-price contracts for default.

849.504-70 Termination of mortuary services.

Use the clause at [852.249-70](#), Termination for Default—Supplement for Mortuary Services, in all solicitations and contracts for mortuary services. This clause is to be used with the [FAR clause 52.249-8](#), Default (Fixed-Price Supply and Service).