

PGI 249.110 Settlement negotiation memorandum.

(1) *Fixed-price contracts*. Use the format in Table 49-1, Settlement Memorandum Fixed-Price Contracts, for the termination contracting officer's settlement memorandum for fixed-price contracts terminated for the convenience of the Government. Encourage contractors and subcontractors to use this format, appropriately modified, for subcontract settlements submitted for review and approval.

(2) *Cost-reimbursement contracts*. Use Part I of the format in Table 49-1 and Part II of the format in Table 49-2, Settlement Memorandum for Cost-Reimbursement Contracts, for the termination contracting officer's settlement memorandum for cost-reimbursement contracts:

TABLE 49-1, SETTLEMENT MEMORANDUM FIXED-PRICE CONTRACTS

PART I—GENERAL INFORMATION

1. Identification. (Identify memorandum as to its purpose and content.)

a. Name and address of the contractor. Comment on any pertinent affiliation between prime and subcontractors relative to the overall settlement.

b. Names and titles of both contractor and Government personnel who participated in the negotiation.

2. Description of terminated contract.

a. Date of contract and contract number.

b. Type of contract (e.g., fixed-price, fixed-price incentive).

c. General description of contract items.

d. Total contract price.

e. Furnish reference to the contract termination clauses (cite FAR/DFARS designation or other special provisions).

3. Termination notice.

a. Reference termination notice and state effective date of termination.

b. Scope and nature of termination (complete or partial), items terminated, and unit price and total price of items terminated.

c. State whether termination notice was amended, and explain any amendment.

d. State whether contractor stopped work on effective termination date. If not, furnish details.

- e. State whether the contractor promptly terminated subcontracts.
 - f. Statement as to the diversion of common items and return of goods to suppliers, if any.
 - g. Furnish information as to contract performance and timeliness of deliveries by the contractor.
4. Contractor's settlement proposal.
- a. Date and amount. Indicate date and location where claim was filed. State gross amount of claim. (If interim settlement proposals were filed, furnished information for each claim.)
 - b. Basis of claim. State whether claim was filed on inventory, total cost, or other basis. Explain rationale for approval when claim is filed on other than inventory basis.
 - c. Examination of proposal. State type of reviews made and by whom (audit, engineering, legal, or other).

PART II—SUMMARY OF CONTRACTOR'S CLAIM AND NEGOTIATED SETTLEMENT

Prepare a summary substantially as follows:

| Item Claimed | Contractor's Proposal | Dollars Accepted | Costs Questioned | Unresolved Items | TCO Negotiated Amount |
|--|-----------------------|------------------|------------------|------------------|-----------------------|
| <p>1. Contractor's costs as set forth on settlement proposal.</p> <p>Metals, raw materials, etc.</p> <p>Total</p> <p>2. Profit</p> <p>3. Settlement expenses</p> <p>4. Total</p> <p>5. Settlement with subs</p> <p>6. Acceptable finished product</p> <p>7. Gross Total</p> <p>8. Disposal and other credits</p> <p>9. Net settlement</p> <p>10. Partial progress & advance payments</p> <p>11. Net payments requested</p> | | | | | |

PART III—DISCUSSION OF SETTLEMENT

1. Contractor's cost.

a. If the settlement was negotiated on the basis of individual items, specify the factors and consideration for each item.

b. In the case of a lump-sum settlement, comment on the general basis for and major factors concerning each element of cost and profit included.

- c. Comment on any important adjustments made to costs claimed or any significant amounts in relation to the total claim.
 - d. If a partial termination is involved, state whether the contractor has requested an equitable adjustment in the price of the continued portion of the contract.
 - e. Comment on any unadjusted contractual changes that are included in the settlement.
 - f. Comment on whether or not a loss would have been incurred and explain adjustment for loss, if any.
 - g. Furnish other information believed helpful to any reviewing authority in understanding the recommended settlement.
2. Profit. Explain the basis and factors considered in arriving at a fair profit.
 3. Settlement expenses. Comment on and summarize those expenses not included in the audit review.
 4. Subcontractor's settlements. Include the number of no-cost settlements, settlements concluded by the contractor under delegation of authority and those approved by the termination contracting officer, as well as the net amount of each.
 5. Partial payments. Furnish the total amount of partial payments, if any.
 6. Progress or advance payments. Furnish the total of unliquidated amounts, if any.
 7. Claims of the Government against the contractor included in settlement agreement reservations. List all outstanding claims, if any, that the Government has against the contractor in connection with the terminated contract or terminated portion of the contract.
 8. Assignments. List any assignments, giving name and address of assignee.
 9. Disposal credits. Furnish information as to applicable disposal credits and give dollar amounts of all disposal credits.
 10. Plant clearance. State whether plant clearance action has been completed and all inventory sold, retained, or otherwise properly disposed of in accordance with applicable plant clearance regulations. Comment on any unusual matters pertaining to plant clearances. Attach consolidated closing plant clearance report.
 11. Government property. State whether all Government property has been accounted for.
 12. Special tooling. If involved, furnish comment on disposition.
 13. Summary of settlement. Summarize the settlement in tabular form substantially as follows:

Amount Amount

Claimed

Allowed

Prime
contractors
charges (before
disposal credits)

Plus:
Subcontractor
charges (after
disposal credits)

Gross settlement:

Less: disposal
credits—Prime

Net
settlement—Less:

Prior payment
credits (this
settlement)

Previous partial
settlements

Other credits or
deductions

Net payment:

Total contract
price (complete
termination)

Contract Price of
Items Terminated
(for partial
termination)—Less:

Total payments to
date

Net payment from
this settlement

Fund reserved for
reservations

Reduction in
contract price

14. Exclusions. Describe any proposed reservation of rights to the Government or to the contractor.

15. Include a statement that the settlement is fair and reasonable for the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

TABLE 49-2, SETTLEMENT MEMORANDUM FOR COST-REIMBURSEMENT CONTRACTS

PART II—SUMMARY OF SETTLEMENT

1. Summary. Summarize the proposed settlement in tabular form substantially as shown in Tables 49-3 and 49-4. Partial settlements may be summarized on Table 49-4.

2. Comments. Explain tabular summaries.

a. Summary of final settlement (see Table 49-3).

(1) Explain why the auditor's final report was not available for consideration, if applicable.

(2) Explain how the fixed-fee was adjusted. Identify basis used, such as percentage of completion. Include a description of factors considered and how they were considered. Include any tabular summaries and breakdowns deemed helpful to an understanding of the process. Factors that may be given consideration are outlined in FAR 49.305.

(3) Briefly identify matters included in liability for property and other charges against the contractor arising from the contract.

(4) Identify reservations included in the settlement that are other than standard reservations required by regulations and that are concerned with pending claims and refunds.

- (5) Explain substantial or otherwise important adjustments made in cost figures submitted by the contractor in arriving at the proposed settlement.
- (6) If unreimbursed costs were settled on a lump sum basis, explain the general basis for and the major factors considered in arriving at this settlement.
- (7) Comment on any unusual items of cost included in the claim and on any phase of cost allocation requiring particular attention and not covered above.
- (8) If the auditor's recommendations for nonacceptance were not followed, explain briefly the main reasons why such recommendations were not followed.
- (9) On items recommended for further consideration by the auditor, explain, in general, the basis for the action taken.
- (10) If any cost previously disallowed by a contracting officer is included in the proposed settlement, identify and explain the reason for inclusion of such costs.
- (11) Show number and amounts of settlements with subcontractors.
- (12) Use the following summary where settlement includes costs and fixed-fee in a complete termination:

| | |
|--|---------|
| Gross settlement | \$_____ |
| Less: Disposal credits | _____ |
| Net settlement | _____ |
| Less: Prior payments | _____ |
| Other credits or deductions | _____ |
| Total | _____ |
| Net payment | \$_____ |
| Total contract estimated cost plus fixed fee | _____ |
| Less: Net settlement | _____ |
| Estimated reserve for exclusions | _____ |
| Final contract price | |

(Consisting of \$_____ for reimbursement of costs and \$_____ for adjusted fixed fee) _____

Reduction in contract price (credit) _____

(13) Plant clearance. Indicate dollar value of termination inventory and state whether plant clearance has been completed. Attach consolidated plant clearance report (SF 1424, Inventory Disposal Report).

(14) Government property. State whether all Government property has been accounted for.

(15) Include a statement that the settlement is fair and reasonable to the Government and the contractor. The contracting officer shall sign and date the memorandum.

(End of memorandum)

| | | AMOUNT CLAIMED | AMOUNT ALLOWED |
|---|----------|-------------------|-------------------|
| 1. Previous reimbursed costs—Prime and Subs | \$ | \$ | |
| 2. Previous unreimbursed costs | _____ | _____ | |
| 3. Total cost settlement | \$ | \$ | |
| 4. Previous fees paid—Prime | \$ | \$ | |
| 5. Previous fees unpaid—Prime | _____ | _____ | |
| 6. Total fee settlement | \$ | \$ | |
| 7. Gross settlement | _____ | _____ | |
| | \$ _____ | \$ _____ | |
| | _____ | _____ | |

Less:
Deductions
not reflected
in Items 1-7

a. Disposal
credits \$ _____

b. Other
charges
against
contractor

arising from
contract \$ _____

8. Net
settlement \$

Less: Prior
payment
credits _____

9. Net
payment \$

10.
Recapitulation
of previous
settlements
(insert
number of
previous
partial
settlements
effected on
account of this
particular
termination):

Aggregate
gross
amount of
previous
settlements \$ _____

Aggregate
net amount
of previous
partial
settlements \$ _____

Aggregate
net
payment
provided in
previous
partial
settlements \$ _____

Aggregate amount allowed for prime contractor acquired property

taken over by the Government in connection with previous

partial settlements \$ _____

TABLE 49-4,
UNREIMBURSED
COSTS
SUBMITTED ON
SF 1437*

| | Amounts Claimed by | Auditor's Recommendation | Unresolved Items | TCO's Computation |
|---|-----------------------|--------------------------|------------------|-------------------|
| Costs | Contractor's Proposal | Cost Questioned | | |
| 1. Direct material | | | | |
| 2. Direct labor | | | | |
| 3. Indirect factory expense | | | | |
| 4. Dies, jigs, fixtures and special tools | | | | |
| 5. Other costs | | | | |
| 6. General and administrative expenses | | | | |
| 7. Fee | | | | |

8. Settlement
expense

9. Settlement
with subs

10. Total costs
(Items 1-9)

*Expand the
format to include
recommendations
of technical
personnel as
required.

Parent topic: PGI 249.1 -GENERAL PRINCIPLES