

## 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 amount due consistent with the termination clause, including any cost principles incorporated by reference. The TCO *shall* comply with [49.109-1](#) through [49.109-6](#) in making a settlement by determination and with [49.203](#) in making an adjustment for loss, if any. Copies of determinations *shall* receive the same distribution as other *contract modifications*.

(b) *Notice to contractor.* Before issuing a determination of the amount due the contractor, the TCO *shall* give the contractor at least 15 days notice by certified mail (return receipt requested) to submit written evidence, so as to reach the TCO on or before a stated date, substantiating the amount previously proposed.

(c) Justification of *settlement proposal*.

(1) The contractor has the burden of establishing, by proof satisfactory to the TCO, the amount proposed.

(2) The contractor *may* submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as desired. The TCO *may* request the contractor to submit additional documents and data, and *may* request appropriate accountings, investigations, and audits.

(3) The TCO *may* accept copies of documents and records without requiring original documents unless there is a question of authenticity.

(4) The TCO *may* hold any conferences considered appropriate-

(i) To confer with the contractor,

(ii) To obtain additional information from Government personnel or from independent experts, or

(iii) To consult persons who have submitted affidavits or reports.

(d) *Determinations.* After reviewing the information available, the TCO *shall* determine the amount due and *shall* transmit a copy of the determination to the contractor by certified mail (return receipt requested), or by any other method that provides evidence of receipt. The transmittal letter *shall* advise the contractor that the determination is a final decision from which the contractor *may* appeal under the Disputes clause, except as shown in paragraph (f) of this section. The determination *shall* specify the amount due the contractor and will be supported by detailed schedules conforming generally to the forms for *settlement proposals* prescribed in [49.602-1](#) and by additional information, schedules, and analyses as appropriate. The TCO *shall* explain each major item of disallowance. The TCO need not reconsider any other action relating to the *terminated portion of the contract* that was ratified or approved by the TCO or another *contracting officer*.

(e) *Preservation of evidence.* The TCO *shall* retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. The TCO *shall* return books of account, together with other original papers and documents, to the contractor within a reasonable time.

(f) *Appeals*. The contractor *may* appeal, under the Disputes clause, any settlement by determination, except when the contractor has failed to submit the *settlement proposal* within the time provided in the contract and failed to request an extension of time. The pendency of an appeal *shall* not affect the authority of the TCO to settle the *settlement proposal* or any part by negotiation with the contractor at any time before the appeal is decided.

(g) *Decision on the contractor's appeal*. The TCO *shall* give effect to a decision of the *Claims Court* or a board of contract appeals, when necessary, by an appropriate modification to the contract. When appropriate, the TCO *should* obtain a release from the contractor. TCO's are authorized to modify the formats of *settlement agreements* in 49.603 to agree with this provision.

**Parent topic:** 49.109 Settlement agreements.