

THE ABC's of T for C
(Termination for Convenience)

As we enjoy the technological advances of the millennium, it still pays to remember the basics. Literally. A potentially useful cost-saving rule to keep in mind is that the FAR generally requires the Contractor to submit its settlement proposal within a year after the contract was terminated for convenience.

FAR 52.249-6(f) Termination (Cost-Reimbursement) (September 1996) provides that:

After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor during this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

This language is identical to FAR 52.249-2(e), which governs Termination for Convenience of Fixed-Price Contracts (September 1996).

The case law interpreting the FAR has developed from the following scenario: (1) a proactive Contracting Officer calendared the end of the one-year period; (2) the Contracting Officer sent a letter to the Contractor advising that the time had expired; and (3) the Contracting Officer unilaterally assesses a settlement amount or denies payment of the costs in its entirety.

The decision of a Contracting Officer that a settlement proposal was untimely per the one-year rule has consistently been upheld. Do-Well Machine Shop, Inc. v. United States, 870 F.2d 637 (Fed. Cir. 1989). There, the termination for convenience claim was returned by the Termination Contracting Officer as untimely, in light of its presentation more than one year after the effective date of termination. In that case, she indicated that she would assess a termination settlement amount. The Court of Appeals for the Federal Circuit held that “the Government correctly recognized that the time bar was fatal to Do-Well’s claim”.

As recently as 3 March 2000, the Department of Transportation Board of Contract Appeals granted the Government's motion to dismiss the Contractor's appeal due to the untimeliness of its settlement proposal. There, the Contracting Officer determined one-year and four months after the termination that the Contractor had failed to properly submit its proposal and denied the Contractor's claim in full. Appeals of Automated Power Systems, Inc., DOT BCA Nos. 3000, 3001, 3003, 3004, 3006, 00-1 BCA P30,825.

It should be noted that the Armed Services Board of Contract Appeals has interpreted the one-year rule to hold that the actual mailing of a settlement proposal within one year after receipt of the notice of termination effected timely filing of the proposal. Jo-Bar Mfg. Corporation, ASBCA No. 39572, 93-2 BCA P25,756. Receipt by the Contracting Officer of the proposal is not critical to effect timely filing.

A valid argument to overcome the one-year time bar would be if the Contractor requested and received an extension to the one-year period. Under the FAR clauses cited above, both the extension request and its approval must be in writing.

Of course, even if the Contractor's settlement proposal is untimely, the Contracting Officer generally has the discretion to pay a settlement amount as stated by the aforementioned FAR clauses.

Thus, the teaching point here is that Contracting Officers are urged to calendar the expiration of the one-year period immediately upon terminating the contract, and to document by correspondence if there is no further action by the Contractor upon the expiration of this period.

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