Navigating the USAID Shutdown Process: A Guide to Grant and Contract Termination for Convenience

The possible closure of the United States Agency for International Development (USAID) involves a structured process that includes issuing *Stop Work Orders* for contracts and suspending grants and cooperative agreements. These actions serve as an immediate measure to halt ongoing activities, allowing USAID to assess financial and operational implications while ensuring compliance with federal regulations.

Stop Work Orders, issued under the authority of Federal Acquisition Regulation (FAR) 52.242-15, initially suspended contractor performance which the agency might require a full termination of certain contracts. Similarly, grants and cooperative agreements would be terminated per 2 CFR 200.340(a)(4), allowing USAID to manage the orderly shutdown of assistance programs because the award no longer effectuates the program goals or agency priorities. This is echoed by USAID's requirement [2 CFR 700.14] to terminate "such assistance [that] would not be in the national interest of the United States".

Ultimately, any terminated contract or grant necessitates the preparation of a *Termination for Convenience* (T4C) under FAR 52.249-2 (for contracts) and applicable federal grant regulations, 2 CFR 200.341 – Notification of Termination Requirement, and 2 CFR 200.343 – Effects of Suspension and Termination. This process ensures the equitable settlement of costs, proper disposition of government property, and mitigation of negative impacts on stakeholders.

What is a Termination for Convenience?

A ***Termination for Convenience*** **(T4C)** is a contractual right that allows the US Government to unilaterally terminate a contract **without cause** when it is in its best interest to do so. This administrative process protects the government from being locked into contracts and grants that no longer serve its best interests. The T4C requires a settlement proposal. Under the FAR, the T4C is a more formal process that includes specialized forms, whereas, the Uniform Guidance, 2 CFR 200, has similar, but less structured processes for grants. Please note that grants are a generic term that we use interchangeably for both grants and cooperative agreements. The rest of this article discusses:

A. What is the overall process for a T4C settlement proposal for a contract versus a grant.
B. Comparing and contrasting the termination cost principles for contracts under FAR and grants under the Uniform Guidance, 2 CFR 200.
C. What does a T4C settlement proposal look like for a contract versus a grant.
D. What are the major components of a T4C, such as entitlement and quantum.
E. Key Takeaways.

A – Process for T4C Settlement Proposal for (1) Contracts and (2) Grants

For a FAR-based contract, the process of an agency issuing a Termination for Convenience (T4C) after a Stop Work Order is to obtain a settlement proposal. Please note the following steps under the FAR are more formalized than for a grant. View more information by clicking here.

For a grant operating under the Uniform Guidance (UG), the process of an agency issuing a Termination Notice to obtain a settlement proposal is less structured than the FAR. The steps for settling a grant termination will depend on the Federal agency's instructions. We are detailing the following process. View more information by clicking here.

B - Comparing and contrasting the termination cost principles for contracts under the FAR and grants under the Uniform Guidance.

FAR 31.205-42 and 2 CFR 200.472 both address costs related to contract and grant terminations, but they apply to different types of agreements and have distinct principles.

Comparison of Cost Principles: FAR 31.205-42 vs. 2 CFR 200.472

Cost Principle	FAR 31.205-42 (Contracts – Federal Acquisition Regulation)	2 CFR 200.472 (Grants – Uniform Guidance)
Applicable To	Federal contracts, primarily **cost-reimbursable** and fixed-price contracts subject to cost principles	Federal grants and cooperative agreements
Cost Type	Termination costs of contracts, including settlement expenses, unexpired lease costs, and inventory disposal	Termination costs of federal awards (grants), including closeout expenses and unliquidated [unspent] obligations

Cost Principle	FAR 31.205-42 (Contracts – Federal Acquisition Regulation)	2 CFR 200.472 (Grants – Uniform Guidance)
Reimbursement	Allows reimbursement for reasonable costs resulting from contract termination	Allows for reimbursement of necessary and reasonable termination and closeout costs
Settlement Costs	Includes settlement of subcontracts, severance pay, legal, accounting	Includes necessary grant closeout actions and obligations incurred before termination; legal, accounting and sub-recipient settlement expenses.
Unexpired Lease Costs	Generally allowable if the lease cannot be terminated at a reasonable cost	Generally allowable if the lease cannot be terminated at a reasonable cost
Loss of Useful Value	A discussion pertaining to the under-utilization of special tooling, machinery and equipment.	Similarly prescribed.
Employee Costs	Includes severance pay, retraining, and relocation costs if reasonable	Includes costs necessary to transition staff and close out activities
Final Cost Determination	Requires contracting officer approval and audit review	Requires federal awarding agency approval and closeout reconciliation

Similarities:

1. **Allowability of Costs:**
   - Both FAR 31.205-42 and 2 CFR 200.472 allow for the recovery of reasonable and allocable costs incurred due to the termination of a contract or award.
   - They both emphasize that termination settlement costs should be based on costs incurred before termination and reasonable post-termination costs.
2. **Reasonableness & Allocability:**
   - In both cases, costs must be reasonable and allocable to the terminated award or contract.
   - Any excessive or avoidable costs are unallowable.
3. **Settlement Costs:**
   - Both regulations allow for administrative expenses related to settling and closing out a terminated agreement, including legal and accounting fees.

Differences:

Feature	FAR 31.205-42 (Federal Acquisition Regulation)	2 CFR 200.472 (Uniform Guidance for Grants)
Applicability	Applies to **federal contracts** (procurement)	Applies to **federal grants and cooperative agreements**
Coverage Scope	Covers direct costs of contract termination, including contractor's liability for subcontracts	Covers costs of terminating grant-funded projects, primarily focusing on non-profit and educational institutions
Inclusion of Inventory & Disposal Costs	Specifically allows for costs of disposing of inventory and restocking fees	Does not explicitly address inventory disposal but covers reasonable closeout costs
Common Items & Initial Costs	Detailed discussion of common items. Initial costs that include start loading cost and preparatory cost involved in manufacturing and production. Discussion of how initial costs are used in settlement proposal.	Limited discussion on common items and does not address initial cost as grants rarely involve manufacturing.
Subcontractor Considerations	Addresses costs incurred by subcontractors due to termination	Less explicit on subcontractor costs but allows for closeout costs incurred by subrecipients
Negotiation & Settlement Process	Involves a more formalized settlement process with the government contracting officer	Settlement is generally less structured but must follow federal grant closeout procedures

C –Quantum Portion of a Settlement Proposal for a Contract verses a Grant

We wanted to show you what a settlement proposal might conceptually look like for a contract or grant.

- **Settlement Proposal for a FAR-Based Contract.** View more information by clicking here.
- **Settlement Proposal for Grants under the Uniform Guidance**. View more information.by clicking here.

D – Major Components of a T4C for Contracts and Grants

It is highly recommended that the preparation of a T4C settlement proposal be accomplished by a law firm with expertise in government contracting or grants. The format of a T4C typically include both entitlement and quantum as key components of the claim.

Under ideal circumstances, the lawyer prepares the entitlement portion of the claim. The law firm hires a Subject Matter Expert (SME), to prepare the quantum. The SME is a specialized accountant that has expertise in understanding the contractor or grantee's cost accounting system, preparation of the settlement proposal expenses in accordance with the applicable termination cost principle and prepares a compliant quantum that will withstand a government audit. For contractors, the SME can complete the SF 1439 – "Schedule of Accounting Information" https://www.gsa.gov/system/files/2023-08/SF1439-89d.pdf, which has several technical questions about the contractor's cost accounting system.

1. **Entitlement** – This establishes the legal and contractual basis for the settlement claim. In a T4C scenario, entitlement is generally assumed because the government has the unilateral right to terminate for convenience for contracts under the Federal Acquisition Regulation (FAR) 52.249-6 (for cost-reimbursement contracts), and for grants per the Uniform Guidance, 2 CFR 200.340(a)(4). However, entitlement issues can arise regarding recoverable costs, including pre-contract costs, or other specific claims.
2. **Quantum** – This refers to the amount being claimed, which is calculated based on the costs incurred, reasonable profit, settlement expenses, and any other allowable costs under FAR Part 49 (Termination of Contracts) or grants per the Uniform Guidance. The quantum portion must be well-documented, typically including:
    - Direct costs (labor, materials, subcontractor costs)
    - Indirect costs (overhead, general and administrative (G&A) expenses)
    - Profit (if applicable and only for contracts, not grants)
    - Settlement expenses (legal and accounting fees related to termination)
    - Adjustments for payments already received
    - Inventory disposal credits or offsets

E – Key Takeaways

If your organization has received a contract Stop Work Order or grant Termination Notice, follow the recommended steps below to assist you with maximum cost recovery.

- Set up a separate account code to track costs after the date of the contract Stop Work Order or grant Termination Notice.
- Document settlement expenses in preparation of a government audit.
- Legal and accounting fees to prepare a settlement proposal for a T4C are allowable.
- Consider having a law firm prepare your T4C.
- Now is the time to engage a law firm as hundreds of contracts and grants have been terminated and it may cause a log jam in finding an available law firm.
- Request that the law firm use your subject matter expert (specializing in contract or grant accounting) to prepare your settlement proposal expenses.

Contact Us

GRF CPAs & Advisors offers a deep bench of expertise in the government contracting sector. With subject matter experts addressing all aspects of preparing a T4C for contracts or grants, as well as DCAA-FAR-CAS regulatory and oversight compliance, GRF provides tailored audit, tax and advisory services that address the unique challenges and opportunities faced by contractors.

Our team of seasoned professionals is committed to delivering comprehensive solutions. By leveraging GRF's experience and local market knowledge, government contractors can confidently navigate the complexities of the acquisition process and achieve their strategic goals.

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