

## **8.0 SUBAWARD TERMINATIONS AND NO COST SETTLEMENTS (09/09)**

### 8.1 Information

The following procedures and discussions/guidance are appropriate for cost reimbursement subawards issued under a federal government contract prime award. This format may be altered by the subaward administrator to suit the requirements of the individual subaward issued under a financial assistance prime award.

### 8.2 Special Processing

When a termination is being considered, the subaward administrator shall decide the type of termination action (i.e., default or convenience) or whether a no-cost settlement is appropriate only after reviewing with the OSP Research Subawards Team Assistant Director and/or Deputy Director of Sponsored Programs and the MIT technical representative to ensure the propriety of the proposed action.

### 8.3 Terminations for Default

A default termination may be appropriate when the subawardee fails to perform some of the provisions of the subaward, such as:

- Failure to deliver the supplies or perform the services within the time specified in the subaward
- Failure to make progress, so as to endanger performance of the subaward

MIT's right to terminate the subaward for default under the provisions of the subaward, may be exercised if the subawardee does not cure such failure within 10 days after receipt of the notice from the subaward administrator specifying the failure.

There are two formats of delinquency notices that may be used. All notices must be sent with proof of delivery requested.

### 8.4 Delinquency Notices

#### a. Cure Notice

If a subaward is in jeopardy of being terminated for default before the delivery date, a "Cure Notice" must be issued. Before issuing this notice, it must be ascertained that the amount of time equal to or greater than the period of "cure" remains in the subaward delivery schedule. See below example cure notice for guidance.

SAMPLE CURE NOTICE:

You are hereby notified that MIT considers your failure [specify the subawardee's failure or failures] a condition that is endangering performance of the subaward. Therefore, unless this condition is cured within 10 days after receipt of this notice, MIT may terminate for default under the terms and conditions of the subaward.

b. Show Cause Notice

If the time remaining in the subaward delivery schedule is not sufficient to permit a realistic "cure" period of 10 days or more, the following "Show Cause Notice" may be used. It should be sent immediately upon expiration of the delivery period. See below example for "show cause notice" format.

SAMPLE SHOW CAUSE NOTICE:

Since you have failed to [insert "perform Subaward No \_\_\_\_ within the time required by its terms", or "cure the conditions endangering performance under Subaward No \_\_\_\_ as described to you in MIT's letter of (date)"], MIT is considering terminating the subaward under the provisions for default of this subaward. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to MIT subaward administrator within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the subawardee and MIT and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this subaward or any acceptance by MIT of delinquent goods or services will be solely for the purposes of mitigating damages, and is not the intentions of MIT to condone any delinquency or to waive any rights MIT has under the subaward.

8.5 Termination Notice (Default or Convenience)

When MIT decides to terminate a subaward, a written notice must be sent to the subawardee stating that the subaward is terminated for either default or convenience, the effective date of the termination, the extent of the termination, and any special instructions. There are different regulations and conditions MIT must follow when terminating a cost reimbursement subaward issued under a Government Contract Prime Award to educational and other nonprofit institutions. Refer to Part 49 of the Federal Acquisition Regulations (FAR) for guidance on MIT's and the subawardee's rights.

## 8.6 No Cost Settlement

If a no-cost settlement is appropriate in accordance with FAR Part 49, it will normally be implemented by a contract modification.