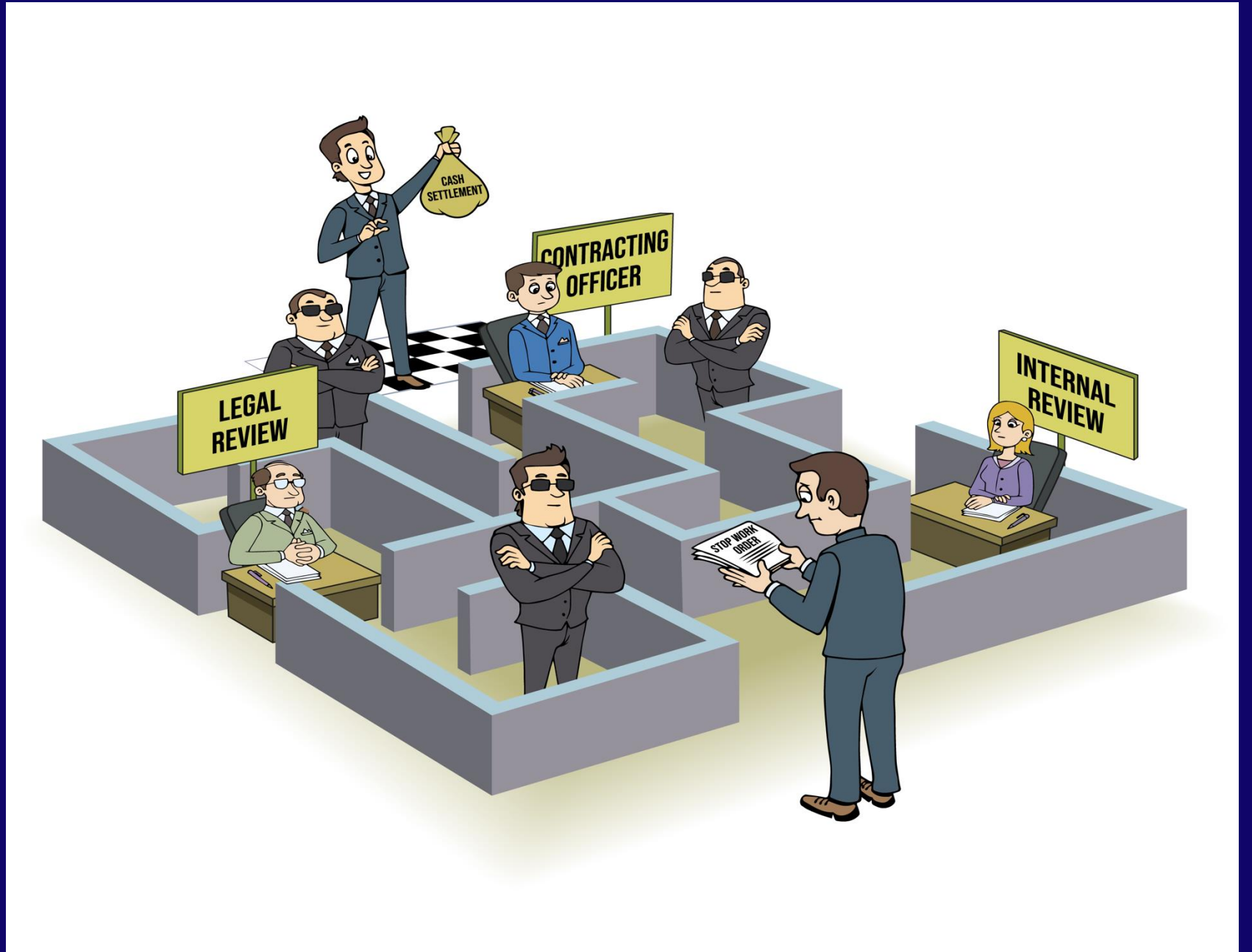




Terminations under US Government Contracts

Presented by Avallon LLC
February 2025



US GOVERNMENT CONTRACT TERMINATIONS

- FAR 2.101: Government's right to completely or partially terminate work when in its interest.
- Included in most government contracts via FAR 52.249-1 to -5.
- Commercial item contracts: Clause found in FAR 52.212-4(I).
- If the clause is absent, Christian Doctrine applies **BUT ONLY AT PRIME** level (G.L. Christian & Assoc. v. U.S., 1963).



TERMINATION PROCESS OVERVIEW

- FAR 2.101: Initiated by Notice of Termination from the Termination Contracting Officer (TCO).
- Prime contractor and TCO have specific responsibilities under:
 - FAR 49.104 (Prime contractor's duties).
 - FAR 49.105 (TCO's duties).

DUTIES OF PRIME CONTRACTOR (FAR 49.104)

After receiving termination notice, the **contractor must**:

- Cease work immediately on the terminated portion.
- Stop placing subcontracts related to the terminated work.
- Notify TCO of any special circumstances preventing stoppage.
- Continue performing the remaining contract work (if termination is partial).
- Protect & preserve property in which the government has or may acquire an interest.
- Notify TCO of legal proceedings from subcontractors.
- Settle subcontract liabilities with TCO's approval.
- Submit settlement proposal promptly.
- Dispose of termination inventory as directed.

DUTIES OF TERMINATION CONTRACTING OFFICER

(FAR 49.105)

- Direct contractor actions per termination clause.
- Examine and negotiate contractor's termination settlement.
- Settle subcontractor proposals when applicable.
- If settlement cannot be reached, issue determination of costs.
- Engage specialized personnel (legal, accounting, technical).
- Conduct reviews of contractor's termination inventory.
- Hold settlement conferences with contractor and major subcontractors.
- Discuss key issues, including:
 - Status of terminated work.
 - Responsibilities for subcontractor settlements.
 - Transfer of materials to the government.
 - Financial adjustments and cost accounting.

TERMINATION OF COST-REIMBURSEMENT CONTRACTS (FAR 49.3)

- Termination clauses in cost reimbursement contracts provide for the settlement of costs and fee, if any.
- Contractor must submit all unvouchered costs and proposed fee within 1 year from the effective date of the termination.
- Contractor proposal shall not include costs that have been
 - Finally disallowed by the contracting officer; or
 - Previously vouchered and formally questioned by the Government but not yet decided as to allowability.
- Contractor shall submit inventory disposal schedule
- If 52.216-7, Allowable Cost and Payment in the contract – indirect costs may be negotiated for the contract period for which the final indirect cost rates have not been negotiated or use billing rates as final rates.

TERMINATION SETTLEMENT PROPOSALS

FIRM FIXED PRICE

(FAR 49.201)

- **Purpose:** Fair compensation for work done & preparation costs.
- Two settlement methods for Firm Fixed Priced Contracts:
 - **Inventory Basis** (Preferred under FAR 49.206-2(a)).
 - **Total Cost Basis** (Allowed with TCO approval under FAR 49.206-2(b)).

INVENTORY BASIS SETTLEMENT (FAR 49.206-2(a))

FIRM FIXED PRICE

- Preferred method for termination settlements. Under the inventory basis, “*the contractor may propose **only costs allocable** to the terminated portion of the contract*”
- Contractor itemizes allocable costs, including:
 - SWO costs
 - Raw materials, work in process, and finished goods.
 - Engineering, administrative, and initial costs.
 - Subcontractor settlements and other termination expenses.
 - Profit allowance or loss adjustment applied.
 - Deductions for advance payments and other credits.

TOTAL COST BASIS SETTLEMENT

FIRM FIXED PRICE (FAR 49.206-2(b))

- Used when **inventory basis is impractical or delays settlement.**
- Requires **TCO approval.**
- More appropriate for FFP USAID contracts where progress payments and milestones are price on performance rather than BOQ or progress basis and reflect actual or close to actual costs to complete milestones
- **Applicable scenarios:**
 - Unit costs for work in process cannot be determined – i.e., milestones do not reflect actual pricing (FFP)
- Settlement based on **all costs incurred** up to termination date.

TERMINATION SETTLEMENT DOCUMENTATION

(FAR 49.602)

- Contractors must submit required Standard Forms (SFs):
 - SF-1435 to SF-1440 for different settlement types.
- Allowable costs follow FAR Part 31:
 - Settlement expenses (including proposal preparation) are reimbursable.
- Partial Payments (FAR 49.112-1):
 - Allowed for interim vouchering after date of termination for up to 6 months during settlement processing:
 - Subcontractor Settlements – must be approved by TCO
 - Termination Costs

FAR 52.249-2 – TIMING REQUIREMENTS FOR TERMINATION SETTLEMENT

- Termination Inventory Schedules: Due within **120 days of termination** (extensions possible upon written request).
- Final Termination Settlement Proposal: Due within **1 year of termination** (extensions possible upon written request).
- If contractor fails to submit, **CO may determine the amount** due based on available information.
- Submission deadlines should be calculated conservatively.
- Each contract should be analyzed on a case-by-case basis to ensure compliance.
- TCO has **no statutory time limit** for completing settlement negotiations.
- Small businesses: FAR 49.101(d) mandates prompt action on settlements for small business concerns.

CLAIMS AND APPEAL RIGHTS

- Settlement proposals vs. CDA Claims (Gardner Machinery Corp. v. U.S., 1988):
 - Settlement proposal: Request to open negotiations.
 - CDA claim: Formal demand for a final decision on a disputed amount.
- Converting a settlement proposal to a CDA claim requires:
 - A written claim for a specific amount.
 - A request for a final decision from the contracting officer.

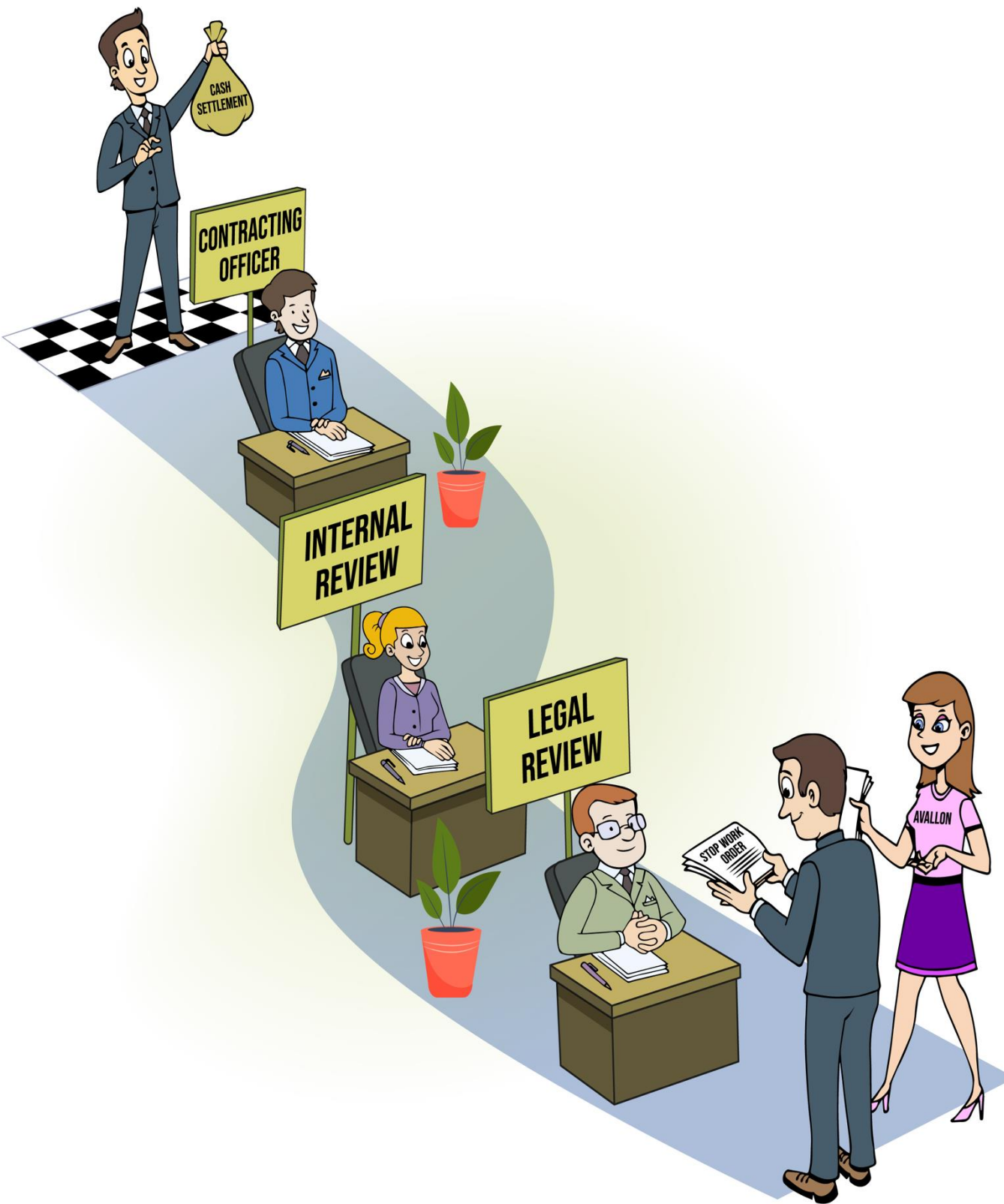
CDA CLAIM APPEALS PROCESS

- If TCO issues a final decision on a CDA claim, contractor may:
 - Appeal to agency board of contract appeals within 90 days.
 - File suit in the U.S. Court of Federal Claims within 12 months.
- Legal guidance is recommended when converting termination settlement proposals into formal claims.

SUBCONTRACTORS

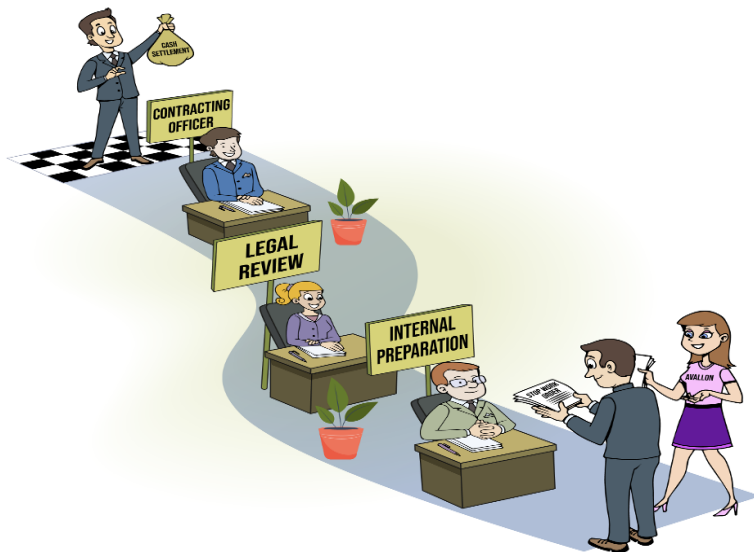
- Does your subcontract include a Termination for Convenience clause?
- Does it only allow termination "IF terminated" by USAID?
- Does it just include FAR 52.249-6 by replacing "Government" with "Prime"? It may mean your Prime can terminate for convenience without USAID's termination
- Does it state that T4C settlement payments or disputed amounts with USAID are contingent on USAID paying the Prime?
- Settlement timing is critical – ensure clear deadlines and obligations.
- Negotiate that the Prime submits your settlement first and pays you upon approval as an interim cost, rather than waiting for full USAID settlement.

Contracts Settlement Organizer™



Contracts Settlement Organizer

A Structured Tool for Managing U.S. Government Stop Work Adjustments and Termination Settlements



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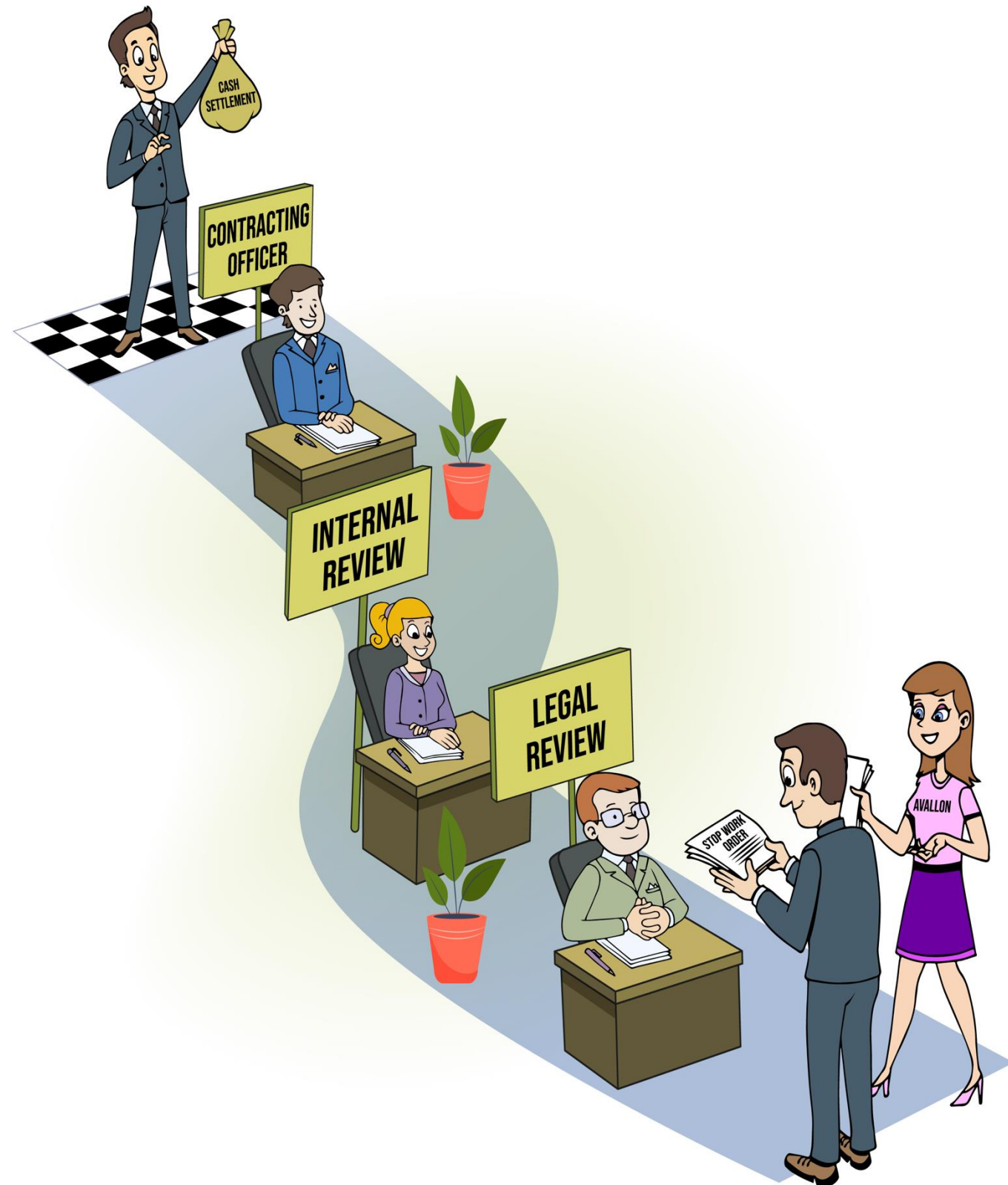
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Contracts Settlement Organizer™



Avallon can help you develop your Termination process plan and Termination Settlement Proposal, as well as assist with correspondence with the Termination Contracting Officer (TCO) and other designated officials. For more information on purchasing **Fixed-Price blocks of service hours, please contact us.**

Note: This cost may be 100% reimbursable as a termination settlement expense.

THANK YOU



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