

## 49.202 Profit.

(a) The TCO *shall* allow profit on preparations made and work done by the contractor for the *terminated portion of the contract* but not on the settlement expenses. Anticipatory profits and consequential damages *shall* not be allowed (but see 49.108-5). Profit for the contractor's efforts in settling subcontractor proposals *shall* not be based on the dollar amount of the subcontract *settlement agreements* but the contractor's efforts will be considered in determining the overall rate of profit allowed the contractor. Profit *shall* not be allowed the contractor for material or services that, as of the *effective date of termination*, have not been delivered by a subcontractor, regardless of the percentage of completion. The TCO *may* use any reasonable method to arrive at a fair profit.

(b) In negotiating or determining profit, factors to be considered include-

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract (engineering estimates of the percentage of completion ordinarily *should* not be required, but if available *should* be considered);

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to-

(i) Attainment of quantity and quality production;

(ii) Reduction of costs;

(iii) Economic use of materials, facilities, and manpower; and

(iv) Disposition of *termination inventory*;

(4) Amount and source of capital and extent of risk assumed;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit that the contractor would have earned had the contract been completed;

(8) The rate of profit both parties contemplated at the time the contract was negotiated; and

(9) Character and difficulty of subcontracting, including selection, placement, and management of subcontracts, and effort in negotiating settlements of terminated subcontracts.

(c) When computing profit on the terminated portion of a *construction* contract, the *contracting officer shall*-

(1) Comply with paragraphs (a) and (b) of this section;

(2) Allow profit on the prime contractor's settlements with *construction* subcontractors for actual work in place at the job site; and

(3) Exclude profit on the prime contractor's settlements with *construction* subcontractors for materials on hand and for preparations made to complete the work.

**Parent topic:** Subpart 49.2 - Additional Principles for Fixed-Price Contracts Terminated for Convenience