

#### 49.202

agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts should be kept to a minimum compatible with the reasonable protection of the public interest.

#### 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) above;

(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.

#### 49.203 Adjustment for loss.

(a) In the negotiation or determination of any settlement, the TCO shall not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The TCO shall negotiate or determine the amount of loss and make an adjustment in the amount of settlement as specified in paragraph (b) or (c) below. In estimating the cost to complete, the TCO shall consider expected production efficiencies and other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis (see 49.206-2(a)), the contractor shall not be paid more than the total of the amounts in subparagraphs (1), (2), and (3) below, less all disposal credits and all unliquidated advance and progress payments previously made under the contract:

(1) The amount negotiated or determined for settlement expenses.

(2) The contract price, as adjusted, for acceptable completed end items (see 49.205).

(3) The remainder of the settlement amount otherwise agreed upon or determined (including the allocable portion of initial costs (see 31.205-42(c)), reduced by multiplying the remainder by the ratio of (i) the total contract price to (ii) the total cost incurred before termination plus the estimated cost to complete the entire contract.

(c) If the settlement is on a total cost basis (see 49.206-2(b)), the contractor shall not be paid more than the total of the amounts in subparagraphs (1) and (2) below, less all disposal and other credits, all advance and progress payments, and all other amounts previously paid under the contract:

(1) The amount negotiated or determined for settlement expenses.

(2) The remainder of the total settlement amount otherwise agreed upon or determined (lines 7 and 14 of SF 1436, Settlement Proposal (Total Cost Basis)) reduced by multiplying the remainder by the ratio of (i) the total contract price to (ii) the remainder plus the estimated cost to complete the entire contract.

#### 49.204 Deductions.

From the amount payable to the contractor under a settlement, the TCO shall deduct—

(a) The agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds from any materials sold that have not been paid or credited to the Government;

(b) The fair value, as determined by the TCO, of any part of the termination inventory that, before transfer of title to the Government or to a buyer under part 45, is destroyed, lost, stolen, or so damaged as to become undeliverable (normal spoilage is ex-

cepted, as is inventory for which the Government has expressly assumed the risk of loss); and

(c) Any other amounts as appropriate in the particular case.

#### 49.205 Completed end items.

(a) Promptly after the effective date of termination, the TCO shall (1) have all undelivered completed end items inspected and accepted if they comply with the contract requirements, and (2) determine which accepted end items are to be delivered under the contract. The contractor shall invoice accepted and delivered end items at the contract price in the usual manner and shall not include them in the settlement proposal. When completed end items, though accepted, are not to be delivered under the contract, the contractor shall include them in the settlement proposal at the contract price, adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

(b) Work in place accepted by the Government under a construction contract is not considered a completed item even though that work may have been paid for at unit prices specified in the contract.

#### 49.206 Settlement proposals.

##### 49.206-1 Submission of settlement proposals.

(a) Subject to the provisions of the termination clause, the contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination. The final settlement proposal must be submitted within one year from the effective date of the termination, unless the period is extended by the TCO. Termination charges under a single prime contract involving two or more divisions or units of the prime contractor may be consolidated and included in a single settlement proposal.

(b) The settlement proposal must cover all cost elements including settlements with subcontractors and any proposed profit. With the consent of the TCO, proposals may be filed in successive steps covering separate portions of the contractor's costs. Such interim proposals shall include all costs