

to an organization's overall net profit, the DOE negotiating official should assume that there is an element of profit in any amount to be paid.

(c) In order to assure consideration of the tax posture of nonprofit organizations during a profit or fee negotiation, the DOE negotiating official shall calculate the fee as for a contract with a commercial concern and then reduce it at least 25 percent. However, depending on the circumstances, the contracting officer may pay profit or fees somewhere between this amount and the appropriate profit or fee as if it were a commercial concern. When this is the case, the contract file shall be documented to specifically state the reason or reasons.

(d) Where a contract with a nonprofit organization is for the operation of Government-owned facilities, the fee should be calculated using the procedures and schedules applicable to operating contracts as set forth in part 970.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36363, July 22, 2009]

**915.404-4-70-6 Contracts with educational institutions.**

In certain situations the DOE may contract with a university to manage or operate Government-owned laboratories. These efforts are generally apart from, and not in conjunction with, their other activities, and the complexity and magnitude of the work are not normally found in standard university research or study contracts. Such operating contracts are subject to the applicable provisions set forth in part 970.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36363, July 22, 2009]

**915.404-4-70-7 Alternative techniques.**

(a) Profit or fees to be paid on construction contracts and construction management contracts shall be determined in accordance with the applicable profit/fee technique for such contracts set forth in 915.404-4-71.

(b) Profit and fee to be paid on contracts under \$500,000, not using the weighted guidelines, shall be judgmentally developed by the contracting officer by assigning individual dollar amounts to the factors appro-

priate to DOE profit considerations discussed in 915.404-4-70-2(d).

(c) Contracts which require only delivery or furnishing of goods or services supplied by subcontractors shall include a fee or profit which, in the best judgment of the contracting officer, is appropriate. It would be expected that there would be a declining relationship of profit/fee dollars in relation to total costs. The higher the cost of subcontracts, for example, the lower the profit/fee ratio to these costs.

(d) Profit/Fee considerations in termination settlements are often a question of equity. They are a matter of negotiation. They should not, however, exceed what would have otherwise been payable under weighted guidelines had the termination not occurred.

[63 FR 56851, Oct. 23, 1998, as amended at 74 FR 36364, July 22, 2009]

**915.404-4-70-8 Weighted guidelines application considerations.**

The Department has developed internal procedures to aid the contracting officer in the application of weighted guidelines and to assure a reasonable degree of uniformity across the Department.

**915.404-4-71 Profit and fee-system for construction and construction management contracts.**

**915.404-4-71-1 General.**

(a) Business concerns awarded a DOE construction or construction management contract shall be paid a profit or fee if requested or solicited. The profit or fee objective for a construction or construction management contract shall be an amount appropriate for the type of effort contained therein. It is the intent of DOE to

- (1) Reward contractors based on the complexity of work;
- (2) Reward contractors who demonstrate and establish excellent records of performance; and
- (3) Reward contractors who contribute their own resources, including facilities and investment of capital.

(b) Standard fees or across-the-board agreements will not be used or made. Profit or fee objectives are to be determined for each contract according to