

Connection

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Message from APTAC President Terri Bennett



Dear APTAC Members,

As 2016 draws to a close, I find myself reflecting on the important accomplishments of the past year—at both individual PTACs and the national policy level. PTAC client award dollars are up by 22%; Congress reaffirmed its support for the PTAP not once, but repeatedly; and we've been able to draw the attention of policy-makers to deceptive, aggressive marketing practices aimed at profiting from unwitting small business contractors.

These accomplishments are a direct result of the expertise, dedication, and passion you bring to your work—and your clients—every day. APTAC is privileged to support you with training and information to continually enhance your expertise, while connecting you with each other to leverage the PTAP's nationwide knowledge and experience bank.

Our work would not be possible without the efforts of our volunteer leadership, committees, and members—and my heartfelt gratitude goes out to them for their invaluable contributions to APTAC and the PTAP. We stand on the shoulders of so many: those who create and support our training programs; those who develop—and then share—resources and best practices for helping clients; those who step up to mentor, collaborate and problem solve with, and otherwise support colleagues across the country; and those who build relationships with agencies and outside organizations that benefit us all. Thank you, thank you.

I encourage everyone to think about what they can bring in 2017 to the national collaboration that we call the PTAP. Consider sharing exceptional or innovative practices by submitting an APTAC Award nomination. Lend your talent to our common cause by running for a position on our Leadership Team or volunteering for a committee. Every contribution enriches us all.

In the meantime, my best wishes go out to APTAC members, their families, and their clients for a joyful holiday season and a happy, healthy, and successful New Year.

Sincerely,



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APTAC'S MISSION

The Association of Procurement Technical Assistance Centers (APTAC) is a membership organization comprised of and supporting Procurement Technical Assistance Centers (PTACs) and the professionals who work for them. APTAC's mission is to support the PTACs in their efforts to provide the very highest levels of government contracting assistance, thereby increasing and improving the supplier base which serves our armed forces and our government as a whole.

APTAC's function is to provide a national forum for training and to facilitate the exchange of information and ideas, to provide a national voice for the PTACs, and to otherwise work toward strengthening the PTAP and the level of services it provides.

Are you "following" APTAC? APTAC's Social Media effort is buzzing! If you're not doing so already, follow us (and "like" us!)

Tell your clients to follow us, too - and to tell their friends!

As you'll see, great procurement news is being posted all the time. It's another benefit for your clients - and it'll help spread the word about the power of the PTACs!

Cover Photo: Taken by a sailor on the USS Nimitz on Christmas Day in 2009. (As a work of the U.S. federal government, the image is in the public domain in the United States.)



How Small Businesses can Justify Increased Profit/Fee under DoD Contracts

[Download article as .pdf](#)

By Jeffrey R. Cuskey, CPCM, CFCM, CSCM, CPP, TechLink Center, Montana State University

“It is in the Government’s interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts, and maintain a viable industria base.”

(FAR 15.404(a)(2))

Purpose

This article provides insight into the federal government and Department of Defense’s (DoD’s) profit policies and how small businesses can earn higher profit or fee on DoD contracts and contract modifications that require the submission of certified cost or pricing data under Federal Acquisition Regulation (FAR) 15.403.

Defense Federal Acquisition Regulation Supplement (DFARS) 215.404-4(b)(1) requires DoD contracting officers to use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when certified cost or pricing data is obtained, except for cost-plus-award-fee (CPAF) contracts and contracts

with Federally Funded Research and Development Centers (FFRDCs). The structured approach most commonly used by DoD contracting officers is called the “Weighted Guidelines” method.

Under the weighted guidelines method, contracting officers are required to factor in performance risk, contract type risk, working capital, facilities capital employed (if proposed), and cost efficiency when developing their prenegotiation profit/fee objectives. Many small businesses are not aware that the government’s prenegotiation profit objectives, developed via the formulaic weighted guidelines method, can vary widely based upon the underlying assumptions and values used. Furthermore, some small businesses

do not realize that they can negotiate a higher profit or fee. As a result, these small businesses blindly accept the Government’s proposed profit rate on contracts that might have higher than normal performance risk and warrant a higher profit. This article will show procurement counselors how to develop effective strategies that can be used by their clients to negotiate higher profit or fee positions that are fully justified under DoD’s weighted guidelines (profit) method application.

Profit Definition

Profit is defined in slightly different ways depending upon the business, accounting or investment context in which it is used. In the context of commerce, profit is defined as the monetary gain from a sales transaction. It is the amount of money earned by a contractor after the contractor has paid all of its underlying contract performance costs and expenses, such as salaries, supplies, subcontracts, costs of goods sold, and indirect expenses. In government contracting, “profit/fee is the dollar amount over and above *allowable* costs that is paid to the firm for contract performance.” (Contract Pricing Reference Guide Vol. 3, Chapter 11.0)

By convention, profit is called “fee” when the government awards a cost reimbursement type contract.

Profit Visibility under Competitive and Non-Competitive Solicitations

The vast majority of government contracts are awarded competitively. For the twelve-month period between 1 July 2015 and 30 June 2016, the federal government executed over 17.6 million contract actions totaling over \$459.6 billion. Over 94% of those contract *actions* were awarded on a competitive basis. DoD contract actions accounted for 74 % of the total actions and 63 % of the total contract dollars during that period. However, due to the large monetary value of non-competed DoD contract actions, the total federal contract *dollars* competed was 63.3 %.

Typically in competitive solicitations, buyers have no visibility into the amount of profit the seller has put into their proposed price or how much profit is actually earned. Nor is there generally a need to obtain and evaluate the seller’s proposed costs and profit when adequate price competition exists or the contracting officer can determine that the price is fair and reasonable via other price analysis techniques. Unlike cost analysis that evaluates proposed cost elements and profit, price analysis is the process of examining and evaluating a proposed price *without* evaluating its separate cost elements and proposed profit.

FEDERAL GOVERNMENT COMPETITION REPORT 01 July 2015 - 30 June 2016 (Source: FPDS.Gov)

	<u>Total</u>		<u>Competed</u>		<u>%</u>	<u>Not</u>	<u>% Not</u>	<u>Not Competed</u>	
	<u>Actions</u>	<u>Total Dollars</u>	<u>Actions</u>	<u>Competed Dollars</u>	<u>Dollars</u>	<u>Competed</u>	<u>Competed</u>	<u>Dollars</u>	<u>% Not</u>
						<u>Actions</u>	<u>Actions</u>		<u>Competed \$</u>
ALL	17,612,569	\$459,623,147,943	16,637,351	\$291,098,007,543	63.3%	972,978	5.52%	\$168,054,970,910	36.56%
DoD	13,013,526	\$289,513,508,924	12,559,248	\$154,031,215,275	53.2%	454,229	3.49%	\$135,458,670,482	46.79%

Per FAR 15.404-1(b) (2), “The government’s preferred price analysis techniques are (1) comparison of proposed prices received in response to the solicitation and (2) comparison of proposed prices to historical prices paid, whether by the government or other than the government, for the same or similar items”. These price analysis techniques are preferred because they require less time, minimal expenditure of resources, and little to no additional data from the contractor, relying instead upon competitive market forces to establish fair and reasonable pricing.

Competitive market forces are not present when the government acquires products and services via non-competitive solicitations. These types of solicitations require the submission of a detailed cost proposal and may require the contractor to certify that the submitted cost or pricing data are current, accurate and complete. The contracting officer is required to use cost analysis to evaluate the reasonableness of individual cost elements and proposed profit/fee when *certified cost or pricing data* are required by FAR 15.403-4. Additionally, per FAR 15.404-1(a)(4), the contracting officer may use cost analysis to evaluate data *other than certified cost or pricing data* to determine cost reasonableness or cost realism when a fair and reasonable price cannot be determined through price analysis alone. Under these circumstances the contracting officer will have visibility into the offeror’s proposed cost elements and profit/fee.

The Importance of Profit/Fee in Government Contracting and National Defense

As noted earlier, it is in the government’s interest to provide contractors the opportunity to earn financial rewards (profit/fee) sufficient to stimulate efficient contract performance, attract highly capable businesses to government contracting, and maintain a viable industrial base. The recognition that profit is not a “four letter” word is also critically important for national defense. On 09 April 2015, the Honorable Frank Kendall, Under

Secretary of Defense, Acquisition, Technology and Logistics, issued his “Implementing Directive for Better Buying Power 3.0 – Achieving Dominant Capabilities through Technical Excellence and Innovation”. The following excerpt highlights DoD’s reliance upon industry to provide innovative, high technology products and solutions to achieve superior military capabilities.

“The technological superiority of the United States is now being challenged by potential adversaries in ways not seen since the Cold War. Efficiency and productivity are always important, but the military capability that we provide to our Warfighters is paramount. Our operational effectiveness is based on the quality of our people and the quality of our products. The former is not in doubt; the latter depends on our efforts and on those of the industrial base. We will continue our work to improve productivity and efficiency, but we must also turn our attention increasingly to our ability to innovate, achieve technical excellence, and field dominant military capabilities.”

To achieve dominant military capabilities, DoD will need to continue and expand their use of [Small Business Innovation Research \(SBIR\)/Small Business Technology Transfer \(STTR\)](#), [Defense Innovation Unit Experimental \(DIUx\)](#), and [Rapid Innovation Fund \(RIF\)](#) programs to identify and acquire novel innovation from small businesses and sources traditionally not available to DoD. Additionally, DoD may need to enhance their use of non-FAR based [Other Transaction Authority \(OTA\) instruments under 10 U.S.C. 2371](#) to attract non-traditional defense contractors. However these programs, initiatives and existing authorities may fall short of their intended goals should DoD provide insufficient profit opportunities to attract innovative, high tech, and non-traditional defense contractors.

Cuskey, How to Justify Increased Profit

Since the vast majority of our supported customers are small businesses, it should be noted that the SBIR/STTR Programs are set aside exclusively for small businesses and the RIF Program has a small business award preference. From fiscal year 2011 through fiscal year 2016, 89% of all RIF contracts were awarded to small businesses and 59% of those RIF awards went to current or former SBIR participants. (Ref: OSD RIF Program Overview, Dan Cundiff and Alice Williams, August 2016) Furthermore, RIF contracting statistics reinforce that the SBIR/STTR programs are a great way for small businesses to receive funding to develop and commercialize innovative technologies and establish credible relationships with prestigious defense and federal agency customers.

Overview of the Federal Government’s Profit Policy

FAR 15.404-4 requires contracting officers to establish profit or fee prenegotiation objectives prior to conducting price negotiations based upon *cost analysis*. When price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

The FAR profit policy specifically states that both government and contractors should recognize the importance of profit as a motivator of efficient and effective contract performance and that sufficient financial rewards are needed to attract the most highly capable small and large firms to government contracting. Per FAR 15.404-4(a)(3), the following actions are not in the best interests of the government, since they do not provide proper motivation for optimum contract performance.

- (1) Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit,
- (2) Negotiation of extremely low profits,
- (3) Use of historical profit averages, or
- (4) Automatic application of profit percentages based upon predetermined percentages to total estimated costs.

A federal agency’s use of de-facto profit/fee caps, historical averages or predetermined profit/fee percentages fails to take into account the unique circumstances and performance risks surrounding each acquisition. Instead, a reasonable profit or fee should be determined through use of a structured methodology, if applicable, or via analysis of the following profit factors listed under FAR 15.404-4(d)(1)(i) through (vi). Offerors should note the specific circumstances that warrant higher profit/fee and factor that into their proposed profit/fee and negotiation strategy.

Profit/Fee Factor	Provide Greater Profit/Fee
Contractor Effort	
<i>Complexity of work & resources required for contract performance</i>	<ul style="list-style-type: none"> • Contracts requiring high degree of professional & managerial skill • Contractor skills, facilities & technical assets expected to lead to efficient contract performance
<i>Material acquisition</i>	<ul style="list-style-type: none"> • Complexity of items required • Number of purchase orders & subcontracts ordered/administered • Need for source development • Complexity of POs & subcontracts
<i>Conversion direct labor</i>	<ul style="list-style-type: none"> • Diversity of labor types required • Amount & quality of supervision & coordination required
<i>Conversion-related indirect costs</i>	<ul style="list-style-type: none"> • Indirect labor evaluated the same as direct labor • Evaluate other indirect costs on complexity & contribution to performance
<i>General Management</i>	<ul style="list-style-type: none"> • Evaluate efforts on complexity & involvement required • Evaluate other cost elements on contribution to contract performance
Cost Risk	<ul style="list-style-type: none"> • Contractor assumes a greater degree of cost responsibility & associated risk considering contract type, reliability of cost estimate in relation to the complexity & duration of the contract
Federal Socioeconomic Programs	<ul style="list-style-type: none"> • Contractor has displayed unusual initiative in support of socioeconomic programs (SBCs, SBs owned & controlled by socially & economically disadvantaged individuals, WOSBs, handicapped sheltered workshops & energy conservation)
Capital Investments	<ul style="list-style-type: none"> • Investments that will facilitate efficient & economical contract performance
Cost Control & Other Past Accomplishments	<ul style="list-style-type: none"> • Have demonstrated an ability to perform similar tasks effectively & economically • Adopted measures to improve productivity • Cost reduction accomplishments that will benefit follow on government contracts
Independent Development	<ul style="list-style-type: none"> • Undertaken relevant independent development that will benefit the contract end item considering whether the development cost was recovered directly or indirectly from Government sources
Additional Agency Factors	<ul style="list-style-type: none"> • Agencies may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions

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Adapted from FAR 15.404-4(d)(1) & Contract Pricing Reference Guide Vol 3, Chapter 11.1.3

PTAC Best Practices: Client Intake

By Kim Bourner, ACAS, Southwest Michigan PTAC

Download article as .pdf



Welcoming a new client to the into the PTAC program is an opportunity to build a long-term relationship. This may be the first introduction to your PTAC, or they may have seen a presentation or attended an event that brought them to your doorstep. However the connection is made, thorough information gathering up front sets the groundwork for a robust relationship.

Client intake provides the opportunity to get a feel for the business’s government contracting potential and for that person to learn more about working with your PTAC. Like reading a solicitation, each question may lead to a go or no-go decision. If it is a new business, and your PTAC has a policy to only work with businesses with sales for at least two years, this may be an ideal opportunity to refer the business to other non-profit resources such as the Small Business Development Center (SBDC).

The questions for intake involve the following fundamentals:

- **Who:** Name of person and company
- **What:** Products/services, do they know their NAICS/PSC, do they have DUNS and CAGE Code
- **When:** How long in business and personal experience
- **Where:** Physical location and geographic area of interest
- **How:** How they learned about the PTAC & how to contact them

These questions are a starting point leading to a conversation about the person’s skill level in the company, years of personal experience, and if they are technically savvy. Technical savvy has become an increasingly important asset in government contracting since so many registrations, research, and bidding opportunities are online. Take time to determine if that person is not feeling up to the technical aspect, and if there is someone else in the company who can assist in that regard.

Share what your PTAC is—and is not—able to do for the company. In addition to discussing this, it may be advantageous to have it in writing with a signature from the client. Such agreements might include that the client will turn in quarterly surveys and awards, attend training events as appropriate, and provide the PTAC office with any status or location changes. The expectation from the PTAC may include providing training/networking events on a regular basis, providing procurement history reports upon request, and the right to privacy for the client. See the [PTAC of Delaware’s sample](#), posted to APTACConnect.

With time, this may become a respected relationship for all parties. For more information, the Body of Knowledge (BoK) section A.3 has a page on client intake on the APTAC website. It includes twenty-one (21) recommended questions to go over with the prospective client. If your PTAC has additional information on this topic, please share it with BOK Chair Jeff Cuskey (jeff.cuskey@montana.edu) for addition to the BOK A.3 description.

ADDITIONAL APTAC RESOURCES FOR CLIENT INTAKE

[APTAC BOK A.3 Client Intake](#)

[Client Expectation Form](#) (sample from Delaware PTAC)

[PTAC Introduction Letter for New Clients](#) (from the GA Tech PTAC)

[Client Profile Self-Certification Worksheet](#) (from the Mississippi PTAC)

[Two-year Client Project Plan](#) (from the University of Houston PTAC)

Kim Bourner has been a Procurement Specialist with the Southwest Michigan PTAC since 2008. Prior to that, she served as a technical writer for a number of different organizations, dating back to 1995.

Celebrating Accomplishments and Looking Ahead

Your work – your energy, expertise, experience and passion – brings tremendous benefit not only to your clients and community, but to your colleagues across the country and the profession at large. Have you ever considered that you can multiply their effect?



Nominating a PTAC project or accomplishment for an [APTAC Award](#) does far more than give us an opportunity to recognize your good work, although that is important, too. It allows us all to learn from your innovation, providing new best practices to emulate and inspiring additional creativity to benefit those we serve. So as you tote up your accomplishments for 2016, please pick the one of which you are most proud and submit a nomination. In preparing the nomination, you will create materials you can use to highlight your best work to your host, community leadership, future clients, and DLA; APTAC will be able to promote your success in a more national forum. Learn about our different [award categories](#) and past [award winners](#). It will be a “win-win” before the winners are even announced!

Also consider how you can grow and contribute through greater involvement with APTAC. APTAC’s leadership and volunteers strive to develop programs and resources to significantly strengthen PTAC capabilities and harness PTAC experience and expertise to inform policy makers on matters that affect small business government contractors. The talent and perspective you can bring to the mix is important – whether in a limited, periodic way or through ongoing, involved leadership. Be assured that whatever your contribution, it will be repaid many times over in what you learn from colleagues as you engage in projects and issues fundamental to your work.

There are many ways you can serve. Read about our [Committees and Subcommittees](#), and consider reaching out to one of our [Committee Chairs](#) to see how you can participate. Meet APTAC’s [Officers](#) and [Regional Directors](#), and learn about their responsibilities. Perhaps you are ready to run for a position on the Board; elections will be held in April for President-elect, Treasurer, and Directors of the odd numbered Regions (1, 3, 5, 7, 9 and 11). [Information on APTAC’s election process](#) is on the website, and more details on candidates – and candidate activities – will be coming in January.

Not sure where you fit in? Contact APTAC Headquarters at headquarters@aptac-us.org and let us know your interests, the skill set you want to contribute and the amount of time you are able to commit, and we will help you connect with the right opportunity to serve. Together, we can make 2017 the best year yet!

APTAC AWARDS

Outstanding Project Award

The Outstanding Project Award recognizes an accomplishment that stands out from the usual conference, event or other activity that all PTACs organize and undertake. Such a project should benefit all PTAC members and/or serve as a model for other PTACs to emulate.



Pam Russenberger, accepting the 2016 Outstanding Project Award for the Iowa PTAC

Economic Impact Award

The Economic Impact Award recognizes a PTAC that has fostered significant economic impact through direct and acknowledged assistance to a PTAC client business(es) in obtaining government contracts and the creation and retention of jobs.

Human Impact Award

The Human Impact Award is meant to recognize a PTAC that has made a positive contribution to a PTAC client business(es) or to the community, going above and beyond the normal PTAC duties and making a difference in the lives of others and in the communities we call home, reminding us all that our successes are not always measured in dollars and cents.

Betty McDonald Outstanding Member Achievement Award

Betty McDonald was a founder and the first President of APTAC, then known as AGMAS (Association of Government Marketing Assistance Specialists). This award, named in her honor, is meant to reflect a significant contribution and deep commitment not just to the procurement profession, but to the APTAC organization and its members.



Adjustments to the Veterans First Contracting Program

VA Updates Procurement Procedures After Supreme Court Ruling

[Download article as .pdf](#)

The U.S. Department of Veterans Affairs (VA) has adjusted the Veterans First Contracting Program in response to the U.S. Supreme Court ruling in *Kingdomware Technologies, Inc. v. United States* and will continue to do so as needed. The Court determined that the “Rule of Two” must be applied to all competitive VA contract awards. The new procedures strengthen and enhance VA’s use of set-asides to the Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) communities, under the authority of the Veterans First Contracting Program.

Previously, VA and lower courts interpreted the rule as limited to prospective open market acquisitions. This meant that if the VA was going to establish an entirely new contract (i.e., solicit new proposals on the open market), the contracting officer would set aside the award to SDVOSBs/VOSBs if there was a reasonable expectation of receiving two or more offers. The ruling extends the Rule of Two analysis to competitive awards against existing contracts, not just open market awards. Adjustments to the Veterans First Contracting Program implement this adjustment to the VA’s understanding of the law.

As a member of the Veteran small business community, you may have questions about what will change as a result of the ruling. The VA is committed to proper implementation of the law and will continue to be inclusive and transparent about our compliance with the Court’s decision.

Some key changes to the Veterans First Contracting Program are as follows:

- ◇ VA’s new acquisition procedures will be applied to all competitive contract actions including those conducted using the Federal Supply Schedules.
- ◇ VA contracting officers will look to use set-asides to verified SDVOSBs and VOSBs using the Rule of Two on all competitive contract actions any time prior market research indicates two or more verified SDVOSBs or VOSBs are likely to provide the best value at a fair, reasonable price.
- ◇ VA will leverage technology to conduct comprehensive and robust market research to identify procurement-ready SDVOSBs/VOSBs, placing a renewed emphasis on the VA Business Intelligence Tool (VA-BIT).
- ◇ VA will provide increased engagement and educational outreach to SDVOSBs/ VOSBs, large and small businesses, Veteran service organizations, and stakeholders who may be impacted by the ruling.
- ◇ VA is providing ongoing training to our contracting workforce and program staff to ensure proper implementation that will better serve our Veterans and their families.

In order to qualify for participation, SDVOSBs/ VOSBs must first be verified through the VA Office of Small and Disadvantaged Business Utilization (OSDBU) Center for Verification and Evaluation. VA -verified SDVOSBs/VOSBs are then listed in the

Continued on next page

Veterans First Contracting Program

VetBiz Vendor Information Pages (VIP) database so they are eligible to compete for VA set-aside and sole source awards.

VA OSDBU is committed to helping all interested parties navigate adjustments to the Veterans First Contracting Program and has prepared a number of ways to keep you informed.

The VA OSDBU website is frequently updated with news, information, and resources. Veteran small business owners can access a dedicated page that details the changes with weekly webinars, presentation slides, and recorded question/answer sessions. SDVOSBs/VOSBs are encouraged to stay informed and take advantage of the unique

education and training opportunities provided by VA OSDBU by accessing <http://www.va.gov/osdbu>.

As VA continues to improve its best practices, OSDBU will continue to offer support and resources to best serve SDVOSBs/VOSBs seeking to do business with VA.



SDVOSB Programs: 2017 NDAA Sharply Curtails VA's Authority *Summary based on [blog post by Steve Koprince \(click here for full post\)](#)*

The [2017 National Defense Authorization Act \(NDAA\)](#) consolidates what are currently two separate and distinct SDVOSB programs: the SBA's self-certification program (the "original" SDVOSB set-aside authorized by the [Small Business Act](#) and implemented in SBA FAR regulations) and the VA's program ([Title 38 of the US Code and regulations](#)). The NDAA sets forth a unified statutory definition of veteran-owned companies and calls for the SBA—not the VA—to issue regulations implementing the statute, including verification of SDVOSB companies. The 2017 NDAA requires the VA to use the SBA's regulations and expressly prohibits the VA from adopting regulations governing the ownership and control of SDVOSBs. These prohibitions, presumably, will ultimately wipe out the two regulations with which many SDVOSBs and VOSBs are very familiar—[38 C.F.R. 74.3](#) (the VA's ownership regulation) and [38 C.F.R. 74.4](#) (the VA's control regulation).

Because both agencies will be using the SBA's rules, the SBA Office of Hearings and Appeals will have authority to hear appeals from any small business denied verification by the VA. The 2017 NDAA also mentions that OHA will have jurisdiction "[i]f an interested party challenges the inclusion in the database" of an SDVOSB or VOSB.

These rules will take effect "on the date on which the Administrator of the Small Business Administration and the Secretary of Veterans Affairs jointly issue regulations implementing such sections," but provides that the SBA and VA "shall issue guidance" pertaining to these matters within 180 days of the enactment of the 2017 NDAA. After that, public comment will be accepted and a final rules eventually announced. Given the speed at which things like these ordinarily play out, these changes are not likely to take effect until sometime in 2018, or perhaps even the following year.

The House [approved the 2017 NDAA on December 2](#). It now goes to the Senate, which is also expected to approve the measure, then send it to the President. In a matter of weeks, the 180-day clock for the joint SBA and VA proposal may start ticking—and the curtain may start to close on the VA's authority to determine who owns or controls a veteran-owned company. [Click here to read full post](#)

Understanding DFARS Cybersecurity Requirements—and How to Meet Them

By Michael Semmens, Imprimis, Inc.

[Download article as .pdf](#)

Background

In November of 2013, [DFARS subpart 204.73](#) went into effect requiring all Department of Defense (DoD) contractors to comply with a designated set of security controls within the [NIST \(SP\) 800-53](#) when Unclassified Controlled Technical Information (UCTI) was stored or passed through the contractor's network or systems. The subpart was in direct response to numerous cases of cyber espionage in which adversaries were able to steal sensitive government information, often from a contractor or subcontractor.

What happened when the clause went into effect? Not much.

There was considerable confusion about the implementation approach. When UCTI security controls applied, who would review and enforce the standards within the government, and who would cover the potential cost? There was resistance among contractors, relatively slow progress at even including the clause in contracts, and no validation that controls had been implemented. Large contractors expressed concern, not primarily over their own compliance – many had been in compliance for years – but rather their implied responsibility and potential liability based on the state of compliance, or non-compliance, of their subcontractors. This concern looms as a major issue going forward.

In August of 2015, the original DFARS subpart and prescribed DFARS clause were significantly modified, an additional subpart with clauses were



added to cover cloud computing, and some definitions were changed. The information to be protected was expanded from UCTI to Defense Covered Information (DCI). The standard changed as well, from a specified number of controls in NIST 800-53 to a newly approved standard, [NIST 800-171: "Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations."](#) Late in 2015, the deadline for implementation was delayed, requiring the contractors to implement cybersecurity controls "as soon as practical but no later than December 31, 2017."

Think of cybersecurity compliance (with standards) as table stakes in a poker game – ... if you don't have it, you're not playing.

Implementing the cybersecurity DFARS clause into contracts has been slow partly due to these changes but mostly due to the 'fog of compliance' – the confusion and malaise surrounding a new and significant requirement. The Defense Procurement and Acquisition Policy agency

(DPAP) has been tracking and grading performance of contracting in all services - including the Defense Logistics Agency (DLA), Defense Contract Management Agency (DCMA), and Other Defense Agencies (ODAs) - with regard

to the requirement. During the first quarter of 2014 (the first quarter after the original DFARS Cybersecurity requirement were issued), less than one in five contracts contained the clause DFARS 252.204-7012. By mid-2015, approximately four out of every five contracts contained the clause, and 100% now include the clauses. What is the take-away? All defense contractors going forward will have to have a compliant cybersecurity profile to be able to receive contracts. Think of cybersecurity compliance (with standards) as table stakes in a poker game – if you don't have it, you're not playing.

But knowing how to achieve a compliant cybersecurity profile can be a challenge – especially for a small firm. The author understands first-hand how overwhelming it can be to make sense of the myriad of requirements. This article is intended to provide an overview of not only the regulations, but some of the basic approaches available within the industry by which contractors can build their confidence in the security of their systems.

DFARS Requirements

The DFARS cybersecurity related subparts and clauses are summarized in the table below. The DFARS now 1) require compliance with NIST 800-171; 2) require the contractor to notify DoD through <http://dibnet.dod.mil> within 72 hours of an incident and preserve an image of the compromised media, 3) protect all DCI (Defense Covered Information), and 4) require notification of the procurement's contract officer of an intent to use cloud computing, and otherwise wait for written approval for a change.

The first of the newly prescribed clauses in Subpart 204.73 restricts deviations from compliance to approval at the DoD CIO level, and the second restricts the use of cyber incident information provided by a 3rd party contractor. Subpart 239.76 and prescribed clauses cover the use of cloud computing, with the same reporting requirements, but requiring safeguards and controls to be implemented in accordance with DISA Cloud Computing Security Requirements Guide (SRG).

Covered Defense Information (CDI):

Unclassified information that is

- i) provided to contractor by or on behalf of DoD,**
- ii) Collected, developed, received, transmitted, used, or stored by the contractor, or [information that] falls within the following categories**
 - i) Controlled technical information,**
 - ii) Critical information (operations security),**
 - iii) Export control,**
 - iv) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls ...**

Summary of the DFARS Cybersecurity Requirements

SUB-PART / CLAUSE	TITLE	REQUIREMENTS
204.73 (subpart)	Safeguarding Covered Defense Information and Cyber Incident Reporting. <i>Revised 21 Sep 2015</i>	Contractors & Subcontractors must safeguard 'Covered' defense information that resides in or transits through contractor information system. Must submit to DoD i) incident report, ii) malicious software, and iii) media. ▪ Prescribes: 252.204-7008, -7009, -7012
252.204-7012 (clause)	Safeguarding Covered Defense Information and Cyber Incident Reporting. <i>Revised 21 Sep 2015</i> <i>Revised 30 Dec 2015</i>	Contractor will implement information systems security protections on all covered contractor information systems. Contractor (Offeror) represents that it will implement security requirements in NIST 800-171 as soon as practical but no later than December 31, 2017. Contractor will apply other information system security measures when the contractor reasonably determines that [additional] security measures are required. Contractor will report, within 72 hours, incidence report to both the prime contractor & DoD via http://dibnet.dod.mil Medium Assurance Certificate require Preserve and Protect Media Image Submit Malicious code if isolated Provide additional information if requested by the government "Alternative but equal effective" security measures used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection accepted in writing by an "authorized representative of the DoD CIO will "adjudicate" offeror requests. flow down of DFARS 252.204-7012 is now limited only to subcontracts, "or similar contractual instruments," for 1) operationally critical support or 2) that involve a covered contractor information system
252.204-7008 (provision)	Compliance with Safeguarding Covered Defense Information Controls. <i>Addition 26 Aug 2015</i> <i>Revised 30 Dec 2015</i>	All contractors represent to implement NIST 800-171 as soon as practical, but no later than December 31, 2017, or Contractor must notify the DoD Chief Information Officer (CIO), within 30 days of award, of ANY NIST SP 800-171 security requirement that has NOT been implemented at the time of contract award.
252.204-7009 (clause)	Limitations on the Use or Disclosure of Third- Party Contractor Reported Cyber Incident Information. <i>Addition 26 Aug 2015</i> <i>Revised 30 Dec 2015</i>	Contractor agrees to use information generated by the contractor or provided by 3rd party shall be used for supporting government activities and no other use. A 3rd party reporting an incident is a 3rd party beneficiary to the Non-disclosure agreement between the Contractor and the government. Flow down of DFARS 252.204-7009 Contractor shall include this clause, including this paragraph (c), in subcontracts, or similar contractual instruments, for services that include support for the Government's activities related to safeguarding covered defense information and cyber incident reporting, including subcontracts for commercial items, without alteration, except to identify the parties
202.1 (subpart)	Definitions. <i>Addition 26 Aug 2015</i> <i>Revised 30 Oct 2015</i>	Designated subpart as location for definitions: o Compro- mise o Cyber Incident o Media
239.76 (subpart)	Cloud Computing. <i>Addition 26 Aug 2015</i>	DoD will acquire cloud computing using commercial T&Cs consistent with Federal Law. Contracts will be awarded to cloud service providers that are granted provisional authorization by DISA. ▪ Prescribes 252.239-7009 & -7010
252.239-7009 (provision)	Representation of Use of Cloud Computing. <i>Addition 26 Aug 2015</i>	The Contractor will be required to provide, as a part of its offer, a Representation of Intent to use Cloud Computing Services in performance of the contract.
252.239-7010 (clause)	Cloud Computing Services. <i>Addition 26 Aug 2015</i>	Representation at time of offer or written approval by the contracting officer required before using cloud computing. Safeguards and controls to be implemented in accordance with DISA Cloud Computing Security Requirements Guide (SRG) Use of data for contract purposes only Incident reporting to http://dibnet.dod.mil Notification of 3rd party request for data Subcontractor Flow-Down required
212.301 (f) (clauses & provisions)	Solicitation provisions and contract clauses for the acquisition of commercial items. <i>Revised 21 Sep 2015</i>	Identifies Solicitation clauses and provisions to be included in the acquisition of commercial items. Includes cybersecurity and safeguards identified in the above clauses.

Recent Activities and Trends

As of this date, implementation activity by contractors has increased substantially and, as the deadline approaches, it continues to accelerate. No one is talking about further delays. It is important to note: with fourteen (14) months remaining until the deadline, contractors need to keep in mind that the full cycle of compliance involves the assessment, remediation, and final compliance verification which may take several months. This timeframe is not because the workload is so high but because of both limited availability of internal contractor staff and limited access to equipment. Smaller organizations cannot afford to have key staff out for extended periods of time, nor can work be stopped for a compliance audit. Rather, the schedule is extended to accommodate staff and system availability. So if a contractor has not already started the process, they should be thinking about doing so soon. Very soon.

A handful of prime contractors have partnered for the purpose of working with subcontractor cybersecurity compliance, forming yet another entity to handle the subcontractor information. They have chosen what is described as a 'risk management' approach rather than a 'compliance' approach, requiring two questionnaires to be completed by subcontractors. One questionnaire addresses the requirements of NIST 800-171 in question form. The other is based on the Center for Internet Security (CIS) Critical Security Controls (CSC) top 20 security controls (CIS 20), commonly referred to as the SANS Top 20. Depending on which version is used, the number of controls ranges roughly from a low of 140 to about 180. These prime contractors are currently using version 5.1 of the CIS 20, while the latest version published is 6.1. So changes should be anticipated.

Nonetheless, the contractor must comply with NIST 800-171 and should have solid documentation to that effect. If this process is done first, the questionnaires become much more

manageable. The questionnaires by themselves in no way document or prove compliance.

Finally, in June of 2016, DoD, NASA, and the GSA published [FAR Subpart 4.19, "Basic Safeguarding of Covered Contractor Information Systems"](#), which prescribes the clause [52.204-21](#) of the same title. The original intent was to protect Controlled Unclassified Information (CUI), but when published, the regulation referred to Federal Contract Information (FCI) as opposed to CUI, thereby directing safeguarding of the system. The published intent of NIST in mid-2015 was to have government contractors dealing with CUI comply with all of NIST 800-171. Instead, fifteen (15) requirements were specified in the FAR clause, resulting in the moniker of the "FAR 15". These correspond exactly to 17 requirements in NIST 800-171, but they include over 40% of all security families, requiring significant development for the FAR 15 including access control, network segmentation, inventory, and scanning. No one should be fooled by the small number of requirements—complying with the FAR will take significant effort to do it right.

Compliance – and Demonstrating Compliance

Compliance can be a daunting process requiring detailed understanding of the standards, performance of a compliance assessment followed by remediation, and a solid verification that everything has been brought into compliance. The assessment can be done by internal staff with training on standards and compliance assessments or by external service providers with appropriate expertise. But questions abound. Self-certification of compliance can be problematic in that it arguably presents a conflict of interest, and some contracting offices have expressed reservations about contractors self-certifying. A host of third-party cybersecurity assessment and "certification" firms has arisen, offering a wide range of services with widely varying price tags, and some of these will produce a letter attesting compliance. But there is no standardization to this practice. To

continued on page 37



MILLENNIUM
CHALLENGE CORPORATION
UNITED STATES OF AMERICA

Millennium Challenge Corporation (MCC) Business Opportunities—Reducing Poverty through Growth

[Download article as .pdf](#)

By Prabhat Garg, Senior Director Program Procurements, Millennium Challenge Corporation

The Millennium Challenge Corporation (MCC) is an independent U.S. Government agency working to reduce global poverty through economic growth. Created in 2004, MCC provides time-limited grants and assistance to poor countries that meet rigorous standards for good governance, from fighting corruption to respecting democratic rights. MCC invests in projects that lead to economic growth and help people lift themselves out of poverty, like power, clean water, land rights, and roads.

All MCC funds are spent through open, fair, transparent, and competitive procurement processes, which present attractive business opportunities for US firms, small or large. Specifically, MCC finances procurement of consulting services in all economic sectors, for example, for feasibility studies and the design of roads, buildings and bridges; for developing resettlement action plans; for designing agricultural food production techniques; for monitoring and evaluation of its investments; and toward public-private partnerships. Similarly, in Goods and Works areas, MCC finances electrical transmission rehabilitation, data centers for energy distribution and monitoring, land titles design and

dissemination, and public sector outreach campaigns.

MCC's singular focus on economic growth is one of the most effective ways to achieve widespread and lasting reductions in poverty in the developing world. Partner countries must qualify for funding, and grant funds are issued through a government-to-government agreement called a "Compact". Funds must be used within five years, and MCC closely monitors and evaluates the implementation of its programs.

Countries with signed Compacts solicit, award, and administer procurements for goods, works, and services based on the programs designed in their Compact. The procurements are awarded and administered by the country through an "accountable entity" (also known as a Millennium Challenge Account or MCA). MCC is not a party to these contracts, but requires that they be awarded through open international competition following MCC procurement guidelines, which incorporate best practices from US Federal Acquisition Regulation (FAR), the World Bank, and the private sector.

Cont. next page

Mr. Prabhat Garg is the Practice Lead and Senior Director with the Millennium Challenge Corporation. Previously, he worked for 16 years with the World Bank. Mr. Garg has an Engineering degree from India, and an MBA from the United States.

Garg, MCC Business Opportunities

Solicitations are advertised in local newspapers and on the relevant websites in the countries of the projects, as well as on some international websites managed by the World Bank (DG Market) and the United Nations (Development Business News). The opportunities are also announced on the MCC website daily.

Although MCC in-country programs do not set aside procurements for small business, there are still prime opportunities, as well as many subcontracting opportunities with larger firms. Small businesses are encouraged to utilize the MCC website to learn about its programs and identify potential subcontracting opportunities. American firms have been the largest recipients of MCC contracts (see chart below).

In addition to the above country-led procurement, there is a separate department within MCC that procures the requirements of MCC Headquarters, which are awarded and administered directly by MCC and subject to the FAR and Small Business Act. Opportunities pursuant to MCC's Corporate Procurements are published on FedBizOpps and are linked to the MCC website. For corporate procurements, the MCC utilizes all aspects of the FAR, e.g., multiple award vehicles, the GSA Schedule, simplified acquisition procedures, and inter-agency agreements, as well as full and open competition. Each year, MCC significantly over-performs with regard to small business socio-economic program goals. See the sidebar to the right for more information on the types of opportunities available through MCC Corporate Procurements.

As a government agency, MCC is funded by the US Congress and managed by a Board of Directors that is chaired by the US Secretary of State.

To learn more about MCC and find out about upcoming business opportunities, please visit www.mcc.gov/work-with-us. MCC would be happy to organize or attend a briefing with PTAC members in any state to introduce its business opportunities to US firms. Any PTAC interested in arranging such a briefing may contact Mr. Prabhat Garg at gargp@mcc.gov, or Brian Corry at corrybm@mcc.gov.

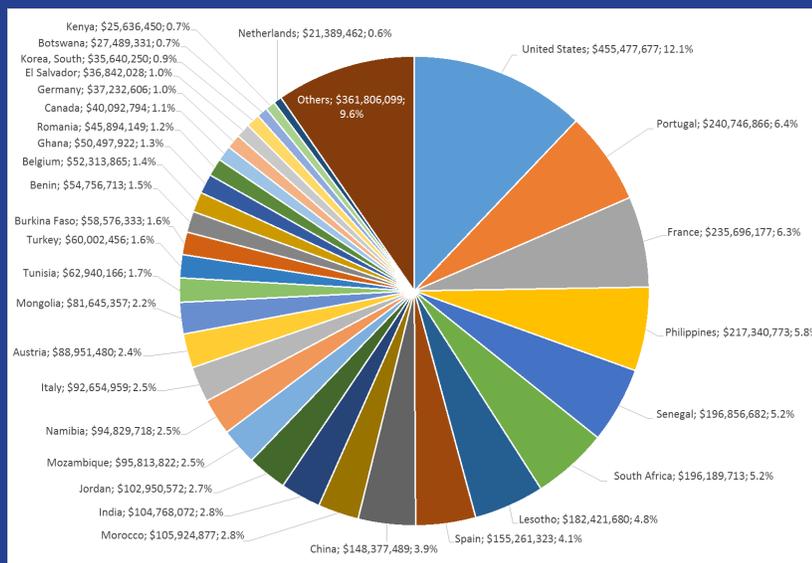
MCC Corporate Procurement Opportunities

Program Related

- Due Diligence for compact development/ implementation
- Feasibility Studies, EIAs, RAPs
- Independent Sector Services (energy, water, transportation, etc.)
- Legal Services
- Monitoring and Impact Evaluation
- Specialty Consulting

Administrative & Finance Related

- Acquisition and Contract Services
- Office and Administrative (Facilities) Services
- Finance & Accounting Services
- Human Resource Related Services
- Information Technology Products and Services
- Targeted Consulting



*MCC Contract Awards
By Nationality
2010—2016*

The FAR profit policy notes that structured approaches for developing profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant profit analysis factors are considered by contracting officers. “Agencies making noncompetitive contact awards over \$100,000 totaling \$50 million or more a year shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and may prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate. Also, federal agencies may use another agency’s structured approach.” (FAR 15.404-4(b))

In an attempt to figure out which federal agencies are required to use a structured approach for developing profit/fee prenegotiation objectives, the author sent an email to the Office of Federal Procurement Policy (OFPP) on 10 October 2016, asking if they maintain a current list of agencies subject to this requirement. That same day Mr. Blum, the OFPP Associate Administrator, provided the following response: “As a general matter, the Office of Federal Procurement Policy does not maintain a list of agencies that meet the trigger requirement for FAR 15.404-4(b) (i.e., agencies whose noncompetitive contract awards total \$50 million or more per year), but I believe there are standard competition reports that may be available based on data in the Federal Procurement Data System that might be helpful in figuring this out.”

Although the Federal Procurement Data System (FPDS) standard competition reports provide the total dollar value of contracts awarded by individual agencies, those reports do not take into account that some awards may fall below the individual contract threshold of \$100,000. Also, it is possible that an agency may meet the trigger requirement for use of a structured profit/fee methodology one year but not meet it the following year. In the meantime, a review of agency Federal Acquisition Regulation Supplements at <http://farsite.hill.af.mil/> indicates the following agencies have a structured

approach for determining prenegotiation profit/fee objectives, although not all agency supplements define or provide details on their methodology.

Agencies with structured approach for prenegotiation profit/fee objectives

Department of Defense
United States Department of Agriculture
Department of Energy
Department of the Interior
Department of Health and Human Services
Environmental Protection Agency
Office of Personnel Management Federal Employees Health Benefits
General Services Administration
Office of Personnel Management Federal Employees' Group Life Insurance
National Aeronautics and Space Administration

Although FAR 15.404-4(c)(5) states “The contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective”, many agencies prefer that prospective offerors provide their rationale and justification for their proposed profit/fee. Doing so opens the door to negotiate profit/fee, giving the offeror an opportunity to justify their proposal based upon the FAR profit analysis factors and/or the agency’s structured profit/fee methodology.

There are no statutory profit limitations on fixed price contracts. Per FAR 15.404-4(c)(4)(i)(A)(B) and (C), **statutory fee limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 3905 apply only to Cost-Plus-Fixed-Fee (CPFF) contracts as follows:**

“(A) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract’s estimated cost, excluding fee.”

(B) For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(C) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee."

Overview of the SBA SBIR Policy Directive Profit Policy

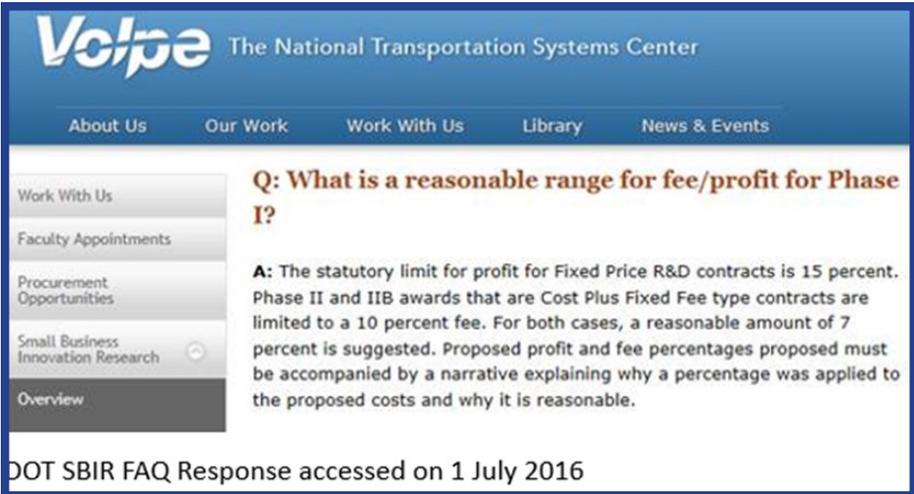
The following SBA Small Business Innovation Research (SBIR) Policy Directive's profit policy at § 7(g)(2) is simple yet subjectively confusing at the same time.

"Fee or Profit. Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on SBIR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work."

The SBIR profit policy is not well understood by agencies or small business participants because there is no known independent data available to determine what "normal" profit margins are provided to profit-making firms for Research/Research and Development (R/R&D) work. Mr. Edsel M. Brown, Jr., Assistant Director of the SBA's Office of Innovation and Technology, (the agency responsible for administering the SBIR/STTR Programs, including the SBIR Policy Directive, which has the full force of law) admitted to the author during a 22 September 2016 phone conference that he was not personally aware of any research or data related to commercial R/R&D profit margins.

As a result, a contracting officer's determination of a reasonable fee or profit on SBIR funding agreements may be highly subjective and/or unduly influenced by historical profit/fee percentages or unwritten de-facto limits established by the agency. For instance, on 28 June 2016, the author asked a DoD Office of Small Business Programs (OSBP) representative about their service's SBIR profit/fee policies, and specifically why their service appeared to limit the amount of SBIR profit/fee to 6% – 7%. The OSBP representative responded that the Research Laboratories are told to cap profit/fee on SBIR and other R&D contracts, but has failed to respond to a follow-up request to see the official or unofficial documentation of this profit/fee policy.

In the author's experience, many federal agencies and DoD components artificially cap profit/fee to between 5% and 7% on SBIR/STTR contracts, begging the question of whether a potential profit of 5% to 7% is sufficient reward to attract the most capable and innovative small businesses. In a recent example, the Department of Transportation "suggested" an offeror provide a specific profit/fee percentage on their SBIR Phase I and/or Phase II proposals. Additionally, DOT's SBIR website FAQ stated incorrectly that there is a statutory cap on fixed price R&D contracts and misstated the statutory fee limitations on Cost-Plus-Fixed-Fee (CPFF) R&D contracts imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 3905.

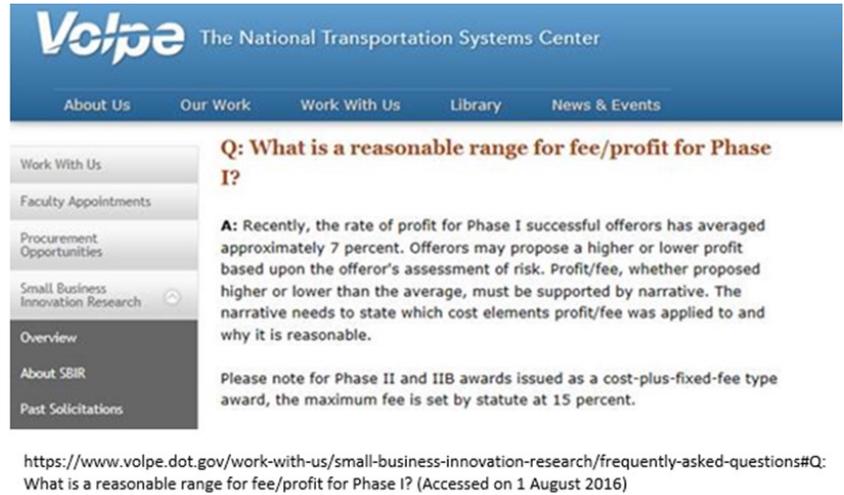


The screenshot shows the Volpe website interface. The header includes the Volpe logo and the text 'The National Transportation Systems Center'. Below the header is a navigation menu with links for 'About Us', 'Our Work', 'Work With Us', 'Library', and 'News & Events'. The main content area features a sidebar on the left with a 'Work With Us' dropdown menu, currently showing 'Small Business Innovation Research'. The main content area contains a question: 'Q: What is a reasonable range for fee/profit for Phase I?' and an answer: 'A: The statutory limit for profit for Fixed Price R&D contracts is 15 percent. Phase II and IIB awards that are Cost Plus Fixed Fee type contracts are limited to a 10 percent fee. For both cases, a reasonable amount of 7 percent is suggested. Proposed profit and fee percentages proposed must be accompanied by a narrative explaining why a percentage was applied to the proposed costs and why it is reasonable.' Below the screenshot is the caption: 'DOT SBIR FAQ Response accessed on 1 July 2016'.

In response, the author pointed out the following to the Department of Transportation SBIR Program Manager:

- (1) There is no statutory profit limit on fixed price contracts,
- (2) SBIR Phase II and II B contracts are for RDT&E per the SBA SBIR Policy Directive,
- (3) The statutory fee limit for CPFF RDT&E contracts is 15% per FAR 15.404-4(c)(4)(i)(A),
- (4) Agencies should not establish pre-determined profit/fee objectives per FAR 15.404-4(a)(3),
- (5) Since the circumstances surrounding each acquisition are unique, a reasonable profit/fee should be determined through use of a structured methodology, if applicable, or via analysis of the profit analysis factors listed under FAR 15.404-4(d)(1)(i) – (vi).

The DOT SBIR Program Manager acknowledged the errors in their SBIR FAQ response and subsequently updated their SBIR FAQ as shown:



The screenshot shows the Volpe website header with navigation links: About Us, Our Work, Work With Us, Library, and News & Events. A sidebar menu on the left includes: Work With Us, Faculty Appointments, Procurement Opportunities, Small Business Innovation Research (selected), Overview, About SBIR, and Past Solicitations. The main content area features a question: "Q: What is a reasonable range for fee/profit for Phase I?" followed by an answer: "A: Recently, the rate of profit for Phase I successful offerors has averaged approximately 7 percent. Offerors may propose a higher or lower profit based upon the offeror's assessment of risk. Profit/fee, whether proposed higher or lower than the average, must be supported by narrative. The narrative needs to state which cost elements profit/fee was applied to and why it is reasonable." Below the answer is a note: "Please note for Phase II and IIB awards issued as a cost-plus-fixed-fee type award, the maximum fee is set by statute at 15 percent." At the bottom of the screenshot is the URL: [https://www.volpe.dot.gov/work-with-us/small-business-innovation-research/frequently-asked-questions#Q:What is a reasonable range for fee/profit for Phase I?](https://www.volpe.dot.gov/work-with-us/small-business-innovation-research/frequently-asked-questions#Q:What%20is%20a%20reasonable%20range%20for%20fee/profit%20for%20Phase%20I?) (Accessed on 1 August 2016)

Overview of DoD's Profit Policy

It should be remembered that DoD and the other federal agencies must follow the profit guidance contained in FAR 15.404-4. DFARS 215.404-4 supplements the FAR profit policy and states that contracting officers shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when *certified cost or pricing data* is obtained, except for Cost-Plus-Award-Fee (CPAF) contracts or those with FFRDCs.

DoD profit policy differs from the FAR policy, requiring a structured approach for developing a prenegotiation profit/fee objective on any negotiated contract action when *certified cost or pricing data* is obtained. The FAR profit policy has a broader application, with FAR 15.404-4 prescribing policies for establishing the profit/ fee portion of the prenegotiation objective in *price negotiations based on cost analysis* and limiting the use of a structured profit/fee methodology to agencies that meet the trigger requirement discussed above.

Per DFARS 215.404-4(b), DoD has three structured approaches for developing a prenegotiation profit or fee objective:

- (1) The Weighted Guidelines Method;
- (2) The modified weighted guidelines method for use on contract actions with nonprofit organizations other than FFRDCs; and
- (3) An alternate structured approach for contract actions at or below the certified cost or pricing data threshold (currently \$750,000); for architect-engineer or construction work; for contracts that are issued primarily for delivery of material from subcontractors or suppliers; or for termination settlement.

The remainder of this article will provide an overview of certified cost or pricing data submission requirements, discuss the mechanics of the Weighted Guidelines Method and show how small businesses can justify increased profit/fee under DoD contracts subject to profit/fee analysis under the Weighted Guidelines Method.

Although specific agreement on the applied weights or values for individual profit factors shall not be attempted, contracting officers may encourage the contractor to present the details of its proposed profit amounts in the weighted guidelines format. (DFARS 215.404-4(c)(5)) As noted under the federal profit policy section of this article, the use of a structured profit/fee methodology may provide added benefits to the offeror over the use of a non-structured profit/fee analysis technique. A structured profit/fee methodology enhances objectivity, ensures the contracting officer evaluates all profit factors and facilitates negotiation of potentially higher profit/fees.

Certified Cost or Pricing Data (COPD)

An integral component of DoD's profit policy is knowing what constitutes "cost or pricing data" and when certified cost or pricing data are required.

An offeror providing certified cost or pricing data is certifying that the data are current, accurate and complete.

"If, after award, certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data". (FAR 15.407-1(b)(1))

"In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty amounts on certain of these overpayments." (FAR 15.407-1(b)(7)(i))

Per FAR 15.403-4, unless an exception applies at FAR 15.403-1 & 2 or a waiver has been granted, certified COPD is required for pricing actions expected to exceed the current \$750,000 threshold for:

- (1) Award of any negotiated (definitized) contract;
- (2) Award or modification of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish COPD;
- (3) Modification of any sealed bid or negotiated contract (whether or not COPD were initially required) where the absolute value of the pricing adjustment exceeds \$750,000;
- (4) Negotiated final pricing actions.

Per FAR 2.101, "Cost or pricing data" means:

"All facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include, but are not limited to, such factors as—

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit-cost trends such as those associated with labor efficiency;
- (6) Make-or-buy decisions;
- (7) Estimated resources to attain business goals; and
- (8) Information on management decisions that could have a significant bearing on costs."

The Head of the Contracting Agency (HCA) may authorize the contracting officer to obtain certified COPD above the simplified acquisition threshold, currently \$150,000, and below the current certified COPD \$750,000 threshold.

It is perhaps easier to understand when certified cost or pricing data is required by understanding when COPD it is **not** required. Per FAR 15.403-1 and 2, contracting officers shall not obtain certified cost or pricing data when:

- (1) Acquisitions are at or below the simplified acquisition threshold (SAT),
- (2) Prices are based upon adequate price competition,
- (3) Prices are set by law or regulation,
- (4) Acquiring commercial items,
- (5) A waiver has been granted,
- (6) Modifying a contract or subcontract for commercial items,
- (7) Exercising a prospectively priced option, or
- (8) Proposals are used solely for overrun funding or interim billing price adjustments.

Understanding the Mechanics of DoD's Weighted Guidelines Structured Profit/Fee Methodology

Under the weighted guidelines method, defense contracting officers are required to factor in performance risk, contract type risk, working capital, facilities capital employed (if proposed) and cost efficiency when developing their prenegotiation profit/fee objectives. Unless a small business is familiar with these policies, they may have difficulty correlating DoD's profit factors to the profit analysis factors listed under FAR 15.404-4(d)(1)(i) – (vi), developing their proposed profit/fee position, and more importantly, developing a

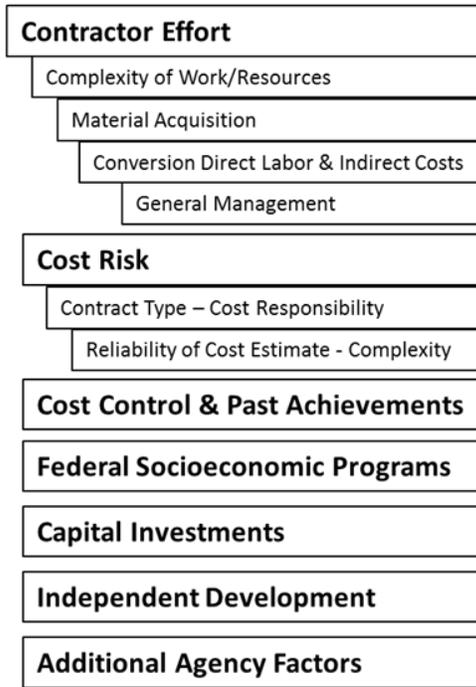
negotiation strategy to justify a higher profit or fee fully supported by the Weighted Guidelines Methodology.

DFARS 215.404-4(d)(1) states that the FAR common profit analysis factors are embodied in the DoD structured approaches and need not be further considered by the contracting officer. However, as depicted in the following chart, the terminology of required profit analysis factors in the FAR and DFARS differs, and it is not readily apparent by terminology alone that the DFARS methodology embodies all of the required FAR factors. But after conducting an in depth review and cross walk, the author was able to verify that the FAR profit analysis factors are embodied, some strongly and others loosely, in DoD's Weighted Guidelines, as indicated by the lines in the chart between the two (see next page). It should be noted that DoD has included a "Technology Incentive for Innovative New Technology" profit analysis factor as an addition. For reasons to be discussed later, this is an extremely important factor that allows increased profit/fee on certain contracts that include the development or application of new innovative technologies.

Understanding the correlation between FAR and DFARS profit analysis factors is important because although DFARS provides specific examples that warrant higher profit/fee, a review of the FAR analysis factors (and Contract Pricing Reference Guide, Volume 3, Chapter 11) provides additional examples of when a higher profit/fee is justified.

DFARS 215.404-70 requires the contracting officer to use DD Form 1547, Record of Weighted Guidelines Method Application, whenever a structured approach to profit analysis is required. "The contracting officer assigns values to each profit factor and then multiplies the profit/fee value (percentage) by the cost base to determine the profit objective (in dollars) for that factor. Except for the cost efficiency factor, each profit factor has a normal value and a designated range of values. The normal value is representative of average conditions on the prospective contract when

FAR Common Profit Analysis Factors



DFARS WGL Profit Analysis Factors

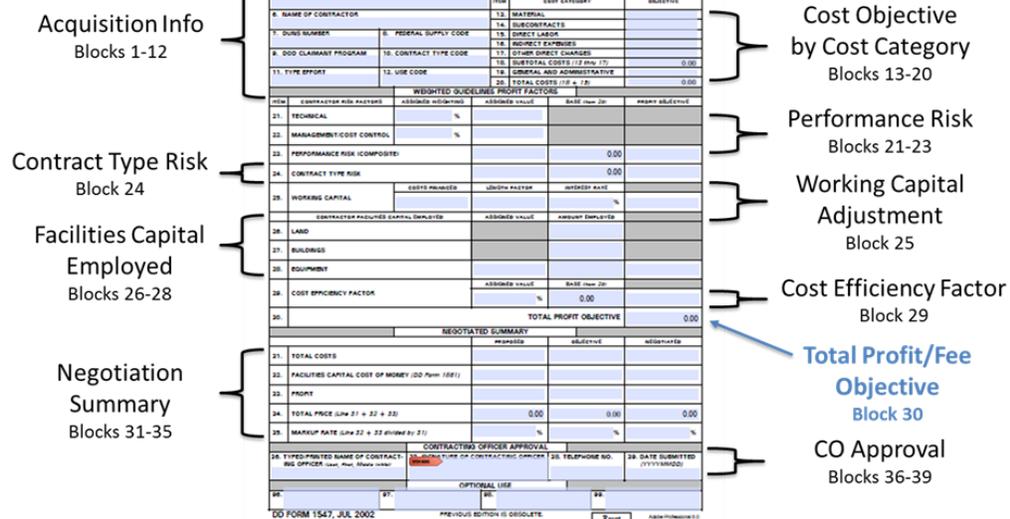


compared to all goods and services acquired by DoD. The designated range provides values based on above normal or below normal conditions. In the price negotiation documentation, the contracting officer need not explain assignment of the normal value, but should address conditions that justify assignment of other than the normal value. The cost efficiency special factor has no normal value. The contracting officer shall exercise sound business judgment in selecting a value when this special factor is used.” (DFARS 215.404-71-1(b))

It should be noted that the contracting officer needs to be given a clear and compelling reason for assigning an above normal value since he or she has to justify the assigned value in their post negotiation memorandum or post business clearance. As such, it is critical for an offeror to understand the range of values available for each profit factor, when the assignment of above normal

values is warranted, and how to develop supportable profit/fee positions that align with the evaluation factors and justifications contained in DFARS 215.404-71.

The following provides a depiction of the DD Form 1547, highlighting the major sections on the form. (A more readable version is provided later in the article).



An [excel spreadsheet version of the DD Form 1547](#), can be accessed online. Although this Weighted Guidelines Tool enables the calculation and linkage of the Total Cost Objectives, the Weighted Guidelines Profit Factors, Facilities Capital Cost of Money (if proposed), Total Profit Amount and Percentage, and Total Mark-Up Percentage (Profit/Fee plus Facilities Capital Cost of Money), it does not have the range of values and other limitations embedded into the tool. A user would have to be familiar with those factors before entering values for each profit analysis factor and determining what is allowed in the cost base, including allowable General and Administrative (G&A) expenses. Additionally it is recommended that those not familiar with Weighted Guidelines review the sample calculations in the [Cost and Pricing Reference Guide, Volume 3, Chapter 11 - Analyzing Profit or Fee](#).

Minimum Data Entry in Yellow. (Line 25 and/or 29 may not be required.) Green cells are calculated from input

RECORD OF WEIGHTED GUIDELINES APPLICATION						REPORT CONTROL SUMMARY			
1. REPORT NO. <i>complete on printable form tab</i>		2. BASIC PROCUREMENT INSTRUMENT IDENTIFICATION NO. a. PURCHASING OFFICE <i>complete on printable form tab</i> b. FY <i>complete on printable form tab</i> c. TYPE PROC INST CODE <i>complete on printable form tab</i>			3. SPIIN <i>complete on printable form tab</i>		4. DATE OF ACTION a. YEAR <i>complete on printable form tab</i> b. MONTH		
5. CONTRACTING OFFICE CODE <i>complete on printable form tab</i>				ITEM	COST CATEGORY		OBJECTIVE		
6. NAME OF CONTRACTOR <i>complete on printable form tab</i>				13.	MATERIAL				
				14.	SUBCONTRACTS				
7. DUNS NUMBER <i>complete on printable form tab</i>			8. FEDERAL SUPPLY CODE <i>complete on printable form tab</i>		15.	DIRECT LABOR			
					16.	INDIRECT EXPENSES			
9. DOD CLAIMANT PROGRAM <i>complete on printable form tab</i>			10. CONTRACT TYPE CODE <i>complete on printable form tab</i>		17.	OTHER DIRECT CHARGES			
					18.	SUBTOTAL COSTS (13 thru 17)		\$ -	
11. TYPE EFFORT <i>complete on printable form tab</i>			12. USE CODE <i>complete on printable form tab</i>		19.	GENERAL AND ADMINISTRATIVE			
					20.	TOTAL COSTS (18 + 19)		\$ -	
WEIGHTED GUIDELINES PROFIT FACTORS									
ITEM	CONTRACTOR RISK FACTORS		ASSIGNED WEIGHTING	ASSIGNED VALUE	BASE (Item 20)		PROFIT OBJECTIVE		
21.	TECHNICAL								
22.	MANAGEMENT/COST CONTROL								
23.	PERFORMANCE RISK (COMPOSITE)				\$ -		\$ -		
24.	CONTRACT TYPE RISK				\$ -		\$ -		
25.	WORKING CAPITAL	COSTS FINANCED		LENGTH FACTOR	INTEREST RATE				
							\$ -		
CONTRACTOR FACILITIES CAPITAL FINANCED						AMOUNT EMPLOYED			
26.	LAND								
27.	BUILDINGS								
28.	EQUIPMENT						\$ -		
29.	COST EFFICIENCY FACTOR			ASSIGNED VALUE	BASE (Item 20)		\$ -		
30.					\$ -		\$ -		
TOTAL PROFIT OBJECTIVE									
NEGOTIATED SUMMARY									
				PROPOSED	OBJECTIVE		NEGOTIATED		
31.	TOTAL COSTS				\$ -				
32.	FACILITIES CAPITAL COST OF MONEY (DD Form 1861)								
33.	PROFIT								
34.	TOTAL PRICE (Line 31 + 32 + 33)			\$ -	\$ -		\$ -		
35.	MARKUP RATE (Line 32 + 33 divided by 31)			0.000%	0.000%		0.000%		
CONTRACTING OFFICER APPROVAL									
36. TYPED/PRINTED NAME OF CONTRACTING OFFICER (Last, First, Middle Initial) <i>complete on printable form tab</i>			37. SIGNATURE OF CONTRACTING OFFICER			38. TELEPHONE NO. <i>complete on printable form tab</i>		39. DATE SUBMITTED <i>complete on printable form tab</i>	
OPTIONAL USE									
96.	97.			98.		99.			

DD FORM 1547, JUL 2002

PREVIOUS EDITION IS OBSOLETE.

How to Justify Increased Profit/Fee under DoD Contracts

In general, an offeror may be able to justify increased proposed profit or fee under DoD contracts by gaining insight into FAR & DFARS profit policies. The following tips may be helpful when developing negotiation strategies:

- (1) Recognize that contracting officers must justify the assignment of Weighted Guidelines profit/fee values that are below or above the normal value.
- (2) Use FAR profit analysis factors and DFARS Weighted Guidelines policies to develop and justify proposed profit/fee positions.
- (3) If needed, ask contracting officers for the specific basis and supporting rationale for their prenegotiation profit/fee objectives.
- (4) Push back and elevate the negotiations to higher authority if the contracting officer does not provide the basis for their profit objective or the contracting officer's position is not supported by FAR or DFARS profit policies, such as agency attempts to:
 - (a) Conduct negotiations aimed merely at reducing prices by reducing profit,
 - (b) Negotiate extremely low profits or fees,
 - (c) Impose an arbitrary cap on profit or fee,
 - (d) Use historical profit/fee percentages,
 - (e) Automatically apply a predetermined profit/fee percentage,
 - (f) Avoid providing justifications for their profit/fee positions during negotiations, and/or
 - (g) Get the contractor to accept a lower profit/fee by stating they "need to obtain higher level approval to provide a higher profit or fee".
- (5) Counter a contracting officer's prenegotiation position by demonstrating that the profit/fee position is based upon FAR profit analysis factors and/or DFARS Weighted Guidelines policies.
- (6) Make it easy for contracting officers to understand and concur that your proposed position is fully justified under FAR and DFARS policies.
- (7) Recognize that contracting officers must develop a pre & post business clearance to justify negotiation positions, including profit/fee. Prenegotiation positions are based on preliminary proposal analysis, while post-negotiation positions should be based on knowledge learned during fact-finding and
- (8) Recognize that experienced government negotiators will only change their prenegotiation positions when given valid and supportable reasons to do so. Offerors should provide contracting officers what they need to support their proposed profit/fee position.

The following provides an overview of the mechanics of the cost and profit objective sections of the DD Form 1547, as well as suggested strategies to justify higher profit or fee under each of the Weighted Guidelines profit analysis factors.

Weighted Guidelines Cost Category Objectives

This section summarizes the offeror’s cost proposal and is broken down into the following cost categories. The total costs serve as a basis for several of the DD Form 1547 profit/fee calculations. Per Contract Pricing Reference Guide Volume 3, Chapter 11.2.1, Line Number 19 General and Administrative must include all G&A expenses, including Independent Research and Development (IRAD) and Bid and Proposal (B&P) expenses. Additionally, the offeror should ensure that Facilities Capital Cost of Money (FCCOM), if proposed, is not included in the proposed costs. (DFARS 215.404-71-2(b) (4) & CPRG Vol 3, CH 11.21)

ITEM	COST CATEGORY	OBJECTIVE
13.	MATERIAL	
14.	SUBCONTRACTS	
15.	DIRECT LABOR	
16.	INDIRECT EXPENSES	
17.	OTHER DIRECT CHARGES	
18.	SUBTOTAL COSTS (13 thru 17)	0.00
19.	GENERAL AND ADMINISTRATIVE	
20.	TOTAL COSTS (18 + 19)	0.00

Remember that the Weighted Guidelines method determines a profit/fee percentage for each of the profit analysis factors and then multiplies that percentage against the total costs (Line 20). As such, it is extremely important that the offeror include all allowable costs in their proposal and ensure that individual cost elements are not arbitrarily reduced during negotiations. Any reduction in costs will reduce the aggregate amount of profit/fee the contractor could potentially earn under the contract. For example, under a firm- fixed-price (FFP) contract with no provisions to protect the contractor against labor and/or material escalation, the reduction of escalation built into the proposed labor and/or material cost elements will not only reduce the contractor’s potential profit but will also subject the contractor to added cost risk.

How to Justify Increased Profit/Fee under the Composite Performance Risk Profit Factor

The “Composite Performance Risk” factor provides the highest potential profit/fee out of all of the Weighted Guidelines profit factors with the potential exception of Facilities Capital Cost of Money (FCCOM), if proposed.

The Technical & Management/Cost Control factors are weighted according to their importance to the contract to develop a “Composite Performance Risk” profit/fee objective (i.e., 60% Technical & 40% Management/Cost Control or any combination that adds up to 100%).

		WEIGHTED GUIDELINES PROFIT FACTORS			
ITEM	CONTRACTOR RISK FACTORS	ASSIGNED WEIGHTING	ASSIGNED VALUE	BASE (Item 20)	PROFIT OBJECTIVE
21.	TECHNICAL	%			
22.	MANAGEMENT/COST CONTROL	%			
23.	PERFORMANCE RISK (COMPOSITE)			0.00	

The “Standard” designated range of values for “Management/Cost Control” & “Technical” is 3% to 7% with 5% being the “Normal” value. When developing a proposed profit position and negotiation strategy, an offeror needs to understand when a contracting officer may assign a value other than the normal value. This chart provides specific examples of when values above and below the normal value may be assigned under the “Standard” range of values for the “Technical” profit analysis factor. To make it easier for a contracting officer to concur with the offeror’s proposed profit/fee position, the offeror should identify the critical contract performance elements and technical performance risks that correspond to the examples in the chart that warrant the assignment of a value above the normal value.

Assigning a Profit/Fee Value for Technical Risk	
Maximum Value	Contract effort requires development or initial production of a new item, particularly if performance or quality specifications are tight; or effort requires a high degree of development or production concurrency
Significantly Above Normal Value	Contract effort involves extremely complex, vital efforts to overcome difficult technical obstacles which require personnel with exceptional abilities, experience, and professional credentials
Above Normal Value	<ul style="list-style-type: none"> The contractor is either developing or applying advanced technologies; Items are being manufactured using specifications with stringent tolerance limits; Contract effort requires highly skilled personnel or the use of state-of-the-art machinery; Services and analytical efforts are extremely important to the Government and must be performed to exacting standards; The contractor’s independent development and investment has reduced the Government’s risk or cost; contractor has accepted & accelerated delivery schedule to meet DoD requirements; or has assumed additional risk through warranty provisions
Below Normal Value	Contract is for off-the-shelf items; requirements are relatively simple; technology is not complex; Contract efforts do not require highly skilled personnel; contract efforts are routine; programs are mature; or contract is a follow-on effort or repetitive-type acquisition
Significantly Below Normal Weight	<ul style="list-style-type: none"> Contract is for routine services; production of simple items; Contract is for rote entry of Government furnished information; or simple operations with GFP

Ref: Contract Pricing Reference Guide (CPRG) Vol 3, Chapter 11.1

If applicable, the contracting officer may use the “Technology Incentive” range of values in lieu of the “Standard” Technical range of values. The “Technology Incentive” range of values is 7% to 11% with 9% being the “Normal” value. Per DFARS 215.404-71-2(d)(4), the “Technology Incentive” range of values may be used when contract performance includes the introduction of new, significant technological innovation. The “Technology Incentive” range of values applies to the “Technical” factor only and cannot be used with the “Management/Cost Control” factor. Additionally, it does not apply to efforts restricted to studies, analyses, or demonstrations that have a technical report as their primary deliverable.

The following chart depicts the types of innovation considered under the Technology Incentive factor and when the assignment of an above normal value may be warranted. After establishing that the technology incentive applies to the pending contract, the offeror can justify the assignment of a value above the

normal value by demonstrating that their innovative efforts will have a major positive impact on the product or program and that the development and application of the innovative new technology will provide significant performance improvements/capabilities over existing products and/or systems. Since the contracting officer may not be a technical subject matter expert, it is often helpful to obtain acknowledgement of the technical performance risk and the positive impact that the offeror’s technological innovation will have on a product or

Assigning a Profit/Fee Value for Technical Risk Using the Technology Incentive Range

Use the technology incentive range only for the most innovative contract efforts

Innovation may be in the form of . . .	Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or
	New products or systems that contain significant technological advances over the products or systems they are replacing
After deciding that use of the technology incentive range is appropriate, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. Generally use the normal value of 9%. However . . .	
Consider using values above the norm when:	The innovation will have a major positive impact on the product or program
Consider using values less than the norm when:	The innovation represents a minor benefit

Ref: Contract Pricing Reference Guide (CPRG) Vol 3, Chapter 11.1

The following chart depicts when a contracting officer may assign a value above and below the normal value for the Management/Cost Control Risk Factor. To justify the assignment of an above normal value, the offeror should identify all planned contract management/cost control actions that demonstrate, among others, the high degree of planning, integration and coordination needed to successfully meet the contract requirements. To bolster the offeror’s profit/fee position, the offeror should attempt to provide as many examples as possible that meet the criteria for assigning a maximum value or above normal value.

As an aside, it is possible to obtain higher profit for a value-added distributor or reseller if they can demonstrate the value-added provided is both considerable and reasonably difficult; and the contract effort requires a high degree of integration and coordination with their suppliers/manufacturers and customers.

Assigning a Profit/Fee Value for Management/Cost Control Risk	
Maximum Weight	<ul style="list-style-type: none"> Contract effort requires large scale integration of the most complex nature; Contract effort involves major international activities with significant management coordination (e.g., offsets with foreign vendors); or has critically important milestones
Above Normal Weight	<ul style="list-style-type: none"> The contractor's value-added is both considerable and reasonably difficult; Contract effort involves a high degree of integration or coordination; The contractor has a good record of past performance; The contractor has a substantial record of active participation in Federal socioeconomic programs; The contractor provides fully documented and reliable cost estimates; makes appropriate make-or-buy decisions; or has a proven record of cost tracking and control.
Below Normal Weight	<ul style="list-style-type: none"> The program is mature and many end item deliveries have been made; The contractor adds minimum value to an item; Contract effort is routine and requires minimal supervision; The contractor provides poor quality, untimely proposals; The contractor fails to provide an adequate analysis of subcontractor costs; or The contractor does not cooperate in the evaluation and negotiation of the proposal; The contractor's cost estimating system is marginal; The contractor has made minimal effort to initiate cost reduction programs; The contractor's cost proposal is inadequate; The contractor has a record of cost overruns or other indication of unreliable cost estimates and lack of cost control; or has a poor record of past performance.
Significantly Below Normal Weight	<ul style="list-style-type: none"> Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (e.g., quality assurance, property control, safety, security); or Contract effort requires an unusually low degree of management involvement.

Ref: Contract Pricing Reference Guide (CPRG) Vol 3, Chapter 11.1

If the use of the Technology Incentive range of values cannot be justified, the offeror should place the greatest weight on the composite risk factor (Technical or Management/Cost Control) that warrants the assignment of the greatest value. This will increase the profit/fee under the Composite Performance Risk factor due to the added weight and the higher value assigned to that factor. For example, the contract effort supports the assignment of the maximum standard value for the Technical Factor (7%) and the assignment of the normal (standard) value (5%) for the Management/Cost Control factor. In that case, the offeror should place the greatest amount of weight on the Technical risk factor that can reasonably be justified. In the following example, the offeror was able to justify an assigned weighting of 70% to the Technical factor. This resulted in a 6.4% profit objective for the Composite Performance Risk factor. Had the offeror assigned equal weighting to the Technical and Management/Cost Control factors, the resulting profit objective would have been reduced to 6%.

		WEIGHTED GUIDELINES PROFIT FACTORS			
ITEM	CONTRACTOR RISK FACTORS	ASSIGNED WEIGHTING	ASSIGNED VALUE	BASE (Item 20)	PROFIT OBJECTIVE
21.	TECHNICAL	70 %	7		
22.	MANAGEMENT/COST CONTROL	30 %	5		
23.	PERFORMANCE RISK (COMPOSITE)		6.4%	0.00	

The above strategy becomes even more important when the use of the higher Technology Incentive Range of Values can be justified.

The following “Composite Performance Risk” applications compare the profit objective under the assignment of “Standard” normal values and equal weighting of “Technical” and “Management/Cost Control” with the assignment of the (higher) normal “Technology Incentive” value and significantly greater weighting on the “Technical” factor. As can be seen, this strategy provides a significant increase in the amount of profit/fee that can be applied to the “Composite Performance Risk” profit objective. The profit objective for this factor could be increased even more if the offeror can justify the assignment of an above normal “Technology Incentive” value by providing evidence that their innovative efforts will have a major positive impact on DoD’s product, weapon system or program. (DFARS 215-404-71-2(d)(4)(ii))

Equal weighting for Technology & Management; Standard Normal value for both factors

WEIGHTED GUIDELINES PROFIT FACTORS					
ITEM	CONTRACTOR RISK FACTORS	ASSIGNED WEIGHTING	ASSIGNED VALUE	BASE (Item 20)	PROFIT OBJECTIVE
21.	TECHNICAL	50 %	5		
22.	MANAGEMENT/COST CONTROL	50 %	5		
23.	PERFORMANCE RISK (COMPOSITE)		5%	0.00	

Greater weight on Technology; Technology Incentive Normal value

WEIGHTED GUIDELINES PROFIT FACTORS					
ITEM	CONTRACTOR RISK FACTORS	ASSIGNED WEIGHTING	ASSIGNED VALUE	BASE (Item 20)	PROFIT OBJECTIVE
21.	TECHNICAL	85 %	9		
22.	MANAGEMENT/COST CONTROL	15 %	5		
23.	PERFORMANCE RISK (COMPOSITE)		8.4%	0.00	

How to Justify Increased Profit/Fee under the Weighted Guidelines Contract Type Risk Factor

This profit analysis factor is designed to recognize the degree of *cost risk* accepted by the contractor under various contract types and, if applicable, the amount of capital “financed” under contracts that provide progress payments. Although the working capital adjustment is calculated via a formula, it is not

Contract Type	Normal Value	Designated Range	Ref: DFARS 215.404-71(c)
Firm-Fixed Price (FFP)			
No Financing	5%	4% to 6%	No Working Capital Adjustment
With Performance Based Payments	4%	2.5% to 5.5%	No Working Capital Adjustment
With Financing (Progress Payments)	3%	2% to 4%	Compute Working Capital Adjustment
Fixed-Price Incentive (FPI)			
No Financing	3%	2% to 4%	No Working Capital Adjustment
With Performance Based Payments	2%	0.5% to 3.5%	No Working Capital Adjustment
With Financing (Progress Payments)	1%	0 to 2%	Compute Working Capital Adjustment
Cost-Plus-Incentive-Fee (CPIF)	1%	0 to 2%	No Working Capital Adjustment
Cost-Plus-Fixed-Fee (CPFF)	0.5%	0 to 1%	No Working Capital Adjustment
Time & Material (TM)	0.5%	0 to 1%	No Working Capital Adjustment
Labor Hour (LH)	0.5%	0 to 1%	No Working Capital Adjustment
FFP Level of Effort (FPLOE)	0.5%	0 to 1%	No Working Capital Adjustment

intended to be an exact calculation of the cost of working capital. The following table provides the normal value, designated range of values, and whether a working capital adjustment is allowed under various contract types. (DFARS 215.404-71.3)

Per DFARS 215.404-71-3(d), contracting officers should consider the following **elements that affect contract type risk**:

- (1) length of the contract,
- (2) adequacy of cost data for cost estimation projections,
- (3) economic market conditions and whether the contract provisions protect the contractor from economic uncertainty, such as economic price adjustment clauses,
- (4) the nature and extent of subcontract activity,
- (5) cost ceilings, fidelity of estimated target costs, the point of total assumption in Fixed-Price-Incentive- Firm (FPIF) contracts, and incentive share ratios that allocate cost risk between the contractor and government,
- (6) risks associated with Foreign Military Sales (FMS) that is not funded by U.S. appropriations, and
- (7) the risk and timing of payments under performance based payment provisions.

The contracting officer is required to assess the extent to which costs were incurred prior to the definitization on any letter contract or undefinitized

contractual action (UCA) and may assign a value as low as 0% if a substantial portion of the costs has been incurred prior to definitization. (DFARS 215.404-71-3(d)(2)) The reason for this mandatory downward adjustment is the belief that there is little to no incentive for a contractor to control costs prior to definitization of the price and application of any cost control provisions. The adage often heard under these circumstances is that “it is difficult to negotiate against actual costs”. However the costs incurred prior to definitization still must meet the government’s five-part test for allowability. The costs must be (1) reasonable, (2) allocable to the contract on either a direct, indirect, or general and administrative (G&A) basis, (3) allowable under FAR Part 31 cost principles, (4) in accordance with generally accepted accounting principles (GAAP) and, if applicable, FAR Part 30 cost accounting standards (CAS), and (5) in accordance with the contract terms and conditions.

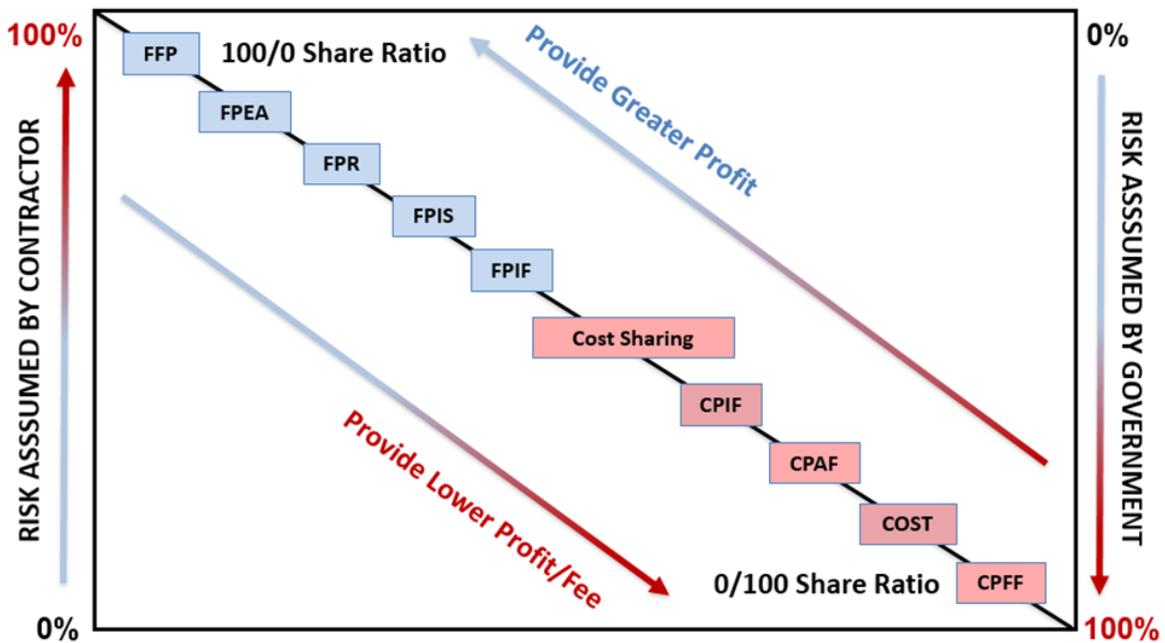
The following chart provides circumstances that warrant the assignment of above normal and below normal values for the Contract-Type Risk profit factor. To increase the amount of profit/fee under this profit factor, the offeror should provide examples in the proposed pricing arrangement that indicate the offeror will be assuming a high degree of cost risk under the contract.

Assigning a Profit/Fee Value for Contract-Type Risk	
Above Normal Weight	<ul style="list-style-type: none"> • There is minimal cost history; • Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty; • Incentive provisions (e.g., cost and performance incentives) place a high degree of risk on the contractor; or • Contract is for FMS sales (other than those under DoD cooperative logistics support arrangement or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items. • An aggressive performance-based payment schedule that increases risk
Below Normal Weight	<ul style="list-style-type: none"> • Contract is for a very mature product line with extensive cost history; • Contract is for a relatively short term; • Contractual provisions substantially reduce the contractor's risk; • Incentive provisions place a low degree of risk on the contractor; • Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or • A performance-based payment schedule that is routine with minimal risk

Ref: Contract Pricing Reference Guide (CPRG) Vol 3, Chapter 11.1

After the contracting officer selects the appropriate contract type risk value, it is entered into Weighted Guidelines under item number 24. The value is then multiplied against the total cost base. It should be remembered that the cost base should not include any proposed Facilities Capital Cost of Money (FCCOM).

The Contract Type Risk Profit Factor is frequently misunderstood and misapplied, especially when the government contemplates the issuance of a cost reimbursement contract. Government contracting officers, contract specialists, and technical program managers are taught that the government assumes 100% of the (cost) risk under a Cost-Plus-Fixed-Fee (CPFF) (0/100 Share Ratio) and that contractors assume one hundred percent of the (cost) risk under a Firm-Fixed-Price (FFP) contract (100/0 Share Ratio). Furthermore, they are taught that a contractor should earn more profit under a FFP contract and less profit under a CPFF contract due to the assumption of risk by each of the parties. Those are fair and correct statements if they relate solely to the assumption of cost risk under various contract types. However some contracting officers believe that contract type risk alone drives the amount of profit/fee that is fair and reasonable, which may partially explain why some agencies “limit” profit or fee to 6% or 7% on their SBIR & other R&D CPFF contracts.



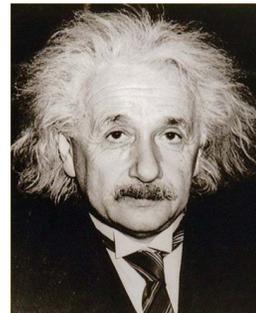
When faced with the above perceptions or arguments, the offeror should note that contract type risk is only one of the required profit analysis factors listed in the FAR and DFARS. The government negotiator should also include other profit analysis factors, including technical performance risk, into their analysis and prenegotiation profit/fee objective. Furthermore, there is a vast difference between contract type cost risk and contract technical performance risk. Contract Type risk is a function of the amount of cost responsibility assumed by the contractor under various contract types. Technical performance risk takes into account the contractor’s degree of risk in fulfilling the contract requirements. The government may assume 100% of the cost risk under a CPFF contract, but that does not relieve the contractor from completing the contract requirements. The difference between these two profit analyses factors is clearly explained in DoD’s Weighted Guidelines Structured Profit/Fee Methodology at DFARS 215.404-71-2 for Performance Risk and DFARS 215.404-71-3 for Contract Type Risk.

The offeror should acknowledge the government negotiator’s statement that the government assumes 100% of the contract cost risk under a CPFF contract and then point out that DoD’s Weighted Guidelines Structured Profit/Fee Methodology has already taken this into account with the designated range of values assigned to CPFF contracts. Additionally, it should be noted that Weighted Guidelines has the following range of designated values for the “Technical Performance Risk” profit objective factor. It is presumed that most small business owners will gladly accept the CPFF Normal Value of 0.5% if they can earn 9% to 11% profit/fee under the “Technology Incentive” profit objective factor.

CONTRACT TYPE RISK		
	Normal Value	Designated Range
CPFF Contract	0.5%	0% to 1%

PERFORMANCE RISK		
	Normal Value	Designated Range
Standard Performance Risk	5%	3% to 7%
Technology Incentive	9%	7% to 11%

In the event the government negotiator does not accept the fact that there is more performance risk under R&D contracts, it is suggested that the contractor highlight the fact that FAR 35.002 specifically recognizes the following inherent risks in R&D contracting. *“Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which offer little or no early assurance of full success.”* If needed, you might solicit the help of Mr. Einstein to reinforce this point.



“If we knew what it was we were doing, it would not be called research, would it?”

Albert Einstein

How to Justify Increased Profit/Fee under the Weighted Guidelines Working Capital Adjustment

24.	CONTRACT TYPE RISK			0.00	
25.	WORKING CAPITAL	COSTS FINANCED	LENGTH FACTOR	INTEREST RATE	
				%	

If the contract type includes progress payments, the contracting officer can include a “Working Capital Adjustment” profit objective. The Working Capital Adjustment profit objective is calculated as follows:

Cost Financed X Contract Length Factor X U.S. Treasury Semi-annual Prompt Payment Act Interest Rate

The amount of costs financed is generally the portion of costs not covered by progress payments. Normally a small business receives a larger 85% progress payment rate than what is provided to large businesses. The “customary” progress payment rate for large businesses is currently 80%. (FAR 32.501) However for the Weighted Guidelines Working Capital Adjustment, contracting officers are supposed to use the customary large business progress payment rate of 80% for contracts that provide progress payments to small businesses. (DFARS 215-404-71-3(e)) The following depicts the formula for determining the amount of costs financed by the contractor.

Cost Financed = Total Cost less FCCOM X Percent of Costs Financed by the Contractor (100% - The current “Customary” Progress Payment Rate 80%)

The contract length factors are listed in DFARS 215.404-71-3(f)(2). The length factor should be based upon the time at which the contractor completes the substantive portion of the work. Per DFARS 215.404-71-3(f)(1), the contract length factor is not necessarily the period of time from contract award to final delivery or final payment. The contracting officer should not include option periods, periods of performance beyond the initial program year’s requirements under any multiyear contract, or periods of time during which the contractor will be expending minimal effort. As

Period of Substantive Performance	Length Factor
21 months or less	0.40
22 to 27 months	0.65
28 to 33 months	0.90
34 to 39 months	1.15
76 months or more	2.90

noted in the chart, the contract length factor is listed as a percentage and increases as the period of performance increases. This takes into account the

length of time the contractor finances the costs or working capital needed to perform the substantive portion of the contract work.

The third component of the Working Capital Adjustment is the “interest rate established by the Secretary of the Treasury.” DFARS 215.404-71-3(b)(7) provides a web link for this interest rate and notes that contracting officers should not use any other interest rate for the Working Capital Adjustment. However, when one accesses the web link, it provides outdated interest rates and interest rates not associated with government contracting. In light of that disjoint, the author sent the Defense Procurement and Acquisition Policy (DPAP) office an email requesting clarification as to which interest rate should be used. On 7 October 2016, the DPAP office confirmed that the semi-annual U.S. Treasury rate that applies to DD 1547 Weighted Guidelines Working Capital Adjustments is the Semi-annual Prompt Payment Act interest rate. The current and historical Prompt Payment Act interest rates can be located at [this treasury website](#) vice the website listed in DFARS .

The Contract Working Capital Adjustment is driven primarily by formula, contract type, and period of performance. As such, it is important that the offeror provide the substantive period of performance and the correct amount of costs financed. Additionally, it is important to verify that the contracting officer uses the correct U.S. Treasury Prompt Payment Rate. Given the current low interest rate environment, the Contract Working Capital Adjustment will be relatively low when compared to the potential profit/fee that could be earned under the Composite Risk profit factor. Nonetheless, the offeror should ensure the contracting officer has factored in the Contract Working Capital Adjustment whenever a fixed price contract contains progress payments.

How to Justify Increased Profit/Fee under the Contractor Facilities Capital Employed Factor

	CONTRACTOR FACILITIES CAPITAL EMPLOYED	ASSIGNED VALUE	AMOUNT EMPLOYED	
26.	LAND			
27.	BUILDINGS			
28.	EQUIPMENT			

Per DFARS 215.404-71-4, “The Contractor Facilities Capital Employed factor focuses on encouraging and rewarding capital investments in facilities (and equipment) that benefit DoD. It recognizes both the facilities capital that the contractor will employ during contract performance and the contractor’s commitment to improving productivity.” This is the most complex of all of the Weighted Guidelines factors and requires a contracting officer, with field input from the Defense Contract Audit Agency (DCAA), to estimate the Facilities Capital Cost of Money (FCCOM) and capital employed on the pending contract.

Facilities capital employed and FCCOM are normally proposed by large businesses that are subject to Cost Accounting Standards (CAS) or businesses that can comply with CAS 414, Cost of Money as an element of the Cost of Facilities Capital. Since small businesses are exempt from having to comply with CAS (FAR 30.000,) this article will not go into the details on how to calculate the estimated FCCOM and capital employed for a specific contract. DFARS 215.404-71-4 and Contract Pricing Reference Guide (CPRG) Volume 3, Chapter 11 - Analyzing Profit or Fee, provide guidance on how to develop a profit objective for facilities capital employed.

This chart depicts the circumstances when a contracting officer may assign a value above or below the normal value for the Facilities Capital Employed profit factor. The key to justifying increased profit/fee under the Facilities Capital Employed factor is to identify the direct and measurable benefits that the facility/equipment will have on the pending contract.

Assigning a Profit/Fee Value for Facilities Capital Employed	
Significantly Above Normal Weight	<ul style="list-style-type: none"> • Direct & measurable benefits in efficiency, & • Significantly reduced acquisition costs
Above Normal Weight	Direct, identifiable, & exceptional benefits, such as: <ul style="list-style-type: none"> • New investments in state-of-the-art technology which reduce acquisition cost • Improved product quality or accelerated deliveries • Investments in new equipment for R&D applications
Below Normal Weight	Capital investment has little benefit to DoD, for example: <ul style="list-style-type: none"> • Applies predominately to commercial product lines • Investments are for such things as furniture and fixtures, corporate aircraft, or gymnasiums; or • Facilities are old or extensively idle
Significantly Below Normal Weight	A significant portion of defense manufacturing is done in an environment characterized by outdated, inefficient, & labor-intensive capital equipment

Contract Pricing Reference Guide Vol 3, Chapter 11.2.1

The amount of potential increased profit/fee is magnified when an offeror has purchased expensive, specialized equipment for DoD contracts, they have very few other contracts, and they can demonstrate that a large percentage of their facilities capital (and equipment) will be employed on the pending contract. The following “Facilities Capital Employed” range of values and normal value reinforce this point.

Asset Type	Normal Value	Designated Range
Land	0%	N/A
Buildings	0%	N/A
Equipment	17.5%	10% to 25%

Facilities Capital Cost of Money (FCCOM)

FCCOM is an imputed cost related to the cost of contractor capital committed to facilities. Cost Accounting Standard (CAS) 414, Cost of Money as an Element of the Cost of Facilities Capital, provides detailed guidance on how to calculate the amount of FCCOM under a specific contract. FCCOM is not included in the contractor’s cost base and is not a profit factor. The Weighted Guidelines Contractor Facilities Capital Employed section calculates a dollar amount for FCCOM, but this amount is not included in the total profit objective or profit/fee percentage. It is remuneration provided in addition to the negotiated costs and profit. This point is important to remember when negotiating fee under CPFF

NEGOTIATED SUMMARY				
		PROPOSED	OBJECTIVE	NEGOTIATED
31.	TOTAL COSTS			
32.	FACILITIES CAPITAL COST OF MONEY (DD Form 1551)			
33.	PROFIT			
34.	TOTAL PRICE (Line 31 + 32 + 33)	0.00	0.00	0.00
35.	MARKUP RATE (Line 32 + 33 divided by 31)	%	%	%
CONTRACTING OFFICER APPROVAL				
36.	TYPED/PRINTED NAME OF CONTRACTING OFFICER (Last, First, Middle Initial)	37. SIGNATURE OF CONTRACTING OFFICER	38. TELEPHONE NO.	39. DATE SUBMITTED (YYYYMMDD)
OPTIONAL USE				
96.	97.	98.	99.	

DD FORM 1547, JUL 2002 PREVIOUS EDITION IS OBSOLETE. Adobe Professional 8.0

contracts. Since FCCOM is not part of the Weighted Guidelines cost and profit objective, the amount of FCCOM provided in the mark-up rate has no bearing or impact on the fee percentage negotiated under a CPFF contract.

The Facilities Capital Employed and FCCOM sections of Weighted Guidelines can be used by small businesses to significantly increase the total mark-up they receive under a DoD contract. Even though small businesses are exempt from having to comply with CAS, they are not prohibited from developing compliant accounting systems that meet certain CAS standards. Per Contract Pricing Reference Guide (CPRG) Volume 3, Chapter 10.1, a small business or large business may propose FCCOM, even if the contract does not require CAS coverage, if:

- (1) The contractor’s capital investment is measured, allocated to contracts and costed in accordance with CAS 414, Cost of Money as an element of the Cost of Facilities Capital,
- (2) The contractor has adequate records that demonstrate compliance with CAS 414,
- (3) Estimated FCCOM is specifically identified or proposed in cost proposals, and
- (4) (4) FAR 31.205-52 Asset Valuations resulting from business combinations are not exceeded.

If a small business has an acceptable government accounting system that allows them to receive a Cost-Plus-Fixed-Fee contract, and they expect to

receive DoD contracts that require certified cost or pricing data, it is highly recommended that the small business owner ask their CPA or accountant what additional actions would be needed to comply with CAS 414 and support the inclusion of facilities capital employed and FCCOM in future proposals.

How to Justify Increased Profit/Fee under the Weighted Guidelines Cost Efficiency Factor

Per DFARS 215.404-71-5(a), the Cost Efficiency factor provides an incentive for contractors to reduce costs. Unlike the other Weighted Guidelines profit objective factors, this special factor has no normal value or range of designated values. To the extent that the offeror can demonstrate that their cost reduction efforts will benefit the pending contract, the contracting officer, at his or her sole discretion, may increase the prenegotiation profit object by an amount not to exceed 4% of the total cost objective.

The contracting officer is supposed to determine if the application of the Cost Efficiency Factor is appropriate by evaluating the benefit the contractor’s cost reduction initiatives will have on the pending contract. In making that determination, the contracting officer shall consider criteria such as (but not limited to) the following:

(see next page)

“(1) The contractor’s participation in “Single Process Initiative” (SPI) improvements. (Author’s note: Defense Secretary William Perry implemented the SPI program in 1995 to facilitate the replacement of multiple government-unique management and manufacturing systems being used within contractor facilities with common, facility-wide systems to reduce costs to both industry and DoD, allowing contractors to operate under a “single process” that would satisfy all Defense customers.);

(2) Actual cost reductions achieved on prior contracts;

(3) Reduction or elimination of excess or idle facilities;

(4) The contractor’s (specific) cost reduction initiatives, such as competition advocacy programs, technical insertion programs, obsolete parts control programs, value engineering and outsourcing of non-core functions if the outsourcing reduces costs);

(5) The contractor’s adoption of process improvements to reduce costs;

(6) Subcontractor (and supplier) cost reduction initiatives;

(7) The contractor’s effective incorporation of commercial items and processes; or

(8) The contractor’s investment in new facilities (and equipment) when such investments contribute to better asset utilization or improved productivity.” (DFARS 215.404-71-5(b))

Unfortunately, many small businesses are not aware they may be able to increase their profit/fee under the “Cost Efficiency” profit factor. As such, they may be proposing a lower profit/fee than what might be justified. Contracting officers do not know what cost reduction initiatives have been undertaken by the contractor or how they may benefit the pending contract. Consequently, the contracting officer will most likely not consider this special profit factor unless the offeror provides

justification in their proposal or during negotiations that their specific cost reduction initiatives will benefit the pending contract and are not attributable to quantity differences, learning, changes in work scope, and/or economic factors such as inflation or deflation.

If the small business has not already done so, it is recommended that they develop and maintain a current list of their cost reduction initiatives and investments made in facilities and equipment that have led or will lead to cost reductions on current and future contracts. Additionally, they should collect data that support the finding that such initiatives and investments have resulted in measurable cost reductions. However, it should be recognized that these findings are a potential two-edged sword. Data used to justify increased profit under the “Cost Efficiency” profit factor can also be used by an astute contracting officer to reduce the estimated costs of performance if those projected cost reductions have not already been factored into the offeror’s proposed costs. A contracting officer could use the following argument to question whether the contractor’s cost reduction initiatives will benefit the pending contract: “If you are so certain that these cost reduction initiatives will facilitate measurable savings on the pending contract, why then have you not accounted for those cost savings in your proposed cost?”

Given the above, the contractor may want to consider not providing estimated cost savings or avoidances if they have not yet substantiated that they will achieve the anticipated cost reductions. If those reductions have been factored into their proposed costs, the contractor should disclose that fact when they submit their certified cost or pricing data. In that case, the contractor’s certified COPD disclosure bolsters their profit position and provides tangible evidence that the cost reduction initiatives and investments have facilitated a cost avoidance on the pending contract. The offeror can then state with confidence, “the performance costs would have been “XX” percent higher if the company had not implemented those cost reduction initiatives and investments”.

Applicability to other Contract Actions

Although this article focused on how a small business could potentially increase their profit/fee under DoD contracts that required certified cost or pricing data, the general strategies, principles, and concepts covered in this article can also be used to support higher profit/fee:

- (a) Under contracts below the certified cost or pricing threshold,
- (b) Under contracts with other federal agencies that use a structured methodology to develop profit/fee objectives,
- (c) When developing profit /fee positions under proposals that do not required a structured methodology to develop profit/fee objectives, but instead require an agency to factor in FAR common profit analysis factors, and
- (d) To ensure a contracting officer considers all relevant profit factors prior to developing a prenegotiation profit/fee profit objective or final negotiated profit/fee amount.

Summary

To justify higher profit or fee under DoD contracts that require the submission of certified cost or pricing data, small businesses and procurement counselors need to understand the underlying FAR and DFARS profit policies and use that insight to develop profit/fee positions that are fully justified under the FAR common profit analysis factors and/or DoD's Weighted Guidelines Structured Profit/Fee Methodology. Small businesses need to recognize that profit/fee is negotiable and that they should "push back" and elevate negotiations whenever a contracting officer or agency fails to support their profit/fee position or when the government's position contravenes FAR and/or DFARS profit policies. It should also be remembered that profit is not a "four letter word," and it is in the government's best interests to provide sufficient profit to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to

government contracts, and maintain a viable industrial base.

The opinions expressed in this article are solely the author's and should not be construed as the official position of the TechLink Center, Montana State University, the Department of Defense or APTAC. The author welcomes questions, suggestions, and comments about this article and is interested in hearing about any successes or challenges small businesses or procurement counselors may have experienced during profit/fee negotiations with federal and defense agencies. He can be reached at (406) 994-7739 or via email at Jeff.Cuskey@montana.edu.

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date, the government has not indicated any plans for wide scale auditing to verify compliance. However, the DPAP implementation guides for the DFARS clauses call for investigations in the event of a breach to verify compliance. Additionally, the proposer on any bid will sign certifications and representations that indicate compliance (or specifying shortfalls), so it is essential that such declarations are truthful and supported with sound documentation to support the claim. With the stakes so high, this leaves a lot of uncertainty for both prime and sub contractors. Sound documentation is a must.



One solution – the CyberVerify™ process - has been put forward by the Defense Industrial Base Information Sharing and Analysis Center (DIB ISAC) – an industry group established to defend corporate key resources and critical infrastructure against security threats. A 501(c)

(6) non-profit, DIB ISAC is one of sixteen (16) organizations recognized by the Department of Homeland Security's National Infrastructure Protection Plan (NIPP). It supports its members by providing members threat information, cyber education, and critical services such as CyberVerify™. DIB ISAC membership is available to companies that have responsibility for the protection of DIB Sector infrastructure, and support personnel responsible for the protection of DIB Sector resources, for modest fees.



The CyberVerify™ process involves assessment of the system of record, remediation as required, and performance of a cybersecurity audit of the system by a qualified independent 3rd party. The DIB ISAC reviews audit results and provides a certificate of compliance when all requirements and controls are met. The organization hopes that this mechanism can provide a recognized standard for verifying cybersecurity compliance. Currently, CyberVerify is included in membership fees for DIB ISAC member companies.

Resources and Approaches for Assessment

Until recently, the data collection tools used for in-house assessment and compliance have consisted of spread sheets and text documents, but additional tools are now available. Below is a brief discussion of the traditional, do-it-yourself practice; the Department of Homeland Security's (DHS) Cyber Security Evaluation Tool (CSET); and finally Imprimis, Inc.'s Assessment and Compliance Tool product--the

i2ACT-800. All also represent key approaches to system record keeping, which is essential not only for accreditation or certification, but for producing a cybersecurity plan that can be submitted with bids.

Spreadsheet & Document Files: Currently, the most common practice for assessments is the use of spreadsheets and/or Word documents to gather data, which is then managed in SharePoint or another document management system. Spreadsheets containing the NIST controls and requirements for the other, various standards can be found on the internet. This practice can be labor intensive, requiring significant time for researching the applicable standards, tracking documentation by version, and managing the files produced, and it is left to the user to keep up-to-date with changes, understand which controls apply to their operations (and how), assess their level of compliance, and identify effective actions for remediation. There are multiple opportunities for error.

Department of Homeland Security's CSET: CSET® is a desktop software tool available through the [Department of Homeland Security's Industrial Control System Cyber Emergency Response Team \(ICS-CERT\)](#). It guides users through a step-by-step process to assess their control system and information technology network security practices against recognized industry standards. The CSET output is a prioritized list of recommendations for improving the cybersecurity posture of the organization's enterprise and industrial control cyber systems. The tool derives the recommendations from a database of cybersecurity standards, guidelines, and practices including NIST 800-53, 800-82 and 800-171, ISO/IEC 15408, DODI 8500.2, and NERC CIP-002 through CIP-009. Each recommendation is linked to a set of actions that can be applied to enhance cybersecurity controls. It has numerous reports available that are very informative, but provides no guidance with regard to prioritizing, assigning, and scheduling remediation actions. The tool is free to members of the DIB and other CIP (Critical Infrastructure Protection) users.

Imprimis, Inc. iACT800: This commercial software is specifically designed for cybersecurity compliance auditing and document control. There is a "lite" version targeted to small businesses and subcontractors who need comply only with DFARS 800-171, as well as a "pro" version that contains over two dozen baselines from 800-53, all DFARS, FIPS, ICS or 800-82, CNSSI No. 1253, and FedRAMP; provides tailoring or the development of overlays that can be named for individual organizations; and can allow simultaneous access to the database by an entire assessment team. The tool contains numerous questions, supplemental guidance, descriptions of intent, and suggested evidence to aid in the assessment process. There are sections for references, risk categorization, assessment, a reports, and database management as well as 'Tabs' for each requirement or control that provide guidance, supplemental information, questions, references, and remediation actions. The tool then reports a full remediation plan and schedule and is exportable to Microsoft Project. Templates are available with the tool and include policy & procedures, System Security Plan (SSP), Incident Response Plan (IRP), and a Business Continuity Plan (BCP). In addition, Imprimis has established a Cyber Compliance Center (C3 or the Cube) where both do-it-yourself and professionals can call for assistance.

These features are designed to significantly cut the labor involved in both initial assessments and updates, while providing a standardized verification report that will be recognized by government and industry contract managers, and it has been selected as the designated data collection tool for DIB ISAC's CyberVerify™ process. It has been priced to be accessible and cost-effective even for small firms.



[\(Download CSET Fact Sheet\)](#)



The iACT-800 was developed to provide much greater productivity and lower cost of compliance. It provides guidance by control or requirement, includes remediation plans by control, automatically provides a POA&M and is complimented by templates for policy, System Security Plans, Incident Response Plans, and Business Continuity Plan. It is supported by the Cyber Compliance Center where users can get help via calls, VTCs, and remote sessions. It is estimated that it improves the overall process and requires less than half of the labor required for alternatives.



Summary



Complying with cybersecurity standards is essential for the Defense Industrial Base (DIB) and national security at large. There is a great deal of concern over the challenge

of bringing the entire DIB into a state of compliance. This responsibility is shared between all of the businesses within the DIB – small, medium and large - but as noted previously, the challenge is often greater for smaller businesses because the cost of compliance relative to their assets can be higher.

If not addressed soon, DFARS non-compliance could have an unintended consequence of diminishing the role of small businesses in defense contracting. Large prime contractors may be hesitant to pay for audits of all their subcontractors, yet still have grave concerns about the liability risk presented by subcontractors not certified against cybersecurity standards. It is critical that all firms that engage with information technology at any level adopt an assessment and remediation strategy as soon as possible and maintain it diligently to protect against cyber threats and ensure their continued viability in the government contracting arena.

The Evolution of the i2ACT800

Imprimis, Inc. (i2), a small business in Colorado Springs, recognized in 2011 that government contractors, particularly those working for the Department of Defense, would have to face the challenge cybersecurity risk management and compliance. At that time, there was a release of a Defense Federal Acquisition Regulation Supplement (DFARS) subpart and clause scheduled for 2013 that would require compliance with 51 specified (and a few more implied) security controls from the National Institute of Standards and Technology (NIST) special publication 800-53.

The initial goal of i2 was to develop a checklist of actions and a spreadsheet for controls. Development of the i2ACT-800 has continued to achieve higher levels of productivity. The tool has a number of features that support this objective.

- ⇒ Provides standards, guidelines, and practices from NIST, DFARS & CNSS
- ⇒ Puts the entire standard in a searchable database at the users fingertips
- ⇒ Determines which regulations apply – select baseline and easily tailor
- ⇒ Provides traceability and long-term trend analysis
- ⇒ Incorporates Vulnerability Scans & Other Attachments into Database
- ⇒ Intuitive User interface requiring little to no training
- ⇒ Provides Intent & Suggested Evidence to Support User
- ⇒ User Training Supported via Manuals, Videos, Webcast, etc.
- ⇒ Develop and Print Reports
- ⇒ Produces a POA&M
- ⇒ Policies & Procedures Available
- ⇒ Security Plan Available
- ⇒ Supports Contingency Planning: Incident Response (IR), Disaster Recovery (DR), Business Continuity (BC) Templates Available
- ⇒ Updates as regulations change
- ⇒ Subnet or Subcontractor Rollup
- ⇒ User Group
- ⇒ Ticketing System
- ⇒ Support via the i2 Cube (Cyber Compliance Center) Included & Additional Available

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