

**SUBPART 231.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS**

**231.205 Selected costs.**

**231.205-6 Compensation for personal services.**

(f)(1) In accordance with Section 8122 of Pub. L. 104-61, and similar sections in subsequent Defense appropriations acts, costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 or subsequent appropriations. This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205-70(b) for the definitions of “business combination” and “restructuring costs.”)

**231.205-10 Cost of money.**

The contractor also must comply with Subpart 230.70 and maintain records to demonstrate compliance.

**231.205-18 Independent research and development and bid and proposal costs.**

(c)(1)(i)(C)(1) Total incurred IR&D/B&P costs, including total IR&D/B&P ceiling amounts which are negotiated pursuant to FAR 31.205-18(c)(1), are fully allocable to all final cost objectives of the contractor. The amount of IR&D/B&P costs allowable under contracts which are subject to advance agreements negotiated by DoD shall not exceed the lesser of—

- (i) Such contracts’ allocable share of incurred IR&D/B&P costs;
  - (ii) Such contracts’ allocable share of the total IR&D/B&P ceiling; or
  - (iii) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.
- (2) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to DoD, including activities that—
- (i) Strengthen the defense industrial and technology base of the United States;
  - (ii) Enhance the industrial competitiveness of the United States;
  - (iii) Promote the development of technologies identified as critical in the plan required under 10 U.S.C. 2508;
  - (iv) Increase the development of technologies useful for both the private commercial sector and the public sector; or

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(v) Develop efficient and effective technologies for achieving such environmental benefits as improved environmental data gathering, environmental cleanup and restoration, pollution-reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(3) The contracting officer will—

(i) Determine whether IR&D/B&P projects are of potential interest to DoD; and

(ii) Provide the results of the determination to the contractor.

(4) See 225.7303 for additional allowability provisions affecting foreign military sale contracts.

(2) Departments/agencies shall not supplement this regulation in any way that limits IR&D/B&P cost allowability. See 225.7303-2 for allowability exceptions for foreign military sales contracts.

(i) In addition to the limitations in FAR 31.205-18(c)(2)(i), for major contractors—

(1) The amount of IR&D/B&P costs allowability under DoD contracts shall not exceed the lesser of—

(i) Such contracts' allocable share of incurred IR&D/B&P costs;

(ii) Such contracts' allocable share of the contractor's total maximum allowable amount; or

(iii) The amount of incurred IR&D/B&P costs for projects having potential interest to DoD.

(2) Allowable IR&D/B&P costs are limited to those for projects which are of potential interest to the DoD, including activities intended to accomplish any of the following—

(i) Enable superior performance of future U.S. weapon systems and components;

(ii) Reduce acquisition costs and life-cycle costs of military systems;

(iii) Strengthen the defense industrial and technology base of the United States;

(iv) Enhance the industrial competitiveness of the United States;

(v) Promote the development of technologies identified as critical under 10 U.S.C. 2522;

(vi) Increase the development and promotion of efficient and effective applications of dual-use technologies;

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(vii) Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities.

(ii) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (see also 242.771-3(a)).

(iii) The total maximum allowable amount limitation may be waived at a level above the contracting officer. A waiver may be appropriate for contractors whose significant growth in sales or IR&D/B&P spending justify higher levels of reimbursement.

#### **231.205-22 Legislative lobbying costs.**

(a) Preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and evaluation has not been completed (10 U.S.C. 2249).

#### **231.205-70 External restructuring costs.**

(a) *Scope.* This subsection prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD. This subsection also implements 10 U.S.C. 2325, Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103-337) (10 U.S.C. 2324 note), Section 8115 of the National Defense Appropriations Act for Fiscal Year 1997 (Pub. L. 104-208), and Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 (Pub. L. 105-56).

(b) *Definitions.* As used in this subsection:

(1) “Business combination” means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) “External restructuring activities” means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) “Restructuring activities” means nonroutine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor’s productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as

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indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).

(4) “Restructuring costs” means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than \$2.5 million, the costs shall not be subject to the audit, review, certification, and determination requirements of paragraph (c)(1) of this subsection; instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.

(5) “Restructuring savings” means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.*

(1) Restructuring costs associated with external restructuring activities shall not be allowed unless—

(i) Such costs are allowable in accordance with FAR Part 31 and DFARS Part 231;

(ii) An audit of projected restructuring costs and restructuring savings is performed;

(iii) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d)(8) of this subsection; and

(iv) For business combinations that occur—

(A) Prior to October 1, 1996, the Under Secretary of Defense (Acquisition & Technology) or the Principal Deputy certifies that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD.

(B) October 1, 1996, through November 18, 1997, the Under Secretary of Defense (Acquisition & Technology) or the Principal Deputy—

(1) Certifies that projections of future restructuring savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for DoD; and

(2) Determines in writing that the audited projected savings for DoD resulting from the restructuring will exceed either—

(i) The costs allowed by a factor of at least two to one; or

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(ii) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(C) After November 18, 1997, the Under Secretary of Defense (Acquisition & Technology) or the Principal Deputy determines in writing that the audited projected savings for DoD resulting from the restructuring will exceed either—

(1) The costs allowed by a factor of at least two to one; or

(2) The cost allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(2) The audit, review, certification, and determination required by paragraph (c)(1) of this subsection shall not apply to any business combination for which payments for restructuring costs were made before August 15, 1994, or for which the cognizant ACO executed an advance agreement establishing cost ceilings based on audit/negotiation of detailed cost proposals for individual restructuring projects before August 15, 1994.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall:

(1) Promptly execute a novation agreement, if one is required, in accordance with FAR Subpart 42.12 and DFARS Subpart 242.12 and include the provision at DFARS 242.1204(e).

(2) Direct the contractor to segregate restructuring costs and to suspend these amounts from any billings, final contract price settlements, and overhead settlements until the certification, or determination, or both, as applicable, in paragraph (c)(1)(iv) of this subsection is obtained.

(3) Require the contractor to submit an overall plan of restructuring activities and an adequately supported proposal for planned restructuring projects. The proposal must include a breakout by year by cost element, showing the present value of projected restructuring costs and projected restructuring savings.

(4) Notify major buying activities of contractor restructuring actions and inform them about any potential monetary impacts on major weapons programs, when known.

(5) Upon receipt of the contractor's proposal, as soon as practicable, adjust forward pricing rates to reflect the impact of projected restructuring savings. If restructuring costs are included in forward pricing rates prior to execution of an advance agreement in accordance with paragraph (d)(8) of this subsection, the contracting officer shall include a repricing clause in each fixed-price action that is priced based on the rates. The repricing clause must provide for a downward price adjustment to remove restructuring costs if the certification, or determination, or both, as applicable, required by paragraph (c)(1)(iv) of this subsection is not obtained.

(6) Upon receipt of the contractor's proposal, immediately request an audit review of the contractor's proposal.

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(7) Upon receipt of the audit report, determine if restructuring savings will exceed restructuring costs on a present value basis. However, for business combinations that occur on or after October 1, 1996, the audited projected savings for DoD must exceed the costs allowed by a factor of at least two to one on a present value basis, unless the determination at paragraph (c)(1)(iv)(B)(2)(ii) or (c)(1)(iv)(C)(2) of this subsection applies.

(8) Negotiate an advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule. The costs may not exceed the amount of projected restructuring savings on a present value basis. The advance agreement shall not be executed until the certification, or determination, or both, as applicable, required by paragraph (c)(1)(iv) of this subsection is obtained.

(9) Submit to the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), ATTN: OUSD(A&T)DP/CPF, a recommendation for certification, or determination, or both, as applicable. Include the information described in paragraph (e) of this subsection.

(10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), when paragraph (c)(1)(iv)(B)(2)(ii) or (c)(1)(iv)(C)(2) of this subsection applies.

*(e) Information needed to obtain certification and determination.*

- (1) The novation agreement (if one is required).
- (2) The contractor's restructuring proposal.
- (3) The proposed advance agreement.
- (4) The audit report.
- (5) Any other pertinent information.

(6) The cognizant ACO's recommendation for certification, or determination, or both, as applicable. This recommendation must clearly indicate one of the following, consistent with paragraph (c)(1)(iv) of this subsection:

(i) Contractor projections of future cost savings resulting for DoD from the business combination are based on audited cost data and should result in overall reduced costs for the Department.

(ii) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one.

(iii) The business combination will result in the preservation of a critical capability that might otherwise be lost to DoD, and the audited projected savings will exceed the costs allowed.