



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

February 13, 1998

ACQUISITION AND
TECHNOLOGY

DP (DAR)

In reply refer to
DFARS Case: 97-D313
D. L. 98-003

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A) / ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: Restructuring Costs

We have amended Part 231 of the Defense Federal Acquisition Regulation Supplement to implement Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 (Pub. L. 105-56), and Section 804 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Sections 8092 and 804 restrict the reimbursement of restructuring costs associated with a business combination of a defense contractor unless certain conditions are met.

This interim rule is effective immediately and will be published in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



**RESTRUCTURING COSTS
DFARS 97-D313
INTERIM RULE**

Added language is in **[bold and brackets]**. Deleted language is indicated by ~~strikethrough~~.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

* * * * *

231.205-70 External restructuring costs.

(a) *Scope.*

This subsection prescribes policies and procedures for allowing contractor external restructuring costs when ~~net~~ 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),]** and 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:

* * * * *

- (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, ~~and certification~~ **[, and determination]** requirements of **[paragraph] 231.205-70(c)(1) [of this subsection]**; instead, the normal rules for determining cost allowability in accordance with FAR Part 31 shall apply.

* * * * *

(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, ~~determines that overall reduced costs should result for DoD,~~ and negotiates an advance agreement in accordance with **[paragraph] 231.205-70(d)(8) [of this subsection];** and
- (iv) **[For business combinations that occur-**

(A) Prior to October 1, 1996,] ~~A certification is made by the Under Secretary of Defense (Acquisition & Technology), [or] his [the] Principal Deputy or designee (in all cases, an individual appointed by the President and confirmed by the Senate),~~ **[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

(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 costs 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, and certification[, and determination] required by [paragraph] 231.205-70(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.

~~(3) Additionally, for business combinations that occur after September 30, 1996, no fiscal year 1997 appropriated funds may be obligated or expended to reimburse a contractor for restructuring costs associated with external restructuring activities unless—~~

~~(i) The audited savings for DoD resulting from the restructuring will exceed the costs allowed by a factor of at least two to one; or~~

~~(ii) The savings for DoD resulting from the restructuring will exceed the costs allowed, and the Secretary of Defense determines that the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.~~

(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] 231.205-70(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] 231.205-70(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] 231.205-70(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.
 - (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 cost[s] 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] 231.205-70(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.**] ~~of net benefit.~~ Include the information described in **[paragraph] 231.205-70(e) [of this subsection]**.
 - (10) Consult with the Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition &

Technology), when ~~231.205-70~~ [paragraph (c) (1) (iv) (B) (2) (ii) or (c) (1) (iv) (C) (2) of this subsection] ~~(e) (3) (ii)~~ applies.

(e) *Information needed to obtain certification [and determination] of net benefit.*

- (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 that **[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.]

* * * * *