## 231.205-70 Restructuring costs.

- (a) *Scope.* This subsection prescribes policies and procedures for allowing appropriate contractor restructuring costs when allowing such costs would result in net savings for DoD. This subsection also implements Section 818 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337).
- (b) *Definitions*. As used in this subsection:
- (1) Business combination means a transaction whereby assets or operations of two previously separate companies are combined, whether by merger, acquisition, or sale/purchase of assets.
- (2) External restructuring activities means restructuring activities occurring after a business combination that involve facilities or workforce from both of the previously separate companies.
- (3) Internal restructuring activities means restructuring activities occurring after a business combination that involve facilities or workforce from only one of the previously separate companies, or, when there has been no business combination, restructuring activities undertaken within one company.
- (4) Restructuring activities means nonroutine, nonrecurring, or extraordinary activities associated with the reduction of facilities or workforce, or consolidation of facilities or operations (including disposal or abandonment undertaken to effect such consolidation), in an effort to improve future operations and reduce overall costs. Restructuring activities do not include routine or ongoing repositioning and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation).
- (5) Restructuring costs means the costs, including both direct and indirect, associated with 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.
- (6) Restructuring savings means cost reductions, including both direct and indirect cost reductions, that are directly associated with or result directly 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, determines that overall reduced costs should result for DoD, and negotiates an advance agreement in accordance with 231.205 (d)(8); and
- (iv) A certification is made by the Under Secretary of Defense (Acquisition & Technology), his Principal Deputy or designee (in all cases, an individual appointed by the President and confirmed by the Senate), 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.
- (2) The certification required by 231.205–70(c)(1)(iv) 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) Costs that may be incurred after a business combination but are not allowed in accordance with FAR part 31 and DFARS part 231 include, but are not limited to:
- (i) Incorporation fees; costs of attorneys, accountants, brokers, promoters, organizers, management consultants, and investment counselors (see FAR 31.205–27).
- (ii) The cost of any change in the contractor's financial structure (see FAR 31.205–27).
- (iii) Interest or other costs of borrowing to finance the acquisition or merger (however represented) (see FAR 31.205–20).
- (iv) When the purchase method of accounting for a business combination is used, increased depreciation, amortization, or cost of money attributable to increases in the book value of plant, equipment, and other tangible assets of the acquired company above the amount that would have been allowed if the business combination had not taken place (see FAR 31.205–52).
- (v) Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) (see FAR 31.205–49).
- (vi) Payments to employees of special compensation in excess of the

- contractor's normal severance pay practice if their employment terminates following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205–6(l)(1)).
- (vii) Payments to employees of special compensation which is contingent upon the employee remaining with the contractor for a specified period of time following a change in the management control over, or ownership of, the company or a substantial portion of its assets (see FAR 31.205–6(l)(2)).
- (d) Procedures and ACO responsibilities. As soon as it is known that the contractor will incur restructuring costs associated with external restructuring activities, the cognizant ACO shall:
- (1) 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 in (c)(1)(iv) is obtained.
- (2) 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 detailed breakout by year by cost element, showing the projected restructuring costs, both direct and indirect, and projected restructuring savings, both direct and indirect.
- (3) Negotiate a Memorandum of Understanding with the contractor setting forth, at a minimum, the types and treatments of restructuring costs and the methodology to be used to demonstrate reduced costs to DoD.
- (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, immediately adjust forward pricing rates to reflect the impact of projected restructuring savings. Pending execution of an advance agreement in accordance with 231.205–70(d)(8), restructuring costs may be included in forward pricing rates if a repricing clause is included 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 required by 231.205–70(c)(1)(iv) 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.