

231.303

(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 a determination. This recommendation must clearly indicate one of the following, consistent with paragraph (c)(4)(i) of this subsection:

(i) The audited projected savings for DoD will exceed the costs allowed by a factor of at least two to one on a present value basis.

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

(f) *Contracting officer responsibilities.*

(1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period;

(iv) Whether the contracting parties are able to make a reasonable estimate of the impact of restructuring on the contract; and

(v) The size of the potential dollar impact of restructuring on the contract.

(3) If the contracting officer decides to use a repricing clause, the clause must provide for a downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring net savings.

[63 FR 7309, Feb. 13, 1998; 63 FR 12862, Mar. 16, 1998, as amended at 64 FR 18828, Apr. 16, 1999; 65 FR 39705, June 27, 2000; 68 FR 7440, Feb. 14, 2003; 69 FR 63332, Nov. 1, 2004; 70 FR 43075, July 26, 2005]

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Subpart 231.3—Contracts With Educational Institutions

231.303 Requirements.

(1) Pursuant to section 841 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160), no limitation may be placed on the reimbursement of otherwise allowable indirect costs incurred by an institution of higher education under a DoD contract awarded on or after November 30, 1993, unless that same limitation is applied uniformly to all other organizations performing similar work under DoD contracts. The 26 percent limitation imposed on administrative indirect costs by OMB Circular No. A-21 shall not be applied to DoD contracts awarded on or after November 30, 1993, to institutions of higher education because the same limitation is not applied to other organizations performing similar work.

(2) The cognizant administrative contracting officer may waive the prohibition in 231.303(1) if the governing body of the institution of higher education requests the waiver to simplify the institution's overall management of DoD cost reimbursements under DoD contracts.

(3) Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[59 FR 26144, May 19, 1994, as amended at 60 FR 2331, Jan. 9, 1995; 61 FR 36306, July 10, 1996; 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]

Subpart 231.6—Contracts With State, Local, and Federally Recognized Indian Tribal Governments

231.603 Requirements.

Under 10 U.S.C. 2249, the costs cited in 231.205-22(a) are unallowable.

[61 FR 36306, July 10, 1996, as amended at 62 FR 47155, Sept. 8, 1997; 63 FR 14641, Mar. 26, 1998]