



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Novation, Change-of-Name, and Business Combination (Restructuring) Agreements

Contracts Directorate
CPR: DCMA-AQ

DCMA-INST 132
March 20, 2014

1. PURPOSE. This Instruction:

a. Reissues and updates DCMA Instruction (DCMA-INST) 132 “Novation, Change-of-Name and Business Combination (Restructuring) Agreements” (Reference (a)).

b. Implements the Government policy pursuant to the references listed within this Instruction.

c. Is established in compliance with DoD Directive 5105.64, “Defense Contract Management Agency (DCMA)” (Reference (b)).

d. Establishes policies, assigns responsibilities, and provides procedures for novation, change-of-name, and business recombination (restructuring) agreements.

2. APPLICABILITY. This Instruction applies to all DCMA activities unless higher-level regulations, policy, guidance, or agreements take precedence.

3. MANAGERS’ INTERNAL CONTROL PROGRAM. In accordance with the DCMA-INST 710, “Managers’ Internal Control Program” (Reference (c)), this Instruction is subject to evaluation and testing. Process flowcharts are located on the policy resource Web page (resource page) for this Instruction.

4. RELEASABILITY – UNLIMITED. This Instruction is approved for public release.

5. PLAS CODE.

a. Process: 047A – Business Combination/Novation/Change-of-Name Agreements.

b. Programs: ACAT/Other Customers (when applicable).

c. Other National; Training and Travel; Local Programs (when applicable).

6. POLICY RESOURCE WEB PAGE. <https://home.dcma.mil/policy/132r>

7. EFFECTIVE DATE. By order of the Director, DCMA, this Instruction is effective March 20, 2014, and all applicable activities shall be fully compliant within 60 days from this date.

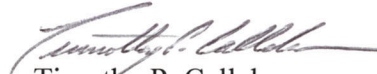

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REFERENCES

- (a) DCMA-INST 132, “Novation, Change-of-Name and Business Combination (Restructuring) Agreements,” July 26, 2013 (hereby canceled)
- (b) DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),” January 10, 2013
- (c) DCMA-INST 710, “Managers’ Internal Control Program,” September 19, 2012
- (d) United States Code (U.S.C.)
- (e) Defense Federal Acquisition Regulation Supplement (DFARS)
- (f) Federal Acquisition Regulation (FAR)
- (g) DCMA-INST 809, “Records Management,” May 2011
- (h) DFARS Procedures, Guidance, and Information (DFARS PGI)
- (i) DCMA-INST 108, “Contract Modifications,” May 13, 2013
- (j) DCMA-INST 130, “Forward Pricing Rates,” July 26, 2013
- (k) DCMA-INST 134, “Boards of Review,” November 4, 2013
- (l) Part 9904.406-61 of Title 48, Code of Federal Regulations, Interpretation (Cost Accounting Standard – Cost Accounting Period)

CHAPTER 1

POLICY

1.1. POLICY. If it is consistent with the Government's interest, it is the DCMA policy to:

1.1.1. Recognize a successor in interest to Government contracts when contractor assets are transferred. The recognition process is conducted through execution of a legal document "Novation Agreement" by the contractor (transferor), successor in interest (transferee), and the Government. Through the use of the "Novation Agreement," the transferor, among other things, guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

1.1.2. Recognize a change in a contractor's name. If only a change of the contractor's name is involved and the Government's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change.

1.1.3. Execute Novation Agreements and Change-of-Name Agreements. The agreements are legal documents requiring the related parties to use suggested format and contents. The format may be adapted to fit specific cases by the administrative contracting officer (ACO) in consultation with DCMA legal counsel.

1.1.4. Allow contractor external restructuring costs when savings would result for the DoD according to Section 2325 of Title 10, United States Code (U.S.C.), "Restructuring Costs" (Reference (d)). The restructuring costs associated with external restructuring activities shall not be allowed unless the costs comply with Defense Federal Acquisition Regulation Supplement (DFARS) 231.205-70(c), "Limitations on Cost Allowability" (Reference (e)).

1.1.5. Distribute the agreements and associated documents to the related offices, such as contracting administration office, contracting office, military department, etc.

1.1.6. Comply with records management and retention requirements, as further described in paragraph 3.7.

1.1.7. Document, in the contract file, the principal elements of the negotiated agreement and the justification for the ACO's acceptance/non-acceptance of the contractor's proposal.

CHAPTER 2

ROLES AND RESPONSIBILITIES

2.1. DIRECTOR, DCMA. Director, DCMA shall:

2.1.1. Serve as a designated official, if the amount of restructuring costs is expected not to exceed \$25 million over a 5-year period. (DFARS 231.205-70(c)(4)(ii); Reference (e)).

2.1.2. Determine in writing whether the audited projected savings for DoD, on a present value basis resulting from the restructuring, will exceed either the cost allowed by a factor of at least two-to-one; or the cost allowed and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

2.2. CONTRACTS DIRECTOR AND CORPORATE ADMINISTRATIVE CONTRACTING OFFICER (CACO)/ DIVISIONAL ADMINISTRATIVE CONTRACTING OFFICER (DACO) GROUP SUPERVISOR.

2.2.1. Contracts directors or CACO/DACO group supervisors who manage the ACO cognizant over the transferor and/or the transferee contractor shall communicate with each other in order to resolve and disposition issues.

2.2.2. The directors/supervisors shall enter into a memorandum of agreement (MOA) regarding transfer of work prior to executing the Novation Agreement.

2.2.3. The directors/supervisors shall review the ACO's submission of a contractor external restructuring board case before the ACO requests a Board of Review (BoR) from the Contracts Directorate (DCMA-AQ).

2.3. ADMINISTRATIVE CONTRACTING OFFICER (ACO). The ACO herein includes DACO and CACO. The ACO shall:

2.3.1. Serve as responsible contracting officer in accordance with Federal Acquisition Regulation (FAR) 42.1202 (Reference (f)).

2.3.2. Evaluate the proposal of sale, business combination, or change-of-name as described in paragraph 3.2.

2.3.3. Determine whether it is the best interest of the Government to recognize a successor in interest to the Government contract in accordance with FAR 42.1204(a), (c), (d), and (h) (Reference (f)).

2.3.4. Execute Novation/Change-of-Name Agreement and ARZ modification as stated in paragraph 3.4., and a Restructuring Advance Agreement, if applicable.

2.3.5. Distribute the agreements to related parties, which include but are not limited to the transferor, the transferee, other ACOs, military department, National Aeronautics and Space Administration (NASA), Military Surface Deployment and Distribution Command, as stated in paragraph 3.5.

2.3.6. Comply with the requirements of DCMA-INST 809, "Records Management" (Reference (g)).

2.4. DCMA LEGAL COUNSEL.

2.4.1. In instances of novation and/or change of name, the contracting officer shall obtain review of DCMA legal counsel for a legal sufficiency determination (FAR 42.1203(f); Reference (f)).

2.4.2. DCMA legal counsel shall provide assistance upon request of the ACO about whether purchases by foreign or domestic concerns of a DoD contractor, or a reorganization of the contractor, may require a Novation Agreement or Change-of-Name Agreement.

2.4.3. DCMA legal counsel shall give assistance on whether a formal agreement is necessary. If it is necessary, DCMA legal counsel shall provide advice on the format and content of the agreement.

2.4.4 DCMA legal counsel shall conduct a legal sufficiency review of the Restructuring Advance Agreement when it is included in a novation proposal.

CHAPTER 3 PROCEDURES

3.1. PROPOSAL OF SALE, BUSINESS COMBINATION, OR CHANGE-OF-NAME.

3.1.1 Applicability. FAR 42.1204(a) (Reference (f)) states that section 6305(a) of Title 41 U.S.C. (formerly section 15 of Title 41 U.S.C.) (Reference (d)) prohibits transfer of Government contracts from the contractor to a third party. However, the Government may, when in its interest, recognize a third party as the successor in interest to a Government contractor when the third party's interest in the contract arises out of the transfer of:

3.1.1.1. All the contractor's assets.

3.1.1.2. The entire portion of the assets involved in performing the contract. (See FAR 14.404-2(l) (Reference (f)) for the effect of Novation Agreements after bid opening but before award.) Examples of such transactions include, but are not limited to:

- Sale of these assets with a provision for assuming liabilities
- Transfer of these assets incident to a merger or corporate consolidation
- Incorporation of a proprietorship or partnership, or formation of a partnership

3.1.2. Contractor's Responsibility. In accordance with FAR 42.1203(a) (Reference (f)), if a contractor wishes the Government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the responsible contracting officer (see paragraph 3.1.4. for determination of who is the responsible contracting officer), hereinafter referred to as ACO. If the contractor received its contract under FAR 8.7 (Reference (f)) under the Javits-Wagner-O'Day Act, the contractor shall use the procedures at FAR 8.716 (Reference (f)) instead.

3.1.3. Documents. The documentation needed for a novation, in addition to the proposed Novation Agreement, is described in FAR 42.1204(e) and FAR 42.1204(f) (Reference (f)). The documentation needed for a Change-of-Name is described in FAR 42.1205(a) (Reference (f)). When a contractor asks the Government to recognize a successor in interest (Novation) or recognize a change in contractor's name (Change-of-Name), the contractor shall forward to the ACO:

3.1.3.1. Novation. Three signed copies of the proposed Novation Agreement and one copy each, as applicable, of the following in accordance with FAR 42.1204(e) (Reference (f)):

3.1.3.1.1. The document describing the proposed transaction.

3.1.3.1.2. A list of all affected contracts accompanying a notice of successor in interest between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date: contract number and type; name and address of contracting office; total dollar value as amended; and remaining unpaid balance.

3.1.3.1.3. Evidence of the transferee's capability to perform.

3.1.3.1.4. Any other relevant information requested by the ACO.

3.1.3.2 Change-of-Name. Three signed copies of the Change-of-Name Agreement and one copy each of the following in accordance with FAR 42.1205(a) (Reference (f)):

3.1.3.2.1. The document effecting the name change, authenticated by a proper official of the State having jurisdiction.

3.1.3.2.2. The opinion of the contractor's legal counsel stating that the Change-of-Name was properly effected under applicable law and showing the effective date.

3.1.3.2.3. A list of all affected contracts accompanying a notice of a name change and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The ACO may request the total dollar value as amended and the remaining unpaid balance for each contract.

3.1.4. Determination of Responsible Contracting Officer. In accordance with FAR 42.1202 (Reference (f)), the contracting officer responsible for processing and executing Novation and Change-of-Name Agreements shall be determined as follows.

3.1.4.1. If any of the affected contracts held by the transferor have been assigned to an ACO, the responsible contracting officer shall be one of the following:

3.1.4.1.1. This ACO.

3.1.4.1.2. DACO (and not the ACO), if a DACO is assigned to a contractor business unit which holds the affected contracts.

3.1.4.1.3. The CACO responsible for the corporate office, if affected contracts are in more than one business unit of the transferor.

3.1.4.2. If none of the affected contracts held by the transferor have been assigned to an ACO, the contracting officer responsible for the largest unsettled (unbilled plus billed but unpaid) dollar balance of contracts shall be the responsible contracting officer.

3.1.4.3. If several transferors are involved, the responsible contracting officer shall be either the ACO administering the largest unsettled dollar balance; or, the contracting officer designated by the agency having the largest unsettled dollar balance, if none of the affected contracts have been assigned to an ACO.

3.1.5. Upon receipt of the contractor's written request for the Government to recognize a successor in interest to its contracts or a name change, in accordance with FAR 42.1203(b) (Reference (f)), the ACO shall:

3.1.5.1 Information. Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in paragraphs 3.1.3. and 3.2.1.

3.1.5.2. Notification. Notify the following offices affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts.

3.1.5.2.1. Legal Counsel. The ACO shall notify legal counsel upon being notified of a possible sale or reorganization of a DoD contractor. The assistance of counsel is needed as early as possible in determining whether purchases by foreign or domestic concerns of a DoD contractor or a reorganization of the contractor may require a Novation Agreement or Change-of-Name Agreement.

3.1.5.2.2. Contract Management Office (CMO) and Contracting Office. The ACO shall promptly notify each CMO and contracting office affected by a proposed request. For Defense Logistics Agency, see resource page for mailing addresses for the Defense Supply Centers.

3.1.5.2.3. Military Departments and NASA. For contracts awarded by a military department or NASA, the ACO shall provide notices to the addresses as stated in DFARS Procedures, Guidance, and Information (PGI) 242.1203(1) (Reference (h)) instead of individual contracting or contract administration offices. On the notice sent to the addresses, the ACO shall include a consolidated list for all subordinate contracting offices of the addressee in accordance with DFARS PGI 242.1203(4) (Reference (h)).

3.1.5.2.4. Special Programs (DCMAS). The cognizant contracting officer shall notify DCMAS of all Novation/Change-of-Name requests via an e-mail to the DCMAS Inbox.

3.1.5.3. Comments or Objection. Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

3.2 EVALUATION OF CONTRACTOR'S NOVATION/CHANGE-OF-NAME AGREEMENT.

3.2.1. List of Documents for Novation. The ACO shall obtain one copy of each of the following documents, as applicable, in accordance with FAR 42.1204(f) (Reference (f)), as the documents become available in addition to the documents stated in paragraph 3.1.3.

3.2.1.1. An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree.

3.2.1.2. A certified copy of each resolution of each corporate party's board of directors authorizing the transfer of assets.

3.2.1.3. A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

3.2.1.4. An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

3.2.1.5. The opinion of legal counsel for the transferor and the transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

3.2.1.6. Balance sheets of the transferor and the transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.

3.2.1.7. Evidence that any security clearance requirements have been met.

3.2.1.8. The consent of all sureties on all contracts listed under paragraph 3.1.3.1.2. if bonds are required, or a statement from the transferor that none are required.

3.2.2. Modification of Document List. The Novation Agreement Checklist, located on the resource page of this Instruction, should be used as a tool to confirm whether all necessary documents are submitted. If the ACO has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the ACO may modify the list of documents to be submitted by the contractor in accordance with FAR 42.1204(g) (Reference (f)).

3.2.3. Determination of Adequacy of Documentation. The ACO shall review the documentation submitted by the contractor, and promptly notify the contractor of any deficiencies and request corrective action if any of the items listed in paragraphs 3.1.3. and 3.2.1. are missing or inadequate.

3.2.4 Review Request. Prior to the execution of a Novation Agreement, the ACO must find that the proposed Novation is in the government's best interest. In order to make such a finding, the ACO must consider legal sufficiency and the transferee's capability to perform the contract.

3.2.4.1. Legal Sufficiency. In instances of novation and/or change of name, the ACO shall obtain review of DCMA legal counsel for a legal sufficiency determination in accordance with FAR 42.1203(f) (Reference (f)). In instances in which a firm that is to be party to the agreement, a known affiliate of the same, or associated natural person is/are debarred, suspended, proposed for debarment or suspension, or when the ACO is aware that such action is being considered even though not yet done, the ACO shall notify counsel as part of such request.

3.2.4.2. Financial Capability. For a Novation Agreement, the ACO shall review financial information for the transferor and transferee to determine the transferee's financial

capability to perform the contracts being proposed for novation in accordance with FAR 42.1204(f)(6) (Reference (f)). As appropriate, the ACO shall request review and input from the DCMA cost and pricing center financial capability group. A financial capability review should be guided by the specific requirements set forth in the contracts being transferred and should include, but not be limited to, assets, liabilities, and revenue stream of the transferee.

3.2.4.3. Technical Capability. For a Novation Agreement, the ACO shall review information regarding the transferee's capability to perform the technical requirements specified in the contracts being transferred. Review and input may be provided by DCMA personnel, Government personnel at the buying activity, and/or other Government personnel involved with or having knowledge of, the requirements and capabilities needed for the item(s) or service(s) at issue. In addition to any submission presented for review under FAR 42.1204(e)(3) (Reference (f)), the ACO also may use information reasonably available within DCMA, from the buying activity, or from another credible source including web-based resources for reporting past performance, and may request review as needed of this information by the Government personnel mentioned above.

3.2.4.4. Security Requirements. For a Novation Agreement, the ACO shall ensure that the transferee meets all security classification requirements (for both personnel and facilities) specified in the contracts being transferred in accordance with FAR 42.1204(f)(7) (Reference (f)).

3.2.4.5. Foreign Interests. For a Novation Agreement, the ACO shall review whether the transfer of assets and liabilities could potentially result in foreign ownership, control or influence (FOCI), which could jeopardize the ability to perform current and future classified contracts in accordance with DFARS 209.104-1 (Reference (e)).

3.2.4.6. Business Status. For a Novation Agreement, the ACO shall review whether the transferee meets any specified set-aside requirements based on business status, such as small business. Also consider whether the transferee will be able to retain such status after the transfer is completed. FAR 19.301-2(b) (Reference (f)) requires contractors to recertify their small business size status within 30 days after execution of a novation agreement.

3.2.4.7. Intellectual Property/Data Rights. For a Novation Agreement, the ACO shall carefully consider whether the control, ownership, and transfer of data rights has been properly addressed in the transfer of assets and liabilities between the contractors in accordance FAR 27.4 (Reference (f)). Most importantly, ensure that Government interest and/or rights in such data has been properly addressed and protected.

3.2.4.8. Other Considerations. The ACO shall also consider any implications the proposed Novation Agreement may have on Cost Accounting Standards (CAS) coverage, approval status for business systems (accounting, estimating and purchasing), etc., of the transferee.

3.2.5. Conflicts of Interest. When considering whether to recognize a third party as a successor in interest to Government contracts, the ACO shall identify and evaluate any

significant organizational conflicts of interest in accordance with FAR 9.5 (Reference (f)). If the ACO determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the Novation Agreement request, in accordance with FAR 42.1204(d) (Reference (f)) a request for a waiver of application of general rule or procedure in FAR 9.5 (Reference (f)) may be submitted in accordance with the procedures at FAR 9.503 (Reference (f)).

3.2.6. External Restructuring Costs. When a Novation Agreement is requested and the transferee intends to incur restructuring costs for external restructuring activities as defined in DFARS 231.205-70 (Reference (e)), the ACO for the transferor shall include the provision cited in DFARS 242.1204 (Reference (e)) as paragraph (b)(7) of the Novation Agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(i) (Reference (f)). The detailed procedures for execution of a Restructuring Advance Agreement are stated in paragraph 3.6 of this Instruction.

3.2.7. Formal Agreement. There may be instances in which the contractor asserts that a Novation Agreement is not required. For one example, a “conversion” from one form of legal entity to a Limited Liability Company (LLC) may be such an instance. The determination of whether a Novation Agreement is needed can entail technical legal considerations, and so the ACO should seek assistance from legal counsel before concluding that a Novation Agreement is or is not required in any instance in which questions regarding need for such agreement arise. Further, even if a Novation Agreement is not needed, a formal agreement may be appropriate. Refer to FAR 42.1204(b) (Reference (f)).

3.3 DETERMINATION TO RECOGNIZE A SUCCESSOR IN INTEREST OR CHANGE-OF-NAME.

3.3.1. Basis of Determination. After receiving a legal sufficiency determination from DCMA legal counsel, the ACO shall make a determination whether or not it is in the Government’s interest to recognize the proposed successor in interest, giving consideration to the following, in accordance with FAR 42.1203(c) (Reference (f)):

3.3.1.1. The comments received from the affected contract administration offices and contracting offices.

3.3.1.2. The proposed successor’s responsibility under FAR 9.1, “Responsible Prospective Contractors” (Reference (f)).

3.3.1.3. Any factor relating to the proposed successor’s performance of contracts with the Government that the Government determines would impair the proposed successor’s ability to perform the contract satisfactorily.

3.3.1.4. The ACO shall not execute a Novation Agreement with any contractors which have been suspended, debarred or proposed for debarment without prior review by DCMA legal counsel and the DCMA Contract Integrity Center. See FAR 9.406 and FAR 9.407 (Reference (f)). See also Excluded Parties List System available at www.sam.gov, where the Government

maintains a publicly available list of parties who are suspended, debarred or proposed for debarment.

3.3.2. Novation Agreement. The ACO shall notify the contractor if he or she decides that a successor will not be recognized. In this situation, the original contractor remains under contractual obligation to perform the existing contracts as provided in FAR 42.1204(c) (Reference (f)).

3.3.3. Change-of-Name. When a contractor requests in writing that the Government recognize a name change, the ACO, after consultation with DCMA legal counsel, shall determine whether the Government and the contractor's obligations remain unaffected and whether advance notification to the contracting and administration offices is warranted in accordance with FAR 42.1205 (Reference (f)).

3.3.4. Coordination Among CMOs and/or CACO/DACO Offices.

3.3.4.1. The cognizant ACO over the transferee shall have the responsibility for resolving and dispositioning pre-existing open issues such as reportable audits after the execution of the Novation Agreement. However, the cognizant ACO over the transferor shall make every effort to resolve/disposition all open issues prior to the execution of the Novation Agreement. If the cognizant ACO over the transferor cannot resolve/disposition all open issues prior to the execution of the Novation Agreement, the cognizant ACO over the transferor shall provide records and assistance to the cognizant ACO over the transferee in support of resolving/dispositioning all the open issues.

3.3.4.2 If there are different ACOs for the transferor and the transferee, such ACOs shall coordinate and cooperate in the orderly transition of contract. The contracts directors and/or the CACO/DACO group supervisors who manage the ACOs cognizant over transferor and/or transferee shall communicate with each other in order to resolve and disposition pre-existing open issues. The directors/supervisors shall enter into an MOA regarding transfer of work. Any difficulties in accomplishing this which cannot be readily resolved between the directors/supervisors will be elevated to the component head for resolution.

3.3.4.3. If the contracts director or the CACO/DACO group supervisor supervises both ACOs cognizant over transferor and/or transferee, the contracts director or the CACO/DACO group supervisor shall make a decision on how to resolve and disposition pre-existing open issues.

3.3.5. Memorandum for Record (MFR). In the contract file, the ACO shall document the principal elements of the negotiated agreement and the process of decision making. The MFR must support the final conclusion reached by the ACO. The MFR shall:

3.3.5.1. Be appropriately detailed and organized to provide a clear link to the findings, conclusions, and recommendations contained in the record. The rationale and extent of procedures performed, including the conclusions reached, shall be documented in the MFR as well.

3.3.5.2. Be signed by the supervisor as evidence of the work performed.

3.3.5.3. Include the analysis of other functional specialist comments or reports, including but not limited to Defense Contract Audit Agency (DCAA), legal counsel, etc., when the ACO relies on the specialists' work provided.

3.3.5.4. Include sufficient documentation to describe the scope of work performed, the area covered, the nature and extent of procedures applied, the documents obtained and analyzed, and the conclusion, even though the extent of documentation needed is a matter of the ACO's judgment. The MFR may include copies of documents obtained from the contractor, review reports or comments provided by legal counsel, DCAA, and/or other functional specialists.

3.4. EXECUTION OF NOVATION/CHANGE-OF-NAME AGREEMENT.

3.4.1. Contents of Novation Agreement. The ACO, the transferor, and the transferee shall execute the Novation Agreement. It shall ordinarily provide in part that in accordance with FAR 42.1204(h) (Reference (f)) :

- The transferee assumes all the transferor's obligations under the contract
- The transferor waives all rights under the contract against the Government
- The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee)
- Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law

3.4.1.1. As stated in paragraph 3.2.6., the cognizant ACO for the transferor shall include the provision cited in DFARS 242.1204(i) (Reference (e)) as paragraph (b)(7) of the Novation Agreement instead of the paragraph (b)(7) provided in the sample format at FAR 42.1204(i) (Reference (f)) when a Novation Agreement is requested and the transferee intends to incur restructuring costs for external restructuring activities as defined in DFARS 231.205-70 (Reference (e)).

3.4.1.2. Any separate agreement between the transferor and the transferee regarding the assumption of liabilities (e.g., long-term incentive compensation plans, Cost Accounting Standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the Novation Agreement in accordance with FAR 42.1203(e) (Reference (f)).

3.4.1.3. The execution of a Novation Agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs in accordance with FAR 42.1203(d) (Reference (f)).

3.4.1.4. If NASA wants a separate agreement with the contractor, the ACO shall continue to process the agreement only for DoD, in accordance with DFARS PGI 242.1203(6) (Reference (h)).

3.4.2. Format. The format for agreements stated in FAR 42.12 (Reference (f)) shall be followed by the ACO.

3.4.2.1. Novation Agreement. The ACO shall use the format stated in FAR 42.1204(i) (Reference (f)) for agreements when the transfer and transferee are corporations and all the transferor's assets are transferred. The format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for other situations. However, before making any substantial alterations or additions to the Novation Agreement format at FAR 42.1204(i) (Reference (f)), the ACO, with input from DCMA legal counsel, shall coordinate with the addressees in paragraph 3.1.5.2. The ACO shall resolve any objections from the addressees before executing the agreement in accordance with DFARS PGI 242.1203(5) (Reference (h)).

3.4.2.2. Change-of-Name. Upon receipt of a legal sufficiency determination, the ACO and contractor shall execute the Change-of-Name Agreement in accordance with FAR 42.1205(a) (Reference (f)). A suggested format is in FAR 42.1205(b) (Reference (f)), which may be adapted for specific cases.

3.4.3. Contract Modification. In accordance with DCMA-INST 103, "Contract Modifications" (Reference (i)), contract modification can be processed in three ways: modification of a single contract using the Modification and Delivery Order (MDO) eTool, manual modification of one or a group of contracts, or a computer generated mass modification (ARZ modification) of a group of contracts. The contract modification shall be transmitted to the Mechanization of Contract Administration Services (MOCAS) or System for Integrated Contract Management (SICM).

3.4.3.1. MOCAS. A Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, is used to transfer/update contracts in the MOCAS database. Such modifications are called ARZ modifications. An ARZ modification is defined as a global modification which is processed systemically and applicable to all contracts assigned to a given contractor.

3.4.3.1.1. An ARZ transfer modification is defined as a modification which does one of the following:

3.4.3.1.1.1. Transfers all contracts for a Commercial and Government Entity (CAGE) code(s) to another CAGE code (i.e., Novations).

3.4.3.1.1.2. Transfers all contracts for a CAGE code to the same Code in a different CMO (i.e., the contractor physically moves and retains the original CAGE code).

3.4.3.1.1.3. Transfers all contracts for a specific CMO into one or more other CMOs (e.g., due to downsizing, creation of CMOs, or elimination of CMOs).

3.4.3.1.1.4. Transfers some of the contracts for a specific CAGE code to another CAGE code.

3.4.3.1.2. The transfer process involves a balancing of contract and invoice counts, contract dollars involved, as well as verifying that all database records have been properly updated to reflect changes. Transfers are only run at the end of the month immediately following the regular MOCAS monthly cycle (transfers are not performed at fiscal year and calendar year end; i.e., end of September and end of December). The verification and balancing is performed by cognizant Functional Information Resource Management (FIRM) team and Defense Finance and Accounting Service (DFAS) systems office personnel.

3.4.3.1.3. An ARZ modification which does not transfer contracts but makes a change to the contractor's name and/or address is also processed systemically. This type of global modification does not physically change MOCAS data unless a change to the non-electronic funds transfer remittance address is addressed in the modification. It does, however, generate and post modification numbers to the impacted contracts. The change in MOCAS data is made via a contractor initiated System for Award Management (SAM) update.

3.4.3.1.4. ACOs shall consult with their cognizant FIRM representative for questions concerning proper ARZ modification preparation. ACOs shall send a copy of the ARZ modification to their cognizant FIRM representative who reviews the modification for the correct format and will coordinate the scheduling and processing of the ARZ modification with the Defense Information Systems Agency Systems Office. The ARZ modification shall incorporate the agreement, or if it is not practical to do so, shall incorporate a written summary of the agreement, as well as a complete list of affected contracts and CAGE codes in accordance with DFARS 204.70 (Reference (e)). ACOs shall **not** assign modification numbers to the SF 30, as the transfer program generates ARZ/AZ numbers. For ARZ modifications, Block 8 of the ARZ modification shall be completed with the former name and address of the contractor and Block 14 shall be completed with the new name, address, and remittance address of the contractor.

3.4.3.1.5. After the ARZ modification is approved by the FIRM representative, the FIRM Center, on behalf of the ACO, shall submit it along with a copy of the Novation Agreement or Change-of-Name Agreement to Defense Logistics Information Service (DLIS) and request that they update the CAGE code file. See DFARS 204.7204 (Reference (e)) for the DLIS address.

3.4.3.1.6. For more information, see DFARS 204.7204 (Reference (e)), Maintenance of the CAGE File and DFARS 204.7205 (Reference (e)), Novation Agreements, Mergers and Sales of Assets.

3.4.3.1.7. When a contractor changes its name, address, business affiliation, financial institution, financial account number, or mailbox in the SAM, CAGE information in the MOCAS database is automatically updated through DLIS. Consequently, even though the SAM system warns the contractor that making such changes without a contract modification may result in payment delays, contractor changes in SAM information may result in contracts being transferred from one cognizant CMO and/or DFAS payment division to another in MOCAS.

Therefore, in those cases where a contractual modification is required (e.g., Novation and Change-of-Name Agreements or change in address/CMO), it is important that ACOs advise contractors to wait until such modifications are actually processed in MOCAS before making changes to SAM information. However, since timing is crucial in the MOCAS system, the ACO shall advise the contractor to update SAM within 48 hours after the signing of the modification. The ACO shall follow-up with the contractor or check the SAM to confirm that the change to SAM has been made.

3.4.3.1.8. ACOs should note the Government's right to suspend payments under FAR 4.11 and FAR 52.204-7 (Reference (f)) when a contractor fails to comply with the FAR 42 (Reference (f)) Novation and Change-of-Name requirements after making certain changes in the SAM.

3.4.3.1.9. No term of this Instruction shall be construed as requiring a contracting officer to sign any agreement being discussed herein if contrary to statute or regulation, or if not in the best interests of the Government.

3.4.3.2. SICM. To modify contracts assigned for administration that are not in MOCAS, ACOs shall use the Electronic Data Access (EDA)-Only Contract Modification capability within the MDO eTool. For example, it would apply to DCMA International contracts that are in SICM.

3.4.3.2.1. The modification is executed through MDO eTool, transmitted to SICM, posted to EDA, and reported to the Federal Procurement Data System (FPDS).

3.4.3.2.2. On behalf of the ACO, the FIRM Center shall submit SICM SF 30 along with a copy of the Novation Agreement or Change-of-Name Agreement to DLIS and request that they update the CAGE code file. See DFARS 204.7204 (Reference (e)) for the DLIS address.

3.5. DISTRIBUTION OF NOVATION/CHANGE-OF-NAME AGREEMENTS.

3.5.1. Agreements. The ACO shall distribute signed copies of Novation/Change-of-Name Agreements to:

3.5.1.1. The transferor and the transferee as stated in FAR 42.1203(g) (Reference (f)).

3.5.1.2. Individual contracting or contract administration offices including DCMAS.

3.5.1.3. For Military Department, two signed copies to the addresses stated in DFARS PGI 242.1203(1) (Reference (h)).

3.5.1.4. For NASA, two signed copies to the addresses stated in DFARS PGI 242.1203(1) (Reference (h)), if applicable.

3.5.1.5. For Military Surface Deployment and Distribution Command, two signed copies to the address stated in DFARS PGI 242.1203(7) (Reference (h)).

3.5.1.6. The cognizant DFAS payment office for the contracts in SICM.

3.5.1.7. The ACO shall retain a signed copy in the case file.

3.5.2. Standard Form 30. The ACO shall, in accordance with FAR 42.1203(h) (Reference (f)):

3.5.2.1. Prepare an SF 30 incorporating a summary of the agreement and attaching a complete list of contracts affected.

3.5.2.2. Retain the original SF 30 with the attached list in the case file.

3.5.2.3. Send a signed copy of the SF 30 with attached list to the transferor and to the transferee.

3.5.2.4. Send a copy of this SF 30 with attached list to each contract administration office or contracting office involved, which shall be responsible for further appropriate distribution.

3.5.2.5. Send two copies of this SF 30 with attached list to the addressees of military department in paragraph 3.5.1. The list of contracts may be confined to those issued by that department in accordance with DFARS PGI 242.1203(8)(i) (Reference (h)).

3.5.2.6. Not send copies to NASA or the Military Surface Deployment and Distribution Command in paragraph 3.5.1. because they will issue their own modification in accordance with DFARS PGI 242.1203(8)(ii) (Reference (h)).

3.5.2.7. Report the Novation Agreement or name change modification for each of the affected contracts to the FPDS in accordance with DFARS PGI 204.606(4)(iv) and (v) (Reference (h)).

3.6. EXECUTION OF A RESTRUCTURING ADVANCE AGREEMENT FOLLOWING THE BUSINESS COMBINATION.

3.6.1. Responsible ACO. Execution of a Restructuring Advance Agreement is typically a DACO or CACO function. The ACO for the transferee shall promptly execute a Restructuring Advance Agreement, in accordance with DFARS 231.205-70 (Reference (e)), when the transferee will incur external restructuring costs associated with restructuring activities after the business combination.

3.6.2. Limitation on Cost Allowability. In accordance with DFARS 231.205-70(c), (Reference (e)), restructuring costs associated with external restructuring activities shall not be allowed unless:

3.6.2.1. Such costs are allowable in accordance with FAR Part 31(Reference (f)) and DFARS Part 231 (Reference (e)).

3.6.2.2. An audit of projected restructuring costs and restructuring savings is performed.

3.6.2.3. The ACO reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with DFARS PGI 231.205-70(d) (Reference (h)).

3.6.2.4. The designated official determines in writing that the audited projected savings for DoD, on a present value basis, resulting from the restructuring will exceed either the costs allowed by a factor of at least two-to-one; or, the costs allowed when the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD. The designated official is:

- The Under Secretary of Defense (AT&L) or the principal deputy, if the amount of restructuring costs is expected to exceed \$25 million over a 5-year period
- The DCMA Director for all other cases

3.6.2.5. The ACO provides the following documents in order to support the designated official's determination:

- The Novation agreement (if one is required)
- The contractor's restructuring proposal
- The proposed advance agreement
- The audit report
- Any other pertinent information
- The ACO's recommendation for a determination (the recommendation must clearly indicate one of two conditions in paragraph 3.6.2.4.)

3.6.3. The ACO shall perform the following functions:

3.6.3.1. Execution of a Novation Agreement. Promptly execute a Novation Agreement, if one is required, in accordance with FAR 42.12 (Reference (f)) and DFARS 242.12 (Reference (e)) and include the provision at DFARS 242.1204 (Reference (e)).

3.6.3.2. Repricing Clause. Help the contracting officer include a repricing clause as stated in DFARS 231.205-70(f) (Reference (e)).

3.6.3.3. Segregation and Suspension of Restructuring Costs. Direct the contractor to segregate restructuring costs and to suspend those amounts from any billings, final contract price settlements, and overhead settlements until the designated official issues a written determination in accordance with DFARS PGI 231.205-70(d)(ii) (Reference (h)).

3.6.3.4. Restructuring Proposal. Request the contractor to provide 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 value of projected restructuring costs and projected restructuring savings. The restructuring proposal shall only include restructuring activities associated with the business combination. The types of restructuring activities that should be proposed are defined in DFARS 231.205-70(b)(3) (Reference (e)). In addition, the ACO shall concurrently request the contractor to provide a Forward Pricing Rate Proposal which is traceable to the restructuring proposal in accordance with DFARS PGI 231.205-70(d)(iii) (Reference (h)).

3.6.3.5. Forward Pricing Rate Agreement. Review any existing forward pricing rate agreements and/or recommendations after a business combination, as warranted by the facts and circumstances, whether or not a restructuring proposal is submitted by the contractor (DCMA-INST 130, “Forward Pricing Rate Agreements” (Reference (j))). When the underlying assumptions upon which they were based have changed due to the business combination, the rate agreements and/or recommendations may no longer be valid. The forward pricing rate agreements and/or recommendations shall be revised or terminated, as appropriate, to protect the Government’s interests.

3.6.3.6. Notification. Notify major buying activities of contractor restructuring actions and inform them about any potential monetary or other impacts on major weapons or other acquisition programs, when known in accordance with DFARS PGI 231.205-70(d)(iv) (Reference (h)). In addition, if restructuring costs are included in forward pricing rates prior to the execution of an advance agreement, the ACO shall notify the procurement contracting officers to include a repricing clause in each fixed-price action that is priced based on the rates in accordance with DFARS 231.205-70(f) (Reference (e)).

3.6.3.7. Adjustment of Forward Pricing Rates and Billing Rates. Adjust forward pricing and billing rates to reflect estimated restructuring savings, after the restructuring and forward pricing rate proposals are submitted in accordance with DFARS PGI 231.205-70(d)(v) (Reference (h)). Such adjustments immediately implement the proposed savings. In addition, the ACO shall continually evaluate and, if necessary, adjust forward pricing rates after proposal submission. After receiving the contractor’s restructuring and forward pricing rate agreement proposals, the ACO shall immediately request an audit of the proposals from DCAA in accordance with DFARS PGI 231.205-70(d)(vi) (Reference (h)).

3.6.3.8. Determination of Projected Restructuring Savings. Upon receipt of the audit report on the contractor’s proposal, determine, on a present value basis, if the audited projected restructuring savings for DoD will exceed the restructuring costs allowed as stated in paragraph 3.6.2.1. herein, according to DFARS PGI 231.205-70(d)(vii)(A) (Reference (h)).

3.6.3.9. Negotiation of Restructuring Advance Agreement. Negotiate the advance agreement with the contractor, setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule, upon issuance of the DCAA audit report ((DFARS PGI 231.205-70(d)(viii) (Reference (h))). The advance agreement shall address the allowability of the contractor’s restructuring expenditures and the resultant projected costs and savings to be realized by DoD. The ACO shall obtain a legal sufficiency review of the Restructuring Advance Agreement from DCMA legal counsel. The

ACO shall also prepare a projected restructuring cost and savings summary which will include any amortized depreciation costs covering the 5-year period of projected restructuring savings. The ACO shall submit a contractor external restructuring board case through the CMO contracts director or CACO group director to DCMA-AQ for a BoR in accordance with DCMA-INST 134, "Boards of Review" (Reference (k)). The submission shall include: an executive summary, restructuring cost and savings summary, negotiation memorandum, Restructuring Advance Agreement, recommendation for determination of at least two-to-one savings to DoD, DCAA audit report, Novation Agreement, legal review, and the contractor's restructuring proposal. The recommendation for determination of at least two-to-one savings to DoD is submitted to Office of the Secretary of Defense by DCMA headquarters after the BoR, if applicable.

3.6.3.10. Execution of Restructuring Advance Agreement. After the designated official's determination required by DFARS 231.205-70(c)(4)(i) (Reference (e)) is obtained, and the DCMA-AQ BoR is conducted, then the ACO shall execute the Restructuring Advance Agreement.

3.6.3.11. Distribution of the Restructuring Advance Agreement. Distribute the advance agreement with Price Negotiation Memorandum to the:

3.6.3.11.1. Individual contracting or contract administration offices including DCMAS.

3.6.3.11.2. For a military department, to the addresses stated in DFARS PGI 242.1203(1) (Reference (h)).

3.6.3.11.3. For NASA, to the addresses stated in DFARS PGI 242.1203(1) (Reference (h)), if applicable.

3.6.3.11.4. Military Surface Deployment and Distribution Command to the address stated in DFARS PGI 242.1203(7) (Reference (h)).

3.6.3.12. The ACO shall retain a signed copy in the case file.

3.6.4. Amortization of Restructuring Costs. Amortizing of restructuring costs is permitted according to part 9904.406-61 of Title 48, Code of Federal Regulations (Reference (l)), Interpretation, as promulgated by the Cost Accounting Standards Board (CASB) for contractor restructuring costs paid or approved on or after August 15, 1994. Pursuant to the interpretation, restructuring costs may be deferred, and subsequently amortized, over a period during which the benefits are expected to accrue. Straight line amortization should normally be used; the amortization period shall not exceed 5 years.

3.6.5. Expensing Restructuring Costs. The CASB interpretation also permits, on an exception basis, restructuring costs to be expensed in the current accounting period when the contracting officer agrees that such treatment results in a more equitable assignment of costs under the circumstances. Therefore, expensing restructuring costs in the accounting period in which they are incurred would be appropriate when the contractor proposes to expense

restructuring costs to the current year and expensing should result in savings to the DoD of at least twice the allowable costs for the period on a present value basis. In making this assessment, ACOs shall consider the composition of the business base (Government versus commercial contracts) and the contract mix (fixed price versus cost reimbursement) for current and future years.

3.7. MANAGEMENT AND RETENTION OF RECORDS.

3.7.1. According to the DCMA Records Retention Schedule, located within DCMA-INST 809 (Reference (g)), Novation/Change-of-Name records shall be retained for a minimum of 6 years and 3 months after completion of the contract(s), or final payment or termination of the program effort, or settlement of disputes/incidents, whichever is later. Retention of the file documentation is the responsibility of the ACOs, the CMO contracts directors, and CACO/DACO group supervisors.

3.7.2. DCMA-INST 809 (Reference (g)) provides an orderly system for organizing records for filing and eventual disposition. The ACO is responsible for complying with the records management requirements. The work product shall be stored using a naming convention that will allow for its logical retrieval and shall be stored in a specific location identified by the component or in accordance with Agency direction. If documents relating to a case are too large to upload electronically, the uploaded location will cite a specific location where the hard copy documents/disk will be stored. It will be a location sanctioned by the component for the retention of records conforming to DCMA policy on retention of records. Electronic document workflow application or an Agency directed replacement is the preferred location.

GLOSSARY

DEFINITIONS

Administrative Contracting Officer (ACO). The contracting officer who is administering contracts in accordance with FAR 2.1 (Reference (f)). In this Instruction, ACO performs functions as a responsible contracting officer.

ARZ Modification. A global modification which is processed systemically and applicable to all contracts assigned to a given contractor.

Business Unit. Any segment of an organization, or an entire business organization that is not divided into segments in accordance with FAR 2.1 (Reference (f)).

Change-of-Name Agreement. A legal instrument executed by the contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties in accordance with FAR 2.1 (Reference (f)).

Cognizant Federal Agency. The Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit in accordance with FAR 2.1 (Reference (f)).

Commercial and Government Entity Code. A code assigned by the DLA Logistics Information Service to identify a commercial or Government entity in accordance with DFARS 204.7201 (Reference (e)).

Novation Agreement. A legal instrument executed by (1) Contractor (transferor), (2) Successor in interest (transferee), and (3) Government, and, by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets in accordance with FAR 2.1 (Reference (f)).

Responsible Contracting Officer. The contracting officer responsible for processing and executing Novation and Change-of-Name Agreements in accordance with FAR 42.1202 (Reference (f)).

Restructuring Advance Agreement. The advance agreement with the contractor setting forth, at a minimum, a cumulative cost ceiling for restructuring projects and, when necessary, a cost amortization schedule in accordance with DFARS PGI 231.205-70(d)(viii) (Reference (h)).

Successor-in-Interest. An individual or party succeeding another individual or party in the former's contractual and other legal rights and obligations.

System for Award Management (SAM) database. Federal Government owned and operated free web site that consolidates the capabilities in Central Contractor Registration (CCR)/Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and Excluded Parties List System (EPLS). Future phases of SAM will add the capabilities of other systems used in Federal procurement and awards processes.

Transferee. The contractor who acquires all or the portion of the assets involved in performing the contract, from the transferor in accordance with FAR 42.1204(a) (Reference (f)).

Transferor. The contractor who transfers all or the portion of the assets involved in performing the contract, to the transferee in accordance with FAR 42.1204(a) (Reference (f)).

GLOSSARY

ACRONYMS

ACO	Administrative Contracting Officer
BoR	Board of Review
CACO	Corporate Administrative Contracting Officer
CAGE	Commercial and Government Entity
CASB	Cost Accounting Standard Board
CMO	Contract Management Office
DACO	Divisional Administrative Contracting Officer
DCAA	Defense Contract Audit Agency
DCMA-AQ	Contracts Directorate
DCMA-INST	DCMA Instruction
DCMAS	Special Programs Directorate
DFARS	Defense Federal Acquisition Regulation Supplement
DFAS	Defense Finance and Accounting Service
DLIS	Defense Logistics Information Service
EDA	Electronic Data Access
FAR	Federal Acquisition Regulation
FIRM	Functional Information Resource Management
FPDS	Federal Procurement Data System
MFR	Memorandum for Record
MDO	Modification and Delivery Order
MOA	Memorandum of Agreement
MOCAS	Mechanization of Contract Administration Services
NASA	National Aeronautics and Space Administration
PGI	Procedures, Guidance, and Information
PLAS	Performance Labor Accounting System
SAM	System for Award Management
SICM	System for Integrated Contract Management
SF	Standard Form
U.S.C.	United States Code