

31.109 Advance agreements.

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7 of certain costs *may* be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7, *contracting officers* and *contractors* *should* seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies at 31.201-6(c). However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7 of that cost.

(b) Advance agreements *may* be negotiated either before or during a contract but *should* be negotiated before incurrence of the costs involved. The agreements *must* be *in writing*, executed by both *contracting* parties, and incorporated into applicable current and future contracts. An advance agreement *shall* contain a statement of its applicability and duration.

(c) The *contracting officer* is not authorized by this 31.109 to agree to a treatment of costs inconsistent with this part. For example, an advance agreement *may* not provide that, notwithstanding 31.205-20, interest is allowable.

(d) Advance agreements *may* be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a *contracting office*, an agency, or several agencies.

(e) The cognizant administrative *contracting officer* (ACO), or other *contracting officer* established in part 42, *shall* negotiate advance agreements except that an advance agreement affecting only one contract, or class of contracts from a single *contracting office*, *shall* be negotiated by a *contracting officer* in the *contracting office*, or an ACO when delegated by the *contracting officer*. When the negotiation authority is delegated, the ACO *shall* coordinate the proposed agreement with the *contracting officer* before executing the advance agreement.

(f) Before negotiating an advance agreement, the Government negotiator *shall*-

(1) Determine if other *contracting offices* inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(2) Inform any such office or agency of the matters under consideration for negotiation; and

(3) As appropriate, invite the office or agency and the *responsible audit agency* to participate in prenegotiation discussions and/or in the subsequent negotiations.

(g) Upon completion of the negotiation, the sponsor *shall* prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in 15.406-3, as applicable.

(h) Examples for which advance agreements *may* be particularly important are-

(1) *Compensation for personal services*, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit *pension plans*;

- (2) Use charges for fully depreciated assets;
- (3) Deferred maintenance costs;
- (4) Precontract costs;
- (5) Independent research and development and bid and *proposal* costs;
- (6) Royalties and other costs for use of patents;
- (7) Selling and distribution costs;
- (8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;
- (9) Costs of idle facilities and idle capacity;
- (10) Severance pay to employees on support service contracts;
- (11) Plant reconversion;
- (12) Professional services (*e.g.*, legal, accounting, and engineering);
- (13) General and administrative costs (*e.g.*, corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in *construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts* (see [31.203\(h\)](#));
- (14) Costs of *construction* plant and equipment (see [31.105\(d\)](#));
- (15) Costs of public relations and advertising; and
- (16) Statistical sampling methods (see [31.201-6\(c\)\(4\)](#)).

Parent topic: [Subpart 31.1 - Applicability](#)