**DFARS Case 2017-D018**

**Treatment of Incurred Independent**

**Research and Development Costs**

**Final Rule**

**PART 225—FOREIGN ACQUISITION**

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**SUBPART 225.73—ACQUISITIONS FOR FOREIGN MILITARY SALES**

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**225.7303-2 Cost of doing business with a foreign government or an international organization.**

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(b) Costs not allowable under FAR ~~P~~**[p]**art 31 are not allowable in pricing FMS contracts, except as noted in paragraphs (c) and (e) of this ~~sub~~section.

(c) The limitations for ~~major~~ **[all]** contractors ~~on independent research and development and bid and proposal (IR&D~~**~~/~~**~~B&P) costs for projects that are of potential interest to DoD,~~ **[described]** in [231.205-18](http://www.acq.osd.mil/dpap/dars/dfars/html/current/231_2.htm#231.205-18)(c)(iii)~~,~~ **[and (iv)]** do not apply to FMS contracts, except as provided in [225.7303-5](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_73.htm#225.7303-5). The allowability of **[independent research and development** **(]**IR&D**[)]**~~/~~ **[costs and bid and proposal (]**B&P**[)]** costs on contracts for FMS not wholly paid for from funds made available on a nonrepayable basis is limited to the contract’s allocable share of the contractor’s total IR&D~~/~~ **[expenditures and total]** B&P expenditures. In pricing contracts for such FMS—

(1) Use the best estimate of reasonable costs in forward pricing; and

(2) Use actual expenditures, to the extent that they are reasonable, in determining final cost.

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**PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES**

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**SUBPART 231.2—CONTRACTS WITH COMMERCIAL ORGANIZATIONS**

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**231.205 Selected costs.**

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**231.205-18 Independent research and development and bid and proposal costs**.

(a) *Definitions*. As used in this ~~sub~~section—

~~(i)~~ “Covered contract” means a DoD prime contract for an amount exceeding the simplified acquisition threshold, except for a fixed-price contract without cost incentives. The term also includes a subcontract for an amount exceeding the simplified acquisition threshold, except for a fixed-price subcontract without cost incentives under such a prime contract.

~~(ii)~~ “Covered segment” means a product division of the contractor that allocated more than $1,100,000in independent research and development **[(IR&D) costs]** and bid and proposal (~~IR&D/~~B&P) costs to covered contracts during the preceding fiscal year. In the case of a contractor that has no product divisions, the term means that contractor as a whole. A product division of the contractor that allocated less than $1,100,000 in IR&D~~/~~**[costs and]** B&P costs to covered contracts during the preceding fiscal year is not subject to the limitations in paragraph (c) of this ~~sub~~section.

~~(iii)~~ “Major contractor” means any contractor whose covered segments allocated a total of more than $11 **[million]**~~,000,000~~ in IR&D~~/~~**[costs and]** B&P costs to covered contracts during the preceding fiscal year. For purposes of calculating the dollar threshold amounts to determine whether a contractor meets the definition of “major contractor,” do not include contractor segments allocating less than $1,100,000of IR&D~~/~~**[** **and]** B&P costs to covered contracts during the preceding fiscal year.

(c) *Allowability*.

(i) Departments/agencies shall not supplement this regulation in any way that limits IR&D~~/~~ **[cost allowability and]** B&P cost allowability.

(ii) See [225.7303-2](http://www.acq.osd.mil/dpap/dars/dfars/html/current/225_73.htm#225.7303-2)(c) for allowability provisions affecting foreign military sale contracts.

~~(iii) For major contractors, the following limitations apply:~~

~~(A) The amount of IR&D~~**~~/~~**~~B&P costs allowable under DoD contracts shall not exceed the lesser of—~~

*~~(1)~~* ~~Such contracts’ allocable share of total incurred IR&D~~**~~/~~**~~B&P costs; or~~

*~~(2)~~* ~~The amount of incurred IR&D/B&P costs for projects having potential interest to DoD~~**~~.~~**

~~(B) Allowable IR&D/B&P costs are limited to those for projects that are of potential interest to DoD, including activities intended to accomplish any of the following:~~

*~~(1)~~* ~~Enable superior performance of future U.S. weapon systems and components.~~

*~~(2)~~* ~~Reduce acquisition costs and life-cycle costs of military systems.~~

*~~(3)~~* ~~Strengthen the defense industrial and technology base of the United States.~~

*~~(4)~~* ~~Enhance the industrial competitiveness of the United States.~~

*~~(5)~~* ~~Promote the development of technologies identified as critical under 10 U.S.C. 4845.~~

*~~(6)~~* ~~Increase the development and promotion of efficient and effective applications of dual-use technologies.~~

*~~(7)~~* ~~Provide efficient and effective technologies for achieving such environmental benefits as: improved environmental data gathering, environmental cleanup and restoration, pollution reduction in manufacturing, environmental conservation, and environmentally safe management of facilities~~*.*

~~(C) For annual IR&D costs to be allowable—~~

~~(~~*~~1~~*~~) The IR&D projects generating the costs~~~~must be reported to the Defense Technical Information Center (DTIC) using the DTIC's on-line input form and instructions at~~ [~~http://www.defenseinnovationmarketplace.mil~~](http://www.defenseinnovationmarketplace.mil)~~;~~

~~(~~*~~2~~*~~) The inputs~~~~must be updated at least annually~~~~and when the project is completed;~~

~~(~~*~~3~~*~~) Copies of the input and updates must be made available for review by the cognizant administrative contracting officer (ACO) and the cognizant Defense Contract Audit Agency auditor to support the allowability of the costs; and~~

~~(iv) Contractors not meeting the threshold of a major contractor are encouraged to use the DTIC online input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors' IR&D activities.~~

~~(v) For major contractors, the ACO or corporate ACO shall—~~

~~(A) Determine whether IR&D/B&P projects are of potential~~

~~interest to DoD; and~~

~~(B) Provide the results of the determination~~~~to the contractor.~~

~~(vi) The cognizant contract administration office shall furnish contractors with guidance on financial information needed to support IR&D/B&P costs and on technical information needed from major contractors to support the potential interest to DoD determination (also see~~ [~~242.771-3~~](http://www.acq.osd.mil/dpap/dars/dfars/html/current/242_7.htm#242.771-3)~~(a)).~~

**[(iii)(A) For IR&D costs major contractors incurred on covered contracts to be allowable—**

***(1)* The contractor is required to report IR&D projects generating the IR&D costs to the Defense Technical Information Center (DTIC) using the DTIC’s online input form and instructions at** [***https://defenseinnovationmarketplace.dtic.mil/industry-portal/***](https://defenseinnovationmarketplace.dtic.mil/industry-portal/)**;and**

***(2)* The contractor is required to update its DTIC inputs at least annually, no later than 3 months after the end of the contractor’s fiscal year, and when the project is completed.**

**(B) The amount of IR&D costs allowable under DoD contracts shall not exceed the lesser of—**

***(1)* Such contracts’ allocable share of total incurred IR&D costs; or**

***(2)* The total amount of incurred IR&D costs that the chief executive officer of the contractor has determined will advance the needs of DoD for future technology and advanced capability as DoD describes such needs in communications referenced at 242.771-3(c)(1)(i).**

**(C) Contractors that are not major contractors are encouraged to use the DTIC online input form and instructions at** [***https://defenseinnovationmarketplace.dtic.mil/industry-portal/***](https://defenseinnovationmarketplace.dtic.mil/industry-portal/)**to report IR&D projects in order to provide DoD with visibility into the technical content of the contractors’ IR&D projects.**

**(iv) Contractors are required to report incurred IR&D costs separately from indirect costs.**

**(v) Contractors are required to report incurred B&P costs separately from other indirect costs.]**

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**PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

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**Subpart 242.3—Contract Administration Office Functions**

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**242.302 Contract administration functions.**

(a)(7) See 242.7502 for ACO responsibilities with regard to receipt of an audit report identifying significant accounting system or related internal control deficiencies.

(9) For additional contract administration functions related to IR&D~~/~~**[projects and]** B&P projects performed by major contractors, see 242.771-3(a).

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**SUBPART 242.7—INDIRECT COST RATES**

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**242.771 Independent research and development and bid and proposal costs.**

**242.771-1 Scope.**

This section implements 10 U.S.C. 3762, Independent research and developmentcosts: allowable costs**[;** **10 U.S.C. 3763, Bid and proposal costs: allowable costs; and 10 U.S.C. 3847, Defense Contract Audit Agency: annual report]**.

**242.771-2 Policy.**

Defense contractors are encouraged to engage in independent research and development ~~and bid and proposal~~ (IR&D~~/B&P~~) ~~activities~~**[projects]** ~~of potential interest to DoD~~ **[that will advance the needs of DoD for future technology and advanced capability (see 231.205-18(c)(iii))]**~~, including activities cited in 231.205-18(c)(iii)(B)~~.

**242.771-3 Responsibilities.**

(a) The cognizant administrative contracting officer (ACO) or corporate ACO shall~~—~~

~~(1) D~~**[d]**etermine cost allowability of IR&D~~/~~ **[costs and bid and proposal (]**B&P**[)]** costs as set forth in 231.205-18 and FAR 31.205-18~~;~~**[.]**

~~(2) Determine whether IR&D/B&P projects performed by major contractors (see 231.205-18(a)) are of potential interest to DoD; and~~

~~(3) Notify the contractor promptly of any IR&D/B&P activities that are not of potential interest to DoD.~~

~~(b) The Defense Contract Management Agency or the military department responsible for performing contract administration functions is responsible for providing the Defense Contract Audit Agency (DCAA) with IR&D~~**~~/~~**~~B&P statistical information, as necessary, to assist DCAA in the annual report required by paragraph (c) of this subsection.~~

~~(c) DCAA is responsible for submitting an annual report to the Director of Defense Procurement~~~~and Acquisition Policy, Office of the Under Secretary of Defense~~~~(Acquisition, Technology, and Logistics) (OUSD(AT&L)), setting forth required statistical information relating to the DoD-wide B&P program.~~

**[(b) The Defense Contract Audit Agency (DCAA) shall—**

**(1) For the DoD-wide B&P program, submit** **an annual report** **to the Principal Director, Defense Pricing and Contracting, Office of the Under Secretary of Defense for Acquisition and Sustainment, in connection with 10 U.S.C. 3763(c); the Defense Contract Management Agency or the military department responsible for performing contract administration functions is responsible for providing DCAA with statistical information, as necessary; and**

**(2) For IR&D costs and B&P costs incurred under any DoD contract in the previous Government fiscal year, submit an annual report to the congressional defense committees as required by 10 U.S.C. 3847.]**

(~~d~~**[c]**) The Office of the ~~Assistant~~ **[Under]** Secretary of Defense for Research and Engineering (O~~A~~**[U]**SD**[(]**R&E**[)]**), is responsible for establishing a regular method for communication~~—~~

(1)**[(i)]** From DoD to contractors, of timely and comprehensive information regarding planned or expected **[needs of]** DoD **[for]** future ~~needs~~**[****technology and advanced capability, by posting information on communities of interest and upcoming meetings on the Defense Technical Information Center (DTIC) website at** [***https://defenseinnovationmarketplace.dtic.mil/communities-of-interest***](https://defenseinnovationmarketplace.dtic.mil/communities-of-interest)**]**;and

~~(2)~~**[(ii)]** From contractors to DoD, of brief technical descriptions of contractor IR&D projects**[; and]**~~.~~

**[(2)** **By providing OUSD(R&E) contact information:** [***osd.pentagon.ousd-re.mbx.communications@mail.mil***](mailto:osd.pentagon.ousd-re.mbx.communications@mail.mil)**.]**

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