

acts, costs for bonuses or other payments in excess of the normal salary paid by the contractor to an employee, that are part of restructuring costs associated with a business combination, are unallowable under DoD contracts funded by fiscal year 1996 or subsequent appropriations. This limitation does not apply to severance payments or early retirement incentive payments. (See 231.205-70(b) for the definitions of "business combination" and "restructuring costs.")

(m)(1) Fringe benefit costs that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.

[57 FR 53600, Nov. 12, 1992, as amended at 58 FR 28469, May 13, 1993; 60 FR 2331, Jan. 9, 1995; 60 FR 61598, Nov. 30, 1995; 61 FR 7077, Feb. 26, 1996; 61 FR 36306, July 10, 1996; 61 FR 50454, Sept. 26, 1996; 61 FR 58490, Nov. 15, 1996; 61 FR 65479, Dec. 13, 1996; 62 FR 63036, Nov. 26, 1997; 63 FR 14641, Mar. 26, 1998; 78 FR 73453, Dec. 6, 2013]

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

(a) *Definitions.* As used in this subsection—

(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 \$1,100,000 in independent research and development 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/B&P costs to covered contracts during the preceding fiscal year is not subject to the limitations in paragraph (c) of this subsection.

(iii) *Major contractor* means any contractor whose covered segments allocated a total of more than \$11,000,000 in IR&D/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 \$1,100,000 of IR&D/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/B&P cost allowability.

(ii) See 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&O 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. 2522.

(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 a contractor's annual IR&D costs to be allowable, the IR&D projects generating the costs must be

231.205-19

reported to the Defense Technical Information Center (DTIC) using the DTIC's on-line input form and instructions at <http://www.dtic.mil/ird/dticdb/index.html>. The inputs must be updated at least annually and when the project is completed. 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. Contractors that do not meet the threshold as a major contractor are encouraged to use the DTIC on-line input form to report IR&D projects to provide DoD with visibility into the technical content of the contractors' IR&D activities.

(iv) 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.

(v) 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).

[64 FR 8729, Feb. 23, 1999, as amended at 77 FR 4636, Jan. 30, 2012]

231.205-19 Insurance and indemnification.

(e) In addition to the cost limitations in FAR 31.205-19(e), self-insurance and purchased insurance costs are subject to the requirements of the clauses at 252.217-7012, Liability and Insurance, and 252.228-7001, Ground and Flight Risk.

[75 FR 32645, June 8, 2010]

231.205-22 Legislative lobbying costs.

(a) Costs associated with preparing any material, report, list, or analysis on the actual or projected economic or employment impact in a particular State or congressional district of an acquisition program for which all research, development, testing, and eval-

48 CFR Ch. 2 (10-1-15 Edition)

uation has not been completed also are unallowable (10 U.S.C. 2249).

[69 FR 63332, Nov. 1, 2004]

231.205-70 External restructuring costs.

(a) *Scope.* This subsection—

(1) Prescribes policies and procedures for allowing contractor external restructuring costs when savings would result for DoD; and

(2) Implements 10 U.S.C. 2325.

(b) *Definitions.* As used in this subsection:

(1) *Business combination* means a transaction whereby assets or operations of two or more companies not previously under common ownership or control are combined, whether by merger, acquisition, or sale/purchase of assets.

(2) *External restructuring activities* means restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.

(3) *Restructuring activities* means non-routine, nonrecurring, or extraordinary activities to combine facilities, operations, or workforce, in order to eliminate redundant capabilities, improve future operations, and reduce overall costs. Restructuring activities do not include routine or ongoing repositionings and redeployments of a contractor's productive facilities or workforce (e.g., normal plant rearrangement or employee relocation), nor do they include other routine or ordinary activities charged as indirect costs that would otherwise have been incurred (e.g., planning and analysis, contract administration and oversight, or recurring financial and administrative support).