

IRS Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.

[62 FR 34125, June 24, 1997, 77 FR 19130, Mar. 30, 2012; 78 FR 37989, June 25, 2013; 78 FR 40043, July 3, 2013; 79 FR 58700, Sept. 30, 2014; 80 FR 81469, Dec. 30, 2015; 85 FR 74612, Nov. 23, 2020; 87 FR 65517, Oct. 28, 2022]

### Subpart 229.70—Special Procedures for Overseas Contracts

SOURCE: 70 FR 6375, Feb. 7, 2005, unless otherwise noted.

NOTE: To obtain tax relief for overseas contracts, follow the procedures at PGI 229.70.

## PART 230—COST ACCOUNTING STANDARDS ADMINISTRATION

### Subpart 230.2—CAS Program Requirements

Sec.

230.201-5 Waiver.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36406, July 31, 1991, unless otherwise noted.

### Subpart 230.2—CAS Program Requirements

#### 230.201-5 Waiver.

(a)(1)(A) The military departments and the Director, Defense Procurement and Acquisition Policy, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics)—

(1) May grant CAS waivers that meet the conditions in FAR 30.201-5(b)(1); and

(2) May grant CAS waivers that meet the conditions in FAR 30.201-5(b)(2), provided the cognizant Federal agency official granting the waiver determines that—

(i) The property or services cannot reasonably be obtained under the contract, subcontract, or modification, as applicable, without granting the waiver;

(ii) The price can be determined to be fair and reasonable without the application of the Cost Accounting Standards; and

(iii) There are demonstrated benefits to granting the waiver.

(B) Follow the procedures at PGI 230.201-5(a)(1) for submitting waiver requests to the Director, Defense Procurement and Acquisition Policy.

(2) The military departments shall not delegate CAS waiver authority below the individual responsible for issuing contracting policy for the department.

(e) By November 30th of each year, the military departments shall provide a report to the Director, Defense Procurement and Acquisition Policy, ATTN: DPAP/CPIC, of all waivers granted under FAR 30.201-5(a), during the previous fiscal year, for any contract, subcontract, or modification expected to have a value of \$15,000,000 or more. See PGI 230.201-5(e) for format and guidance for the report. The Director, Defense Procurement and Acquisition Policy, will submit a consolidated report to the CAS Board and the congressional defense committees.

[71 FR 69495, Dec. 1, 2006, as amended at 77 FR 52254, Aug. 29, 2012]

## PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

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

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### Subpart 231.7—Contracts With Nonprofit Organizations

231.703 Requirements.

AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1.

SOURCE: 56 FR 36408, July 31, 1991, unless otherwise noted.

## Subpart 231.1—Applicability

### 231.100 Scope of subpart.

#### 231.100-70 Contract clause.

Use the clause at 252.231-7000, Supplemental Cost Principles, in all solicitations and contracts which are subject to the principles and procedures described in FAR subpart 31.1, 31.2, 31.6, or 31.7.

[59 FR 27672, May 27, 1994]

## Subpart 231.2—Contracts With Commercial Organizations

### 231.205 Selected costs.

#### 231.205-1 Public relations and advertising costs.

(e) See 225.7303-2(e) for allowability provisions affecting foreign military sales contracts.

(f) Unallowable public relations and advertising costs also include monies paid to the Government associated with the leasing of Government equipment, including lease payments and reimbursement for support services, except for foreign military sales contracts as provided for at 225.7303-2.

[74 FR 68382, Dec. 24, 2009]

#### 231.205-6 Compensation for personal services.

(f)(1) In accordance with Section 8122 of Pub. L. 104-61, and similar sections in subsequent Defense appropriations acts, costs for bonuses or other pay-

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ments 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 section—

*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.

*Covered segment* means a product division of the contractor that allocated more than \$1,100,000 in independent research and development (IR&D) costs and bid and proposal (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 section.

*Major contractor* means any contractor whose covered segments allocated a total of more than \$11 million

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 \$1,100,000 of 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(c) for allowability provisions affecting foreign military sale contracts.

(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/>; 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/> 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.

[88 FR 6599, Jan. 31, 2023]

**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 Lobbying and political activity 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 evaluation has not been completed also are unallowable (10 U.S.C. 4652).

[69 FR 63332, Nov. 1, 2004, as amended at 86 FR 59870, Oct. 29, 2021; 87 FR 76995, Dec. 16, 2022]

**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. 3761.

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

(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).

(4) *Restructuring costs* means the costs, including both direct and indirect, of restructuring activities. Restructuring costs that may be allowed include, but are not limited to, severance pay for employees, early retirement incentive payments for employees, employee retraining costs, relocation expense for retained employees, and relocation and rearrangement of plant and equipment. For purposes of this definition, if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than \$2.5 million, the costs shall not be subject to the audit, review, and determination requirements of paragraph (c)(4) of this subsection; instead, the normal rules for determining cost allowability in accordance with FAR part 31 shall apply.

(5) *Restructuring savings* means cost reductions, including both direct and indirect cost reductions, that result from restructuring activities. Reassignments of cost to future periods are not restructuring savings.

(c) *Limitations on cost allowability.* Restructuring costs associated with external restructuring activities shall not be allowed unless—

(1) Such costs are allowable in accordance with FAR part 31 and DFARS part 231;

(2) An audit of projected restructuring costs and restructuring savings is performed;

(3) The cognizant administrative contracting officer (ACO) reviews the audit report and the projected costs and projected savings, and negotiates an advance agreement in accordance with paragraph (d) of this subsection; and

(4)(i) The official designated in paragraph (c)(4)(ii) of this subsection determines in writing that the audited projected savings, on a present value basis, for DoD resulting from the restructuring will exceed either—

(A) The costs allowed by a factor of at least two to one; or

(B) The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

(ii)(A) If the amount of restructuring costs is expected to exceed \$25 million over a 5-year period, the designated official is the Under Secretary of Defense (Acquisition, Technology, and Logistics) or the Principal Deputy. This authority may not be delegated below the level of an Assistant Secretary of Defense.

(B) For all other cases, the designated official is the Director of the Defense Contract Management Agency. The Director may not delegate this authority.

(d) *Procedures and ACO responsibilities.* As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall follow the procedures at PGI 231.205-70(d).

(e) *Information needed to obtain a determination.* (1) The novation agreement (if one is required).

(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; 87 FR 76995, Dec. 16, 2022]

**231.205–71 Costs related to counterfeit electronic parts and suspect counterfeit electronic parts.**

(a) *Scope.* This section implements the requirements of section 818(c)(2), National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), as modified by section 833, National Defense Authorization Act for Fiscal Year

2013 (Pub. L. 112–239), and section 885 of the National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114–92).

(b) The costs of counterfeit electronic parts and suspect counterfeit electronic parts and the costs of rework or corrective action that may be required to remedy the use or inclusion of such parts are unallowable, unless—

(1) The contractor has an operational system to detect and avoid counterfeit electronic parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303(b);

(2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101 or were obtained by the contractor in accordance with the clause at 252.246–7008, Sources of Electronic Parts; and

(3) The contractor—

(i) Becomes aware of the counterfeit electronic parts or suspect counterfeit electronic parts through inspection, testing, and authentication efforts of the contractor or its subcontractors; through a Government Industry Data Exchange Program (GIDEP) alert; or by other means; and

(ii) Provides timely (*i.e.*, within 60 days after the contractor becomes aware) written notice to—

(A) The cognizant contracting officer(s); and

(B) GIDEP (unless the contractor is a foreign corporation or partnership that does not have an office, place of business, or fiscal paying agent in the United States; or the counterfeit electronic part or suspect counterfeit electronic part is the subject of an ongoing criminal investigation).

[81 FR 59515, Aug. 30, 2016]

**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

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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. 4652, 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; 87 FR 76995, Dec. 16, 2022]

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

#### 231.603 Requirements.

Under 10 U.S.C. 4652, 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; 87 FR 76995, Dec. 16, 2022]

### Subpart 231.7—Contracts With Nonprofit Organizations

#### 231.703 Requirements.

Under 10 U.S.C. 4652, 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; 87 FR 76995, Dec. 16, 2022]

## PART 232—CONTRACT FINANCING

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