



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH, DEVELOPMENT AND ACQUISITION
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MEMORANDUM FOR DISTRIBUTION

Subj: RECENT COURT OPINION UPHOLDING GOVERNMENT INTERPRETATION
OF FEDERAL ACQUISITION REGULATION DEFINITION OF
INDEPENDENT RESEARCH AND DEVELOPMENT COSTS;
FAR 31.205-18(a)

Ref: (a) *United States v. Newport News Shipbuilding*, 276 F.
Supp. 2d 539 (E.D. Va. 2003)

The reference (a) opinion, decided August 14, 2003, contains a useful and illuminating analysis of the definition of "Independent Research and Development" in Federal Acquisition Regulation (FAR) 31.205-18, Independent Research and Development and Bid and Proposal Costs (IR&D and B&P). The court in this case, ruled that Newport News Shipbuilding, Inc. (NNS) violated FAR 31.205-18(a) by misclassifying, as IR&D, approximately \$74 million that was spent in connection with the design and construction of double-hulled tankers for commercial customers. Specifically, the court held that these costs, NNS charged as Double Tanker IR&D, were for efforts "required in the performance of a contract," (i.e., the NNS commercial tanker contracts) and thus were excluded from the FAR definition of IR&D.

The pertinent part of FAR 31.205-18 reads as follows:

(a) Definitions. As used in this subsection--

"Independent research and development (IR&D)" means a contractor's IR&D cost that consists of projects falling within the four following areas:

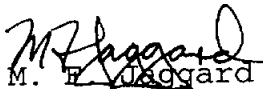
- (1) basic research,
- (2) applied research,
- (3) development, and
- (4) systems and other concept formulation studies. **The term does not include the costs of effort sponsored by a grant or required in the performance of a contract.**

(Emphasis added.)

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The court in reference (a) held that the phrase "required in the performance of a contract" includes those efforts that are implicitly required, as well as those efforts explicitly called for in the contract. The court also held that the plain language of FAR 31.205-18 does not allow the charging of research and design efforts as IR&D simply because they are a benefit to more than one existing contract. Once a contract is signed, the performance of which requires, implicitly or explicitly, a certain effort, that effort may no longer be charged as IR&D, even if it also stands to benefit other existing contracts or potential future contracts.

Please ensure that acquisition personnel under your cognizance are aware of this important Government contract opinion upholding the longstanding Government position on interpretation of FAR 31.205-18 and allowability of IR&D costs. The court's analysis includes a detailed discussion of the regulatory history of FAR 31.205-18. The DASN(ACQ) point of contact is Mr. Clarence Belton, 703-693-4006; clarence.belton@navy.mil. The AGC(RDA) points of contact are Ms. Katharine Carney, 703-697-1642; Katharine.carney@navy.mil, or Ms. Ann Marra, 703-693-4072; ann.marra@navy.mil.


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