United States Advanced Battery Consortium LLC (USABC)
Defense Contractors Audit Agency (DCAA)
Cost Principles-Expressly Unallowable Costs (REVISED)
19-PAC-002'(R) supercedes 14-PAC-021'(R), and 14-PAC-022'(R)
Content Table with Reference Line (REVISED)
February, 2020

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DEFENSE CONTRACT AUDIT AGENCY
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

IN REPLY REFER TO

PAC 730.3.B.01/2018-02

May 14, 2019
19-PAC-002(R)

MEMORANDUM FOR REGIONAL DIRECTORS, DCAA
CORPORATE AUDIT DIRECTORS, DCAA
ASSISTANT DIRECTORS, HQ, DCAA

SUBJECT: Audit Alert on Identifying Expressly Unallowable Costs

This audit alert revises the guidance on identifying expressly unallowable costs due to recent court cases. This guidance includes an updated listing of FAR 31 and DFARS 231 cost principles that meet the definition of expressly unallowable costs. We also updated the guidance for determining whether a cost principle identifies expressly unallowable costs. Audit guidance 14-PAC-021(R), dated December 18, 2014, and 14-PAC-022(R), dated January 7, 2015, are superseded.

Summary

In order for a cost to be expressly unallowable, the cost principle must state in direct terms that the costs are unallowable, or leaves little room for interpretation or differences of opinion as to whether the particular cost meets the allowability criteria. The Government must show that it was unreasonable, under all the circumstances, for a person in the contractor's position to conclude that the costs were allowable.

Determining Whether a Cost Principle Identifies Expressly Unallowable Costs

We are providing the enclosed list to assist audit teams in determining whether a questioned cost is expressly unallowable. We updated the list to reflect the impact of recent court cases and for current FAR and DFARS language. Audit teams should use the list as a tool to help determine whether statements from the cost principles that they used as a basis to question costs are expressly unallowable. Even though audit teams have the tool, auditors will need to be use judgment in the evaluation of costs. If an audit team questions a cost that is on this list, it generally should treat the questioned cost as expressly unallowable and subject to penalties.

May 14, 2019
PAC 730.3.B.01/2018-02 19-PAC-002(R)
SUBJECT: Audit Alert on Identifying Expressly Unallowable Costs

Assistance with Determinations

If, based on unique facts and circumstances, FAO personnel believe costs are expressly unallowable under cost principles not included on the list, the FAO should alert the appropriate regional or CAD points of contact. Regional/CAD personnel with questions regarding this audit alert should contact Accounting and Cost Principles Division, at (703) 767-3250 or by e-mail at DCAA-PAC@dcaa.mil.

/Signed/
Martha E. McKune
Assistant Director, Policy and Plans

Enclosure:
Examples of Cost Principles Identifying
Expressly Unallowable Costs

DISTRIBUTION: E

Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
1	31.105(d)(2)(ii)(B)	Costs incident to major repair and overhaul of rental equipment are unallowable.	For contracts subject to FAR 31.105, costs incident to major repair and overhaul of rented construction equipment are expressly unallowable and subject to penalty.	
2	31.205-1(f)	Unallowable public relations and advertising costs include the following: (1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205-38(b)(5)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services. (2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government. (3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production. (4) Costs of ceremonies such as – (i) Corporate celebrations and (ii) New product announcements. (5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.		

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Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public. (7) Costs of memberships in civic and community organizations. (8) Costs associated with the donation of excess food to nonprofit organizations in accordance with the Federal Food Donation Act of 2008 (42 U.S.C. 1792, see FAR subpart 26.4).		
3	31.205-3	Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.		
4	31.205-6(a)(6)(ii)(B)	(a) *General*. Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle: ... (6)(i) Compensation costs for certain individuals give rise to the need for special consideration. Such individuals include: (A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and (B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. (ii) For these individuals, compensation must – ... (B) Not be a distribution of profits (which is not an allowable contract cost).	Compensation paid to the following persons is expressly unallowable and subject to penalty if such compensation represents a distribution of profits: • Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and • Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.	Only the distribution of profits is an expressly unallowable cost.
5	31.205-6(a)(6)(iii)	For owners of closely held companies, compensation in excess of the costs that are deductible as compensation under the Internal		

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		Revenue Code (26 U.S.C.) and regulations under it is unallowable.		
6	31.205-6(e)(2)	Differential allowances for additional income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under 31.205-35(a)(10).)		
7	31.205-6(g)(3)	Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.		
8	31.205-6(g)(5)	Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the Government will consider allowability on a case-by-case basis.		
9	31.205-6(g)(6)	Under 10 U.S.C 2324(e)(1)(M) and 41 U.S.C. 4304(a)(13), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States....10 U.S.C 2324(e)(3) and 41 U.S.C. 4304(b) permit the head of the agency to waive these cost allowability limitations under		Since waiver authority is vested in the head of the agency and not the contracting officer, this waiver is not discretionary and the cost principle is expressly unallowable.

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		certain circumstances (see 37.113 and the solicitation provision at 52.237-8).		
10	31.205-6(g)(6)	...Further, under 10 U.S.C 2324(e)(1)(N) and 41 U.S.C. 4304(a)(14), all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C 2324(e)(3) and 41 U.S.C. 4304(b) permit the head of the agency to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237-8).		
11	31.205-6(h)	Backpay is a retroactive adjustment of prior years' salaries or wages. Backpay is unallowable except as follows: (1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree. (2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiation are allowable. (3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if–		

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		(i) A formal agreement or understanding exists between management and the employees concerning these payments, or (ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.		
12	31.205-6(i)(1)	Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.	In Raytheon Co., 2015-1 BCA ¶ 36,043 and Exelis Inc., 2017-1 BCA ¶ 36,708, it was held that compensation which is calculated, or valued, based on changes in the price of corporate securities are expressly unallowable and that in order to be unallowable the award of shares need not be solely dependent upon the change in price of the stock.	
13	31.205-6(i)(2)	Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.		
14	31.205-6(i)(3)	If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.		
15	31.205-6(j)(1)(i)	Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, the contractor shall fund pension costs by the time set for filing of the Federal income tax return or any extension. Pension costs assigned to the current year, but not funded by the tax return time, are not allowable in any subsequent year....	Except for nonqualified pension plans using the pay-as-you-go cost method, pension costs assigned to the current year, but not funded by the time set for filing of the federal income tax return including any extensions, are expressly unallowable and	Specifically states costs are not allowable and is therefore expressly unallowable.

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
			subject to penalty in the current year and in any subsequent year.	
16	31.205-6(j)(1)(ii)	...The cost of changes in pension plans are not allowable if the changes are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future.		
17	31.205-6(j)(1)(iii)	Except as provided for early retirement benefits in subparagraph (j)(6) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs, unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.		
18	31.205-6(j)(2)(i)(A)	Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412-40(a)(1)) assigned to the current accounting period, but not funded during it, are not allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).	Except for nonqualified pension plans, pension costs assigned to the current accounting period, but not funded during that year or by the time set for filing the federal income tax return or any extension thereof, are expressly unallowable and subject to penalty in subsequent years unless they exceed the amount required to be funded pursuant to a waiver granted under the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and are funded in that subsequent year.	
19	31.205-6(j)(2)(iii)	Increased pension costs are unallowable if the increase is caused by a delay in funding beyond 30 days after each quarter of the year to which they are assignable....		

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
20	31.205-6(j)(2)(v)	Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement....		Gives the contracting officer the authority to enter into an advanced agreement to allow these costs before they were incurred, but increased costs not covered by an advance agreement are expressly unallowable
21	31.205-6(j)(3)(ii)	...Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(3)(ii) are unallowable in accordance with 31.205-41(b)(6).		
22	31.205-6(j)(6)(iii)	...The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable;...	The cost of extending an early retirement plan to employees who retired or were terminated before the adoption of the plan is expressly unallowable and subject to penalty.	
23	31.205-6(j)(6)(iv)	The present value of the total incentives given to any employee in excess of the amount of the employee's annual salary for the previous fiscal year before the employee's retirement is unallowable....	The present value of the total early retirement incentives given to any employee in excess of the employee's annual salary for the previous fiscal year before the employee's retirement is expressly unallowable and subject to penalty.	
24	31.205-6(k)(2)	The costs of deferred compensation awards are unallowable if the awards are made in periods subsequent to the period when the work being remunerated was performed.		
25	31.205-6(l)	*Compensation incidental to business acquisitions. The following costs are unallowable:* (1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control		

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		over, or ownership of, the contractor or a substantial portion of its assets. (2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.		
26	31.205-6(m)(2)	That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(d)).		
27	31.205-6(n)	*Employee rebate and purchase discount plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.		
28	31.205-6(o)(2)(iii)(G)*(2)*	...Any duplicate recovery of costs due to the change from one method to another is unallowable....	For postretirement benefits other than pensions, when changing from one accrual accounting method to another, duplicate recovery of costs due to the change from one method to another is expressly unallowable and subject to penalty.	
29	31.205-6(o)(2)(iii)(G)*(3)*	To be allowable, PRB costs must be funded by the time set for filing the Federal income tax return or any extension thereof, or paid to an insurer, provider, or other recipient by the time set for filing the Federal income tax return or	PRB costs are expressly unallowable and subject to penalty if they are not funded or paid to an insurer, provider, or other recipient by the time set for	PRB costs are expressly unallowable and subject to penalty if they are not funded or paid to an insurer, provider, or other recipient by the time set for filing the Federal income

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		extension thereof. PRB costs assigned to the current year, but not funded, paid or otherwise liquidated by the tax return due date as extended are not allowable in any subsequent year.	filing the Federal income tax return or any extension thereof. PRB costs that are assigned to the current year but not funded, paid, or otherwise liquidated by the tax return due date, as extended, are expressly unallowable and subject to penalty in any subsequent year.	tax return or any extension thereof. PRB costs that are assigned to the current year but not funded, paid, or otherwise liquidated by the tax return due date, as extended, are expressly unallowable and subject to penalty in any subsequent year.
30	31.205-6(o)(2)(iii)(G)*(4)*	Increased PRB costs causes by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.		
31	31.205-6(p)(2)	Senior executive compensation limit for contracts awarded before June 24, 2014— (i) Applicability. This paragraph (p)(2) applies to the following: (A) To all executive agencies, other than DoD, NASA and the Coast Guard, for contracts awarded before June 24, 2014; (B) To DoD, NASA, and the Coast Guard for contracts awarded before December 31, 2011; (ii) Costs incurred after January 1, 1998. Cost incurred after January 1, 1998 for the compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under 41 U.S.C. 1127 as in effect prior to June 24, 2014, are unallowable (10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 4304(a)(16), as in effect prior to June 24, 2014). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1,		

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		1998, under contracts awarded before June 24, 2014, and applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(4) has been changed for compensation costs incurred after January 1, 1999.) …		
32	31.205-6(p)(3)	All employee compensation limit for contracts awarded before June 24, 2014. (i) Applicability. This paragraph (p)(3) applies to DoD, NASA, and the Coast Guard for contracts awarded on or after December 31, 2011 and before June 24, 2014; (ii) Costs incurred after January 1, 2012, for the compensation of any contractor employee in excess of the benchmark compensation amount, determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP) under 41 U.S.C. 1127 as in effect prior to June 24, 2014 are unallowable (10 U.S.C. 2324(e)(1)(P) as in effect prior to June 24, 2014.). This limitation is the sole statutory limitation on allowable employee compensation costs incurred after January 1, 2012, under contracts awarded on or after December 31, 2011 and before June 24, 2014. (Note that pursuant to section 803 of Pub. L. 112-81, 10 U.S.C. 2324, Allowable costs under defense contracts, was amended by striking "senior executives" and inserting "any contractor employee", making unallowable the excess compensation costs incurred after January 1, 2012, under affected contracts.) …		

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Number	Clause	Excerpt	DCAA Notes	Guidance Updates
33	31.205-6(p)(4)	All employee compensation limit for contracts awarded on or after June 24, 2014. (i) Applicability. This paragraph (p)(4) applies to all executive agency contracts awarded on or after June 24, 2014, and any subcontracts thereunder; (ii) Costs incurred on or after June 24, 2014. Costs incurred on or after June 24, 2014, for the compensation of all employees in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator of the Office of Federal Procurement Policy are unallowable under 10 U.S.C. 2324(e)(1)(P) and 41 U.S.C. 4304(a)(16), as in effect on or after June 24, 2014, pursuant to section 702 of Public Law 113-67. This limitation is the sole statutory limitation on allowable employee compensation costs incurred on or after June 24, 2014, under contracts awarded on or after June 24, 2014. ...		
34	31.205-6(q)(2)(ii)	Contributions by the contractor in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are unallowable.	Contributions by the contractor to an employee stock ownership plan (ESOP) in any one year that exceed the deductibility limits of the Internal Revenue Code for that year are expressly unallowable and subject to penalty.	
35	31.205-6(q)(2)(iv)(A)	Stock purchases by the ESOT in excess of fair market value are unallowable;...	When an ESOP contribution is in the form of cash, stock purchases by the ESOT in excess of fair market value are expressly unallowable and subject to penalty.	

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Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
36	31.205-8	Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in 31.205-1(e)(3)		
37	31.205-10(c)	Actual interest cost in lieu of the calculated imputed cost of money is unallowable.		
38	31.205-11(a)	...Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.		
39	31.205-11(d)	Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.		
40	31.205-11(f)	No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control....		
41	31.205-11(h)(2)	If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.		
42	31.205-13(b)	Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)		
43	31.205-13(c)	Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.		

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Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
44	31.205-14	Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable....		
45	31.205-14	...Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.		
46	31.205-15(a)	Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations, are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.		
47	31.205-15(b)	Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as costs to rescreen and reconstruct records.		
48	31.205-17	... (b)The costs of idle facilities are unallowable unless the facilities – (1) Are necessary to meet fluctuations in workload; or (2) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not		

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		have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see 31.205-42)). ... (d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.		
49	31.205-18(d)(1)	IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that – (i) The total amount of IR&D costs applicable to the product can be identified; (ii) The proration of such costs to sales of the product is reasonable; (iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and (iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.		
50	31.205-19(c)(3)	If purchased insurance is available, any self-insurance charge plus insurance administration expenses in excess of the cost of comparable purchased insurance plus associated insurance administration expenses is unallowable.		

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51	31.205-19(c)(4)	Self-insurance charges for risks of catastrophic losses are unallowable (see 28.308(e)).		
52	31.205-19(d)(2)	For all contracts, premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) are unallowable to the extent they exceed the sum of— (i) The amount that would have been allowed had the contractor insured directly with the captive insurer; and (ii) Reasonable fronting company charges for services rendered.		
53	31.205-19(d)(3)	Actual losses are unallowable unless expressly provided for in the contract, except— (i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable; and (ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of business and that are not covered by insurance, are allowable.		
54	31.205-19(e)(2)(iii)	The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the	With respect to insurance maintained by the contractor in connection with the general conduct of its business, the cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is expressly unallowable and subject to penalty unless the contractor has a formal written policy assuring that in the event the insured	The cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset stated to be unallowable in this cost principle, therefore this remains expressly unallowable. No need for citation to *Emerson*.

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		acquisition cost of the insured asset is unallowable.	property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost.	
55	31.205-19(e)(2)(v)	Costs of insurance on the lives of officers, partners, proprietors, or employees are allowable only to the extent that the insurance represents additional compensation (see 31.205-6).	Costs of insurance on the lives of officers, partners, proprietors, or employees that do not represent additional compensation (see 31.205-6) are expressly unallowable and subject to penalty.	Cost principle does not specifically identify the costs as unallowable, but the *Thomas Assoc., Inc.*, 11-1 BCA ¶ 34,764 case previously held that these costs were expressly unallowable.
56	31.205-19(e)(3)	The cost of insurance to protect the contractor against the costs of correcting its own defects in materials and workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.		
57	31.205-19(e)(4)	Premiums for retroactive or backdated insurance written to cover losses that have occurred and are known are unallowable.		
58	31.205-19(e)(6)	Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to section 4007 (29 U.S.C. 1307) or section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.		
59	31.205-20	Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of	Note that if the contract involves the conveyance of a utility system under 10 U.S.C. §2688, interest may be allowable under certain circumstances pursuant to the	

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		preparing and issuing stock rights are unallowable (but see 31.205-28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3) is allowable.	provisions of Class Deviation 2011-O0006.	
60	31.205-21(b)	As required by Executive Order 13494, Economy in Government Contracting, costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable....		
61	31.205-22	(a)Costs associated with the following activities are unallowable: (1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activities; (2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections; (3) Any attempt to influence – (i) The introduction of Federal, state, or local legislation, or (ii) The enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in	In *Raytheon Co.*, 2017-1 BCA ¶ 36,724 it was held that the salary of employees performing lobbying activities are expressly unallowable; however, in *Raytheon Co.*, 2015-1 BCA ¶ 36,043 it was held that bonus and incentive compensation of employees performing lobbying activities although unallowable are not expressly unallowable because neither bonus and incentive compensation nor compensation cost are specifically named and stated as unallowable under this cost principle, nor are such costs identified as unallowable in any direct or unmistakable terms.	

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		connection with a decision to sign or veto enrolled legislation; (4) Any attempt to influence (i) The introduction of Federal, state, or local legislation, or (ii) The enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; (5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or (6) Costs incurred in attempting to improperly influence (see 3.401), either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter. (b) The following activities are excepted from the coverage of (a) of this section: (1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented		

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		request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing. (2) Any lobbying made unallowable by paragraph (a)(3) of this subsection to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract. (3) Any activity specifically authorized by statute to be undertaken with funds from the contract.		
62	31.205-23	**Losses on Other Contracts.** An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.		
63	31.205-27	(a)Except as provided in paragraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions,	In regard to mergers and acquisitions costs, in *Raytheon Company,* 17-1 BCA ¶ 36,724; the board stated that this principle needs to be read in conjunction	

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		(2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised. (b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by 31.205-6. These activities include acquiring stock for – (1) Executive bonuses, (2) Employee savings plans, and (3) Employee stock ownership plans.	with FAR 31.205-12, and FAR 31.205-28 and, after doing so, it concluded the intent appears to be that costs in connection with actually planning a specific merger or acquisition, are unallowable in accordance with FAR 31.205-27: whereas, generalized long-range management planning costs are allowable in accordance with FAR 31.205-12, which they infer includes planning in regard to mergers and acquisitions in general, not related to a specific merger or acquisition.	
64	31.205-30(c)	Other than those for general counseling services, patent costs not required by the contract are unallowable. (See also 31.205-37.)		
65	31.205-31	...Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred....	Reconversion costs (those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately before the start of the Government contract, fair	The contracting officer has discretion to permit certain costs if the costs were agreed to before they were incurred, but costs not agreed to in advance are expressly unallowable.

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			wear and tear excepted) are expressly unallowable and subject to penalty, except for: the cost of removing Government property and the restoration or rehabilitation costs caused by such removal; and in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred.	
66	31.205-33(c)	Costs of professional and consultant services performed under any of the following circumstances are unallowable: (1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (*e.g.*, 52.215-1(e), Restriction on Disclosure and Use of Data). (2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor. (3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest. (4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.		

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67	31.205-34(b)	Help-wanted advertising costs are unallowable if the advertising – (1) Does not describe specific positions or classes of positions; (2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities;		
68	31.205-35(a)(6)(i)	(a) … The following types of relocation costs are allowable as noted, subject to the limitations in paragraphs (b) and (f) of this subsection: … (6) Costs incident to acquiring a home in the new work location, except that -- (i)These costs are not allowable for existing employees or newly recruited employees who were not homeowners before the relocation;…	Relocation costs incident to acquiring a home in the new work location are expressly unallowable and subject to penalty for existing employees or newly recruited employees who were not homeowners before the relocation.	
69	31.205-35(b)(6)(ii)	When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.		
70	31.205-35(c)	The following types of costs are unallowable: (1) Loss on sale of a home. (2) Costs incident to acquiring a home in the new location as follows: (i) Real estate brokers' fees and commissions. (ii) Costs of litigation. (iii) Real and personal property insurance against damage or loss of property. (iv) Mortgage life insurance. (v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence (However, the cost of a mortgage title policy is allowable.)		

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		(vi) Property taxes and operating or maintenance costs. (3) Continuing mortgage principal payments on a residence being sold. (4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.		
71	31.205-38(a)	"Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. The costs of any selling efforts other than those addressed in this cost principle are unallowable.	Selling costs that do not fall within one of the following categories are expressly unallowable and subject to penalty: • Advertising (31.205-1(b)), • Corporate image enhancement (31.205-1 (a)), • Bid and proposal costs (31.205-18), • Economic Planning Costs including market planning (31.205-12), and • Direct selling.	
72	31.205-41(b)	The following types of costs are not allowable: (1) Federal income and excess profits taxes. (2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations (see 31.205-20 and 31.205-27). (3) ... When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable		

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		to Government contract activity be realized by the Government. The term "exemption" means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise. (4) Special assessments on land that represent capital improvements. (5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) of this section). (6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans. (7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements. (8) Any tax imposed under 26 U.S.C. 5000C.		
73	31.205-41(b)(3)	(b) The following types of costs are not allowable: ... (3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government....		The costs are stated to be not allowable and therefore are expressly unallowable. The exception here is merely a determination of materiality of the benefit to the Government and not so discretionary as to eliminate the expressly unallowable nature of this cost principle.

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74	31.205-44(a)	Overtime compensation for training and education is unallowable.		
75	31.205-44(b)	The cost of salaries for attending undergraduate level classes or part-time graduate level classes during working hours is unallowable, except when unusual circumstances do not permit attendance at such classes outside of regular working hours.		
76	31.205-44(c)	Costs of tuition, fees, training materials and textbooks, subsistence, salary, and any other payments in connection with full-time graduate level education are unallowable for any portion of the program that exceeds two school years or the length of the degree program, whichever is less.		
77	31.205-44(d)	Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.		
78	31.205-44(e)	Training or education costs for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where suitable public education is not available may be included in overseas differential pay.		
79	31.205-44(f)	Contractor contributions to college savings plans for employee dependents are unallowable.		
80	31.205-46(d)	…That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).		
81	31.205-47	… (b) Costs incurred in connection with any proceeding brought by: A Federal, …	Costs incurred in connection with any proceeding brought by the Federal government for a	

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		government for a violation of, or failure to comply with, law or regulation by the contractor (including its agents or employees) (41 U.S.C. 4310 and 10 U.S.C. 2324(k)); …; or a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is-- (1) In a criminal proceeding, a conviction; (2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct; or imposition of a monetary penalty, …; (3) A final decision by an appropriate official of an executive agency to – (i) Debar or suspend the contractor; (ii) Rescind or void a contract; or (iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation. (4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in subparagraphs (b)(1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or (5) Not covered by subparagraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of subparagraphs (b)(1) through (4) of this subsection. (c)(1) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States	violation of, or failure to comply with, law or regulation by the contractor (including its agents or employees) or proceeding brought by a third party under the False Claims Act in which the United States intervened are unallowable if the result is covered by subparagraphs (b)(1) through (5). Because application of subparagraph (c)(2) allows the contracting officer discretion in regard to proceedings brought by a third party under the False Claims Act, in which the United States did not intervene and proceedings brought by a whistleblower for alleged reprisal and subparagraph (d) allows for CO discretion in regard to proceedings commenced by a State, local, or foreign government, costs of those type proceeding that are unallowable based on this cost principle are not expressly unallowable	

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		that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement. (2)(i) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor determines that there was very little likelihood that the third party would have been successful on the merits. (ii) In the event of disposition by consent or compromise of a proceeding brought by a whistleblower for alleged reprisal in accordance with 41 U.S.C. 4712 or 10 U.S.C. 2409, reasonable costs incurred by a contractor or subcontractor in connection with such a proceeding that are not otherwise unallowable by regulation or by agreement with the United States may be allowed if the contracting officer, in consultation with his or her legal advisor, determined that there was very little likelihood that the claimant would have been successful on the merits. (d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or		

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		foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either: (1) As a direct result of a specific term or condition of a Federal contract; or (2) As a result of compliance with specific written direction of the cognizant contracting officer.		
82	31.205-47(f)	Costs not covered elsewhere in this subsection are unallowable if incurred in connection with: (1) Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government (see 2.101). (2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions (see also 31.205-27). (3) Defense of antitrust suits. (4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled. (5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either – (i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or (ii) Dual sourcing, coproduction, or similar programs, are unallowable, except when (A) Incurred as a result of compliance with specific terms and conditions of the		

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		contract or written instructions from the contracting officer, or (B) When agreed to in writing by the contracting officer. (6) Patent infringement litigation, unless otherwise provided for in the contract. (7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding. (8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer. (9) A congressional investigation or inquiry into an issue that is the subject matter of a proceeding resulting in a disposition as described in paragraphs (b)(1) through (5) of this section (see 10 U.S.C. 2324(e)(1)(Q)).		
83	31.205-48	"Research and development," as used in this subsection, means the type of technical effort described in 31.205-18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract		

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Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
84	31.205-49	...Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.		
85	31.205-51	Costs of alcoholic beverages are unallowable.		
86	DFARS 231.205-1(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 reimbursements for support services, except for foreign military sales contracts as provided for at 225.7303-2.	Monies paid to the Government associated with leasing of Government equipment are expressly unallowable and subject to penalty. However, the limitations in DFARS 231.205-1 on allowability of costs associated with leasing Government equipment do not apply to Foreign Military Sales (FMS) contracts as provided for by DFARS 225.7303-2. Therefore, monies paid to the Government associated with the leasing of Government equipment are not expressly unallowable and not subject to penalty on FMS contracts.	
87	DFARS 231.205-6(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 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.....		

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Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
88	DFARS 231.205-6(m)(1)	Fringe benefit costs that are contrary to law, employer-employee agreement, or an established policy of the contractor are unallowable.		
89	DFARS 231.205-22(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. 2249).		
90	DFARS 231.205-70(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-	In accordance with DFARS 231.205-70(b)(4), the provisions of DFARS 231.205-70(c)(4) do not apply if restructuring costs associated with external restructuring activities allocated to DoD contracts are less than $2.5M.	

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Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		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.		
91	DFARS 231.205-71(b)	The costs of counterfeit electronic parts or suspect counterfeit electronic parts and the cost 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 parts and suspect counterfeit electronic parts that has been reviewed and approved by DoD pursuant to 244.303; (2) The counterfeit electronic parts or suspect counterfeit electronic parts are Government-furnished property as defined in FAR 45.101; 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—		

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Listing of Cost Principles Identifying Expressly Unallowable Costs

Number	Clause	Excerpt	DCAA Notes	Guidance Updates
		(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 on-going criminal investigation).		

Notes:

1. This summary only addresses indirect costs that are expressly unallowable under a cost principle in the FAR and DFARS. In accordance with FAR 42.709-1(a)(1), a cost may also be expressly unallowable under an executive agency supplement to the FAR other than DFARS.

2. This summary reflects FAR 31 and DFARS 231 as of November 1, 2018.

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