



29 November 2021

Mr. David E. Johnson  
Office of the Undersecretary of Defense (Acquisition and Sustainment)

Submitted via email to: [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil)

Subject: Financial Executives International Committee on Government Business Comments on the Proposed DFARS Rule on the Treatment of Incurred Independent Research and Development Costs

Reference: DFARS Case 2017-D018

Mr. Johnson:

I am pleased to offer the following comments on the Proposed DFARS Rule on the Treatment of Incurred Independent Research and Development Costs (*Federal Register* notice dated September 29, 2021, Docket Number DARS-2019-0039) on behalf of the Financial Executives International – Committee on Government Business (FEI-CGB). FEI is a professional association representing the interests of more than 10,000 chief financial officers, treasurers, controllers, tax directors and other senior financial executives from major companies throughout the United States. FEI represents both the providers and users of financial information. CGB formulates policy opinions on Government contracting issues for FEI in line with the views of the membership.

In recent years, the DoD has implemented various regulations governing the recovery of contractor Independent Research and Development (IR&D). For well over 100 years, firms in the Defense Industrial Base have independently developed advanced technologies for the warfighter that have protected the American public and its allies. Companies have always given careful consideration prior to the expenditure of limited IR&D resources. The FEI-CGB reviewed the proposed regulation prepared in response to Section 824 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328).

Since many of the members of the FEI-CGB are also members of the National Defense Industrial Association (NDIA) Procurement Committee, the FEI-CGB is aware of, and endorses, the technical content of NDIA's comments on DFARS Case Number 2017-D018.

FEI-CGB's comments concerning other aspects of the NDAA are presented in the following pages by element.

1. Section 824 amends 10 U.S.C. 2372 to require that regulations may not infringe on the independence of a contractor to choose which technologies to pursue in its independent research and development (IR&D) program if the chief executive officer (CEO) of the contractor determines that IR&D expenditures will advance the needs of DoD for future technology and advanced capability.

**Comments on Chief Executive Officer Determination of IR&D expenditures:**

The FEI-CGB appreciates that this proposed regulation clarifies that the Government will not infringe on a contractor's ability to choose which technologies to pursue. We recognize that the 2017 NDAA requires a contractor CEO to determine that the IR&D expended in the previous period will advance DoD needs. If a company is publicly traded, its CEO already has the responsibility to certify certain financial statutory reporting requirements submitted to the Security and Exchange Commission (SEC). Prior to these certifications, the CEO consults with the appropriate subject matter experts to obtain confidence in the information that will be certified. Many contractors have a Chief Technology Officer (CTO) or an equivalent expert, who may have superior knowledge of the various IR&D projects and their potential benefits to the DoD. The DFARS rule should allow for the CEO determination to be delegable to an appropriate company representative.

If properly interpreted by the Government regulators, this CEO (or delegate) determination should satisfy and expedite the review of contractor IR&D cost claims and allow audit hours to be redirected into other areas. However, there is industry concern that this determination will be subject to creative audit scrutiny of the claimed costs for a multitude of tangential reasons such as the level of supporting documentation required to demonstrate linkage to DoD's communicated areas of planned or expected needs for future technology and advanced capability. Viewed differently, implementation of this proposed DFARS rule presents an opportunity to increase both Government and contractor efficiency by leveraging another DFARS requirement, 252.242-7006 Accounting System Administration. Industry has long asked that there be added value to a determination of an approved Business System, such as the avoidance of the need to duplicate audit steps in other financial related audit assignments. We recommend that this proposed DFARS rule include language that requires the cognizant ACO to consider the status of the contractor's Accounting System in the determination of IR&D allowability. If the contractor has an approved Accounting System, and the CEO or delegate has determined that the IR&D projects will advance the needs of the DoD, then the ACO may determine that this satisfies the requirement for the submitted IR&D costs to be allowable.

2. Section 824 also amends 10 U.S.C. 2372 to remove the list that limits the allowability of IR&D costs to seven activities of potential interest to DoD. In lieu of the list of activities of potential interest to DoD, section 824 requires a CEO determination that IR&D expenses will advance the needs of DoD for future technology and advanced capability.

**Comments on the Removal of the Seven Activities of IR&D Allowability:**

The deletion of the list of activities of potential interest to DoD eliminates the need for the corresponding requirement in DFARS 242.771-3(a) for the ACO to compare the IR&D projects uploaded in DTIC to the list. It should be noted that some contractors may still use the listed activities

as part of their established internal IR&D evaluation procedures. Consequently, these activities may still be useful to support a contractor's position, and related CEO or delegate determination, that the IR&D is in the interest of DoD future technology and advanced capabilities.

3. Section 824 also decouples IR&D and bid and proposal (B&P) costs by moving the language pertaining to B&P costs out of 10 U.S.C. 2372 and placing it in the new 10 U.S.C. 2372a. This change ensures that regulations pertaining to B&P costs are separated from regulations pertaining to IR&D costs.

**Comments on Decoupling IR&D and Bid and Proposal (B&P) costs:**

The current threshold for the calculation of a major contractor in DTIC includes both IR&D and B&P costs. IR&D and B&P are distinctly different types of costs incurred for completely different purposes. If B&P costs are going to be regulatorily decoupled from IR&D costs, then the calculation of a "major contractor" within the DFARS should be changed to only include IR&D costs. This will avoid an unnecessary reporting burden on small businesses, as well as contractors with a high volume of B&P activity but a small investment in IR&D.

4. Section 824 also amends 10 U.S.C. 2313a by adding a requirement for the Defense Contract Audit Agency to submit an annual report to Congress of all incurred IR&D and B&P costs of contractors in the prior Government fiscal year.

**Comments on the Requirement for All Contractors to Provide an Incurred Cost Submission of IR&D and B&P Costs to DCAA:**

FEI-CGB is concerned that the DCAA reporting requirement contained in the regulation causes an additional reporting requirement for contractors. Specifically, the proposed clause at DFARS 252.242-70XX would require all noncommercial contracts exceeding the simplified threshold to include the requirement to provide a report on all IR&D and B&P costs incurred by the contractor during performance of any DoD contract. For contractors that are required to provide a Final Indirect Cost Rate Proposal in accordance with FAR 52.216-7, Allowable Cost and Payment, the requested information is already provided to DCAA. For contractors who are not required to submit a Final Indirect Cost Rate Proposal (generally because they do not have flexibly priced contracts with the federal government), this requirement generates a new reporting burden without a clear explanation of what benefit will be gained, aside from assisting DCAA with its reporting obligations.

FEI-CGB believes that if executed judiciously, Section 824 of the 2017 NDAA can be implemented in a way that provides the government with meaningful information on contractor IR&D without increasing the burden on both the contractor and government acquisition communities. Specifically, by relying on existing audits and determinations of contractor Accounting Systems, elements of those audits can be leveraged for an ACO to determine a contractor's IR&D costs are allowable.

If you wish to engage with the FEI-CGB on this matter, we would be amenable to meeting with you at your convenience. Please contact Ms. Marisa Peacock at phone number (973) 765-1007 or email at [mpeacock@financialexecutives.org](mailto:mpeacock@financialexecutives.org) for arrangements.

Thank you for your consideration in this matter.

Respectfully,

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Mr. Mark A. Smith  
Chairman, Financial Executives International – Committee on Government Business

A handwritten signature in blue ink, appearing to read "Andrej Suskavcevic". The signature is cursive and includes a long horizontal stroke at the end.

Andrej Suskavcevic  
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