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31.205-37 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract *products* or processes are allowable unless-

- (1) The Government has a license or the right to a free use of the patent;
- (2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;
- (3) The patent is considered to be unenforceable; or
- (4) The patent is expired.

(b) Care *should* be exercised in determining reasonableness when the royalties *may* have been arrived at as a result of less-than-arm's-length bargaining; e.g., royalties-

- (1) Paid to persons, including corporations, affiliated with the contractor;
- (2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or
- (3) Paid under an agreement entered into after the contract award.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed *should* not exceed the cost which would have been allowed had the contractor retained title.

(d) See [31.109](#) regarding advance agreements.

Parent topic: [31.205 Selected costs.](#)