

## Federal Acquisition Regulation

## 42.801

controls required for satisfactory participation in the Department of Defense sponsored self-governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and

(2) The unallowable costs subject to the penalty were inadvertently incorporated into the proposal; *i.e.*, their inclusion resulted from an unintentional error, notwithstanding the exercise of due care.

[60 FR 42659, Aug. 16, 1995]

### 42.709-6 Contract clause.

Use the clause at 52.242-3, Penalties for Unallowable Costs, in all solicitations and contracts over \$700,000 except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at 52.216-7, 52.216-16, or 52.216-17, or a similar clause from an executive agency's supplement to the FAR.

[60 FR 42659, Aug. 16, 1995, as amended at 69 FR 76358, Dec. 20, 2004; 71 FR 57368, Sept. 28, 2006; 72 FR 27385, May 15, 2007; 75 FR 53134, Aug. 30, 2010]

## Subpart 42.8—Disallowance of Costs

### 42.800 Scope of subpart.

This subpart prescribes policies and procedures for (a) issuing notices of intent to disallow costs and (b) disallowing costs already incurred during the course of performance.

### 42.801 Notice of intent to disallow costs.

(a) At any time during the performance of a contract of a type referred to in 42.802, the cognizant contracting officer responsible for administering the contract may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence. However, before issuing the notice, the contracting officer responsible for administering the contract shall make every reasonable effort to

reach a satisfactory settlement through discussions with the contractor.

(b) A notice of intent to disallow such costs usually results from monitoring contractor costs. The purpose of the notice is to notify the contractor as early as practicable during contract performance that the cost is considered unallowable under the contract terms and to provide for timely resolution of any resulting disagreement. In the event of disagreement, the contractor may submit to the contracting officer a written response. Any such response shall be answered by withdrawal of the notice or by making a written decision within 60 days.

(c) As a minimum, the notice shall—

(1) Refer to the contract's Notice of Intent to Disallow Costs clause;

(2) State the contractor's name and list the numbers of the affected contracts;

(3) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;

(4) Describe the potential impact on billing rates and forward pricing rate agreements;

(5) State the notice's effective date and the date by which written response must be received;

(6) List the recipients of copies of the notice; and

(7) Request the contractor to acknowledge receipt of the notice.

(d) The contracting officer issuing the notice shall furnish copies to all contracting officers cognizant of any segment of the contractor's organization.

(e) If the notice involves elements of indirect cost, it shall not be issued without coordination with the contracting officer or auditor having authority for final indirect cost settlement (see 42.705).

(f) In the event the contractor submits a response that disagrees with the notice (see paragraph (b) above), the contracting officer who issued the notice shall either withdraw the notice or issue the written decision, except when elements of indirect cost are involved, in which case the contracting officer