42.709-6 Waiver of the penalty.

The cognizant *contracting officer shall* waive the penalties at 42.709-2(a) when—

(a) The contractor withdraws the proposal before the Government formally initiates an audit of the proposal and the contractor submits a revised proposal (an audit will be deemed to be formally initiated when the Government provides the contractor with written notice, or holds an entrance conference, indicating that audit work on a specific final *indirect cost* proposal has begun);

(b) The amount of the *unallowable costs* under the proposal which are subject to the penalty is $10,000 or less (*i.e.,* if the amount of expressly or previously determined *unallowable costs* which would be allocated to the contracts specified in 42.709-1(b) is $10,000 or less); or

(c) The contractor demonstrates, to the cognizant *contracting officer*'s satisfaction, that-

(1) It has established policies and personnel training and an internal control and review system that provide assurance that *unallowable costs* subject to penalties are precluded from being included in the contractor's *final indirect cost rate* proposals (*e.g.,* the types of 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.

Parent topic: 42.709 Penalties for Unallowable Costs.