52.242-3 Penalties for Unallowable Costs.

As prescribed in 42.709-7, use the following clause:

Penalties for *Unallowable Costs* (Dec 2022)

(a) *Definition.*

Proposal, as used in this clause, means either—

(1) A *final indirect cost rate proposal* submitted by the Contractor after the expiration of its fiscal year which-

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable *indirect costs* in a *proposal may* be subject to penalties. The penalties are prescribed in 10 U.S.C. 3748 or 41 U.S.C. chapter 43, as applicable, which is implemented in Section 42.709 of the Federal *Acquisition* Regulation (FAR).

(c) The Contractor *shall* not include in any *proposal* any cost that is unallowable, as defined in subpart 2.1 of the FAR, or an *executive agency* supplement to the FAR.

(d) If the *Contracting Officer* determines that a cost submitted by the Contractor in its *proposal* is expressly unallowable under a cost principle in the FAR, or an *executive agency* supplement to the FAR, that defines the allowability of specific selected costs, the Contractor *shall* be assessed a penalty equal to–

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed-

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub.L.92-41 (85 Stat.97).

(e) If the *Contracting Officer* determines that a cost submitted by the Contractor in its *proposal* includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of 41 U.S.C. chapter 71, Contract Disputes.

(g) Pursuant to the criteria in FAR 42.709-6, the *Contracting Officer may* waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any *unallowable cost* which has been paid by the Government to the Contractor.

(End of clause)

Parent topic: 52.242 [Reserved]