

Unallowable Costs

FAR Cost Principles

To be allowable, a cost must:

- Allocable
 - The cost is assignable or chargeable to one or more cost objectives on the basis of benefit received
- Reasonable
 - Based on what a prudent person would incur in the ordinary course of business
 - Consider economy and efficiency
 - Burden of proof is always on the contractor

To be allowable, a cost must also:

- If applicable, comply with CAS
- Comply with terms of the contract
- Comply with GAAP
- Comply with law
- Comply with the FAR Cost Principles
 - FAR 31.205

Commercial Cost vs Government Cost Concept

- Commercial world cost is a normal business cost
- Government contracting some costs may be unallowable
- Unallowable costs must be segregated
- Unallowable costs cannot be proposed, claimed or billed to the government

- Government does not restrict how you choose to spend your money
- Government will not permit you to bill UA expenses
- Government will assess a penalty if you claim an “Expressly Unallowable Cost”

52.242-3 -- Penalties for Expressly Unallowable Cost

- Level 1 penalty – assessed for inclusion of expressly unallowable cost in a final indirect cost proposal (ICE)
- Schedule N (ICE) certifies that no UA costs are included (per FAR 52.242-4)
- Penalty equal to (1) the amount of the disallowed cost allocated to this contract; plus (2) Simple interest,
- Level 2 penalty assessed if previously disallowed cost is included again

- Some costs are always unallowable
 - Interest, bad debts, lobbying, entertainment
- Some costs are allowable up to a limit
 - Travel, compensation
- Some costs are allowable by the circumstance
 - Legal costs, sales commissions, advertising

Unallowable Costs

FAR 31.201-6

- Expressly Unallowable
- Mutually agreed to be unallowable
- Directly associated costs (when UA cost is incurred, its directly associated costs are also UA)
- Shall be identified and excluded from any billing, claim, or proposal.

Expressly Unallowable Costs

FAR 31.001 -- Definitions

“Expressly unallowable cost” means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is *specifically named and stated to be unallowable*.

Expressly Unallowable Costs

- Bad debts - 31.205-3
 - Alcoholic beverages – 31.205-51
 - Donations and contributions – 31.205-8*
 - Entertainment – 31.205-14
 - Lobbying – 31.205-22
 - Interest paid – 31.205-20
 - Losses on other contracts - 31.205-25
 - Goodwill – 31.205-49
-and more

Expressly Unallowable Costs

- Bad debts - 31.205-3
 - *Bad debts.....due from customers...., and any directly associated costs such as collection costs... are unallowable.*
- Alcoholic beverages – 31.205-51
 - *Costs of alcoholic beverages are unallowable.*
- Donations and contributions – 31.205-8*
 - *Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in 31.205-1(e)(3).*
- Losses on other contracts - 31.205-23
 - *An excess of costs over income under any other contract.... is unallowable.*

Unallowable Costs

- FAR Cost Principles specify certain costs as unallowable, allowable, allowable in certain circumstances.
- Many costs are in a “gray area” and require consideration of the particular circumstance.

Unallowable Costs

- Unallowable cost cannot be claimed whether it is a direct contract expense, or
- Indirectly, through an allocation of an indirect cost pool

Travel 31.205-46

- 205-46(a)(7) states that costs are allowable only if the contractor maintains specific documentation to support claimed travel costs (similar to IRS)
 - date and place (city, town, or other similar designation) of the expenses,
 - purpose of the trip; and
 - name of person on trip and that person's title or relationship to the contractor.

Travel 31.205-46

- 205-46(a) costs for lodging, meals, and incidental expenses may be based on (i) per diem, (ii) actual expenses, or (iii) a combination of a fixed amount and actual expenses.
- allowable costs are limited on a daily basis to the "maximum per diem" rates in effect at the time of travel set forth in the Government travel regulations*
- FTR, JTR, Department of State Travel Regs

- Maximum per diem rates are a *combination* of the lodging plus meals and incidental expenses
- Special or unusual situations allow for up to 300% of allowable per diem for domestic travel with contracting officer written approval
- Document your travel reimbursement in the P&P

- If a contractor's policy is to reimburse its employees a *fixed amount (per diem)* for subsistence *within the prescribed maximum* daily per diem rates, there is a presumption that the costs are reasonable and allowable and *detailed receipts or other documentation are not required* to support claims by employees.

- If a contractor's policy is to reimburse its employees *actual expenses* incurred, all *unallowable costs* (such as, alcoholic beverages and entertainment) *must be separately identified and excluded* from billings, claims, and proposals to the Government in accordance with FAR 31.201-6 and CAS 405.

- The maximum Federal per diem rates reflect allowance for lodging, meals, and incidentals for a 24-hour period
- Contractors must provide for a reasonable reduction from the maximum rates when lodging, meals, or incidentals are not required (partial day)
- Partial day equates to departure and arrival day
- Using 75% per diem is usually acceptable

- Allowable airfare costs are limited to the lowest customary standard, coach, or equivalent airfare offered during normal business hours, except for special circumstances set forth in FAR 31.205-46(b).

- Excess cost is allowable when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements.

- However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.