UNIT 68 UNALLOWABLE COSTS

Formerly Unit 66

UNIT CERTIFICATION

Statement of Completion

_____ has satisfactorily completed on-the-job training in the duty or duties of this Unit under the conditions described below and in accordance with the overall standard(s) for this Unit.

Duty	Disapprove unallowable costs.
Conditions	Given invoices, findings and recommendations from auditors, and the related contracts.
Overall Standard(s)	Payments are not made for unallowable costs. Contractors are given proper notice of disallowance.

Evaluator

_____
Name

_____
Title

_____
Date

UNIT 68 UNALLOWABLE COSTS

DOCUMENTATION OF OJT ASSIGNMENT(S)
Description of Assignment:
Evaluation:
Completion Date:

UNIT 68 UNALLOWABLE COSTS

Policies

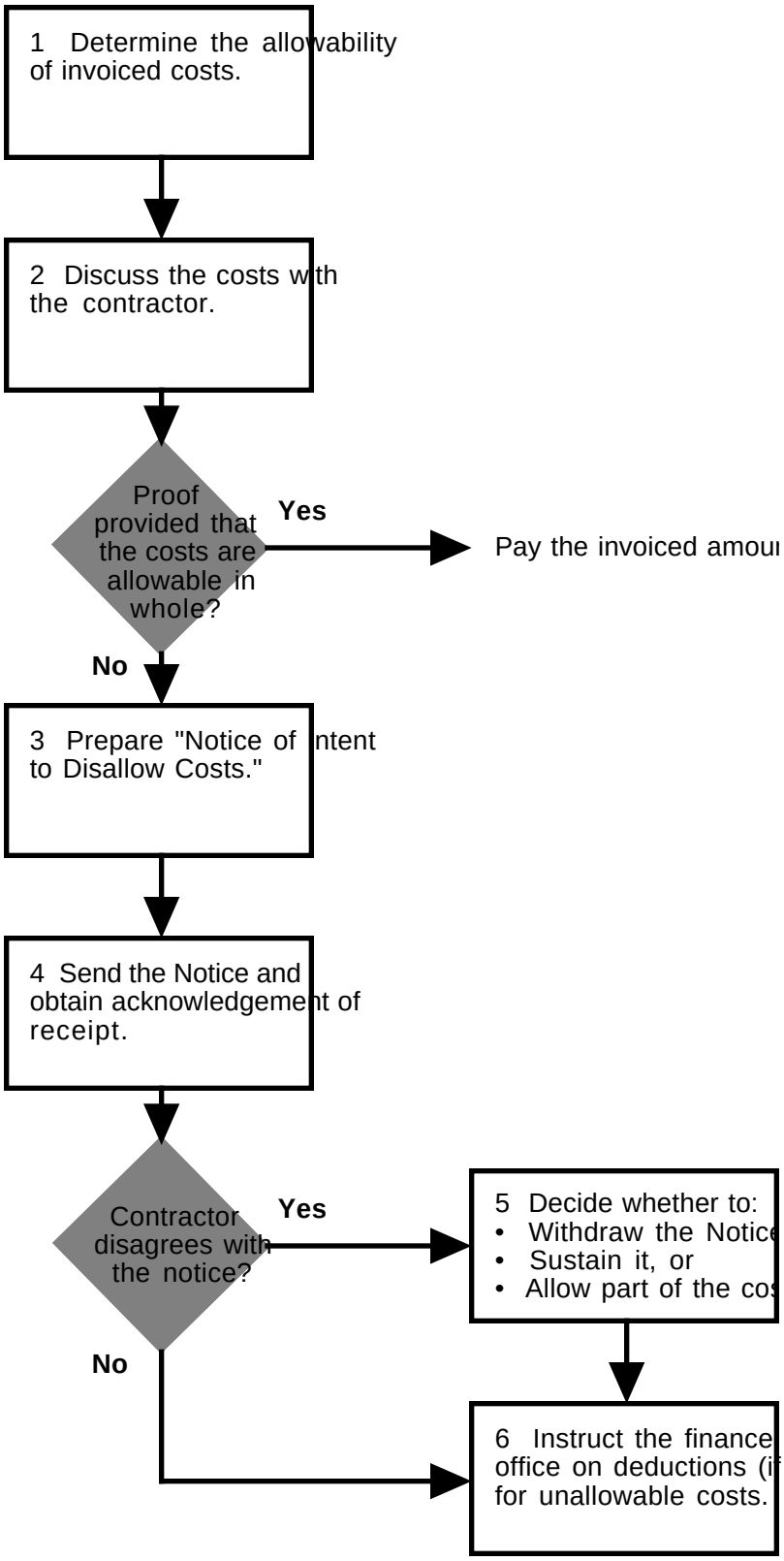
FAR	*Agency Suppl.*	*Subject*
31		Contract cost principles and procedures.
42.8		Disallowance of costs.
52.216-7		Allowable cost and payment.
52.232-16		Disallowance of costs in progress payment requests.
52.242-1		Notice of intent to disallow costs.

Other KSA's

1. Accounting.

Other Policies and References (Annotate As Necessary):

UNALLOWABLE COSTS



UNALLOWABLE COSTS

1. Determine allowability of reported costs. • Obtain review by auditors (per Unit 39). • Prepare a position and supporting data on allowability for discussions with the contractor (per Unit 40). (In agencies where auditors are responsible for reviewing vouchers, the auditor may perform this step unilaterally with respect to vouchered costs.)	1. Correctly recognize costs on invoices that are probably unallowable.

Entertainment, Gift And Recreation Costs For Contractor Employees

$ The costs of recreation are expressly unallowable with the exception of costs of company sponsored employee sports teams and employee organizations designed to improve company loyalty, team work, or physical fitness. The final rule retains the allowability of "wellness/ fitness centers" found in the interim rule. [§31.205-13, FAC 90-31, Case 94-750]

$ The costs of gifts are expressly unallowable (31.205-13(b)). However, this does not apply to costs which meet the definition of, and are properly accounted for as, compensation or recognition awards under §31.205-6. [§31.205-13, FAC 90-31, Case 94-750]

$ FAR 31.205-14, "Entertainment Costs", incorporates FASA wording relating to the unallowability of entertainment costs under any other cost principle. This revision specifically disallows entertainment costs which some may have previously considered allowable. [§31.205-14, FAC 90-31, Case 94-750]

Lobbying, Foreign National Severance Costs, And Conventions

$ The costs of sponsoring conventions are unallowable when "the principal purpose of the event is other than dissemination of technical information or stimulation of production." [§31.205-1 and 205-43, FAC 90-31, Case 94-754, CSW Unit 66, Task 1]

$ The FAR imposes additional restrictions on the allowability of severance costs for foreign nationals employed outside the United States. Under certain conditions, for instance, all severance costs are unallowable if the termination of employment of the foreign national is the result of the closing of a United States facility in that country at the request of the government of that country (or curtailment of activities at the facility under the same circumstances).

However, FAR §37.113 allows waivers of the restrictions. [§31.205-6, 37.113, 52.237-8, and 52.237-9; FAC 90-31, Case 94-754]

UNALLOWABLE COSTS

$ The costs of lobbying local Governments are unallowable, in the same respect that such costs are unallowable at the State and Federal levels. [§31.205-22, FAC 90-31, Case 94-754]

Statutory Unallowables

$ Sections 31.603 and 31.703 have been expanded to list 15 types of costs that are unallowable in statute. [§31.603 and 31.703, FAC 90-31, Case 94-754]

2. Attempt to negotiate a satisfactory settlement through discussions with the contractor and coordinate with auditor (per Units 44 and 45). (In agencies where auditors are responsible for reviewing vouchers, the auditor may perform this step unilaterally.)	2. Reach no agreement that would result in paying any unallowable cost. Obtain any additional data from the contractor that may bear on the decision of allowability.
3. Prepare notification to the contractor. • If anticipatory (prior to receiving invoices or vouchers for incurred costs), prepare the "Notice of Intent to Disallow Costs." • If after receipt of a voucher, prepare a notice to suspend and/or disallow part or all of the incurred, invoiced costs. In some agencies, this step may be done independently by an auditor.	3. Correctly prepare "Notices of Intent to Disallow Costs" per FAR 42.801. Include: • A reference to the FAR clause at 52.242-1. • The contractor's name and the numbers of the affected contracts. • A description of the costs to be disallowed, including estimated dollar value by item and applicable time periods and reasons for the intended disallowance. • A description of potential impact on billing rates and forward pricing rate agreements. • Effective date of the notice and the date by which a written response must be received. • A list of recipients of copies of the notice. • A request that the contractor acknowledge receipt of the notice.
4. Send notice to the contractor and obtain acknowledgment of receipt of notice.	4. Also send copies to: • All contracting officers cognizant of any segment of the contractor's organization. • The finance office, with instructions to pay only allowable items and amounts.

5. Respond to the contractor's rebuttal (if any) of the decision. • If the contractor disagrees in writing within 60 days to an anticipatory "Notice of Intent to Disallow Costs", issue a written decision to withdraw the notice, sustain the original decision, or allow part of the costs. • If the contractor disagrees with the notice to suspend or disallow payment of incurred, invoiced costs — handle per the Unit on Claims.	5. Make the decision after consulting the auditor. Keep the finance office abreast of any changes in the status of the disallowed or suspended costs.
6. Determine the penality (if any) for submitting unallowable costs.	

Penalties for Submission of Unallowable Costs

$ Sections 2101 and 2151 of FASA:

- Extend DoD's authority to assess penalties to all executive agencies.
- Change the contract value threshold for assessment of penalties on unallowable costs from $100,000 to $500,000.

With the exception of the threshold value, the penalty provisions in the new law are the same as those implemented in the current Defense Federal Acquisition Regulation Supplement. [§42.709 and 52.242-3, FAC 90-31, Case 94-751, CSW Unit 66, New Task]

$ Unless a waiver is granted, Contracting officers shall assess penalties against contractors for including expressly unallowable indirect costs in—

- Final indirect cost rate proposals; or
- The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

However, this policy only applies to contracts in excess of $500,000 — and does NOT apply to fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items. [§42.709 and 52.242-3, FAC 90-31, Case 94-751, CSW Unit 66, New Task]

$ The penalty is equal to the amount of the disallowed costs plus interest on the paid portion, if any, of the disallowance. However, if the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is double that amount. Any of the following may constitute evidence of prior determinations of unallowability:

- A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency.
- A contracting officer final decision which was not appealed.
- A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance.
- A determination or agreement of unallowability under 31.201-6. [§42.709 and 52.242-3, FAC 90-31, Case 94-751, CSW Unit 66, New Task]

$ Determinations of penalty amounts under paragraphs (d) and (e) of the clause at 52.242-3 are final decisions within the meaning of the Contract Disputes Act of 1978. The FAR contains precise instructions for determining the amount of the interest, issuing assessments, and waiving the penalty. [§42.709 and 52.242-3, FAC 90-31, Case 94-751, CSW Unit 66, New Task]