## 42.703-2 Certificate of indirect costs.

(a) *General.* In accordance with <u>10 U.S.C. 3747</u> and <u>41 U.S.C.4307</u>, a proposal *shall* not be accepted and no agreement *shall* be made to establish *final indirect cost rates* unless the costs have been certified by the contractor.

(b) Waiver of certification.

(1) The agency head, or designee, may waive the certification requirement when-

(i) It is determined to be in the interest of the United States; and

(ii) The reasons for the determination are put *in writing* and made available to the public.

(2) A waiver may be appropriate for a contract with-

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A State or local government subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendices V and VII;

(iii) An educational institution (defined as an institution of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and <u>20 U.S.C. 1001</u>) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III; and

(iv) A nonprofit organization (as defined in the OMB Uniform Guidance at 2 CFR part 200) subject to the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV.

(c) Failure to certify.

(1) If the contractor has not certified its proposal for *final indirect cost rates* and a waiver is not appropriate, the *contracting officer may* unilaterally establish the rates.

(2) Rates established unilaterally should be-

(i) Based on audited historical data or other available data as long as *unallowable costs* are excluded; and

(ii) Set low enough to ensure that *unallowable costs* will not be reimbursed.

(d) *False certification*. The *contracting officer should* consult with legal counsel to determine appropriate action when a contractor's certificate of final *indirect costs* is thought to be false.

(e) *Penalties for unallowable costs*. <u>10 U.S.C. 3743</u> and <u>41 U.S.C.4303</u> prescribe penalties for submission of *unallowable costs* in *final indirect cost rate* proposals (see <u>42.709</u> for penalties and *contracting officer* responsibilities).

(f) Contract clause.

(1) Except as provided in paragraph (f)(2) of this subsection, the clause at <u>52.242-4</u>, Certification of Final *Indirect Costs, shall* be incorporated into all *solicitations* and contracts which provide for establishment of *final indirect cost rates*.

(2) The Department of Energy *may* provide an *alternate* clause in its agency supplement for its Management and Operating contracts.

Parent topic: <u>42.703 General.</u>