

42.703-2 Certificate of indirect costs.

(a) *General.* In accordance with [10 U.S.C.2324\(h\)](#) and [41 U.S.C.4307](#), 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 [20 U.S.C. 1001](#)) 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.* [10 U.S.C.2324\(a\)](#) through (d) and [41 U.S.C.4303](#) prescribe penalties for submission of *unallowable costs* in *final indirect cost rate* proposals (see [42.709](#) for penalties and *contracting officer* responsibilities).

(f) *Contract clause.*

(1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242-4, 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: 42.703 General.