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. $\underline{10~U.S.C.~3743}$ and $\underline{41~U.S.C.4303}$ prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see $\underline{42.709}$ 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.