

42.703-2 Certificate of indirect costs.

(a) *General.* In accordance with [10 U.S.C. 3747](#) 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. 3743](#) 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](#).