

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: August 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

42.703 General.

2. Section 42.703 is redesignated as 42.703–1 and a new section 42.703 is added as a heading to read as set forth above.

3. Section 42.703–2 is added to read as follows:

42.703–2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish billing rates or 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 OMB Circular A–87;

(iii) An educational institution subject to OMB Circular A–21; and

(iv) A nonprofit organization subject to OMB Circular A–122.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for billing rates or indirect costs rates and a waiver is not appropriate, the contracting officer shall unilaterally establish the rates if they are necessary for continuation of the contract.

(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 potentially unallowable costs will not be reimbursed.

(d) *False certification.* The contracting officer should consult with legal counsel to determine appropriate action when a contractor certificate of 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. 256 (a) through (d) 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 Indirect Costs, shall be incorporated into all solicitations and contracts which provide for—

(i) Interim reimbursement of indirect costs;

(ii) Establishment of final indirect costs rates; or

(iii) Contract financing that includes interim payment of indirect costs, e.g., progress payments based on cost (Subpart 32.5) or progress payments based on percentage or stage of completion.

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

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.242–4 is added to read as follows:

52.242–4 Certification of Indirect Costs.

As prescribed in 42.703–2(f), insert the following clause:

Certification of Indirect Costs (Oct 1995)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.

(c) The certificate of indirect costs shall read as follows:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

1. I have reviewed this indirect cost proposal;

2. All costs included in this proposal (*identify proposal and date*) to establish

billing or final indirect costs rates for (*identify period covered by rate*) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the FAR or its supplements, including, but not limited to: advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Government contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

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48 CFR Parts 1 and 6

[Federal Acquisition Circular 90–31; Item VII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; technical amendments.

SUMMARY: In Federal Acquisition Circular (FAC) 84–60 (55 FR 36782, September 6, 1990), section 52.237–9 was removed and reserved. This entry was inadvertently left in § 1.160. This document corrects § 1.106 by removing “52.237–9” from the List of approved OMB control numbers.

In FAC 84–56 (55 FR 3881, February 5, 1990), section 6.304(a)(1) was incorrectly revised. This document correctly revises section 6.304(a)(1) by removing subparagraphs (a)(1)(i) through (a)(1)(iv).

DATES: Effective Date: August 16, 1995.

FOR FURTHER INFORMATION CONTACT:

The FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 90–31, Technical Corrections.

**List of Subjects in 48 CFR Parts 1 and
6**

Government procurement.

Dated: August 7, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, 48 CFR Parts 1 and 6 are amended as set forth in the technical amendments appearing below:

1. The authority citation for 48 CFR Parts 1 and 6 continued to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

**PART 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM**

1.106 [Amended]

2. Section 1.106 is amended under the “FAR Segment” and “OMB Control Number” headings by removing “52.237-9” and “9000-0103”, respectively.

**PART 6—COMPETITION
REQUIREMENTS**

6.304 [Amended]

3. Section 6.304 is amended by removing paragraphs (a)(1)(i) through (a)(1)(iv).

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