Subpart 25.10 - Additional Foreign Acquisition Regulations

Parent topic: Part 25 - Foreign Acquisition

25.1001 Waiver of right to examination of records.

(a) *Policy*. The clause at 52.215-2, Audit and Records-Negotiation, prescribed at 15.209(b), and paragraph (d) of the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-*Commercial Products* and *Commercial Services*, prescribed at 12.301(b)(4), implement 10 U.S.C. 3841 and 41 U.S.C. 4706. The basic clauses authorize examination of records by the Comptroller General.

(1) Insert the appropriate basic clause, whenever possible, in negotiated contracts with *foreign contractors*.

(2) The *contracting officer may* use 52.215-2 with its *Alternate* III or 52.212-5 with its *Alternate* I after-

(i) Exhausting all reasonable efforts to include the basic clause;

(ii) Considering factors such as *alternate* sources of supply, additional cost, and time of delivery; and

(iii) The *head of the agency* has executed a determination and findings in accordance with paragraph (b) of this section, with the concurrence of the Comptroller General. However, concurrence of the Comptroller General is not required if the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination.

(b) *Determination and findings*. The determination and findings *must*-

(1) Identify the contract and its purpose, and identify if the contract is with a *foreign contractor* or with a foreign government or an agency of a foreign government;

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor’s refusal to include the basic clause;

(4) Describe the price and availability of the *supplies* or services from the *United States* and other sources; and

(5) Determine that it will best serve the interest of the *United States* to use the appropriate *alternate* clause in paragraph (a)(2) of this section.

25.1002 Use of foreign currency.

(a) Unless an international agreement or the *WTO GPA* (see 25.408(a)(4)) requires a specific currency, *contracting officers must* determine whether *solicitations* for contracts to be entered into and performed outside the *United States* will require submission of *offers* in U.S. currency or a

specified foreign currency. In unusual circumstances, the *contracting officer may* permit submission of *offers* in other than a specified currency.

(b) To ensure a fair evaluation of *offers*, *solicitations* generally *should* require all *offers* to be priced in the same currency. However, if the *solicitation* permits submission of *offers* in other than a specified currency, the *contracting officer must* convert the offered prices to U.S. currency for evaluation purposes. The *contracting officer must* use the current market exchange rate from a commonly used source in effect as follows:

(1) For *acquisitions* conducted using sealed bidding procedures, on the date of bid opening.

(2) For *acquisitions* conducted using negotiation procedures-

(i) On the date specified for receipt of *offers*, if award is based on initial *offers*; otherwise

(ii) On the date specified for receipt of final proposal revisions.

(c) If a contract is priced in foreign currency, the agency *must* ensure that adequate funds are available to cover currency fluctuations to avoid a violation of the Anti-Deficiency Act (31 U.S.C. 1341, 1342, 1511-1519).

25.1003 Tax on certain foreign procurements.

See 29.204 for the imposition of the tax on certain foreign *procurements* pursuant to the James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111-347), 26 U.S.C. 5000 C, and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.