PART 25

FOREIGN ACQUISITION

☛ Notify unsuccessful offerors within three days after award. Consider notification by registered mail, with return receipt requested, or E-Mail with automatic return receipt, or fax if your fax software or hardware verifies receipt by the receiving fax station. (FAC 90-31, Case 94-701)

25.405 Procedures.

FAR as of FAC 90-25	*FAR as revised*
When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used: * * * * (e) Within 7 working days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries written notice in accordance with 14.408-1(a)(2) and 15.1001(c)(2).	When the Trade Agreements Act or North American Free Trade Agreement (NAFTA) applies, the following procedures shall be used: * * * * (e) Within **three** days after a contract award for an eligible product, agencies shall give unsuccessful offerors from designated or NAFTA countries **notice** in accordance with **14.409-1 and 15.1002**. **"Day," for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.**

☛ The Comptroller General's right of access to contractor records is established by the clauses at 52.214-26 and 52.215-2 — the clause at 52.215-1 is reserved. The clause at 52.215-2 also stresses that this right of access "may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law". (§4.702, 15.106-1, 25.901, 52.214-26, and 52.215-2, FAC 90-31, Case 94-740)

☛ A new Alternate III to the clause at FAR 52.215-2 waives the Comptroller General's right to examine the records of foreign contractors. Do not automatically waive that right. Rather, the FAR requires every reasonable effort to negotiate incorporation of the "basic" clause at FAR 52.215-2 with the Comptroller's right of access intact — and the FAR maintains essentially the same controls on waivers that formerly applied to decisions about omitting the clause at 52.215-1. (§25.901 and 52.215-2; FAC 90-31, Case 94-740).

25.000 Scope of part.

FAR as of FAC 90-25	*FAR as revised*
Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures for the application to foreign acquisitions of international agreements, customs and duties, ~~the clause at 52.215-1, Examination of Records by Comptroller General~~, and use of local currency for payment.	Except as provided in agency regulations, this part provides policies and procedures to implement the Buy American Act, the Balance of Payments Program, purchases under the Trade Agreements Act of 1979, and other laws and regulations that pertain to acquiring foreign supplies, services, and construction materials. This part also provides policies and procedures pertaining to international agreements, customs and duties, **the clause at 52.215-2, Audit and Records—Negotiation**, and use of local currency for payment**.**

25.901 Omission of audit clause

FAR as of FAC 90-25	*FAR as revised*
(a) *Definition*. "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.	(a) *Definition*. "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.
(b) *Policy*. As required by 10 U.S.C. 2313, 41 U.S.C. 254, and 15.106-1(b)(3), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the clause ~~at 52.215-1,~~ Examination of Records by Comptroller General. ~~Omission of the clause~~ should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the clause.	(b) *Policy*. As required by 10 U.S.C. 2313, 41 U.S.C. 254d, and 15.106-1(b), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the **basic** clause at **52.215-2, Audit and Records—Negotiation, which authorizes** examination of records by the Comptroller General. **Use of the clause with Alternate III should be** approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the **basic** clause.
(c) *Conditions for omission*. (1) The contracting officer may ~~omit the clause at 52.215-1~~, Examination of Records by Comptroller General, from contracts with foreign contractors— (i) If the agency head determines, with the concurrence of the Comptroller General ~~or a designee, the omission of the clause~~ will serve the public interest; or (ii) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from	(c) *Conditions for use of Alternate III*. The contracting officer may **use the clause at 52.215-2, Audit and Records—Negotiation, with its Alternate III** in contracts with foreign contractors— (1) If the agency head, or designee, determines, with the concurrence of the Comptroller General, **that waiver of the right to examination of records by the Comptroller General** will serve the public interest; or (2) If the contractor is a foreign government or

making its ~~books, documents, papers, or~~ records available for examination, and the agency head determines, after taking into account the price and availability of the property or services from domestic sources, that omission of the clause best serves the public interest.

(2) ~~When a determination under subparagraph (c)(1)(ii) of this section is the basis for omission of the clause at 52.215-1, Examination of Records by Comptroller General, the agency head shall forward a written report to the Congress explaining the reasons for the determination; except that this requirement is not applicable to the Department of Defense~~.

agency thereof or is precluded by the laws of the country involved from making its **records, as defined at 4.703(a)**, available for examination, and the agency head, or designee, determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.

(d) *Determination and findings*. The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(2) Describe the efforts to include the clause;

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

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

(5) Determine that it will serve the interest of the United States to ~~omit the clause~~.

(d) *Determination and findings*. The determination and findings shall—

(1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;

(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 property or services from the United States and other sources; and

(5) Determine that it will serve the interest of the United States to **use the clause with its Alternate III**.