



Homeland
Security

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Sarah Green SARAH T GREEN
Deputy Chief Procurement Officer

SUBJECT: FAR Class Deviation (Number 25-13) for FAR Part 29 in Support of Executive Order on Restoring Common Sense to Federal Procurement

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Date: 2025.07.31 14:08:24 -04'00'

1. **Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) part 29 for purposes of implementing the FAR Council's model deviation to FAR Part 29.
2. **Background.** [Executive Order \(E.O.\) 14275 Restoring Common Sense to Federal Procurement](#), signed April 15, 2025, mandates a comprehensive review and simplification of the FAR.

The FAR is being updated to:

- Eliminate non-statutory language
- Remove redundant or obsolete language
- Enhance clarity through plain language
- Align with the new FAR framework
- Preserve essential governmentwide acquisition standards

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative. This initiative will make the FAR more concise, understandable, and focused on core procurement requirements.

3. **Summary of Changes.** FAR part 29, Taxes, has been updated to be more direct, active, and accessible. The main objective was to rewrite the complex tax requirements in plain language, leading to an approximate 20% reduction in word count. Statutory requirements retained in the RFO FAR part 29 model deviation include, but are not limited to, the following:
 - 26 U.S.C. § 4041, Imposition of tax
 - 26 U.S.C. § 4053, Exemptions
 - 26 U.S.C. § 4064, Gas guzzler tax
 - 26 U.S.C. § 4221, Certain tax-free sales
 - 26 U.S.C. § 4293 and § 4483, Tax exemptions
 - 26 U.S.C. § 5000C, Imposition of tax on certain foreign procurement

- 10 U.S.C. § 402, Transportation of humanitarian relief supplies to foreign countries
- 10 U.S.C. § 404, Foreign disaster assistance
- 10 U.S.C. § 2557, Domestic emergency assistance
- 10 U.S.C. § 2561, Humanitarian assistance

Change	Description
Retained	• Revisions made to the “Scope of Part” at 29.000 are minor plain language adjustments. The substantive scope of the part remains. • Subpart 29.1 - Guidance for resolving tax problems is retained at 29.101; however, contracting officers are now required to request assistance from assigned legal counsel when tax issues arise. It was previously encouraged, but not required, to do so. • Subpart 29.2 - Federal Excise Taxes is retained; however contracting officers are now required to request offers on a tax-exclusive basis when the law exempts the Government from federal excise taxes, unless inappropriate for the circumstances. It was previously encouraged, but not required, to do so. • Subpart 29.3 - The language governing application of State and Local Taxes has been logically reorganized and renumbered. This restructuring improves the flow of information, making the subpart more intuitive for users. For instance, the specific rules for the North Carolina Sales and Use Tax Act, previously located in a sub-paragraph, have been elevated to a standalone section, increasing their visibility and usability. • Subpart 29.4 - Most of the solicitation provisions, contract clauses, and prescriptions are retained, with plain language edits where appropriate, because they are tied to specific tax law. • Clauses and provisions retained with plain language adjustments include: ○ 52.229-1, State and Local Taxes. ○ 52.229-2, North Carolina State and Local Sales and Use Tax ○ 52.229-3, Federal, State, and Local Taxes. ○ 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments) ○ 52.229- ○ 52.229-6, Taxes-Foreign Fixed-Price Contracts. ○ 52.229-7, Taxes-Fixed-Price Contracts with Foreign Governments ○ 52.229-8, Taxes-Foreign Cost-Reimbursement Contracts. 52.229-9, Taxes-Cost-Reimbursement Contracts with Foreign Governments ○ 52.229-10, State of New Mexico Gross Receipts and Compensating Tax ○ 52.229-11, Tax on Certain Foreign Procurements Notice and Representation

	○ 52.229-12, Tax on Certain Foreign Procurements
Removed	• Definitions of North Atlantic Treaty Organization (NATO) Forces, and U.S. Forces in Afghanistan have been removed. • Information in Section 29.304, Matters requiring special consideration has been removed or relocated, as appropriate. • Subsection 29.402-4, prescribing tax requirements for foreign contracts in Afghanistan has been removed in its entirety, along with the following clauses prescribed in that section: ○ 52.229-13, Taxes Foreign Contracts in Afghanistan ○ 52.229-14, Taxes Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement)

4. **Instructions.** The Department of Homeland Security (DHS) acquisition workforce shall follow the RFO Part 29 deviation text instead of FAR Part 29 as codified at 48 CFR Chapter 29. The Council's RFO Part 29 model deviation text is available at: <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-29>. See Attachment 1 for changes to FAR Part 29 solicitation provisions and contract clauses.
5. **Applicability.** This class deviation applies to all DHS procurements.
6. **Authority.** This class deviation is issued under the authority of [E.O. 14275](#), [OMB M- 25-25](#), and 48 CFR 1.4, and RFO FAR 1.304.
7. **Effective Date.** This class deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.
8. **Points of Contact.** Questions regarding this class deviation may be directed to Acquisition Policy and Legislation Branch at Acquisition.Policy@hq.dhs.gov.

Attachments:

1. FAR Part 29 Solicitation Provisions and Contract Clauses Revisions

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 52.2—Text of Provisions and Clauses

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52.229-1 State and Local Taxes.

As prescribed in 29.401-1 , insert the following clause:

State and Local Taxes (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

North Carolina State and Local Sales and Use Tax (APR 1984)

(a) “Materials,” as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) of this section, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor’s warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor’s statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to

substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) of this clause shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) of this clause shall be in the following form:

I hereby certify that during the period _____ to _____ [insert dates], _____ [insert name of Contractor or subcontractor] paid North Carolina State and local sales and use taxes aggregating \$ _____ (State) and \$ _____ (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by _____ [insert name of Contractor or subcontractor] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

(End of clause)

Alternate I (APR 1984). If the requirement is for vessel repair to be performed in North Carolina, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) "Materials," as used in this clause, means materials, supplies, fixtures, and equipment that become a part of or are annexed to any vessel altered or repaired under this contract.

52.229-3 Federal, State, and Local Taxes.

As prescribed in 29.401-3, insert the following clause:

Federal, State, and Local Taxes (FEB 2013)

(a) As used in this clause-

After-imposed Federal tax means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

After-relieved Federal tax means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for

which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

All applicable Federal, State, and local taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

Contract date means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b)(1) The contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under [26 U.S.C. 5000C](#) may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in 29.401-3, insert the following clause:

Federal, State, and Local Taxes (State and Local Adjustments) (FEB 2013)

(a) As used in this clause-

After-imposed tax means any new or increased Federal, State, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

All applicable Federal, State, and local taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

Contract date means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

Excepted tax means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

Local taxes includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) (1) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under [26 U.S.C. 5000C](#) may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to Federal, State, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(h) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when-

(1) The Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and

(2) A reasonable basis exists to sustain the exemption.

(End of clause)

52.229-5 [Reserved]

52.229-6 Taxes-Foreign Fixed-Price Contracts.

As prescribed in 29.402-1(a), insert the following clause:

Taxes-Foreign Fixed-Price Contracts (FEB 2013)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) *Definitions.* As used in this clause-

Contract date means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

Tax and “taxes” include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

All applicable taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

After-imposed tax means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Excepted tax means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c)(1) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States, except as provided in subparagraph (c)(2) of this clause.

(2) Taxes imposed under [26 U.S.C. 5000C](#) may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(d)(1) Except as provided in subparagraph (d)(2) of this clause, the contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price

does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) of this clause.

(2) The contract price may not be increased to offset taxes imposed under [26 U.S.C. 5000C](#).

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) of this clause.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

52.229-7 Taxes-Fixed-Price Contracts with Foreign Governments.

As prescribed in 29.402-1(b), insert the following clause:

Taxes-Fixed-Price Contracts with Foreign Governments (FEB 2013)

(a) “Contract date,” as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b)(1) The contract price, including the prices in any subcontracts under this contract, does not include any tax or duty that the Government of the United States and the Government of _____ *[insert name of the foreign government]* have agreed shall not apply to expenditures made by the United States in _____ *[insert name of country]*, or any tax or duty not applicable to this contract or any subcontracts under this contract, pursuant to the laws of _____ *[insert name of country]*. If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(2) Taxes imposed under [26 U.S.C. 5000C](#) may not be included in the contract price.

(c) If, after the contract date, the Government of the United States and the Government of _____ *[insert name of the foreign government]* agree that any tax or duty included in the contract price shall not apply to expenditures by the United States in _____ *[insert name of country]*, the contract price shall be reduced accordingly.

(d) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(End of clause)

52.229-8 Taxes-Foreign Cost-Reimbursement Contracts.

As prescribed in 29.402-2(a), insert the following clause:

Taxes-Foreign Cost-Reimbursement Contracts (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ *[insert name of the foreign government]*, or from which the Contractor or any subcontractor under this contract is exempt under the laws of _____ *[insert name of country]*, shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of clause)

52.229-9 Taxes-Cost-Reimbursement Contracts with Foreign Governments.

As prescribed in 29.402-2(b), insert the following clause:

Taxes-Cost-Reimbursement Contracts with Foreign Governments (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ *[insert name of the foreign government]*, or from which any subcontractor under this contract is exempt under the laws of _____ *[insert name of country]*, shall not constitute an allowable cost under this contract.

(b) If any subcontractor obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid (not credited to the contract) to the Treasurer of the United States at the time the Federal income tax return is filed.

(End of clause)

52.229-10 State of New Mexico Gross Receipts and Compensating Tax.

As prescribed in 29.401-4(b), insert the following clause:

State of New Mexico Gross Receipts and Compensating Tax (APR 2003)

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3 C, to the:

State of New Mexico Taxation and Revenue Dept. Revenue Division PO Box 630 Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (* _____) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The (* _____) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (* _____), may participate in any matters or proceedings pertaining to this clause or the abovementioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (* _____) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

[*Insert appropriate agency name in blanks.]

(End of clause)

52.229-11 Tax on Certain Foreign Procurements—Notice and Representation.

As prescribed in 29.402-3(a), insert the following provision:

Tax on Certain Foreign Procurements—Notice and Representation (JUN 2020)

(a) *Definitions.* As used in this provision—

Foreign person means any person other than a United States person.

Specified Federal procurement payment means any payment made pursuant to a contract with a foreign contracting party that is for goods, manufactured or produced, or services provided in a foreign country that is not a party to an international procurement agreement with the United States. For purposes of the prior sentence, a foreign country does not include an outlying area.

United States person as defined in [26 U.S.C. 7701\(a\)\(30\)](#) means

(1) A citizen or resident of the United States;

(2) A domestic partnership;

- (3) A domestic corporation;
- (4) Any estate (other than a foreign estate, within the meaning of [26 U.S.C. 701\(a\)\(31\)](#)); and
- (5) Any trust if—
 - (i) A court within the United States is able to exercise primary supervision over the administration of the trust; and
 - (ii) One or more United States persons have the authority to control all substantial decisions of the trust.
- (b) Unless exempted, there is a 2 percent tax of the amount of a specified Federal procurement payment on any foreign person receiving such payment. See [26 U.S.C. 5000C](#) and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.
- (c) Exemptions from withholding under this provision are described at 26 CFR 1.5000C-1(d)(5) through (7). The Offeror would claim an exemption from the withholding by using the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, available via the internet at www.irs.gov/w14. Any exemption claimed and self-certified on the IRS Form W-14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the [26 U.S.C. 5000C](#) tax are adjudicated by the IRS as the [26 U.S.C. 5000C](#) tax is a tax matter, not a contract issue. The IRS Form W-14 is provided to the acquiring agency rather than to the IRS.
- (d) For purposes of withholding under [26 U.S.C. 5000C](#), the Offeror represents that
 - (1) It ☐ is ☐ is not a foreign person; and
 - (2) If the Offeror indicates "is" in paragraph (d)(1) of this provision, then the Offeror represents that—I am claiming on the IRS Form W-14 ☐ a full exemption, or ☐ partial or no exemption [Offeror shall select one] from the excise tax.
- (e) If the Offeror represents it is a foreign person in paragraph (d)(1) of this provision, then—
 - (1) The clause at FAR 52.229-12, Tax on Certain Foreign Procurements, will be included in any resulting contract; and
 - (2) The Offeror shall submit with its offer the IRS Form W-14. If the IRS Form W-14 is not submitted with the offer, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent of each payment.
- (f) If the Offeror selects "is" in paragraph (d)(1) and "partial or no exemption" in paragraph (d)(2) of this provision, the Offeror will be subject to withholding in accordance with the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, in any resulting contract.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of provision)

52.229-12 Tax on Certain Foreign Procurements.

As prescribed in 29.402-3(b), insert the following clause:

Tax on Certain Foreign Procurements —Notice and Representation (FEB 2021)

(a) *Definitions.* As used in this clause—

Foreign person means any person other than a United States person.

United States person, as defined in [26 U.S.C. 7701](#)(a)(30), means—

(1) A citizen or resident of the United States;

(2) A domestic partnership;

(3) A domestic corporation;

(4) Any estate (other than a foreign estate, within the meaning of [26 U.S.C. 7701](#)(a)(31));
and

(5) Any trust if-

(i) A court within the United States is able to exercise primary supervision over the administration of the trust; and

(ii) One or more United States persons have the authority to control all substantial decisions of the trust.

(b) This clause applies only to foreign persons. It implements [26 U.S.C. 5000C](#) and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.

(c) (1) If the Contractor is a foreign person and has only a partial or no exemption to the withholding, the Contractor shall include the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, with each voucher or invoice submitted under this contract throughout the period in which this status is applicable. The excise tax withholding is applied at the payment level, not at the contract level. The Contractor should revise each IRS Form W-14 submission to reflect the exemption (if any) that applies to that particular invoice, such as a different exemption applying.

In the absence of a completed IRS Form W-14 accompanying a payment request, the default withholding percentage is 2 percent for the section 5000C withholding for that payment request. Information about IRS Form W-14 and its separate instructions is available via the internet at www.irs.gov/w14.

(2) If the Contractor is a foreign person and has indicated in its offer in the provision 52.229-11, Tax on Certain Foreign Procurements—Notice and Representation, that it is fully exempt from the withholding, and certified the full exemption on the IRS Form W-14, and if that full exemption no longer applies due to a change in circumstances during the performance of the contract that causes the Contractor to become subject to the withholding for the 2 percent excise tax then the Contractor shall—

(i) Notify the Contracting Officer within 30 days of a change in circumstances that causes the Contractor to be subject to the excise tax withholding under [26 U.S.C. 5000C](#); and

(ii) Comply with paragraph (c)(1) of this clause.

(d) The Government will withhold a full 2 percent of each payment unless the Contractor claims an exemption. If the Contractor enters a ratio in Line 12 of the IRS Form W-14, the result of Line 11 divided by Line 10, the Government will withhold from each payment an amount equal to 2 percent multiplied by the contract ratio. If the Contractor marks box 9 of the IRS Form W-14 (rather than completes Lines 10 through 12), the Contractor must identify and enter the specific exempt and nonexempt amounts in Line 15 of the IRS Form W-14; the Government will then withhold 2 percent only from the nonexempt amount. See the IRS Form W-14 and its instructions.

(e) Exemptions from the withholding under this clause are described at 26 CFR 1.5000C-1(d)(5) through (7). Any exemption claimed and self-certified on the IRS Form W-14 is subject to audit by the IRS. Any disputes regarding the imposition and collection of the [26 U.S.C. 5000C](#) tax are adjudicated by the IRS as the [26 U.S.C. 5000C](#) tax is a tax matter, not a contract issue.

(f) Taxes imposed under [26 U.S.C. 5000C](#) may not be—

(1) Included in the contract price; nor

(2) Reimbursed.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of clause)

52.229-14 [Reserved (JULY 2025) (DEVIATION 25-13)]

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