

NOTICE RE:

FAR provision 52.229-11 and FAR clause 52.229-12 and IRS Form W-14

The sole purpose of this NOTICE is to make industry aware of the inclusion of Federal Acquisition Regulation (FAR) provision 52.229-11 and clause 52.229-12 in the solicitation AND the requirement to submit IRS Form W-14 with the proposal and/or request for payment. This provision and clause concern the imposition of a 2% Federal excise tax withholding on any resultant contract award or payment request. The notice is intended for general information/distribution and is intended only to make vendor(s) aware of the new provision and clause and the requirement to submit IRS Form W-

14. This notice is in no way intended to be interpreted as direction of any kind in complying with the provision and clause and does not substitute for vendor(s) seeking guidance from their own tax, legal, and accounting professionals for advice concerning the provision, clause and the execution/submission of IRS Form W-14.

*This NOTICE should not be considered a modification to any other Government contract.

**This NOTICE should not be used as an authoritative source for information concerning Title 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7 (see FAR 29.402-3, 31.205-41(b)(8)) which require acquiring agencies to collect this excise tax via withholding on applicable contract payments. Consult the regulations for specific details and for changes on a regular basis.

This NOTICE has been prepared for informational purposes only, and is not intended to provide, and should not be relied on for, tax, legal or accounting advice. You should consult your own tax, legal and accounting advisors before executing IRS Form W-14.

FAR Subpart 29.204 Federal excise tax on specific foreign contract payments states in pertinent part:

(a) Title 26 U.S.C. 5000C requires acquiring agencies to collect a Federal excise tax via withholding on applicable contract payments. If applicable, agencies will merely withhold the tax for the Internal Revenue Service (IRS). **Contracting officers shall refer all questions related to this IRS regulation to <https://www.irs.gov/help/tax-law-questions>.**

(b) In accordance with FAR provision 52.229-11, exemptions from this excise tax must be claimed by an offeror when it submits an IRS Form W-14 with the offer. If not submitted with the offer exemptions will not be applied to any resulting contract and the Government will withhold a full 2% on each payment. Any exemption claimed and self-certified is subject to audit by the IRS. Any disputes concerning this tax are to be adjudicated by the IRS because the Section 5000C tax is a tax matter not a contract issue.

(c) In accordance with FAR clause 52.229-12, all contractors that are subject to this excise tax will complete IRS Form W-14 and submit the form with each voucher or invoice. If an IRS Form W-14 is not completed & submitted with a payment request, the agency must withhold 2% for that payment request. Further information about IRS Form W-14 is available at www.irs.gov/w14.

Additional information about the Section 5000C excise tax on specific foreign contract payments is available at <https://www.irs.gov/government-entities/excise-tax-on-specified-federal-foreign-procurement-payments>.

FAR Subpart 29.402 Foreign Contracts

(a) Insert the provision at FAR 52.229-11, Tax on Certain Foreign Procurement Payments—Notice and Representation in solicitations, including solicitations using FAR Part 12 procedures for the acquisition of commercial items, unless one of the following exemptions applies:

(1) Acquisitions under the SAP threshold;

(2) Emergency acquisitions under FAR Part 18;

(3) Acquisitions using FAR Part 6.302-2 Unusual and compelling urgency;

(4) Contracts for personal services that will not exceed the SAP threshold on an annual calendar year basis;

(5) Acquisitions for certain foreign humanitarian assistance contracts

(b) Insert the clause at FAR 52.229-12, Tax on Certain Foreign Procurements in:

(1) Solicitations that contain provision FAR 52.229-11 Tax on Certain Foreign Procurements—Notice and Representation; and

(2) Resultant contracts in which the contractor has indicated that it was a foreign person in solicitation provision FAR 52.229-11.

****NOTE: FAR provision 52.229-11 and FAR clause 52.229-12 both require the submission of IRS Form W-14.**

IRS Form W-14 shall be used with an OFFER & PAYMENT REQUEST to establish:

(i) You are a “foreign contracting party” and

(ii)

To claim “exemptions” from the Section 5000C excise tax.

IRS Form W-14 can be found at: <https://www.irs.gov/pub/irs-pdf/fw14.pdf>.

CAUTION

***Exemptions must be claimed by an offeror when it submits an IRS Form W-14 with an offer; if not submitted with the offer, exemptions will not be applied to the contract and the Government will**

withhold a full 2% on each payment request. *A failure to submit IRS Form W-14 with a payment request will result in an automatic withholding of 2% from the payment request.

A “foreign contracting party” must complete IRS Form W-14 and submit the fully executed form to the “acquiring agency.”

DEFINITIONS

“Foreign contracting party” means any foreign person that is a party to a contract with the U.S. government. A foreign person is any person other than a U.S. person. “Acquiring agency” means any U.S. government department , agency, etc. that is a party to a contract.

CAUTION

*A failure to submit an IRS Form W-14 with an offer and/or payment request will result in an automatic withholding of 2% on the contract and/or each payment request.

52.229-11 Tax on Certain Foreign Procurements—Notice and Representation states in pertinent part:

(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.

NOTE: an offerormustindicate whether it is or isn’t a foreign person AND whether it is or isn’t claiming an exemption from the excise tax when submitting an offer and IRS Form W-14.

A failure to execute & submit FAR provision 52.229-11 and an IRS Form W-14 with an offer will result in no exemptions being applied to any resultant contract and the automatic withholding of 2% on each payment.

Form **W-14**

(August 2016)

Department of the Treasury
Internal Revenue Service**Certificate of Foreign Contracting Party
Receiving Federal Procurement Payments**► Information about Form W-14 and its separate instructions is at www.irs.gov/wf14.
► Give this form to the acquiring agency. Do not send to the IRS.

OMB No. 1545-2263

Part I Identification of Foreign Contracting Party and Acquiring Agency

1 Name of foreign contracting party		2 Country of incorporation or organization, if applicable (do not abbreviate the name of the country)	
3 Permanent residence address (street, apt. or suite no., or rural route). Do not use a P.O. box or in-care-of address.			
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)	
4 Mailing address (if different from above)			
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)	
5 U.S. taxpayer identification number (TIN), if any		6 Contract/reference number (if known)	
7 Name and address of the acquiring agency			
City or town, state or province. Include postal code where appropriate.		Country (do not abbreviate)	

Part II Exemption Based on an International Agreement (if applicable)

- 8 Check this box if claiming relief from the tax under section 5000C pursuant to an international agreement with the United States (such as a qualified income tax treaty). Also complete Part IV.

**Part III Exemption Based on an International Procurement Agreement
or Because Goods/Services Produced/Performed in the United States**

9 <input type="checkbox"/> Check this box if identifying specific exempt and nonexempt amounts (for example, by contract line item number). Skip lines 10 through 14 and complete Part IV, line 15.		10 Total contract price or estimated total contract price	
11 Nonexempt amount or estimated nonexempt amount		12 Contract ratio (line 11 divided by line 10)	

Part IV Explanation (Complete if Part II or Part III is applicable)

13 If you checked the box in Part II, state the name of the agreement and specific provision relied upon (for example, the nondiscrimination article of a qualified income tax treaty); and the basis on which you are entitled to the benefits of that provision (for example, because you are a corporation organized in a foreign country with which the United States has a qualified income tax treaty that covers all nationals). (Use additional sheets as necessary.)

In accordance with the provision 52.229-11 and clause 52.229-12 included in the solicitation the POC for information/questions involving IRS Form W-14 are:

<https://www.irs.gov/help/tax-law-questions>

www.irs.gov/w14

<https://www.irs.gov/government-entities/ecise-tax-on-specified-federal-foreign-procurement-payments>

IRS Form W-14 can be found at:

<https://www.irs.gov/pub/irs-pdf/fw14.pdf>