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US Army Corps
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Middle East District
<https://www.tam.usace.army.mil/>

FAR 29.204 Federal Excise Tax on Specific Foreign Contract Payments

While every clause in a Government contract is important, the below clause may have direct financial impact on foreign contractors, and should be closely reviewed early in the acquisition process.

If the contractor is a foreign person or firm, and no exception applies, USACE will withhold 2% of each payment as an excise tax. As addressed in FAR 52.229-6 Taxes-Foreign Fixed-Price Contracts, the 2% may not be included in the contract price or reimbursed. A foreign person or firm is defined at FAR 52.229-12(a).

Title 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C-1 through 26 CFR 1.5000C-7 require USACE to collect a 2% excise tax, via withholding on applicable contract payments. All solicitations will contain the provision at FAR 52.229-11 Tax on Certain Foreign Procurements—Notice and Representation, and all contracts awarded to foreign persons will contain the clause at FAR 52.229-12 Tax on Certain Foreign Procurements.

Contractors that are subject to the section 5000C tax must claim any exemption when it submits an IRS Form W-14 with its offer. If not submitted with the offer, exemptions will not be applied to the contract.

Contractors that are subject to the section 5000C tax will complete IRS Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, and submit this form with each voucher or invoice. Information about IRS Form W-14 is available via the internet at www.irs.gov/w14.

All substantive issues regarding the underlying section 5000C tax, e.g., the imposition of, and exemption from the tax, are matters under the jurisdiction of the IRS.

Contractors are strongly urged to closely review the definitions and exemptions at 26 CFR § 1.5000C-1 - Tax on specified Federal procurement payments, as the language may, among other things, impact decisions to bid on U.S. Government contracts or partner with U.S. contractors. In addition, contractors are encouraged to consult with tax professionals in the offeror's home of record.

Helpful resources:

- 1) 26 U.S. Code § 5000C - Imposition of tax on certain foreign procurement: <https://www.law.cornell.edu/uscode/text/26/5000C>
- 2) 26 CFR § 1.5000C-1 - Tax on specified Federal procurement payments: <https://www.law.cornell.edu/cfr/text/26/1.5000C-1>
- 3) Additional information about this excise tax on specific foreign contract payments is available via the internet at: <https://www.irs.gov/government-entities/excise-tax-onspecified-federal-foreign-procurement-payments>
- 4) Form W-14 is completed by foreign contracting parties and is used to claim an exemption from withholding, in whole or in part, from the 2% tax imposed by section 5000C: <https://www.irs.gov/forms-pubs/about-form-w-14>
- 5) FAR language: <https://www.acquisition.gov/far/29.204>

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