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)

Parent topic: 52.229 [Reserved]