

OFFICE OF MANAGEMENT AND BUDGET**Office of Federal Procurement Policy****DEPARTMENT OF DEFENSE****GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 5, 24, 29, and 52**

[FAR Case 2026–005, Docket No. FAR–2026–0005, Sequence No. 1]

RIN 9000–AO90

Federal Acquisition Regulation: Revolutionary Federal Acquisition Regulation Overhaul Parts 5, 24, and 29

AGENCY: Office of Federal Procurement Policy (OFPP), Office of Management and Budget (OMB); Department of Defense (DoD); General Services Administration (GSA); and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: OFPP, DoD, GSA, and NASA (collectively referred to as the Federal Acquisition Regulatory Council or FAR Council) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement. The E.O. directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The FAR Council is issuing twelve proposed rules that collectively will streamline the FAR in its entirety. This rule proposes revisions to FAR parts 5, 24, 29, and 52. **DATES:** Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before July 23, 2026, to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2026–005 to the Federal eRulemaking portal at <https://www.regulations.gov>. Follow the instructions for sending comments.

Instructions: Please submit comments only and cite “FAR Case 2026–005” in all correspondence related to this case. Include your name, company name (if any), and “FAR Case 2026–005” on any attached document. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided.

Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at <https://www.regulations.gov/faq>). To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov/FAR-2026-005>.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact FARpolicy@gsa.gov or call 202–969–4075 and cite “FAR Case 2026–005.” For information pertaining to status, publication schedules, or alternate instructions for submitting comments if <https://www.regulations.gov> cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or GSARegSec@gsa.gov. Please cite “FAR Case 2026–005.”

SUPPLEMENTARY INFORMATION:**I. Background**

E.O. 14275, Restoring Common Sense to Federal Procurement (April 15, 2025), resets the foundation for Federal buying by requiring the FAR Council to produce a streamlined FAR that is simpler, clearer, and structured for speed. According to the E.O., the FAR has evolved from its original purpose (*i.e.*, to establish uniform procedures across executive departments and agencies), into an excessive and overcomplicated regulatory framework and bureaucracy. While meant to “deliver, on a timely basis, the best value product or service to the customer, while maintaining the public’s trust and fulfilling public policy objectives,” the FAR has become an expensive barrier to achieving those objectives. As a result, the E.O. directed the FAR Council and OMB to create an agile, effective, and efficient regulation that contains only provisions required by statute or essential to sound procurement.

To implement E.O. 14275, OMB issued Memorandum M–25–26, Overhauling the Federal Acquisition Regulation, which announced the “Revolutionary FAR Overhaul” (RFO) and created a roadmap for producing simpler regulations aligned to statute, rewritten in plain language, and including nonstatutory requirements that are necessary to conducting a sound procurement. The memorandum described a new streamlined vision for the FAR, to be maintained alongside nonregulatory governmentwide guidance to provide a common-sense

authoritative foundation for nimble response and delivery of mission capability.

This new vision represents a paradigm shift where over-engineered regulations designed for paperwork and compliance are replaced with streamlined regulations focused on core stewardship principles and nonregulatory guidance that will be used in concert with the streamlined FAR focused on proven buying strategies, critical thinking, market awareness (including to expand awareness of goods, products, and materials offered in the United States), and risk literacy to enhance workforce problem-solving. The significant reduction of unnecessary mandates is intended to clarify and reinforce the contracting officer’s discretion to determine the best way to apply policies and practices. The newly established, nonregulatory guidance, which has been inspired by acquisition innovation advocates, category managers, other experienced practitioners, and many years of feedback from the contractor community—is expected to facilitate contracting officers’ use of their discretion more efficiently and effectively to make smarter buying decisions.

OMB Memorandum M–25–26 also directed the FAR Council to complete the regulatory overhaul in two phases, each with robust public input. The FAR Council conducted its phase one effort in fiscal year 2025 by issuing model class deviations to replace each part in the FAR until such time as formal rulemaking occurred. This proposed rule is one of a series that constitute the FAR Council’s phase two effort to obtain public comment through formal rulemaking.

II. Discussion and Analysis

A summary of proposed changes to existing FAR parts 5, 24, and 29, and their corresponding provisions and clauses in part 52 follows:

A. General**1. General RFO Updates**

This proposed rule generally reorganizes the FAR parts into phases of acquisition and simplifies the text into plain language, where possible. The plain language efforts include changes to active voice, edits to improve readability, and reorganization to present information more logically. None of the plain language edits are intended to change existing FAR requirements. The rewriting of the entire FAR also required edits to harmonize the changes being proposed

such as updating the cross-references. This aligns with the Federal plain language guidelines as directed by the Plain Writing Act of 2010 (5 U.S.C. 301 note).

2. Standardization of Prescriptions

This rule proposes revisions to standardize prescriptions for provisions and clauses. These changes are intended to provide better clarity around the applicability of provisions and clauses such as whether they apply to commercial products and services.

3. Use of “Must” Instead of “Shall”

Additional revisions are being proposed throughout the FAR text and FAR provisions and clauses to replace the use of the term “shall” with “must” or “will,” as appropriate, to impose requirements.

4. Non-statutory Requirements

Section 4 of the E.O. required amendments to the FAR to ensure it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security. The FAR

Council reviewed all non-statutory requirements to determine if they are still relevant and essential to sound procurement in today’s contracting environment based on the criteria from section 4 of the E.O. The proposed rule retains non-statutory requirements that further one or more of the elements of sound procurements, including those requirements that serve as guardrails to protecting taxpayer interests and promote taxpayer confidence in the procurement system. Non-statutory requirements that were beneficial but not essential were retained in the non-regulatory guidance documents. Other non-statutory requirements that did not meet these standards, were removed. The Council considered the extent to which regulation is the most efficient means for capturing the benefit of the policy. For example, most “how to” requirements were found to be more appropriately suited for non-regulatory coverage which better enables a contracting officer to use discretion in determining the application of a strategy to a given situation and limits the risk of overapplication, which can create wasteful burden on the contracting parties.

As part of the RFO, the FAR Council has created a number of non-regulatory resources, including the FAR Companion, which provides insight from experienced practitioners across the government on using more streamlined practices and processes. The migration of significant coverage to non-regulatory guidance is intended to ensure that the benefits of the policy are not outweighed by the compliance burden of a more rigidly written regulation that is prone to application in an overly broad manner. This approach was explained to the public in a set of “frequently asked questions” that were posted on the Revolutionary FAR Overhaul homepage shortly after the initiative was launched.

B. Summary of Changes to FAR Part 5, Publicizing Noncommercial Contract Actions

1. Reorganize Into Lifecycle-Based Subparts

FAR part 5 is reorganized into three subparts aligned to the phases of an acquisition: Subpart 5.1, Presolicitation; Subpart 5.2, Solicitation; and Subpart 5.3, Award, as follows:

Existing FAR reference	Proposed FAR reference
5.1 Dissemination of Information	5.1 Presolicitation.
5.2 Synopses of Proposed Contract Actions	5.2 Solicitation.
5.3 Synopses of Contract Award	5.3 Award.
5.4 Release of Information	Removed.
5.5 Paid Advertisements	5.102.
5.6 Publicizing Multi-Agency Use Contracts	Removed.
5.7 Publicizing Requirements Under the ARRA	Removed.

This restructuring improves navigability, presents requirements in chronological order, and enhances usability without altering the underlying statutory obligations. The revision replaces dense narrative paragraphs with a clear sequence of actions for contracting officers when publicizing noncommercial contract actions.

2. Retain Statutorily Based Requirements

Consistent with Executive Order No. 14275, Restoring Common Sense to Federal Procurement, the rule retains all statutory requirements governing publicizing noncommercial contract actions, including 5 U.S.C. 552, 15 U.S.C. 637(e), 637(k), 637b, 644, and 41 U.S.C. 1708, among others. These authorities establish the minimum notice and transparency standards across presolicitation, solicitation, and award phases.

3. Posting Requirements Presented in Standardized Tables

New tables 5–1, 5–2, 5–3, and 5–4 present posting content and minimum timeframes in a standardized, visual format. The tables clarify when and how presolicitation notices, solicitation notices, and award notices must be posted, and identify trade agreement implications where applicable. This replaces fragmented narrative sections with concise, actionable matrices to reduce ambiguity and improve compliance.

The standardized tables in Part 5 reflect the statutory framework in 41 U.S.C. 1708 and incorporate recent FAR inflation adjustments. Specifically, the \$20,000–\$25,000 tier in Tables 5–2 and 5–3 aligns with the long-standing distinction between the lower “posting/display” tier and the higher “publish/synopsis” tier. The lower bound was raised from \$15,000 to \$20,000 under Federal Acquisition Circular (FAC)

2025–06, and the tables now mirror FAR 5.101(a) to ensure consistency. Additionally, the tables clarify that the “10 days” requirement refers to the minimum posting duration, not a pre-issuance lead time.

The first row of Table 5–3 is revised to align with the \$20,000 threshold, eliminating inconsistencies and ensuring that posting requirements are clear across all bands. Minor clarity edits such as renaming the timing column to “Minimum Timing” and specifying that reductions to 10 days are at the contracting officer’s discretion further improve usability and compliance.

4. Updates for Clarity and Usability

Section 5.000, Scope of Part, is updated to explicitly reaffirm that public notices are posted in the Governmentwide Point of Entry (GPE). This edit clarifies the authoritative platform for Federal notices and ensures consistent practice across agencies.

Section 5.001, Definitions, streamlines the definition of “Contract Action” and adds precise definitions such as “Notice” and “Presolicitation Notice.” These updated definitions support consistent applications across the lifecycle subparts and align with the new streamlined requirements. Section 5.002, Policy, is edited to more directly convey the purpose of publicizing noncommercial actions using plain language and removing dated phrasing. This refinement aligns with modern outreach practices while preserving statutory objectives.

5. Remove Obsolete and Duplicative Sections

The revision to FAR part 5 eliminates provisions that are obsolete, duplicative, or non-statutory in nature. These revisions include removal of subpart 5.4, Release of Information, which was largely duplicative of the general posting guidance throughout the part; subpart 5.6, Publicizing Multi-Agency Use Contracts, which was duplicative and outdated; subpart 5.7, Publicizing Requirements Under the American Recovery and Reinvestment Act of 2009 (ARRA), which was removed as the funds appropriated for ARRA have expired. Additionally, the term “synopsis” has been retired.

6. Move All References Related to Commercial Acquisitions to FAR Part 12

All requirements related to commercial acquisitions are relocated from FAR part 5 to FAR part 12. This consolidation eliminates confusion caused by scattered references. Moving these provisions ensures that all commercial acquisition policies are housed in one location. As a result of this change, section 5.000, Scope of Part, is updated to direct the reader to FAR part 12 for information about commercial acquisitions. Additionally, section 5.101(c)(4)(ii) and tables 5–2 and 5–3 have been updated to remove instructions related to commercial acquisitions. These updates improve clarity, reduce the risk of inconsistent application, and simplify training and long-term maintenance of the regulation.

7. Clarify Exception for National Security

Language in section 5.101, Presolicitation Notice, is revised to clarify that, even when an agency relies on the national security authority at FAR 6.103–6, posting a presolicitation notice remains required unless posting the notice would itself reveal sensitive information. This change improves transparency by encouraging notice to

the maximum extent practicable, while clearly preserving the ability to withhold notice when disclosure would compromise national security. It will provide contracting officers clearer guidance, reduce inconsistent application of the exception, and better align FAR part 5 with statutory intent by balancing openness with legitimate security concerns.

8. Update Presolicitation Notice Thresholds at FAR 5.101, Table 5–2

The proposed rule updates thresholds used in FAR 5.101, Table 5–2, to determine the minimum posting timeframes for presolicitation notices. This change reflects statutory inflation adjustments and aligns the posting tiers with current trade agreement structures and historic escalation factors. Specifically, the threshold for the lower tier is increased from \$25,000 to \$45,000. The previous \$25,000 value derived from the former Canadian threshold under the North American Free Trade Agreement (NAFTA), which no longer applies. The \$25,000 threshold derives from statutory authorities implemented at FAR 9.403–2(b) and FAR 13.402(a), both of which originated prior to 2000 and are therefore subject to application of a full inflation factor of 1.8436. Applying this escalation factor increases the original \$25,000 amount to \$45,000. This change reduces ambiguity, ensures consistency with inflation adjustments across the FAR, and enhances transparency while maintaining statutory notice requirements.

9. Clarify and Expand Exemptions to Posting Solicitation Notices

The rule updates language in section 5.201, Solicitation Notice, to clearly identify circumstances when a solicitation does not need to be posted to the GPE. The updated language explains that posting is not required when a presolicitation notice was not required under FAR 5.101(b), except when the exemption at 5.101(b)(1)(i) applies; when a presolicitation notice was posted for a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of 6.103; or when a presolicitation notice was posted for a proposed contract action valued at or below the simplified acquisition threshold that the Government intends to solicit and negotiate with only one source under FAR 13.101 or solicit directly from at least three sources under FAR 13.201. These clarifications help contracting officers apply the posting requirements consistently, reduce unnecessary duplication, and

maintain transparency while supporting streamlined acquisition practices.

10. Clarify the Timing and Process for Announcing Contract Awards Over \$5.5 Million

Section 5.302, Public Announcement, is revised to clarify the timing and process for announcing significant contract awards. Although this requirement is not mandated by statute, it is retained because it promotes transparency, public awareness, and consistency in the procurement process. However, the language is updated to make this provision permissive rather than mandatory. Agencies may publicly announce significant contract awards, rather than being required to do so, allowing flexibility while still encouraging practices that reinforce fairness and accountability. Public announcement under this section remains distinct from the automated posting to the GPE and may be accomplished through any method the agency deems appropriate, such as press releases or official websites. Additionally, the threshold for public announcement is increased from \$4.5 million to \$5.5 million to align with inflation adjustments implemented under FAC 2025–06.

C. Summary of Changes to FAR Part 24, Protection of Privacy and Freedom of Information

1. Retain Statutorily Based Requirements

FAR part 24 continues to provide essential protections for privacy and freedom of information. The RFO deviation retains all statutory requirements and executive directives, including 5 U.S.C. 552, Freedom of Information Act; 5 U.S.C. 552a, Privacy Act of 1974; 5 U.S.C. 574, Confidentiality; 10 U.S.C. 3309 and 41 U.S.C. 4702, Prohibition on Release of Contractor Proposals; 10 U.S.C. 3705 and 41 U.S.C. 3505, Submission of Other Information; and OMB Circular A–130, Managing Information as a Strategic Resource. These authorities remain the foundation of Part 24 and ensure compliance with governmentwide privacy and disclosure standards.

2. Remove Duplicative Sections

The revision to FAR part 24 eliminates non-statutory, duplicative, and outdated content. Specifically, section 24.301, Privacy Training, was deleted, as it was duplicative of content found in clause 52.224–3, Privacy Training. This revision ensures that FAR part 24 focuses exclusively on

statutory requirements and essential governmentwide standards, consistent with the policy objective to eliminate non-essential content and improve useability. Additionally, 24.102(c) has been removed as it was duplicative with 24.102(a). This change ensures consistency with the Privacy Act and eliminates ambiguity regarding contractor obligations. Finally, 24.102(d) was renumbered and revised to clarify the scope of civil liability for agencies when contractors handle systems of records. This change eliminates ambiguity regarding contractors performing design, development, or other activities that do not involve operating such systems.

D. Summary of Changes to FAR Part 29, Taxes

1. Retain Statutorily Based Requirements

The updates to FAR part 29 preserve all statutory and treaty-based requirements governing Federal tax obligations in procurement. This includes provisions implementing 26 U.S.C. (Internal Revenue Code), state and local tax exemptions under 40 U.S.C. 501, and applicable international agreements. These retained requirements ensure continued compliance with Federal tax law and reciprocal tax arrangements for Government contracts.

2. Remove Obsolete and Duplicative Sections

The revision eliminates outdated and non-statutory text that was informational in nature and did not impose enforceable requirements on contracting officers or contractors. Specifically, narrative guidance in section 29.101 was removed, as this content summarized IRS procedures for obtaining tax exemption certificates and interacting with IRS offices. Information in FAR 29.304 regarding special consideration matters is removed, with content regarding North Carolina taxes now reflected in Section 29.303. Additionally, FAR 29.402–4, Prescribing Tax Requirements for Foreign Contracts in Afghanistan has been removed in its entirety because the Status of Forces Agreement (SOFA) expired in 2021. Clauses prescribed in that section were also removed, including 52.229–13, Taxes—Foreign Contracts in Afghanistan; and 52.229–14, Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement). Additionally, the definitions of North Atlantic Treaty Organization (NATO) Forces and U.S.

Forces in Afghanistan have been removed for the reasons noted above.

3. Clarification of Federal Excise Tax References

Section 29.201(a), Federal Excise Taxes, is revised to clarify the scope of applicable statutory and regulatory provisions. The previous language referenced “26 U.S.C. 4041 *et seq.*” and “26 CFR parts 40 through 299,” which could be interpreted as overly narrow or overly broad. The updated text acknowledges that Subtitle D of the Internal Revenue Code spans multiple subchapters and that other statutory and regulatory provisions may apply, while retaining a general reference to the primary excise tax requirements. This change improves accuracy and reduces potential confusion without altering the underlying policy.

4. FAR 29.3 Definition

The definition of “State and Local Taxes” has been relocated from FAR part 2 to subpart 29.3 because the term is only used in part 29. This change improves clarity and organization by placing the definition within the subpart where it is applied. As a result of this relocation, paragraphs in subpart 29.3 have been renumbered to maintain proper sequence. Coordination with GSA will ensure removal of the definition from part 2 to avoid duplication.

5. FAR 29.304(b) Evidence of exemption

This change clarifies that a Government Purchase or Fleet Card is acceptable evidence to support a claim for exemption from state or local taxes. This change will reduce confusion, promote consistent documentation, and make it easier for agencies to validate and justify tax exemptions.

E. Summary of Changes to FAR Part 52, Contract Clauses

1. Plain Language Update

As part of the broader plain language initiative, the term “shall” has been replaced with “must” throughout all affected clauses and prescriptions in this rulemaking to promote clarity and consistency. These updates will streamline contract drafting and compliance, reduce ambiguity, and save time for both contracting officers and contractors.

2. Clarification of FAR Clause Applicability to Commercial Products and Commercial Services

This rule clarifies the applicability of FAR part 52 clause prescriptions to commercial acquisitions to ensure consistent treatment across the FAR.

Conforming revisions were made to prescriptions associated with FAR parts 24 and 29 to accurately reflect when clauses apply to commercial products and commercial services. Affected prescriptions include those at 24.104, 24.302, 29.401–1, 29.401–2, 29.401–3, 29.401–4, 29.402–1, 29.402–2, and 29.402–3. In addition, clauses at 52.224–2 and 52.224–3 were revised to clarify subcontract applicability to commercial products and commercial services.

3. Part 52 Renumbering

As a result of the RFO, the FAR Council is considering establishing a new FAR subpart in part 52 and relocating and renumbering all provisions and clauses under this new subpart. This means, if subpart 52.4 was used, all provisions and clauses would begin with 52.4 instead of 52.2. This change is anticipated to prevent confusion and increase compliance by creating a clear distinction between versions of a provision or clause prior to the RFO. Other benefits include avoiding potential clause numbering conflicts and information system and data collection impacts. The FAR Council welcomes comments on the potential impact of such a change on contractors, Government personnel, and other stakeholders.

III. Applicability to Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold and for Commercial Products, Commercially Available Off-the-Shelf Items, and Commercial Services

The following sections address the applicability of provisions and clauses prescribed in FAR parts 5, 24, and 29 to solicitations and contracts valued at or below the simplified acquisition threshold (SAT) and those for the acquisition of commercial products, commercially available off-the-shelf (COTS) items, and commercial services. Prescriptions for provisions and clauses in these parts have been updated to reflect applicability to commercial acquisitions.

A. Contracts and Subcontracts Valued at or Below the Simplified Acquisition Threshold

This proposed rule, if finalized, does not alter the prescriptions of provisions and clauses included in this proposed rule to change their applicability to contracts and subcontracts valued at or below the SAT.

B. Contracts and Subcontracts for Commercial Products, Commercially Available Off-The-Shelf Items, and Commercial Services.

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and gives the FAR Council the authority to determine to apply a law to contracts or subcontracts for the acquisition of commercial products and commercial services. 41 U.S.C. 1907 exempts contracts for commercially available off-the-shelf (COTS) items from certain provisions of law unless the Administrator for Federal Procurement Policy determines that doing so would not be in the best interest of the Federal Government.

Section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) required the FAR Council

and the Administrator of Federal Procurement Policy to review prior determinations under 41 U.S.C. 1906 and 41 U.S.C. 1907, as well as the applicability of provisions and clauses to contracts and subcontracts for commercial products, COTS items, and commercial services that do not implement statute or Executive order, and propose amendments to the FAR to eliminate or exempt such requirements from commercial acquisitions, unless there are specific reasons to retain particular requirements.

In accordance with section 839 of the NDAA for FY 2019 and their authorities under 41 U.S.C. 1906 and 1907, the FAR Council reviewed the applicability of the provisions and clauses associated with the FAR parts covered by this proposed rule.

The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposed

determination regarding the applicability of the provisions and clauses to solicitations and contracts for commercial products, COTS items, and/or commercial services. In making proposed applicability determinations, the FAR Council considered factors such as whether the provision or clause advances national security or economic security, contributes to the resilience of contractors and subcontractors in the Federal marketplace, or advances uniformity and clarity in the performance of basic functions that are essential to sound procurement.

Accordingly, this proposed rule, if finalized, would revise provision and clause prescriptions to clearly reflect applicability to commercial acquisitions as outlined in the table. An “X” in the following table indicates the provision or clause will apply to that category of commercial acquisition, as prescribed:

Provision/Clause No.	Title	Commercial Products	Commercial Services	COTS items
52.224–1	Privacy Act Notification	X	X	X
52.224–2	Privacy Act	X	X	X
52.224–3	Privacy Training	X	X	X
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) .....	.....	.....	.....
52.229–6	Taxes–Foreign Fixed-Price Contracts	X	X	X
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	X	X	X
52.229–12	Tax on Certain Foreign Procurements	X	X	X

The FAR Council also reviewed subcontract flow down requirements in clauses associated with the FAR parts covered by this proposed rule. The following table reflects the FAR Council and Administrator of Federal Procurement Policy's proposal regarding

whether those clauses flow down to subcontracts for commercial products, COTS items, and/or commercial services. This proposed rule, if finalized, would revise the subcontract paragraphs in these clauses to clearly state whether the clause flows down to

commercial subcontracts, as outlined in the table. An “X” in the following table indicates the provision or clause will apply to subcontracts for that category of commercial subcontracts, as described in the clause:

Clause No.	Title	Commercial products	Commercial services	COTS items
52.224–2	Privacy Act	X	X	X
52.224–3	Privacy Act Training	X	X	X
52.229–10	State of New Mexico Gross Receipts and Compensating Tax .....	.....	.....	.....

IV. Expected Impact of the Rule

The intended impact of the RFO, as stated in E.O. 14275, is to restore the Government's ability to “deliver on a timely basis the best value product or

service to the customer, while maintaining the public's trust and fulfilling public policy objectives.” Each of the RFO rulemakings is designed to contribute to this impact by emphasizing mission first, by aligning

acquisition activities directly to achieving the agency's overarching objectives and serving the public interest and elevating the importance of fiscal responsibility. The proposed RFO rules focus on three goals in particular:

(1) timely acquisition and delivery, (2) lower cost and accountability in all spending, and (3) increased competition.

Timeliness. Timely acquisition and delivery are essential for mission success. To this end, RFO rules propose to eliminate mandates that unnecessarily interfere with agency discretion to determine the best way to procure products and services. The proposed RFO rules highlight more clearly streamlined and simplified authorities that allow buyers to use their time more efficiently and are expected to reduce time between solicitation and award. The proposed RFO rules are expected to make it easier for contracting officers to leverage commercial practices that are familiar to the commercial marketplace. This is expected to make it easier for sellers to engage and respond to Government solicitations more rapidly.

Lower cost. E.O. 14271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracts (April 15, 2025), directs the Government to utilize, to the maximum extent practicable, the commercial marketplace and the innovations of private enterprise to provide better, more cost-effective services to taxpayers, as envisioned by the Federal Acquisition Streamlining Act. The procurement of custom products and services where a suitable or superior commercial solution would have fulfilled the Government's needs has resulted in avoidable waste to the detriment of American taxpayers.

To address these concerns, consistent with associated responsibilities in section 839 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), the FAR Council reviewed prescriptions for provisions and clauses to ensure all prescriptions are clear regarding their applicability to acquisitions for commercial products and services. Currently, many prescriptions do not specify applicability to commercial acquisitions and leave the applicability determination to contracting officer interpretation. By specifically stating when a provision or clause can be applied to commercial acquisitions, proposed RFO rules should decrease the likelihood of inclusion of provisions and clauses in commercial acquisitions that are not required by law and drive greater consistency in the terms and conditions used in these contracts. In turn, these changes should increase the participation of commercial sellers, who are unwilling or unable to manage the cost of complying with noncommercial requirements, and also improve

taxpayer access to affordable commercial solutions.

Some RFO rules propose to delete requirements placed on commercial or noncommercial sellers that are not related to performance of the contract, drive up cost without attendant performance benefits, and may misdirect efforts away from innovation, investment and economic growth. Greater emphasis on timeliness should reduce bidders' carrying costs, enabling them to pass those savings on to customers through lower prices.

Increased competition. Since enactment of the Competition in Contracting Act of 1984 (Title VII of Pub. L. 98–369), competition has been the cornerstone of the Federal acquisition system. The benefits of competition are well established: competition saves money for the taxpayer, improves contractor performance, curbs fraud, and promotes accountability for results. Competition also drives contractor resilience and positions the U.S. market to develop a strategic advantage for the nation.

According to data in the SAM Contract Award Management, roughly 45 percent of contract dollars were awarded in FY 2025 either without competition or with competition that received only one offer. Of equal concern, the Federal marketplace has seen a significant decline over the past 20 years in the number of businesses—especially small businesses—participating in the Federal supplier base. Studies suggest that high compliance costs lead to the misallocation of resources away from more profitable activities and discourage innovation, investment, and economic growth (Council of Economic Advisers, Executive Office of the President, June 2025. *The Economic Benefits of Current Deregulatory Policies*. <https://www.whitehouse.gov/wp-content/uploads/2025/03/The-Economic-Benefits-of-Current-Deregulatory-Efforts.pdf>). This may shelter incumbent contractors and stifle competition, reducing startup activity and job formation.

The RFO rules seek to increase participation in agency competitions and the resilience of the Federal supplier base—which includes commercial entities, small businesses, manufacturers, and nontraditional suppliers. The RFO will achieve this outcome by removing regulatory mandates that are not rooted in statute or essential to sound procurement, promoting greater reliance on practices that reduce transaction costs, and improving the quality of communications with offerors and

potential offerors. Access to a broader range of solutions in a more dynamic marketplace will drive better return for each taxpayer dollar spent and increase taxpayer confidence in the Federal acquisition system.

The Government has conducted a regulatory impact analysis (RIA) for the RFO rulemaking inclusive of this proposed rule for FAR parts 5, 24, and 29. The RIA includes a discussion of the anticipated effects of the rulemakings as follows:

1. FAR Part 5

This proposed rule reorganizes the publicizing requirements into a lifecycle-based structure and introduces tables that consolidate posting timelines, improving usability and consistency across acquisition phases. This restructuring, along with clarified guidance on national security exceptions and award announcements over \$5.5 million, enhances the clarity and application of the part. The relocation of publicizing requirements specific to commercial acquisitions into FAR part 12 consolidates all commercial acquisition policies in one place, reducing the need for contracting officers to cross-reference multiple parts. In addition, the proposed rule updates the thresholds used in FAR 5.101, Table 5–2, to determine the minimum posting timeframes for presolicitation notices. This change reflects statutory inflation adjustments and aligns the posting tiers with current trade agreement structures and historic escalation factors. Specifically, the lower-tier threshold is increased from \$25,000 to \$45,000.

Benefits to the Government include improved regulatory navigation, reduced administrative burden, and fewer procedural errors resulting from streamlined guidance, consolidated commercial publicizing rules, and the removal of outdated thresholds that previously complicated application. The threshold update also reduces lower value presolicitation postings, allowing contracting officers to focus on actions with meaningful competition impact. Benefits to industry include clearer, more consistent public notices, a more predictable regulatory framework aligned with modern economic thresholds, and reduced clutter from low value postings, which can help vendors, particularly small businesses, more efficiently identify relevant opportunities. Any burdens associated with these changes are minimal and one-time, consisting primarily of familiarization, updates to internal policies, screening tools, or automated posting parameters, and routine

adjustments to agency training and templates, policy updates, and minor procurement system modifications.

2. FAR Part 24

The changes to FAR part 24 focus on removing duplicative, non-statutory text so that the part more clearly presents statutory privacy and FOIA protections and established Governmentwide standards. This streamlining does not alter substantive requirements but improves clarity and readability for the acquisition workforce. Benefits to the Government include easier interpretation and application of privacy and FOIA policies, reduced reliance on redundant regulatory text, and improved clarity regarding roles and responsibilities. Benefits to industry are indirect; because no contractor obligations are changed or added, vendors experience the same compliance environment but may benefit from reduced ambiguity and fewer unnecessary documentation exchanges resulting from simplified regulatory language. Anticipated burdens or costs are negligible and limited to routine internal updates within agencies.

3. FAR Part 29

The proposed revisions to FAR part 29 improve clarity, accuracy, and usability by streamlining statutory requirements, removing obsolete requirements, refining excise tax references, reorganizing key definitions, and modernizing documentation requirements for tax exemption claims. Benefits to the Government include improved accuracy in applying excise tax authorities, clearer organizational structure, and more efficient processing of tax-exempt transactions. Benefits to industry include reduced administrative burden, minimized delays associated with exemption documentation requests, and more predictable, streamlined interactions with Government purchasers. Any burdens associated with implementation are minimal and limited primarily to internal guidance and training updates.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Executive Order 14192

This rule is subject to E.O. 14192, Unleashing Prosperity Through Deregulation. This proposed rule, if finalized as proposed, is anticipated to be an E.O. 14192 deregulatory action. See discussion in the “Expected Impact of the Rule” section of this preamble.

VII. Regulatory Flexibility Act

This proposed rule, if finalized, may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act 5 U.S.C. 601–612. However, an Initial Regulatory Flexibility Analysis (IRFA) is as follows:

1. Reasons for the Action

Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement, directs the elimination of excessive acquisition regulations to stop the inefficient use of American taxpayer dollars. The E.O. directs the first comprehensive end-to-end overhaul of the FAR in its 40-year history. The E.O. establishes the policy that the FAR should “contain only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests.” In response to E.O. 14275, the Office of Management and Budget issued memorandum M–25–26, Overhauling the Federal Acquisition Regulation. The Memo directed the FAR Council to complete a “revolutionary overhaul” of the FAR. Therefore, the FAR Council is issuing twelve proposed rules that collectively will streamline the FAR in its entirety.

2. Objectives of, and Legal Basis for, the Rule

The revolutionary FAR overhaul (RFO) rewrite represents a paradigm shift in Federal acquisition. It emphasizes streamlining, clarity, and accessibility, while ensuring that the regulation focuses only on statutory mandates and foundational procurement principles. The RFO is designed to simplify compliance for contracting professionals, improve acquisition speed and agility, and reinforce mission outcomes over process formalities.

The basis for the RFO is E.O. 14275. The authority for promulgation of the FAR is 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

3. Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply

All small entities who want to contract with the Federal Government will have to familiarize themselves with the reorganized,

streamlined, and revised FAR, including the content of this rulemaking. As of January 2026, there are 401,196 entities registered in the System for Award Management (SAM) that were small for at least one North American Industry Classification System (NAICS) code they had selected.

a. FAR Part 5

The proposed changes to FAR part 5 reorganize the text into lifecycle-based subparts, present posting requirements in standardized tables, consolidate commercial acquisition references into FAR part 12, clarify exceptions for national security, and increase the threshold for public announcements from \$4.5 million to \$5.5 million. These revisions will make the FAR easier to navigate and reduce confusion for small businesses by providing clearer guidance and standardized formats. While small entities may need to update internal procedures to align with the reorganized structure, the overall effect is expected to reduce administrative burden and improve transparency. Familiarization costs are anticipated to be minimal, primarily involving time spent reviewing the new structure.

Additionally, the adjustments to the presolicitation notice thresholds in Table 5–2 increased the 10-day posting threshold from \$25,000 to \$45,000, resulting in a higher number of lower dollar acquisitions following the 10-day minimum posting period rather than the 15-day period. This change does not alter whether notices must be posted but modestly streamlines the presolicitation phase while still ensuring that small entities receive advanced visibility into upcoming opportunities. As a result, any impact on small entities is expected to be minimal and generally neutral to slightly beneficial.

b. FAR Part 24

The changes to FAR Part 24 streamline and modernize the regulation by removing duplicative and outdated material, such as the former Privacy Training section, and eliminating unnecessary repetition within 24.102. The revisions also clarify the remaining provisions, including the scope of agency civil liability when contractors handle systems of records. These revisions will not impose new obligations on small entities and will instead provide greater clarity, reducing uncertainty and compliance risk. No additional costs are expected for small entities as a result of these changes.

c. FAR Part 29

The revisions to FAR Part 29 clarify that a Government Purchase or Fleet Card is acceptable evidence for tax exemption, remove obsolete sections related to Afghanistan tax clauses, and relocate the definition of “State and Local Taxes” for clarity. These changes will reduce administrative burden for small entities by eliminating unnecessary documentation requirements and streamlining compliance processes. No new requirements are introduced, and the overall impact is expected to be positive, saving time and reducing paperwork.

d. FAR Part 52

This change clarifies the applicability of provisions and clauses to commercial applications in clauses associated with updates to prescriptions in FAR parts 24 and 29. In addition to these clarifications, the rule includes plain language edits, such as improvements to readability, updates to active voice, and replacement of the term “shall” with “must,” to promote consistency across prescriptions and clauses. Any costs are negligible and limited to internal policy updates. Therefore, the changes are not expected to have a significant economic impact on a substantial number of small entities.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule

This proposed rule, if finalized, does not contain any new reporting, recordkeeping or other compliance requirements.

a. FAR Part 5

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 5. The revisions are structural and editorial in nature and do not impose additional compliance obligations on contractors. Small entities may need to review the reorganized content and update internal procedures, but no new reporting or recordkeeping requirements are introduced.

b. FAR Part 24

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 24. The revisions do not create new compliance obligations; they simply improve clarity and eliminate redundancy.

c. FAR Part 29

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 29. The revisions reduce administrative burden by simplifying documentation requirements and do not introduce new compliance activities.

d. FAR Part 52

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements under FAR part 52. The updates clarify the applicability of prescriptions and clauses to commercial acquisitions and make conforming revisions to clauses associated with FAR parts 24 and 29. These changes are editorial and organizational in nature and do not impose new compliance obligations.

5. Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Rule

The proposed rule, if finalized, would not duplicate, overlap, or conflict with other Federal rules.

6. Description of Any Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes, and Which Minimize any Significant Economic Impact of the Rule on Small Entities

There are no significant alternatives that would minimize the impact of the rule on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. The FAR Council invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

The FAR Council will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite “5 U.S.C. 610 (FAR Case 2026–005)” in correspondence.

VIII. Paperwork Reduction Act

This rule includes information collections under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Following are the specific collections associated with each FAR part in this rule as previously approved by OMB followed by how each collection would be affected by the proposed rule. If a FAR part is not listed below, then there are no information collections associated with the part.

A. FAR Part 24

OMB Control No 9000–0182, Privacy Training–FAR Section Affected: 52.224–3. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

B. FAR Part 29

OMB Control No 9000–0059, North Carolina Sales Tax Certification—FAR Section Affected: 52.229–2. The changes under this proposed rule, if finalized, would not affect the information collection or the paperwork burden previously approved by OMB. The collection would remain unchanged.

C. Comments Regarding Paperwork Burden

The FAR Council will publish a separate first notice in accordance with the Paperwork Reduction Act seeking comments on the changes to the

collections of information affected by this proposed rule.

IX. Severability

If any portion (e.g., section, clause, sentence) of this rule is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of this rule, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of this rule are independent and serve distinct purposes. Even if one aspect were rendered invalid, the other benefits of the rule would still be applicable.

List of Subjects in 48 CFR Parts 5, 24, 29, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, OFPP, DoD, GSA, and NASA propose amending 48 CFR parts 5, 24, 29, and 52 as set forth below:

■ 1. Revise parts 5, 24, and 29 to read as follows:

PART 5—PUBLICIZING NONCOMMERCIAL CONTRACT ACTIONS

Sec.

- 5.000 Scope of part.
- 5.001 Definitions.
- 5.002 Policy.

Subpart 5.1—Presolicitation

- 5.101 Presolicitation notice.
- 5.102 Paid advertisements.
- 5.103 Special notices.

Subpart 5.2—Solicitation

- 5.201 Solicitation notice.
- 5.202 Requests from small businesses.

Subpart 5.3—Award

- 5.301 Award notice.
- 5.302 Public announcement.
- 5.303 Notice of subcontract opportunity.

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

5.000 Scope of part.

This part prescribes the policies and procedures for publicizing contract opportunities and award information in the Governmentwide point of entry (GPE). Policies and procedures for publicizing commercial contract opportunities and award information can be found in FAR Part 12.

5.001 Definitions.

As used in this part—

Contract action means an action resulting in a contract, including actions for additional supplies or services outside the existing contract scope. This does not include actions within the scope and terms of the existing contract, such as contract modifications issued under the Changes clause, or funding and other administrative changes.

Notice means a description of a business opportunity, contract action, or other information posted to the GPE.

Presolicitation notice means a notice used to notify industry and the public that the Government intends to release a solicitation in the near future.

5.002 Policy.

Contracting officers must post presolicitation notices, solicitations, and award notices in the GPE as described in this part to—

- (a) Increase competition;
- (b) Broaden industry participation in meeting Government requirements; and
- (c) Inform small business concerns of contract and subcontract opportunities.

Subpart 5.1—Presolicitation

5.101 Presolicitation notice.

(a) *Requirement.* For proposed contract actions expected to be greater than \$20,000, post a presolicitation notice to the GPE unless an exemption in paragraph (b) applies.

(b) *Exemptions.* The contracting officer is not required to post a presolicitation notice to the GPE when—

- (1) The proposed contract action—
 - (i) Is valued at or below the simplified acquisition threshold (SAT) and the solicitation will—
 - (A) Be posted to the GPE in accordance with 5.201; and
 - (B) Permit the public to respond to the solicitation electronically;
 - (ii) Is such that it is not possible to publicly describe the agency's needs

without compromising national security or create other security risks;

(iii) Would result from acceptance of—

(A) An unsolicited proposal that is unique and innovative, and sharing details would reveal confidential or proprietary information or original ideas; or

(B) A proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97–219);

(iv) Is for an order issued under a requirements contract, a task order contract, or a delivery order contract;

(v) Is for perishable subsistence supplies;

(vi) Is for utility services (other than telecommunications) for which only one source is available; or

(vii) Is for the services of an expert for use in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Federal Government in a trial, hearing, or proceeding before a court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify;

(2) Using other than full and open competition (see 6.103); however—

(i) A presolicitation notice is required for the authority at 6.103–1 (Only One Responsible Source).

(ii) For the authority at 6.103–6 (National Security), a presolicitation notice must be posted unless posting the notice would disclose the agency's needs in a way that compromises national security; or

(3) The head of the agency determines in writing, after consulting with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that posting a presolicitation notice is not appropriate or reasonable.

(c) *Content.* Include the following information in each presolicitation notice sent to the GPE:

(1) *Point of contact.* Include the name, address, and contact information for the contracting officer.

(2) *Set-asides.* If applicable, identify whether the proposed contract action will be a total or partial small business set-aside (see part 19) or a local area set-aside (see part 26).

(3) *Codes for services or supplies.* Select the appropriate code(s) (*i.e.*, product service code (PSC) and/or North American Industry Classification System (NAICS) code) to identify services or supplies to be procured.

(4) *Description.*

(i) Provide a clear and concise description of supplies or services that does not unnecessarily restrict competition and allows prospective offerors to make an informed business judgment about monitoring the GPE for or requesting a copy of the solicitation. For supplies, this description should include, as appropriate, any agency nomenclature, National Stock Number, or other part number and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information.

(ii) If a proposed contract action is estimated to be greater than \$25,000, but not greater than the SAT, include a description of the procedures for awarding the contract and the anticipated award date.

(iii) If one or more items under the acquisition is subject to the World Trade Organization Government Procurement Agreement (WTO GPA) and/or a Free Trade Agreement (FTA) (see Part 25) and the solicitation will include one of the following clauses, or an agency equivalent, include the required language regarding trade agreements:

TABLE 5–1—STATEMENTS REGARDING TRADE AGREEMENTS

FAR clause	Required language
FAR 52.225–3, Buy American-Free Trade Agreement-Israeli Trade Act	“One or more of the items under this acquisition is subject to Free Trade Agreements.”
FAR 52.225–5, Trade Agreements	“One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”
FAR 52.225–11, Buy American-Construction Materials under Trade Agreements, or FAR 52.225–23, Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials under Trade Agreements.	“One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”

(iv) If technical data required to respond will not be furnished as part of the solicitation, identify where and how prospective offerors can obtain the data.

(v) If an award of a construction contract to a small business is anticipated, include information about

definitization of equitable adjustments for change orders (see part 36).

(vi) Include a statement that all responsible sources may submit a

quotation, bid, or proposal, as appropriate, which will be considered by the agency.

(vii) For noncompetitive contract actions (including those at or below the SAT), identify the intended source and explain why competition is lacking.

(viii) State whether an offeror or its product or service must meet a qualification requirement in order to be eligible for award; and if so, identify the office from which the qualification requirement may be obtained.

(d) *Timing.* When a presolicitation notice is required, post it to the GPE as follows:

TABLE 5–2—MINIMUM TIMEFRAMES FOR POSTING PRESOLICITATION NOTICES

Acquisition value	Minimum timing
>\$20,000 to ≤\$45,000.	Must be posted for 10 days.
>\$45K to ≤SAT.	Must be posted 15 days before soliciting quotations directly, or awarding to only one source under the authority at 13.101(b)(2).
>SAT	Must be posted 15 days before posting the solicitation or awarding to only one source under the authority at 6.103–1 or 6.103–6.

5.102 Paid advertisements.

In addition to posting in the GPE, agencies may place paid advertisements. Agencies that choose to advertise proposed contract actions in newspapers or other public media must follow 41 U.S.C. 3701–3703.

5.103 Special notices.

(a) Federally Funded Research and Development Centers (FFRDCs). For requirements relating to FFRDCs see part 35.

(b) Notices about consolidation or bundling. For required notices about bundling or consolidation requirements, see part 7.

Subpart 5.2—Solicitation

5.201 Solicitation notice.

(a) *Requirements.* Unless an exemption at paragraph (b) applies, post the solicitation in the GPE.

(b) *Exemptions.* The contracting officer does not need to post the solicitation to the GPE if a presolicitation notice—

- (1) Was not required based on an exemption at 5.101(b), except when the exemption at 5.101(b)(1)(i) applies;
- (2) Was posted to the GPE for a proposed contract action the Government intends to award to only one source under the authority of 6.103–1, 6.103–6, or 13.101(b)(2)]; or—

(3) Was posted to the GPE for a proposed contract action valued at or below the SAT and the Government will solicit quotations directly from at least three sources under the authority at 13.201.

(c) *Content.* The solicitation notice posted to the GPE must include—

(1) The information required by 5.101(c);

(2) Specifications, technical data, and other pertinent information determined necessary by the contracting officer or instructions on how to access the information; and

(3) When an acquisition contains brand name specifications, the justification required by 6.104, redacted as necessary.

(d) *Timing.* Establish a date for receipt of quotations or offers that meets the minimum timeframes in the table below. See part 25 to determine whether an acquisition is subject to the WTO GPA or an FTA.

TABLE 5–3—MINIMUM TIMEFRAMES FOR RECEIPT OF QUOTATIONS OR OFFERS

Value	Description	Not subject to WTO GPA or FTA	Subject to WTO GPA or FTA, and included in annual forecast	Subject to WTO GPA or FTA, but not included in annual forecast
≥\$20K to ≤SAT.	Any acquisition	None, allow a reasonable opportunity to respond.	10 days from presolicitation notice or solicitation, as applicable.	40 days from presolicitation notice or solicitation, as applicable.
>SAT	Research and Development (R&D) acquisitions. Orders under a Basic Ordering Agreement (BOA) or similar (non-R&D).	45 days from presolicitation notice. 30 days from presolicitation notice.	N/A	N/A.
	All other acquisitions	30 days from solicitation	40 days from presolicitation notice (reducible to 10 days, if warranted as determined by the contracting officer). 30 days from solicitation (reducible to 10 days, if warranted).	40 days from presolicitation notice. 30 days from solicitation.

5.202 Requests from small businesses.

Per 15 U.S.C. 637(b), when a solicitation is not posted to the GPE, provide to small business concerns, upon request—

(a) A copy of the solicitation and specifications;

(b) The name and email address of the solicitation point of contact; and

(c) Adequate citations to Federal laws and agency rules the small business must follow if awarded a contract.

Subpart 5.3—Award

5.301 Award notice.

(a) *Requirement.* Except as provided in paragraph (b) of this section, post an award notice to the GPE for contract actions greater than \$25,000 that are—

- (1) Covered by the WTO GPA or FTA (see part 25); or
- (2) Likely to result in subcontract awards.

(b) *Exemptions.* An award notice is not required if an exemption at

5.101(b)(1) to the presolicitation notice requirements applied to the contract action.

(c) *Content.* The award notice must include the following information:

- (1) A description of the supplies or services.
- (2) Contracting office and address.
- (3) Contractor receiving the award.
- (4) Contract award dollar amount.
- (5) Contract award date.

(d) *Timing.* When an award notice is required, post it to the GPE within the following timeframes:

TABLE 5—4—MINIMUM TIMEFRAMES FOR POSTING AWARD NOTICES

Value	Description	Timing
>\$25K	Likely to result in subcontracting opportunities	As soon as possible after award to promote industry and small business participation.
	Not likely to result in subcontracting opportunities, but subject to WTO GPA or FTA.	Within 60 days of award.

5.302 Public announcement.

(a) Agencies may publicly announce awards of contract actions over \$5.5 million as soon as practicable on the day of award, consistent with agency procedures. Public announcement under this section is distinct from the automated posting to the Governmentwide Point of Entry (GPE) required by part 5.301. Agencies may use any appropriate method to inform the public of significant contract awards.

(b) Public announcement should not be issued for contracts—

(1) Placed with the Small Business Administration under Section 8(a) of the Small Business Act;

(2) Placed with foreign firms when delivery or performance is outside the United States and its outlying areas; and

(3) That were exempt from the presolicitation notice requirements at 5.101(b).

5.303 Notice of subcontracting opportunity.

(a) The following entities may post a notice of subcontracting opportunities to the GPE:

(1) A contractor awarded a contract greater than the SAT that will likely result in subcontract awards.

(2) A subcontractor or supplier, at any tier, under a contract greater than the SAT with a subcontracting opportunity greater than \$20,000.

(b) The notice must include—

(1) The business opportunity information described at 5.101(d)(4)(i), and

(2) The due date for receipt of offers.

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

24.000 Scope of part.

Subpart 24.1—Protection of Individual Privacy

24.101 Definitions.

24.102 General.

24.103 Procedures.

24.104 Contract clauses.

Subpart 24.2—Freedom of Information Act

24.201 Authority.

24.202 Prohibitions.

24.203 Policy.

Subpart 24.3—Privacy Training

24.301 [Reserved]

24.302 Contract clause.

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

24.000 Scope of part.

This part explains how the Privacy Act of 1974 (5 U.S.C. 552a) and the associated requirements of OMB Circular A–108 (Dec. 23, 2016), OMB Circular No. A–130 (July 28, 2016), and Privacy Act Implementation: Guidelines and Responsibilities, 40 FR 28,948 (July 9, 1975) apply to Government contracts. It also references the Freedom of Information Act (5 U.S.C. 552).

Subpart 24.1—Protection of Individual Privacy

24.101 Definitions.

As used in this subpart—

Agency means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

Individual means a citizen of the United States or an alien lawfully admitted for permanent residence.

Maintain means maintain, collect, use, or disseminate.

Operation of a system of records means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

Personally identifiable information means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See Office of Management and Budget (OMB) Circular No. A–130, Managing Federal Information as a Strategic Resource).

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history, and that contains the individual's name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

System of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

24.102 General.

(a) The Privacy Act requirements apply to the contractor and its employees working on the contract when the contract requires the contractor to design, develop, or operate a system of records to accomplish an agency function. The system of records operated under the contract is officially considered to be maintained by the agency for the purposes of the Act.

(b) Both agency staff and contractor employees may face criminal penalties for violating the Privacy Act. When contractors operate a system of records to accomplish an agency function, the law treats these contractors as agency employees for purposes of the criminal penalties.

(c) Agencies that, within the limits of their authorities, fail to require contractors to operate systems of records according to the Privacy Act may be civilly liable. If an individual suffers harm due to the contractor's violation of the Act, the agency may be liable. This provision does not apply to contractors performing design, development, or other activities that do not involve operating a system of records on behalf of the agency.

24.103 Procedures.

(a) The contracting officer must review requirements to determine if they include designing, developing, or

operating a system of records to accomplish an agency function.

(b) If the contract requires such work, the contracting officer must—

(1) Clearly identify in the contract work statement both the specific system of records and the design, development, or operation work required; and

(2) Provide the contractor with the agency's rules and regulations that implement the Privacy Act.

24.104 Contract clauses.

When a contract requires designing, developing, or operating a system of records to accomplish an agency function, including those for commercial products or commercial services, include the following clauses in solicitations and contracts:

(a) The clause at 52.224–1, Privacy Act Notification.

(b) The clause at 52.224–2, Privacy Act.

Subpart 24.2—Freedom of Information Act

24.201 Authority.

The Freedom of Information Act (5 U.S.C. 552) requires that information be made available to the public through three methods:

(a) Publication in the **Federal Register**;

(b) Access to read and copy records at convenient locations; or

(c) Providing a copy of a reasonably described record upon request.

24.202 Prohibitions.

(a) An agency must not disclose under the Freedom of Information Act any proposal submitted in response to solicitation for competitive proposals. This prohibition does not apply to a proposal, or any part of a proposal, that is included or incorporated by reference in a contract between the Government and the contractor that submitted the proposal. (See 10 U.S.C. 3309 and 41 U.S.C. 4702.)

(b) An agency must not disclose outside the Government any information obtained under part 15 that is exempt from disclosure under the Freedom of Information Act. (See 10 U.S.C. 3705(c)(3) and 41 U.S.C. 3505(b)(3).)

(c) A dispute resolution communication between a neutral person and a party to alternative dispute resolution proceedings that is protected under 5 U.S.C. 574(j) is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(3)).

24.203 Policy.

(a) The Freedom of Information Act specifies how agencies must make their

records available upon public request, sets strict time standards for agency responses, and exempts certain records from public disclosure. Each agency's implementation of these requirements appears in its respective title of the Code of Federal Regulations and is referenced in subpart 24.2 of its implementing acquisition regulations.

(b) Contracting officers may receive requests for records that may be exempt from mandatory public disclosure. The most common exemption is for trade secrets and confidential commercial or financial information (5 U.S.C. 552(b)(4)). Other exemptions include certain interagency or intra-agency memoranda, classified information, internal personnel rules, personal and medical information about individuals, and law enforcement.

(c) Since these requests often involve complex issues requiring in-depth knowledge of court rulings and policy guidance, contracting officers must comply with their agency's implementing regulations. Contracting officers should obtain necessary guidance from agency officials responsible for Freedom of Information Act compliance. For additional assistance, authorized agency officials may contact the Department of Justice, Office of Information Policy. A Freedom of Information Act guide and other resources are available at the Department of Justice website under FOIA reference materials: <https://www.justice.gov/oip>.

Subpart 24.3—Privacy Training

24.301 [Reserved]

24.302 Contract clause.

(a) Insert the clause at FAR 52.224–3, Privacy Training, in solicitations and contracts, including those for commercial products or commercial services, when, on behalf of the agency, contractor employees will—

(1) Have access to a system of records;

(2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or

(3) Design, develop, maintain, or operate a system of records.

(b) Use the clause with its Alternate I when agency-provided training is required.

PART 29—TAXES

Sec.

29.000 Scope of part.

Subpart 29.1—General

29.101 Resolving tax problems.

Subpart 29.2—Federal Excise Taxes

29.201 General.

29.202 General exemptions.

29.203 Other Federal tax exemptions.

29.204 Federal excise tax on specific foreign contract payments.

Subpart 29.3—State and Local Taxes

29.300 Scope of subpart.

29.301 Definitions.

29.302 Application of State and local taxes to the Government.

29.303 Application of State and local taxes to Government contractors and subcontractors.

29.304 North Carolina Sales and Use Tax Act.

29.305 State and local tax exemptions.

Subpart 29.4—Contract Clauses

29.401 Domestic contracts.

29.401–1 Indefinite-delivery contracts for leased equipment.

29.401–2 Construction contracts performed in North Carolina.

29.401–3 Federal, State, and local taxes.

29.401–4 New Mexico gross receipts and compensating tax.

29.402 Foreign contracts.

29.402–1 Foreign fixed-price contracts.

29.402–2 Foreign cost-reimbursement contracts.

29.402–3 Tax on certain foreign procurements.

29.000 Scope of part.

This part provides policies and procedures for using tax clauses in contracts (including foreign contracts), claiming immunity or exemption from taxes, and getting tax refunds. It explains Federal, State, and local taxes on certain supplies and services that executive agencies buy and how these taxes apply to the Federal Government. This information is general guidance for Government personnel and does not cover all tax laws and regulations.

Subpart 29.1—General

29.101 Resolving tax problems.

Contract tax problems are primarily legal issues and vary widely. Contracting officers must consult the agency's legal counsel when tax issues arise, especially before negotiating with any taxing authority.

Subpart 29.2—Federal Excise Taxes

29.201 General.

(a) Federal excise taxes are taxes on the sale or use of specific supplies or services. Subtitle D of the Internal Revenue Code, Miscellaneous Excise Taxes 26 U.S.C. 4041, *et seq.*, and its regulations (26 CFR parts 40 through 299) primarily cover Federal excise tax requirements. Other statutory and regulatory provisions may apply. Direct questions in this area to legal counsel. The most common excise taxes are—

(1) Manufacturers' excise taxes on certain motor-vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, fishing equipment, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and

(2) Special-fuels excise taxes charged at retail on diesel fuel and special motor fuels.

(b) Executive agencies must take advantage of available Federal excise tax exemptions. When the law exempts the Federal Government from these taxes, the contracting officer must, unless inappropriate for the circumstances, request offers on a tax-exclusive basis. When no exemption exists, request offers on a tax-inclusive basis.

29.202 General exemptions.

Federal manufacturers' or special-fuels excise taxes do not apply in many contracting situations. This includes supplies for any of the following purposes:

(a) The exclusive use of any State or political subdivision, including the District of Columbia (26 U.S.C. 4041 and 4221).

(b) Export shipment to a foreign country or an outlying area of the United States. Shipment must occur within 6 months after title passes to the Government. When claiming this exemption, the words "for export" must appear on the contract or purchase document. The contracting officer must give the seller proof of export (see 26 CFR 48.4221-3).

(c) Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes) (26 CFR 48.4221-2).

(d) Use as fuel supplies, ships or sea stores, or legitimate equipment on vessels of war, including—

(1) Aircraft owned by the United States and constituting part of the armed forces; and

(2) Guided missiles and pilotless aircraft owned or chartered by the United States. When claiming this exemption, make the purchase on a tax-exclusive basis. The contracting officer must give the seller an exemption certificate for Supplies for Vessels of War (an example appears in 26 CFR 48.4221-4(d)(2)). The IRS will accept one certificate covering all orders under a single contract for up to 12 calendar quarters) (26 U.S.C. 4041 and 4221).

(e) A nonprofit educational organization (26 U.S.C. 4041 and 4221).

(f) Emergency vehicles (26 U.S.C. 4053 and 4064(b)(1)(c)).

29.203 Other Federal tax exemptions.

(a) Under 26 U.S.C. 4293, the Secretary of the Treasury has exempted

the United States from the communications excise tax imposed in 26 U.S.C. 4251, when the supplies and services are for the exclusive use of the United States. (Secretarial Authorization, June 20, 1947, Internal Revenue Cumulative Bulletin, 1947-1, 205.)

(b) Under 26 U.S.C. 4483(b), the Secretary of the Treasury has exempted the United States from the Federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the United States owns or leases the vehicle. (Secretarial Authorization, Internal Revenue Cumulative Bulletin, 1956-2, 1369.)

29.204 Federal excise tax on specific foreign contract payments.

(a) Title 26 U.S.C. 5000C and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7 require an acquiring agency to collect this excise tax (section 5000C tax) through withholding on applicable contract payments (see 29.402-3, 31.205-41(b)(8)). Agencies merely withhold the tax for the Internal Revenue Service (IRS). All substantive issues regarding the underlying section 5000C tax, such as the imposition of or exemption from the tax, are matters under IRS jurisdiction. For questions about interpreting IRS regulations, refer to <https://www.irs.gov/help/tax-law-questions>.

(b) According to clause 52.229-12, Tax on Certain Foreign Procurements, contractors 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. If a completed IRS Form W-14 is not submitted with a payment request, the default withholding percentage is 2 percent for that payment request. Information about IRS Form W-14 is available at www.irs.gov/w14.

(c)(1) Exemptions from withholding in IRS regulations at 26 CFR 1.5000C-1(d)(1) through (4) are covered in the prescription at 29.402-3(a), which means the contracting officer will not include the provision when one of the 29.402-3(a) exceptions applies.

(2) The offeror will claim exemptions under 26 CFR 1.5000C-1(d)(5) through (7) by submitting an IRS Form W-14 with their offer. If not submitted with the offer, exemptions will not apply to the contract.

(3) Any exemption claimed and self-certified on the IRS Form W-14 is subject to IRS audit. Any disputes about imposing and collecting the section 5000C tax are handled by the IRS

because this is a tax matter, not a contract issue.

(d) The exemptions in 29.201 through 29.203 do not apply to this section 5000C tax.

(e) Additional information about this excise tax on specific foreign contract payments is available at <https://www.irs.gov/government-entities/excise-tax-on-specified-federal-foreign-procurement-payments>.

Subpart 29.3—State and Local Taxes

29.300 Scope of subpart.

This subpart provides the policies and procedures regarding the exemption or immunity of Federal Government purchases and property from State and local taxation.

29.301 Definitions.

As used in this subpart—

State and local taxes means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

29.302 Application of State and local taxes to the Government.

(a) Generally, purchases and leases made by the Federal Government are immune from State and local taxation. However, whether a specific purchase or lease is immune is a legal question requiring advice from the agency's legal counsel.

(b) When economically feasible, executive agencies must take full advantage of all exemptions from State and local taxation. When appropriate, the contracting officer must provide a Standard Form 1094, U.S. Tax Exemption Form (see part 53), or other evidence listed in 29.304(a) to establish that the Government is making the purchase.

29.303 Application of State and local taxes to Government contractors and subcontractors.

(a) The Government does not normally designate prime contractors and subcontractors as agents of the Government for claiming immunity from State or local sales or use taxes. Before asserting that a contractor is a Government agent, refer the matter to the agency head for review. Include all relevant data and a thorough analysis of all relevant legal precedents with the referral.

(b) When purchases are made by a prime contractor or subcontractor rather than directly by the Government, the right to exemption from sales or use tax may not depend on the Government's immunity from direct taxation by States and localities. Instead, it may depend on provisions of the specific State or local

law, or in some cases, the transaction may not be expressly exempt from the tax. Protect the Government's interest by following the procedures in 29.101.

(c) Often, property owned by the Government (including property acquired under progress payments or the Government property clause) is in a contractor's or subcontractor's possession. States or localities may claim the right to tax Government property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property. In such cases, the contracting officer must seek review and advice from the agency's legal counsel on the appropriate action.

(d) Indefinite-delivery contracts for equipment rental may require the contractor to provide equipment in any state. States and local governments impose various taxes on equipment leased to the Government, and the tax amounts can vary significantly among jurisdictions.

29.304 North Carolina Sales and Use Tax Act.

(a) The North Carolina Sales and Use Tax Act allows counties and incorporated cities and towns to receive an annual refund from the Secretary of Revenue for sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become part of or are attached to any building or structure built, altered, or repaired for these counties and incorporated cities and towns in North Carolina. In *United States v. Clayton*, 250 F. Supp. 827 (1965), the court ruled that the United States is entitled to the refund but must follow the Act's refund procedure and regulations to recover what it is due.

(b) To receive the refund, the Act requires claimants to file a written request within 6 months after the end of their fiscal year, supported by records, receipts, and information that the Secretary of Revenue requires. Claimants will not receive a refund for applications filed late or not meeting the Secretary of Revenue's requirements. These requirements appear in regulations stating that to support a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must get certified statements from the contractor showing the cost of property purchased from each vendor and the amount of sales or use taxes paid. If a contractor makes several purchases from the same vendor, the certified statement must show the invoice numbers, invoice dates, total invoice amount, and sales

and use taxes paid. The statement must also include the cost of any tangible personal property the contractor took from warehouse stock and the amount of sales or use tax paid. The general contractor must obtain and provide to the claimant similar certified statements from subcontractors. The contractor's statement must show any local sales or use taxes separately from State sales or use taxes.

(c) The clause prescribed at 29.401–2 requires contractors to submit certified statements disclosing North Carolina State and local sales and use taxes paid during the 12-month period ending the previous September 30 to contracting officers by November 30 each year. The contracting officer must ensure contractors comply with this requirement and obtain the annual refund to which the Government is entitled. The refund application must be filed annually before March 31 in the manner and form the Secretary of Revenue requires. Get copies of the form from applicable state resources, or—

State of North Carolina
Department of Revenue
PO Box 25000
Raleigh, NC 27640

29.305 State and local tax exemptions.

(a) *General.* The contract may require the contractor to take specific actions regarding payment, nonpayment, refund, protest, or other handling of a specified tax. Such special treatment may be appropriate when there is doubt about the applicability or allocability of the tax, or when the tax's applicability is being challenged in court.

(b) *Evidence of exemption.* Evidence is needed to establish an exemption from State or local taxes. The type of evidence depends on the grounds for the exemption claimed, the parties involved, and the requirements of the taxing jurisdiction. Examples of evidence include but are not limited to documents that identify a U.S. agency as the buyer including Government Purchase or Fleet Cards, a U.S. tax exemption form (SF 1094), or documents establishing a State or local exemption.

(c) *Furnishing proof of exemption.* If there is a reasonable basis to claim an exemption, provide the seller with evidence of exemption, as follows:

(1) Under a contract containing the clause 52.229–3, Federal, State, and Local Taxes, if requested by the contractor and there is a reasonable basis to support the exemption.

(2) Under a contract containing the clause 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), if the contractor requests

evidence that applies to a tax excluded from the contract price and there is a reasonable basis to support the exemption.

(3) Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the contracting officer's discretion.

(4) Under a contract or purchase order with no tax provision, if—

(i) Requested by the contractor and approved by the contracting officer or at the contracting officer's discretion; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor agrees to a reduction in the contract price.

Subpart 29.4—Contract Clauses

29.401 Domestic contracts.

29.401–1 Indefinite-delivery contracts for leased equipment.

Insert the clause at 52.229–1, State and Local Taxes, in solicitations and contracts for leased equipment, other than those for commercial products or commercial services, when—

(a) Planning a fixed-price indefinite-delivery contract;

(b) The contract will be performed wholly or partly in the United States or its outlying areas; and

(c) The delivery places are not known at the time of contracting.

29.401–2 Construction contracts performed in North Carolina.

Insert the clause at 52.229–2, North Carolina State and Local Sales and Use Tax, in solicitations and contracts for construction to be performed in North Carolina, other than those for commercial products or commercial services. If the requirement is for vessel repair in North Carolina, use the clause with its Alternate I.

29.401–3 Federal, State, and local taxes.

(a) Except as provided in paragraph (b) of this section, insert the clause at 52.229–3, Federal, State, and Local Taxes, in solicitations and contracts other than those for commercial products or commercial services if—

(1) The contract will be performed wholly or partly in the United States or its outlying areas;

(2) Planning a fixed-price contract; and

(3) The contract exceeds the simplified acquisition threshold.

(b) In a noncompetitive contract that meets all conditions in paragraph (a) of this section, the contracting officer may insert the clause at 52.229–4, Federal, State, and Local Taxes (State and Local Adjustments), instead of the clause at

52.229–3, other than those for commercial products or commercial services, if the price would otherwise include an inappropriate contingency for potential postaward changes in State or local taxes.

29.401–4 New Mexico gross receipts and compensating tax.

(a) *Definition.*

Service, as used in this section, is defined in the Gross Receipts and Compensating Tax Act of the State of New Mexico, Sec 7–9–3(S) NMSA 1978, and means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. “Service” includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective, or ultimate objective of the contracting parties must not be controlling. “Service” includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. That tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. Sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property.

(b) *Contract clause.* Insert the clause at 52.229–10, State of New Mexico Gross Receipts and Compensating Tax, in solicitations and contracts other than those for commercial products or commercial services issued by the agencies identified in paragraph (c) of this section when all three of these conditions exist:

(1) The contractor will be performing a cost-reimbursement contract.

(2) The contract directs or authorizes the contractor to acquire tangible personal property as a direct cost under the contract and title to such property passes directly to and vests in the United States upon delivery by the vendor.

(3) The contract will be for services to be performed wholly or partly within New Mexico.

(c) *Participating agencies.*

(1) The agencies listed below have an agreement with the State of New Mexico to eliminate double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in

performing services wholly or partly in New Mexico, and when title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Therefore, the clause applies only to solicitations and contracts issued by the—United States Defense Advanced Research Projects Agency; United States Defense Threat Reduction Agency; United States Department of Agriculture; United States Department of the Air Force; United States Department of the Army; United States Department of Energy; United States Department of Health and Human Services; United States Department of the Interior; United States Department of Labor; United States Department of the Navy; United States Department of Transportation; United States General Services Administration; United States Missile Defense Agency; and United States National Aeronautics and Space Administration.

(2) Any other Federal agency expecting to award cost-reimbursement contracts to be performed in New Mexico should contact the New Mexico Taxation and Revenue Department to execute a similar agreement.

29.402 Foreign contracts.

29.402–1 Foreign fixed-price contracts.

(a) Insert the clause at 52.229–6, Taxes-Foreign Fixed-Price Contracts, in solicitations and contracts, including those for commercial products or commercial services, if the acquisition value exceeds the simplified acquisition threshold when planning a fixed-price contract to be performed wholly or partly in a foreign country, unless the contract will be with a foreign government.

(b) Insert the clause at 52.229–7, Taxes-Fixed-Price Contracts with Foreign Governments, in solicitations and contracts, other than those for commercial products or commercial services, that exceed the simplified acquisition threshold when planning a fixed-price contract with a foreign government.

29.402–2 Foreign cost-reimbursement contracts.

(a) Insert the clause at 52.229–8, Taxes-Foreign Cost-Reimbursement Contracts, in solicitations and contracts other than those for commercial products or commercial services, when planning a cost-reimbursement contract to be performed wholly or partly in a foreign country, unless the contract will be with a foreign government.

(b) Insert the clause at 52.229–9, Taxes-Cost-Reimbursement Contracts with Foreign Governments, in

solicitations and contracts other than those for commercial products or commercial services, when planning a cost-reimbursement contract with a foreign government.

29.402–3 Tax on certain foreign procurements.

(a) Insert the provision at 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation, in solicitations, including those for commercial products and commercial services, except for—

(1) Acquisitions using simplified acquisition procedures that do not exceed the simplified acquisition threshold;

(2) Emergency acquisitions using the emergency acquisition flexibilities defined in part 26;

(3) Acquisitions using the unusual and compelling urgency authority in part 6;

(4) Contracts with a single individual for personal services that will not exceed the simplified acquisition threshold on an annual calendar year basis for all years of the contract; and

(5) Acquisitions the requiring activity identifies as requirements for certain foreign humanitarian assistance contracts that are payments made by U.S. Government agencies under a contract with a foreign contracting party to obtain goods or services described in or authorized under 7 U.S.C. 1691, *et seq.*, 22 U.S.C. 2151, *et seq.*, 22 U.S.C. 2601 *et seq.*, 22 U.S.C. 5801 *et seq.*, 22 U.S.C. 5401 *et seq.*, 10 U.S.C. 402, 10 U.S.C. 404, 10 U.S.C. 407, 10 U.S.C. 2557, and 10 U.S.C. 2561.

(b) Insert the clause at 52.229–12, Tax on Certain Foreign Procurements, in—

(1) Solicitations that contain the provision at 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation; and

(2) Resulting contracts for which the contractor indicated it was a foreign person in solicitation provision 52.229–11, Tax on Certain Foreign Procurements—Notice and Representation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 41 U.S.C. 1121(b); 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

■ 3. Revise section 52.224–1 through 52.224–3 to read as follows:

52.224–1 Privacy Act Notification.

As prescribed in 24.104(a), insert the following clause in solicitations and contracts:

Privacy Act Notification (Date)

The Contractor will be required to design, develop, or operate a system of records, to accomplish an agency function, subject to the Privacy Act of 1974, Public Law 93–579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

52.224–2 Privacy Act.

As prescribed in 24.104(b), insert the following clause in solicitations and contracts:

Privacy Act (Date)

(a) The Contractor agrees to— (1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records to accomplish an agency function when the contract identifies the design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, including those for commercial products or commercial services, when the work statement in the proposed subcontract provides for the design, development, or operation of a system of records that is subject to the Act.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records to accomplish an agency function, the Contractor and any employee of the Contractor is considered to be an employee of the agency.

(c)(1) “*Operation of a system of records*,” as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, maintenance, or dissemination of records.

(2) “*Record*,” as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) “*System of records*,” as used in this clause, means a group of any records under

the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(d) Include this clause, including this paragraph (d) in all subcontracts awarded under this contract, including those for commercial products or commercial services, which require the design, development, or operation of such a system of records.

(End of clause)

52.224–3 Privacy Training.

As prescribed in 24.302(a), insert the following clause:

Privacy Training (Date)

(a) *Definition.* As used in this clause, “personally identifiable information” means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other information that is linked or linkable to a specific individual. (See Office of Management and Budget (OMB) Circular A–130, Managing Federal Information as a Strategic Resource).

(b) *Responsibilities.* The Contractor must ensure that initial privacy training, and annual privacy training thereafter, is completed by contractor employees who—

- (1) Have access to a system of records;
- (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of an agency; or—
- (3) Design, develop, maintain, or operate a system of records (see also FAR subpart 24.3 and 39.105).

(c) *Requirements.*

(1) Privacy training must address the key elements necessary for ensuring the safeguarding of personally identifiable information or a system of records. The training must be role-based, provide foundational as well as more advanced levels of training, and have measures in place to test the knowledge level of users. At a minimum, the privacy training must cover—

- (i) The provisions of the Privacy Act of 1974 (5 U.S.C. 552a), including penalties for violations of the Act;
- (ii) The appropriate handling and safeguarding of personally identifiable information;
- (iii) The authorized and official use of a system of records or any other personally identifiable information;
- (iv) The restriction on the use of unauthorized equipment to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise access personally identifiable information;
- (v) The prohibition against the unauthorized use of a system of records or unauthorized disclosure, access, handling, or use of personally identifiable information; and
- (vi) The procedures to be followed in the event of a suspected or confirmed breach of a system of records or the unauthorized disclosure, access, handling, or use of personally identifiable information (see OMB guidance for Preparing for and Responding to a Breach of Personally Identifiable Information).

(2) Completion of an agency-developed or agency-conducted training course must be deemed to satisfy these elements.

(d) *Documentation.* The Contractor must maintain and, upon request, provide documentation of completion of privacy training to the Contracting Officer.

(e) *Restriction.* The Contractor must not allow any employee access to a system of records, or permit any employee to create, collect, use, process, store, maintain, disseminate, disclose, dispose or otherwise handle personally identifiable information, or to design, develop, maintain, or operate a system of records unless the employee has completed privacy training, as required by this clause.

(f) *Subcontracts.* The substance of this clause, including this paragraph (f), must be included in all subcontracts at any tier, including those for commercial products or commercial services, under this contract, when subcontractor employees will—

- (1) Have access to a system of records;
- (2) Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information; or
- (3) Design, develop, maintain, or operate a system of records.

(End of clause)

Alternate I (Date). As prescribed in 24.302 (b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Provider.* The contracting agency will provide initial privacy training, and annual privacy training thereafter, to Contractor employees for the duration of this contract.

■ 4. Revise sections 52.229–1 through 52.229–4 to read as follows:

52.229–1 State and Local Taxes.

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

State and Local Taxes (DATE)

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 must 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:

North Carolina State and Local Sales and Use Tax (DATE)

(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 must constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) of this clause, the Contractor must 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 must 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 must 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. The Contractor must show any local sales or use taxes included in the Contractor's statements separately from the State sales or use taxes. The Contractor must 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 must 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 Contractor must submit certified statements to be furnished pursuant to paragraph (c) of this clause within 60 days after completion. If this contract is not completed before the next October 1, the Contractor must submit certified statements on or before November 30 of each year that include taxes paid during the 12-month period that ended the preceding September 30.

(e) The Contractor must use the following format for the certified statements to be furnished pursuant to paragraph (c) of this clause:

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.

Alternate I (DATE). 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.

(End of clause)

52.229-3 Federal, State, and Local Taxes.

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

Federal, State, and Local Taxes (DATE)

(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 Government will increase the contract price 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 Government will decrease the contract price by the amount of any after-relieved Federal tax.

(e) The Government will decrease the contract price 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) The Government will not adjust the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor must 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 must take appropriate action as the Contracting Officer directs.

(h) The Government will, 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(b), insert the following clause:

Federal, State, and Local Taxes (State and Local Adjustments) (DATE)

(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 Government will increase the contract price 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 Government will decrease the contract price by the amount of any after-relieved tax. The Government must 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 will be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The Government will decrease the contract price 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) The Government will not adjust the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor must 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 must take appropriate action as the Contracting Officer directs. The contract price must 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 will 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 [Removed and Reserved]

■ 5. Remove and reserve section 52.229-5.

■ 6. Revise sections 52.229-6 through 52.229-12 to read as follows:

52.229-6 Taxes—Foreign Fixed-Price Contracts.

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

Taxes—Foreign Fixed-Price Contracts (Date)

(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—

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.

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.

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.

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.

(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 must not be applicable to expenditures in such country by or on behalf of the United States, except as provided in paragraph (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 paragraph (d)(2) of this clause, the Government will increase the contract price 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 requirements of paragraph (i) of this clause.

(2) The Government will not increase the contract price to offset taxes imposed under 26 U.S.C. 5000C.

(e) The Government will decrease the contract price by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States will 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 will be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The Government will decrease the contract price 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 requirements of paragraph (i) of this clause.

(g) The Government will not adjust 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 Contractor must pay or credit the amount of the reduction to the Government of the United States as the Contracting Officer directs.

(i) The Contractor must 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 must not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor must 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 must take appropriate action as the Contracting Officer directs. The Government will equitably adjust the contract price 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 (Date)

(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 must 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 must 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 must not apply to expenditures by the United States in _____ [insert name of country], the Government of the United States will reduce the contract price accordingly.

(d) The Government of the United States will not adjust 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 (Date)

(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], must 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 Contractor must pay or

credit the amount of the reduction 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 (Date)

(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], must 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 subcontractor must pay (not credit to the contract) the amount of the reduction 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 (DATE)

(a) Within 30 days after award of this contract, the Contractor must register the contract, including the contract number, with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico.

(b) The Contractor must pay the New Mexico gross receipts taxes, required by 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 by the contracting officer in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c)(1) The Contractor must 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.

(2) When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor must 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 must 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. If the Contractor does not provide a Type 15 Nontaxable Transaction Certificate to a vendor, the vendor will be liable for the gross receipt taxes, which the vendor will pass on to the Contractor. Those taxes are not an allowable cost under the contract, and the Government will not reimburse the Contractor for the taxes.

(e) The Contractor must 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) The Contractor's out-of-state purchase of tangible personal property, which would be otherwise subject to compensation tax, is subject to the principles of this clause.

Accordingly, Contractors must pay compensating tax 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 Agreement mentioned in paragraph (c)(2) of this clause. This must not preclude the Contractor from having its own representative nor does it obligate the [*_____] to represent its Contractor.

(h) The Contractor agrees to insert 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.

(i) Paragraphs (a) through (h) of this clause must be null and void should the Agreement referred to in paragraph (c)(2) 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 (Date)

(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 of the United States.

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) *Tax Imposition.* 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.* Exemptions from withholding under this provision are described at 26 CFR 1.5000C-1(d)(5) through (7). The Offeror may claim an exemption from the withholding by using the Department of the Treasury IRS Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, available 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) *Representations.* For purposes of withholding under 26 U.S.C. 5000C, the Offeror represents that:

- (1) It ☐ 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 must select one] from the excise tax.

(e) *Contract Requirements for Foreign Persons.* 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 must 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) *Withholding for Partial or No Exemption.* 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) *IRS Guidance.* A taxpayer may, for a fee, seek advice from the 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 (Date)

(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) *Applicability.* 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) *Contractor Responsibilities.*

(1) If the Contractor is a foreign person and has only a partial or no exemption to the withholding, the Contractor must include the Department of the Treasury IRS 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—

- (i) Is a foreign person; and
- (ii) 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

(iii) 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 must—

(A) 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

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

(d) *Withholding Procedures.* 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.* 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) *Treatment of Taxes.* Taxes imposed under 26 U.S.C. 5000C may not be—

- (1) Included in the contract price; nor
- (2) Reimbursed.

(g) *IRS Guidance.* A taxpayer may, for a fee, seek advice from the 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)

52.229-13 [Removed and Reserved]

52.229-14 [Removed and Reserved]

■ 7. Remove and reserve sections 52.229-13 and 52.229-14.

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