

52.229–12 Tax on Certain Foreign Procurements.

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

Tax on Certain Foreign Procurements (JUN 2020)

(a) *Definitions.* As used in this clause—
Foreign person means any person other than a United States person.

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

- (1) A citizen or resident of the United States;
- (2) A domestic partnership;
- (3) A domestic corporation;
- (4) Any estate (other than a foreign estate, within the meaning of 26 U.S.C. 7701(a)(31)); and
- (5) Any trust if—

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

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

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

(c)(1) If the Contractor is a foreign person and has only a partial or no exemption to the withholding, the Contractor shall include the Department of the Treasury Internal Revenue Service Form W–14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, with each voucher or invoice submitted under this contract throughout the period in which this status is applicable. The excise tax withholding is applied at the payment level, not at the contract level. The Contractor should revise each IRS Form W–14 submission to reflect the exemption (if any) that applies to that particular invoice, such as a different exemption applying. In the absence of a completed IRS Form W–14 accompanying a payment request, the default withholding percentage is 2 percent for the section 5000C withholding for that payment request. Information about IRS Form W–14 and its separate instructions is available via the internet at www.irs.gov/w14.

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

- (i) Notify the Contracting Officer within 30 days of a change in circumstances that causes the Contractor to be subject to the excise tax withholding under 26 U.S.C. 5000C; and
- (ii) Comply with paragraph (c)(1) of this clause.

(d) The Government will withhold a full 2 percent of each payment unless the Contractor claims an exemption. If the Contractor enters a ratio in Line 12 of the IRS

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

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

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

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

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

(End of clause)

[FR Doc. 2020–07110 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 4, 19, 25, and 52**

[FAC 2020–06; Item IV; Docket No. FAR–2020–0052; Sequence No. 1]

Federal Acquisition Regulation; Technical Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make needed editorial changes.

DATES: Effective: May 6, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Lois Mandell, Regulatory Secretariat Division (MVCB), 1800 F Street NW,

2nd Floor, Washington, DC 20405, 202–501–4755. Please cite FAC 2020–06, Technical Amendments.

SUPPLEMENTARY INFORMATION: In order to update certain elements in 48 CFR parts 4, 19, 25, and 52 this document makes editorial changes to the FAR.

List of Subjects in 48 CFR parts 4, 19, 25, and 52

Government procurement.

William F. Clark,

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

Therefore, DoD, GSA, and NASA amend 48 CFR parts 4, 19, 25, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 4, 19, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS**4.1102 [Amended]**

- 2. Amend section 4.1102 by removing from paragraph (a)(3)(ii) “http://aoprals.state.gov/Web920/danger_pay_all.asp” and adding “<https://aoprals.state.gov/>” in its place.

PART 19—SMALL BUSINESS PROGRAMS**19.102 [Amended]**

- 3. Amend section 19.102 by removing from paragraph (a)(1) “<https://www.sba.gov/content/table-small-business-size-standards>” and adding “<https://www.sba.gov/document/support-table-size-standards>” in its place.

PART 25—FOREIGN ACQUISITION**25.301–1 [Amended]**

- 4. Amend section 25.301–1 by removing from paragraph (a)(2)(i) “http://aoprals.state.gov/Web920/danger_pay_all.asp” and adding “<https://aoprals.state.gov/>” in its place.

25.301–4 [Amended]

- 5. Amend section 25.301–4 by removing from paragraph (b)(1) “http://aoprals.state.gov/Web920/danger_pay_all.asp” and adding “<https://aoprals.state.gov/>” in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

- 6. Amend section 52.219–28 by revising the date of the clause and removing from paragraph (d) “

www.sba.gov/content/table-small-business-size-standards” and adding “<https://www.sba.gov/document/support-table-size-standards>” in its place to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

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Post-Award Small Business Program Rerepresentation MAY 2020

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■ 7. Amend section 52.223–15 by revising the date of the clause and removing from paragraph (d)(2) “http://www1.eere.energy.gov/femp/procurement/eeep_requirements.html” and adding “<https://www.energy.gov/eere/femp/energy-efficient-products-and-energy-saving-technologies>” in its place to read as follows:

52.223–15 Energy Efficiency in Energy-Consuming Products.

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Energy Efficiency in Energy-Consuming Products MAY 2020

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■ 8. Amend section 52.225–19 by revising the date of the clause and removing from paragraphs (b)(1)(ii)(A) and (q)(2)(i) “http://aoprals.state.gov/Web920/danger_pay_all.asp” and adding “<https://aoprals.state.gov/>” in

their places, respectively, to read as follows:

52.225–19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.

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Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States MAY 2020

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[FR Doc. 2020–07111 Filed 5–5–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 2]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–06; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA),

and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rules appearing in Federal Acquisition Circular (FAC) 2020–06, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2020–06, which precedes this document. These documents are also available via the internet at <http://www.regulations.gov>.

DATES: May 6, 2020.

ADDRESSES: The FAC, including the SECG, is available via the internet at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2020–06 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755.

RULE LISTED IN FAC 2020–06

Item	Subject	FAR Case	Analyst
I	Revocation of Executive Order on Nondisplacement of Qualified Workers	2020–001	Delgado.
II	Applicability of Inflation Adjustments of Acquisition-Related Thresholds	2018–007	Delgado.
III	Tax on Certain Foreign Procurement	2016–013	Delgado.
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments made by these FAR rules, refer to the specific item numbers and subjects set forth in the documents following these item summaries. FAC 2020–06 amends the FAR as follows:

Item I—Revocation of Executive Order on Nondisplacement of Qualified Workers (FAR Case 2020–001)

This final rule removes subpart 22.12, entitled “Nondisplacement of Qualified Workers Under Service Contracts”, and a related contract clause, from the FAR. The final rule applies to service contracts which succeed a contract for performance by service employees of the same or similar work at the same location. It removes a requirement for service contractors and their

subcontractors to offer employees of the predecessor contractor and its subcontractors a right of first refusal of employment for positions for which they are qualified. It implements Executive Order 13897 of October 31, 2019, Improving Federal Contractor Operations by Revoking Executive Order 13495. This final rule will not have a significant impact on service contractors and their subcontractors. However, as a result of eliminating the language in FAR subpart 22.12, there will be fewer requirements imposed on contractors to keep records demonstrating compliance on successor contractors.

Item II—Applicability of Inflation Adjustments of Acquisition-Related Thresholds (FAR Case 2018–007)

This final rule makes inflation adjustments of statutory acquisition-related thresholds under 41 U.S.C. 1908 applicable to existing contracts and subcontracts in effect on the date of the adjustment. It implements section 821 of the National Defense Authorization Act for Fiscal Year 2018.

This final rule will not have a significant economic impact on a substantial number of small entities.

Item III—Tax on Certain Foreign Procurement (FAR Case 2016–013)

This final rule withholds a 2 percent tax on contract payments made by the United States (U.S.) Government to foreign persons pursuant to certain contracts. This rule applies to Federal