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Federal Acquisition Circular 2005-65, published January 29, 2013, included a couple of final rules that affected government contract compliance. But you weren't taken by surprise. As a long-time, loyal readers of this blog, you already knew about them. You knew about them because we told you they were coming, long ago.

First up: **FAR Case 2012-013** . This is a final rule that prohibits contracting with "inverted domestic corporations." We originally **brought this issue to your attention** when it was first issued as an interim rule, back in July 2009. Six public comments were submitted; but those comments did not affect the language in the final rule.

When the FAR applies, you cannot contract with an inverted domestic corporation. An inverted domestic corporation is one that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country. (See the definition of inverted domestic corporation at FAR 9.108-1.)

You'll know if the FAR applies because you'll have the solicitation provision 52.209-2 or the contract clause 52-209-10 staring you in the face when you read the RFP or contract. You *are* reading those things, right?

Second: **FAR Case 2011-011** . This is a final rule that first imposes the two percent excise tax on "certain Federal procurement payments to foreign persons," and then makes payments of that tax unallowable. We first **told you about** this issue in March 2012, when it was issued as a proposed rule. As we told you at the time—

… in order to determine whether or not an excise tax should be imposed, and whether or not estimated project margins should be reduced by the value of that 2 percent excise tax, you first need to know (a) the country involved, and (b) whether that country has signed a Trade Agreement with the U.S.A. These decision points will need to be addressed at the time the proposal is being prepared—or, even better, at the time of the bid/no bid decision.

Candidly, we didn't think very much of the proposed rule. We expected that it would create difficulties for companies subject to foreign "offset" requirements in the export of defense articles. However, we also noted that, "since the rule-making is mandated by Public Law, we don't believe that the Councils have much latitude in the changes they can make." Accordingly, we didn't expect public comments regarding the proposed rule to affect the language to any great extent.

And guess what? We were right about that. As the promulgating comments stated, "Based on a review of the public comments … the Councils have concluded that no change to the proposed rule is necessary."

The final rule revised FAR 31.205-41 to state that the costs of the two percent excise tax are not allowable. FAR 52.229-3, 52.229-4, 52.229-6, and 52.229-7 were amended to provide that the costs for the two percent excise tax cannot be included in either foreign fixed-price contracts with a foreign concern or foreign fixed-price contracts with foreign governments.

So when applicable, you must pay the excise taxes. However, you cannot include them in the proposed contract price, and you cannot submit them as an allowable cost for reimbursement. Essentially, the tax will erode the project margins of your export sales.

As we told you they would.