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

(a) Prime contractors and subcontractors *shall* not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any activity contends that a contractor is an agent of the Government, the matter *shall* be referred to the *agency head* for review. The referral *shall* include all pertinent data on which the contention is based, together with a thorough analysis of all relevant legal precedents.

(b) When purchases are not made by the Government itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax *may* not rest on the Government's immunity from direct taxation by States and localities. It *may* rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction *may* not in fact be expressly exempt from the tax. The Government's interest *shall* be protected by using the procedures in 29.101.

(c) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations *may* arise in which States or localities assert 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 shall* seek review and advice from the agency-designated counsel on the appropriate course of action.

Parent topic: Subpart 29.3 - State and Local Taxes