29.304 Matters requiring special consideration.

The imposition of *State and local taxes may* result in special contract considerations including the following:

(a) With coordination of the agency-designated counsel, a contract *may* (1) state that the contract price includes or excludes a specified tax or (2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment *may* be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of *State and local taxes* to purchases by the Federal Government *may* depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery *should* be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental *may* require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction. See 29.401-1 for the prescription of the *contract clause* to be included in contracts when delivery points are not known at time of *contracting*.

(d) The North Carolina State and local sales and use tax.

(1) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, *supplies*, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In *United States* v. *Clayton*, 250 F. Supp. 827 (1965), it was held that the *United States* is entitled to the benefit of the refund, but *must* follow the refund procedure of the Act and the regulations to recover what it is due.

(2) The Act provides that, to receive the refund, claimants *must* file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue *may* require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner *may* require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund *claim* for sales or use taxes paid on purchases of building materials, *supplies*, fixtures, or equipment by a contractor, the Government *must* secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or 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 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 sales or use tax paid by the contractor. Similar certified statements by subcontractors *must* be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement *must* be shown separately from the State sales or use taxes.

(3) The clause prescribed at 29.401-2 requires contractors to submit to *contracting officers* by November 30 of each year a certified statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The *contracting officer shall* ensure that contractors comply with this requirement and *shall* obtain the annual refund to which the Government *may* be entitled. The application for refund *must* be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form *may* be obtained from the-

State of North Carolina,

Department of Revenue,

PO Box 25000 Raleigh,

North Carolina 27640.

Parent topic: Subpart 29.3 - State and Local Taxes