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Parent topic: Federal Acquisition Regulation

29.000 Scope of part.

This part prescribes policies and procedures for (a) using tax clauses in contracts (including foreign contracts), (b) asserting immunity or exemption from taxes, and (c) obtaining tax refunds. It explains Federal, State, and local taxes on certain supplies and services acquired by executive agencies and the applicability of such taxes to the Federal Government. It is for the general information of Government personnel and does not present the full scope of the tax laws and regulations.

29.001 29.001 Definitions.

As used in this part—

North Atlantic Treaty Organization (NATO) Forces means the Members of the Force, Members of the Civilian Component, NATO Personnel and all property, equipment, and materiel of NATO, NATO Member States, and Operational Partners present in the territory of Afghanistan.

*U.S. Forces*means the entity comprising the members of the force and of the civilian component, and all property, equipment, and materiel of the United States Armed Forces present in the territory of Afghanistan.

Subpart 29.1 - General

29.101 Resolving tax problems.

(a) Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and to the pertinent tax laws and regulations. Therefore, when tax questions arise, contracting officers should request assistance from the agency-designated legal counsel.

(b) To keep treatment within an agency consistent, contracting officers or other authorized personnel shall consult the agency-designated counsel before negotiating with any taxing authority for the purpose of-

(1) Determining whether or not a tax is valid or applicable; or

(2) Obtaining exemption from, or refund of, a tax.

(c) When the constitutional immunity of the Government from State or local taxation may reasonably be at issue, contractors should be discouraged from negotiating independently with taxing authorities if the contract involved is either-

(1) A cost-reimbursement contract; or

(2) A fixed-price contract containing a tax escalation clause.

(d) Before purchasing goods or services from a foreign source, the contracting officer should consult the agency-designated counsel-

(1) For information on foreign tax treaties and agreements in force and on the implementation of

any foreign-tax-relief programs; and

(2) To resolve any other tax questions affecting the prospective contract.

Subpart 29.2 - Federal Excise Taxes

29.201 General.

(a) Federal excise taxes are levied on the sale or use of particular supplies or services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C.4041, *etseq*., and its implementing regulations, 26 CFR parts 40 through 299, cover miscellaneous federal excise tax requirements. Questions arising in this area should be directed to the agency-designated counsel. The most common excise taxes are-

(1) Manufacturers' excise taxes imposed 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 imposed at the retail level on diesel fuel and special motor fuels.

(b) Sometimes the law exempts the Federal Government from these taxes. Contracting officers should solicit prices on a tax-exclusive basis when it is known that the Government is exempt from these taxes, and on a tax-inclusive basis when no exemption exists.

(c) Executive agencies shall take maximum advantage of available Federal excise tax exemptions.

29.202 General exemptions.

No Federal manufacturers' or special-fuels excise taxes are imposed in many contracting situations as, for example, when the supplies are for any of the following:

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

(b) Shipment for export to a foreign country or an outlying area of the United States. Shipment must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words "for export" must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (see 26 CFR48.4221-3).

(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 a part of the armed forces and (2) guided missiles and pilotless aircraft owned or chartered by the United States. When this exemption is to be claimed, the purchase should be made on a tax-exclusive basis. The contracting officer shall furnish the seller an exemption certificate for Supplies for Vessels of War (an example is given in 26 CFR 48.4221-4(d)(2) ; the IRS will accept one certificate covering all orders under a single contract for a specified period of up to 12 calendar quarters) (26 U.S.C.4041 and 4 221).

(e) A nonprofit educational organization (26 U.S.C.4041 and 4 221).

(f) Emergency vehicles (26 U.S.C.4053 and 4 064(b)(1)(c)).

29.203 Other Federal tax exemptions.

(a) Pursuant to 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) Pursuant to 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 vehicle is owned or leased by the United States. (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 acquiring agencies to collect this excise tax via withholding on applicable contract payments (see 29.402-3, 31.205-41(b)(8)). Agencies merely withhold the tax (section 5000C tax) for the Internal Revenue Service (IRS). All substantive issues regarding the underlying section 5000C tax, e.g., the imposition of, and exemption from the tax, are matters under the jurisdiction of the IRS. The contracting officer will refer all questions relating to the interpretation of the IRS regulations to https://www.irs.gov/help/tax-law-questions.

(b) In accordance with the clause 52.229-12, Tax on Certain Foreign Procurements, contractors that are 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. 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 is available via the internet at www.irs.gov/w14.

(c)

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

(2) The exemptions at 26 CFR 1.5000C-1(d)(5) through (7) must be claimed by the offeror when it submits an IRS Form W-14 with the offer. If not submitted with the offer, exemptions will not be applied to the contract.

(3) 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 section 5000C tax are adjudicated by the IRS as the section 5000C tax is a tax matter, not a contract issue.

(d) The exemptions in 29.201 through 29.302 do not apply to this section 5000C tax.

(e) Additional information about this excise tax on specific foreign contract payments is available via the internet 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 prescribes the policies and procedures regarding the exemption or immunity of Federal Government purchases and property from State and local taxation.

29.301 [Reserved]

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. Whether any specific purchase or lease is immune, how-ever, is a legal question requiring advice and assistance of the agency-designated counsel.

(b) When it is economically feasible to do so, executive agencies shall take maximum advantage of all exemptions from State and local taxation that may be available. If appropriate, the contracting officer shall provide a Standard Form 1094, U.S. Tax Exemption Form (see part 53), or other evidence listed in 29.305(a) to establish that the purchase is being made by the Government.

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.

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.

29.305 State and local tax exemptions.

(a) *Evidence of exemption.* Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:

(1) A copy of the contract or relevant portion.

(2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.

(3) A U.S. Tax Exemption Form (SF 1094).

(4) A State or local form indicating that the supplies or services are for the exclusive use of the United States.

(5) Any other State or locally required document for establishing general or specific exemption.

(6) Shipping documents indicating that shipments are in interstate or foreign commerce.

(b) *Furnishing proof of exemption*. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

(1) Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), in accordance with the terms of those clauses.

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

(3) Under a contract or purchase order that contains no tax provision, if-

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

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents 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 when-

(a) A fixed-price indefinite-delivery contract is contemplated;

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

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

29.401-2 Construction contracts performed in North Carolina.

The contracting officer shall 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. If the requirement is for vessel repair to be performed in North Carolina, the clause shall be used with its AlternateI.

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 if-

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

(2) A fixed-price contract is contemplated; and

(3) The contract is expected to exceed the simplified acquisition threshold.

(b) In a noncompetitive contract that meets all the 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, if the price would otherwise include an inappropriate contingency for potential postaward change(s) in State or local taxes.

29.401-4 New Mexico gross receipts and compensating tax.

(a) *Definition*.

Services, as used in this subsection, is as defined in the Gross Receipts and Compensating Tax Act of the State of New Mexico, Sec 7-9-3(k) NM SA1978, and means all activities engaged in for other persons for a consideration, which activities involve predominately the performance of a service as distinguished from selling or leasing property. "Services" 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 shall not be controlling. "Services" also includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such 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. However, 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*. The contracting officer shall insert the clause at 52.229-10, State of New Mexico Gross Receipts and Compensating Tax, in solicitations and contracts issued by the agencies identified in paragraph (c) of this subsection when all three of the following 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 a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor.

(3) The contract will be for services to be performed in whole or in part within the State of New Mexico.

(c) Participating agencies.

(1) The agencies listed below have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which 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 which expects 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) The contracting officer shall insert the clause at 52.229-6, Taxes-Foreign Fixed-Price Contracts, in solicitations and contracts expected to exceed the simplified acquisition threshold when a fixed-price contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless

it is contemplated that the contract will be with a foreign government.

(b) The contracting officer shall insert the clause at 52.229-7, Taxes-Fixed-Price Contracts with Foreign Governments, in solicitations and contracts that exceed the simplified acquisition threshold when a fixed-price contract with a foreign government is contemplated.

29.402-2 Foreign cost-reimbursement contracts.

(a) The contracting officer shall insert the clause at 52.229-8, Taxes-Foreign Cost-Reimbursement Contracts, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government.

(b) The contracting officer shall insert the clause at 52.229-9, Taxes-Cost-Reimbursement Contracts with Foreign Governments, in solicitations and contracts when a cost-reimbursement contract with a foreign government is contemplated.

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 solicitations using FAR part 12 procedures for the acquisition of commercial items, unless one of the following exceptions applies:

(1) Acquisitions using simplified acquisition procedures that do not exceed the simplified acquisition threshold (as defined in 2.101).

(2) Emergency acquisitions using the emergency acquisition flexibilities defined in part 18.

(3) Acquisitions using the unusual and compelling urgency authority per 6.303-2.

(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.

(5) Acquisitions if the requiring activity identifies that the requirement is for certain foreign humanitarian assistance contracts which are payments made by the U.S. Government agencies pursuant to 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) Resultant contracts in which the contractor has indicated that it was a foreign person in solicitation provision 52.229-11, Tax on Certain Foreign Procurements—Notice and Representation.

29.402-4 Taxes—Foreign Contracts in Afghanistan.

(a) Use the clause at 52.229-13, Taxes—Foreign Contracts in Afghanistan, in solicitations and

contracts with performance in Afghanistan awarded by or on behalf of U.S. Forces, unless the clause at 52.229-14 is used.

(b) Use the clause at 52.229-14, Taxes—Foreign Contracts in Afghanistan (North Atlantic Treaty Organization Status of Forces Agreement), instead of the clause at 52.229-13, Taxes—Foreign Contracts in Afghanistan, in solicitations and contracts with performance in Afghanistan awarded on behalf of or in support of the North Atlantic Treaty Organization (NATO), which are governed by the NATO Status of Forces Agreement (SOFA).