

#### 52.213-4 Terms and Conditions—Simplified Acquisitions (Other than Commercial Items).

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#### Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Apr. 2003)

\* \* \* \* \*

(b)(1) \* \* \*

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

\* \* \* \* \*

8. Amend section 52.244-6 by revising the section and clause heading, the date of the clause, and paragraph (c)(1)(v) to read as follows:

#### § 52.244-6 Subcontracts for Commercial Items and Commercial Components.

\* \* \* \* \*

#### Subcontracts for Commercial Items and Commercial Components (Apr. 2003)

\* \* \* \* \*

(c)(1) \* \* \*

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

\* \* \* \* \*

9. Amend section 52.247-64 by—
  - a. Revising the date of the clause;
  - b. Removing “The” from the beginning of the introductory text of paragraph (a) and adding “Except as provided in paragraph (e) of this clause, the” in its place;
  - c. Removing the period at the end of paragraph (d) and adding “, except those described in paragraph (e)(4).” in its place;
  - d. Removing “and” at the end of paragraph (e)(2);
  - e. Removing the period at the end of paragraph (e)(3) and adding “; and” in its place;
  - f. Adding paragraph (e)(4);
  - g. Revising the date, introductory text, and paragraph (a) of Alternate I; and
  - h. Revising Alternate II to read as follows:

#### 52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

\* \* \* \* \*

#### Preference for Privately Owned U.S.-Flag Commercial Vessels (Apr 2003)

\* \* \* \* \*

(e) \* \* \*

- (4) Subcontracts or purchase orders for the acquisition of commercial items unless—
  - (i) This contract is—
    - (A) A contract or agreement for ocean transportation services; or
    - (B) A construction contract; or

(ii) The supplies being transported are—

(A) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(B) Shipped in direct support of U.S. military—

- (1) Contingency operations;
- (2) Exercises; or
- (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

\* \* \* \* \*

*Alternate I (Apr 2003).* As prescribed in 47.507(a)(2), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Except as provided in paragraphs (b) and (e) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

\* \* \* \* \*

*Alternate II (Apr 2003).* As prescribed in 47.507(a)(3), substitute the following paragraph (e) for paragraph (e) of the basic clause:

(e) The requirement in paragraph (a) does not apply to—

- (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
  - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
  - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.
- (4) Subcontracts or purchase orders under this contract for the acquisition of commercial items unless the supplies being transported are—

(i) Items the Contractor is reselling or distributing to the Government without adding value. (Generally, the Contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment); or

(ii) Shipments in direct support of U.S. military—

- (A) Contingency operations;
- (B) Exercises; or
- (C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations. (*Note:* This contract requires shipment of commercial items in direct support of U.S. military contingency operations, exercises, or forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.)

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## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 29 and 52

[FAC 2001-13; FAR Case 2000-016; Item III]

RIN 9000-AJ39

#### Federal Acquisition Regulation; Federal, State, and Local Taxes

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to clarify the prescriptions for use of clauses relating to Federal, State, and local taxes. In addition, the rule deletes the clause at FAR 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and updates and moves the definition of “local taxes.”

**DATES:** Effective Date: April 17, 2003.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 2001-13, FAR case 2000-016.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the FAR to clarify the prescriptions at FAR 29.401 for use of FAR clauses 52.229-3, Federal, State, and Local Taxes; 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments). In addition, the rule deletes the clause at 52.229-5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, and moves the definition of “local taxes” from the clause at 52.229-5 to the clauses at 52.229-3 and 52.229-4, and updates the definition by adding U.S. territories and the Commonwealth of the Northern Mariana Islands, which are no longer considered possessions of the United States.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 38552, June 4, 2002. Two sources

submitted comments in response to the proposed rule. The first respondent recommended adding the word "contingency" in 29.401–3(b) for clarity. The Councils adopted the intent of the respondent's recommendation for paragraph (b) for clarity and consistency with the clause language at 52.229–4(c). Another commenter recommended that the FAR be further amended to address payment of property tax on equipment rented or leased by the Government. That comment was outside the scope of the case and no action was taken.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely clarifies existing language.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Parts 29 and 52

Government procurement.

Dated: March 12, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 29 and 52 as set forth below:

1. The authority citation for 48 CFR parts 29 and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 29—TAXES

2. In section 29.305, revise paragraph (b)(1) to read as follows:

### 29.305 State and local tax exemptions.

\* \* \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

3. Revise the heading and text of section 29.401–3 to read as follows:

### 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 within the United States, its possessions or territories, Puerto Rico, or the Northern Mariana Islands;

(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 and 29.401–5 [Removed]

### 29.401–6 [Redesignated as 29.401–4]

4. Remove sections 29.401–4 and 29.401–5, and redesignate section 29.401–6 as 29.401–4.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Amend section 52.229–3 as follows:

a. Revise the date of the clause;

b. Revise paragraph (a) introductory text; and

c. In paragraph (a), amend the definitions "Contract date", "All applicable Federal, State, and local taxes and duties", "After-imposed Federal tax", and "After-relieved Federal tax" by removing "as used in this clause," and placing these definitions in alphabetical order; and add, in alphabetical order, the definition "Local taxes".

The revised and added text read as follows:

### 52.229–3 Federal, State, and Local Taxes.

\* \* \* \* \*

### Federal, State, and Local Taxes (April 2003)

(a) As used in this clause—

\* \* \* \* \*

*Local taxes* includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands,

if the contract is performed wholly or partly in any of those areas.

\* \* \* \* \*

(End of clause)

6. Amend section 52.229–4 as follows:

(a) Revise the section and clause headings; and the introductory paragraph;

(b) Revise paragraph (a) introductory text;

(c) In paragraph (a), place the definitions "Contract date", "All applicable Federal, State, and local taxes and duties", "After-imposed tax", "After-relieved tax", and "Excepted tax" in alphabetical order and amend by removing "as used in this clause;" and add, in alphabetical order, the definition "Local taxes".

The revised and added text read as follows:

### 52.229–4 Federal, State, and Local Taxes (State and Local Adjustments).

As prescribed in 29.401–3, insert the following clause:

### Federal, State, and Local Taxes (State and Local Adjustments) (April 2003)

(a) As used in this clause—

\* \* \* \* \*

*Local taxes* includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

\* \* \* \* \*

### 52.229–5 [Removed and reserved]

7. Remove and reserve section 52.229–5.

8. Amend section 52.229–10 as follows: a. Amend the introductory text by removing "29.401–6(b)" and adding "29.401–4(b)" in its place; b. Revise the date of the clause; and c. Amend paragraph (h) by removing "29.401–6(b)(1)" and adding "29.401–4(b)(1)" in its place.

The revised text reads as follows:

### 52.229–10 State of New Mexico Gross Receipts and Compensating Tax.

\* \* \* \* \*

### State of New Mexico Gross Receipts and Compensating Tax (April 2003)

\* \* \* \* \*

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