

Part 29 - Taxes

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29.000 Scope of part.

This part provides policies and procedures for using tax clauses in contracts (including foreign contracts), claiming immunity or exemption from taxes, and getting tax refunds. It explains Federal, State, and local taxes on certain supplies and services that executive agencies buy and how these taxes apply to the Federal Government. This information is general guidance for Government personnel and does not cover all tax laws and regulations.

Subpart 29.1 - General

29.101 Resolving tax problems.

Contract tax problems are primarily legal issues and vary widely. Contracting officers must consult the agency's legal counsel when tax issues arise, especially before negotiating with any taxing authority.

Subpart 29.2 - Federal Excise Taxes

29.201 General.

(a) Federal excise taxes are taxes on the sale or use of specific supplies or services. Subtitle D of the Internal Revenue Code, Miscellaneous Excise Taxes 26 U.S.C. 4041, *et seq.*, and its regulations (26 CFR parts 40 through 299) cover Federal excise tax requirements. Direct questions in this area to legal counsel. The most common excise taxes are—

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

(b) Executive agencies must take advantage of available Federal excise tax exemptions. When the law exempts the Federal Government from these taxes, the contracting officer must, unless inappropriate for the circumstances, request offers on a tax-exclusive basis. When no exemption exists, request offers on a tax-inclusive basis.

29.202 General exemptions.

Federal manufacturers' or special-fuels excise taxes do not apply in many contracting situations. This includes supplies for any of the following purposes:

- (a) The exclusive use of any State or political subdivision, including the District of Columbia (26 U.S.C. 4041 and 4221).
- (b) Export shipment to a foreign country or an outlying area of the United States. Shipment must occur within 6 months after title passes to the Government. When claiming this exemption, the words "for export" must appear on the contract or purchase document. The contracting officer must give the seller proof of export (see 26 CFR 48.4221-3).
- (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 part of the armed forces; and
 - (2) Guided missiles and pilotless aircraft owned or chartered by the United States. When claiming this exemption, make the purchase on a tax-exclusive basis. The contracting officer must give the seller an exemption certificate for Supplies for Vessels of War (an example appears in 26 CFR 48.4221-4(d)(2)). The IRS will accept one certificate covering all orders under a single contract for up to 12 calendar quarters) (26 U.S.C. 4041 and 4221).
- (e) A nonprofit educational organization (26 U.S.C. 4041 and 4221).
- (f) Emergency vehicles (26 U.S.C. 4053 and 4064(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 United States owns or leases the vehicle.
(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 (section 5000C tax) through withholding on applicable contract payments (see 29.402-3, 31.205-41(b)(8)). Agencies merely withhold the tax for the Internal Revenue Service (IRS). All substantive issues regarding the underlying section 5000C tax, such as the imposition of or exemption from the tax, are matters under IRS jurisdiction. For questions about interpreting IRS regulations, refer to <https://www.irs.gov/help/tax-law-questions>.

(b) According to clause 52.229-12, Tax on Certain Foreign Procurements, contractors 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. If a completed IRS Form W-14 is not submitted with a payment request, the default withholding percentage is 2 percent for that payment request. Information about IRS Form W-14 is available at www.irs.gov/w14.

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

(2) The offeror will claim exemptions under 26 CFR 1.5000C-1(d)(5) through (7) by submitting an IRS Form W-14 with their offer. If not submitted with the offer, exemptions will not apply to the contract.

(3) Any exemption claimed and self-certified on the IRS Form W-14 is subject to IRS audit. Any disputes about imposing and collecting the section 5000C tax are handled by the IRS because this is a tax matter, not a contract issue.

(d) The exemptions in 29.201 through 29.301 do not apply to this section 5000C tax.

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

29.301 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. However, whether a specific purchase or lease is immune is a legal question requiring advice from the agency's legal counsel.

(b) When economically feasible, executive agencies must take full advantage of all exemptions from State and local taxation. When appropriate, the contracting officer must provide a Standard Form 1094, U.S. Tax Exemption Form (see part 53), or other evidence listed in 29.304(a) to establish that the Government is making the purchase.

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

(a) The Government does not normally designate prime contractors and subcontractors as agents of the Government for claiming immunity from State or local sales or use taxes. Before any activity claims that a contractor is a Government agent, refer the matter to the agency head for review. Include all relevant data and a thorough analysis of all relevant legal precedents with the referral.

(b) When purchases are made by a prime contractor or subcontractor rather than directly by the Government, the right to exemption from sales or use tax may not depend on the Government's immunity from direct taxation by States and localities. Instead, it may depend on provisions of the specific State or local law, or in some cases, the transaction may not be expressly exempt from the tax. Protect the Government's interest by following the procedures in 29.101.

(c) Often, property owned by the Government (including property acquired under progress payments or the Government property clause) is in a contractor's or subcontractor's possession. States or localities may claim 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 must seek review and advice from the agency's legal counsel on the appropriate action.

(d) Indefinite-delivery contracts for equipment rental may require the contractor to provide equipment in any state. States and local governments impose various taxes on equipment leased to the Government, and the tax amounts can vary significantly among jurisdictions.

29.303 North Carolina Sales and Use Tax Act.

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

(a) The North Carolina Sales and Use Tax Act allows counties and incorporated cities and towns to receive an annual refund from the Secretary of Revenue for sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become part of or are attached to any building or structure built, altered, or repaired for these counties and incorporated cities and towns in North Carolina. In *United States v. Clayton*, 250 F. Supp. 827 (1965), the court ruled that the United States is entitled to the refund but must follow the Act's refund procedure and regulations to recover what it is due.

(b) To receive the refund, the Act requires claimants to file a written request within 6 months after the end of their fiscal year, supported by records, receipts, and information that the Secretary of Revenue requires. Claimants will not receive a refund for applications filed late or not meeting the Secretary of Revenue's requirements. These requirements appear in regulations stating that to support a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must get certified statements from the contractor showing the cost of property purchased from each vendor and the amount of sales or use taxes paid. If a contractor makes several purchases from the same vendor, the certified statement must show the invoice numbers, invoice dates, total invoice amount, and sales and use taxes paid. The statement must also include the cost of any tangible personal property the contractor took from warehouse stock and the amount of sales or use tax paid. The general contractor must obtain and provide to the claimant similar certified statements from subcontractors. The contractor's statement must show any local sales or use taxes separately from State sales or use taxes.

(c) The clause prescribed at 29.401-2 requires contractors to submit certified statements disclosing North Carolina State and local sales and use taxes paid during the 12-month period ending the previous September 30 to contracting officers by November 30 each year. The contracting officer must ensure contractors comply with

this requirement and obtain the annual refund to which the Government is entitled. The refund application must be filed annually before March 31 in the manner and form the Secretary of Revenue requires. Get copies of the form from—

State of North Carolina

Department of Revenue

PO Box 25000

Raleigh, NC 27640

29.304 State and local tax exemptions.

(a) *General.* The contract may require the contractor to take specific actions regarding payment, nonpayment, refund, protest, or other handling of a specified tax. Such special treatment may be appropriate when there is doubt about the applicability or allocability of the tax, or when the tax's applicability is being challenged in court.

(b) *Evidence of exemption.* Evidence is needed to establish an exemption from State or local taxes. The type of evidence depends on the grounds for the exemption claimed, the parties involved, and the requirements of the taxing jurisdiction. Examples of evidence include but are not limited to documents that identify a U.S. agency as the buyer, a U.S. tax exemption form (SF 1094), or documents establishing a State or local exemption.

(c) *Furnishing proof of exemption.* If there is a reasonable basis to claim an exemption, provide the seller with evidence of exemption, as follows:

(1) Under a contract containing the clause 52.229-3, Federal, State, and Local Taxes, if requested by the contractor and there is a reasonable basis to support the exemption.

(2) Under a contract containing the clause 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments), if the contractor requests evidence that applies to a tax excluded from the contract price and there is a reasonable basis to support the exemption.

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

(4) Under a contract or purchase order with no tax provision, if—

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

- (ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor agrees 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) Planning a fixed-price indefinite-delivery contract;
- (b) The contract will be performed wholly or partly in the United States or its outlying areas; and
- (c) The delivery places are not known at the time of contracting.

29.401-2 Construction contracts performed in North Carolina.

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 in North Carolina, use the clause with its Alternate I.

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 will be performed wholly or partly in the United States or its outlying areas;
 - (2) Planning a fixed-price contract; and
 - (3) The contract is expected to exceed the simplified acquisition threshold.
- (b) In a noncompetitive contract that meets all 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 changes in State or local taxes.

29.401-4 New Mexico gross receipts and compensating tax.

(a) Definition.

Services, as used in this section, is defined in the Gross Receipts and Compensating Tax Act of the State of New Mexico, Sec 7-9-3(S) NMSA 1978, and means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" 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. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. That 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. 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. 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 section when all three of these 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 the contract and title to such property passes directly to and vests in the United States upon delivery by the vendor.
- (3) The contract will be for services to be performed wholly or partly within New Mexico.

(c) Participating agencies.

- (1) The agencies listed below have an agreement with the State of New Mexico to eliminate double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services wholly or partly in New Mexico, and when 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 expecting 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) Insert the clause at 52.229-6, Taxes-Foreign Fixed-Price Contracts, in solicitations and contracts expected to exceed the simplified acquisition threshold when planning a fixed-price contract to be performed wholly or partly in a foreign country, unless the contract will be with a foreign government.

(b) 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 planning a fixed-price contract with a foreign government.

29.402-2 Foreign cost-reimbursement contracts.

(a) Insert the clause at 52.229-8, Taxes-Foreign Cost-Reimbursement Contracts, in solicitations and contracts when planning a cost-reimbursement contract to be

performed wholly or partly in a foreign country, unless the contract will be with a foreign government.

(b) Insert the clause at 52.229-9, Taxes-Cost-Reimbursement Contracts with Foreign Governments, in solicitations and contracts when planning a cost-reimbursement contract with a foreign government.

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 part 12 procedures for acquiring commercial products and commercial services, except for—

- (1) Acquisitions using simplified acquisition procedures that do not exceed the simplified acquisition threshold;
- (2) Emergency acquisitions using the emergency acquisition flexibilities defined in part 18;
- (3) Acquisitions using the unusual and compelling urgency authority in part 6;
- (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; and
- (5) Acquisitions the requiring activity identifies as requirements for certain foreign humanitarian assistance contracts that are payments made by U.S. Government agencies under 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) Resulting contracts for which the contractor indicated it was a foreign person in solicitation provision 52.229-11, Tax on Certain Foreign Procurements—Notice and Representation.

Part 52 - Solicitation Provisions and Contract Clauses

[52.229 \[Reserved\]](#)

[52.229-1 State and Local Taxes.](#)

[52.229-2 North Carolina State and Local Sales and Use Tax.](#)

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[52.229-6 Taxes-Foreign Fixed-Price Contracts.](#)

[52.229-7 Taxes-Fixed-Price Contracts with Foreign Governments.](#)

[52.229-8 Taxes-Foreign Cost-Reimbursement Contracts.](#)

[52.229-9 Taxes-Cost-Reimbursement Contracts with Foreign Governments.](#)

[52.229-10 State of New Mexico Gross Receipts and Compensating Tax.](#)

[52.229-11 Tax on Certain Foreign Procurements—Notice and Representation.](#)

[52.229-12 Tax on Certain Foreign Procurements.](#)

[52.229-13 \[Reserved\]](#)

[52.229-14 \[Reserved\]](#)

52.229 [Reserved]

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause:

State and Local Taxes (Apr 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

North Carolina State and Local Sales and Use Tax (Apr 1984)

(a) "Materials," as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) of this section, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Contractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) of this clause shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) of this clause shall be in the following form:

I hereby certify that during the period _____ to _____ [*insert dates*], _____ [*insert name of Contractor or subcontractor*] paid North Carolina State and local sales and use taxes aggregating \$_____ (State) and \$_____ (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by _____ [*insert name of Contractor or subcontractor*] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

(End of clause)

Alternate I (Apr 1984). If the requirement is for vessel repair to be performed in North Carolina, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) "Materials," as used in this clause, means materials, supplies, fixtures, and equipment that become a part of or are annexed to any vessel altered or repaired under this contract.

52.229-3 Federal, State, and Local Taxes.

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

Federal, State, and Local Taxes (Feb 2013)

(a) As used in this clause-

After-imposed Federal tax means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

After-relieved Federal tax means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as

the result of legislative, judicial, or administrative action taking effect after the contract date.

All applicable Federal, State, and local taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

Contract date means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

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.

(b) (1) The contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under [26 U.S.C. 5000](#) C may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(End of clause)

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 (Feb 2013)

(a) As used in this clause-

After-imposed tax means any new or increased Federal, State, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

All applicable Federal, State, and local taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

Contract date means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

Excepted tax means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

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.

(b) (1) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties, except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under [26 U.S.C. 5000 C](#) may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to Federal, State, and local taxes and duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover

the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(h) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when-

(1) The Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and

(2) A reasonable basis exists to sustain the exemption.

(End of clause)

52.229-5 [Reserved]

52.229-6 Taxes-Foreign Fixed-Price Contracts.

As prescribed in 29.402-1(a), insert the following clause:

Taxes-Foreign Fixed-Price Contracts (Feb 2013)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) *Definitions.* As used in this clause-

Contract date means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

Country concerned means any country, other than the United States and its outlying areas, in which expenditures under this contract are made.

Tax and "taxes" include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

All applicable taxes and duties means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract, pursuant to written ruling or regulation in effect on the contract date.

After-imposed tax means any new or increased tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, other than excepted tax, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date.

After-relieved tax means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

Excepted tax means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. "Excepted tax" does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor's possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) (1) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States, except as provided in subparagraph (c)(2) of this clause.

(2) Taxes imposed under [26 U.S.C. 5000](#) C may not be-

(i) Included in the contract price; nor

(ii) Reimbursed.

(d) (1) Except as provided in subparagraph (d)(2) of this clause, the contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) of this clause.

(2) The contract price may not be increased to offset taxes imposed under [26 U.S.C. 5000](#) C.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the

United States for such taxes. The Government of the United States shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) of this clause.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys' fees.

(End of clause)

52.229-7 Taxes-Fixed-Price Contracts with Foreign Governments.

As prescribed in 29.402-1(b), insert the following clause:

Taxes-Fixed-Price Contracts with Foreign Governments (Feb 2013)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b) (1) The contract price, including the prices in any subcontracts under this contract, does not include any tax or duty that the Government of the United States and the Government of _____ *[insert name of the foreign government]* have agreed shall not apply to expenditures made by the United States in _____ *[insert name of country]*, or any tax or duty not applicable to this contract or any subcontracts under this contract, pursuant to the laws of _____ *[insert name of country]*. If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(2) Taxes imposed under [26 U.S.C. 5000](#) C may not be included in the contract price.

(c) If, after the contract date, the Government of the United States and the Government of _____ *[insert name of the foreign government]* agree that any tax or duty included in the contract price shall not apply to expenditures by the United States in _____ *[insert name of country]*, the contract price shall be reduced accordingly.

(d) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(End of clause)

52.229-8 Taxes-Foreign Cost-Reimbursement Contracts.

As prescribed in 29.402-2(a), insert the following clause:

Taxes-Foreign Cost-Reimbursement Contracts (Mar 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ *[insert name of the foreign government]*, or from which the Contractor or any subcontractor under this contract is exempt under the laws of _____ *[insert name of country]*, shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of clause)

52.229-9 Taxes-Cost-Reimbursement Contracts with Foreign Governments.

As prescribed in 29.402-2(b), insert the following clause:

Taxes-Cost-Reimbursement Contracts with Foreign Governments (Mar 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ *[insert name of the foreign government]*, or from which any subcontractor under this contract is exempt under the laws of _____ *[insert name of country]*, shall not constitute an allowable cost under this contract.

(b) If any subcontractor obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid (not credited to the contract) to the Treasurer of the United States at the time the Federal income tax return is filed.

(End of clause)

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

As prescribed in 29.401-4(b), insert the following clause:

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

(a) Within thirty (30) days after award of this contract, the Contractor shall advise the State of New Mexico of this contract by registering with the State of New Mexico, Taxation and Revenue Department, Revenue Division, pursuant to the Tax Administration Act of the State of New Mexico and shall identify the contract number.

(b) The Contractor shall pay the New Mexico gross receipts taxes, pursuant to the Gross Receipts and Compensating Tax Act of New Mexico, assessed against the contract fee and costs paid for performance of this contract, or of any part or portion thereof, within the State of New Mexico. The allowability of any gross receipts taxes or local option taxes lawfully paid to the State of New Mexico by the Contractor or its subcontractors will be determined in accordance with the Allowable Cost and Payment clause of this contract except as provided in paragraph (d) of this clause.

(c) The Contractor shall submit applications for Nontaxable Transaction Certificates, Form CSR-3 C, to the:

State of New Mexico Taxation and Revenue Dept. Revenue Division PO Box 630 Santa Fe, New Mexico 87509

When the Type 15 Nontaxable Transaction Certificate is issued by the Revenue Division, the Contractor shall use these certificates strictly in accordance with this contract, and the agreement between the (*_____) and the New Mexico Taxation and Revenue Department.

(d) The Contractor shall provide Type 15 Nontaxable Transaction Certificates to each vendor in New Mexico selling tangible personal property to the Contractor for use in the performance of this contract. Failure to provide a Type 15 Nontaxable Transaction Certificate to vendors will result in the vendor's liability for the gross receipt taxes and those taxes, which are then passed on to the Contractor, shall not be reimbursable as an allowable cost by the Government.

(e) The Contractor shall pay the New Mexico compensating user tax for any tangible personal property which is purchased pursuant to a Nontaxable Transaction Certificate if such property is not used for Federal purposes.

(f) Out-of-state purchase of tangible personal property by the Contractor which would be otherwise subject to compensation tax shall be governed by the principles of this clause. Accordingly, compensating tax shall be due from the contractor only if such property is not used for Federal purposes.

(g) The (*_____) may receive information regarding the Contractor from the Revenue Division of the New Mexico Taxation and Revenue Department and, at the discretion of the (*_____), may participate in any matters or proceedings pertaining to this clause or the abovementioned Agreement. This shall not preclude the Contractor from having its own representative nor does it obligate the (*_____) to represent its Contractor.

(h) The Contractor agrees to insert the substance of this clause, including this paragraph (h), in each subcontract which meets the criteria in 29.401-4(b)(1) through (3) of the Federal Acquisition Regulation, 48 CFR Part 29.

(i) Paragraphs (a) through (h) of this clause shall be null and void should the Agreement referred to in paragraph (c) of this clause be terminated; provided, however, that such termination shall not nullify obligations already incurred prior to the date of termination.

[*Insert appropriate agency name in blanks.]

(End of clause)

52.229-11 Tax on Certain Foreign Procurements—Notice and Representation.

As prescribed in 29.402-3(a), insert the following provision:

Tax on Certain Foreign Procurements—Notice and Representation (Jun 2020)

(a) *Definitions.* As used in this provision—

Foreign person means any person other than a United States person.

Specified Federal procurement payment means any payment made pursuant to a contract with a foreign contracting party that is for goods, manufactured or produced, or services provided in a foreign country that is not a party to an international procurement agreement with the United States. For purposes of the prior sentence, a foreign country does not include an outlying area.

United States person as defined in 26 U.S.C. 7701(a)(30) means

- (1) A citizen or resident of the United States;
- (2) A domestic partnership;
- (3) A domestic corporation;
- (4) Any estate (other than a foreign estate, within the meaning of [26 U.S.C. 701\(a\)\(31\)](#)); and
- (5) Any trust if—
 - (i) A court within the United States is able to exercise primary supervision over the administration of the trust; and
 - (ii) One or more United States persons have the authority to control all substantial decisions of the trust.

(b) Unless exempted, there is a 2 percent tax of the amount of a specified Federal procurement payment on any foreign person receiving such payment. See [26 U.S.C. 5000C](#) and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.

(c) Exemptions from withholding under this provision are described at 26 CFR 1.5000C-1(d)(5) through (7). The Offeror would claim an exemption from the withholding by using the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, available via the internet at www.irs.gov/w14. 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 [26 U.S.C. 5000C](#) tax are adjudicated by the IRS as the [26 U.S.C.](#)

5000C tax is a tax matter, not a contract issue. The IRS Form W-14 is provided to the acquiring agency rather than to the IRS.

(d) For purposes of withholding under 26 U.S.C. 5000C, the Offeror represents that

(1) It ☐ is ☐ is not a foreign person; and

(2) If the Offeror indicates "is" in paragraph (d)(1) of this provision, then the Offeror represents that—I am claiming on the IRS Form W-14 ☐ a full exemption, or ☐ partial or no exemption [Offeror shall select one] from the excise tax.

(e) If the Offeror represents it is a foreign person in paragraph (d)(1) of this provision, then—

(1) The clause at FAR 52.229-12, Tax on Certain Foreign Procurements, will be included in any resulting contract; and

(2) The Offeror shall submit with its offer the IRS Form W-14. If the IRS Form W-14 is not submitted with the offer, exemptions will not be applied to any resulting contract and the Government will withhold a full 2 percent of each payment.

(f) If the Offeror selects "is" in paragraph (d)(1) and "partial or no exemption" in paragraph (d)(2) of this provision, the Offeror will be subject to withholding in accordance with the clause at FAR 52.229-12, Tax on Certain Foreign Procurements, in any resulting contract.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of provision)

52.229-12 Tax on Certain Foreign Procurements.

As prescribed in 29.402-3(b), insert the following clause:

Tax on Certain Foreign Procurements—Notice and Representation (Feb 2021)

(a) *Definitions.* As used in this clause—

Foreign person means any person other than a United States person.

United States person, as defined in [26 U.S.C. 7701\(a\)\(30\)](#), means–

- (1) A citizen or resident of the United States;
- (2) A domestic partnership;
- (3) A domestic corporation;
- (4) Any estate (other than a foreign estate, within the meaning of [26 U.S.C. 7701\(a\)\(31\)](#)); and
- (5) Any trust if-
 - (i) A court within the United States is able to exercise primary supervision over the administration of the trust; and
 - (ii) One or more United States persons have the authority to control all substantial decisions of the trust.

(b) This clause applies only to foreign persons. It implements [26 U.S.C. 5000C](#) and its implementing regulations at 26 CFR 1.5000C-1 through 1.5000C-7.

(c) (1) If the Contractor is a foreign person and has only a partial or no exemption to the withholding, the Contractor shall include the Department of the Treasury Internal Revenue Service Form W-14, Certificate of Foreign Contracting Party Receiving Federal Procurement Payments, with each voucher or invoice submitted under this contract throughout the period in which this status is applicable. The excise tax withholding is applied at the payment level, not at the contract level. The Contractor should revise each IRS Form W-14 submission to reflect the exemption (if any) that applies to that particular invoice, such as a different exemption applying. 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 and its separate instructions is available via the internet at www.irs.gov/w14.

(2) If the Contractor is a foreign person and has indicated in its offer in the provision 52.229-11, Tax on Certain Foreign Procurements—Notice and Representation, that it is fully exempt from the withholding, and certified the full exemption on the IRS Form W-14, and if that full exemption no longer applies due to a change in circumstances during the performance of the contract that causes the Contractor to become subject to the withholding for the 2 percent excise tax then the Contractor shall–

(i) Notify the Contracting Officer within 30 days of a change in circumstances that causes the Contractor to be subject to the excise tax withholding under [26 U.S.C. 5000C](#); and

(ii) Comply with paragraph (c)(1) of this clause.

(d) The Government will withhold a full 2 percent of each payment unless the Contractor claims an exemption. If the Contractor enters a ratio in Line 12 of the IRS Form W-14, the result of Line 11 divided by Line 10, the Government will withhold from each payment an amount equal to 2 percent multiplied by the contract ratio. If the Contractor marks box 9 of the IRS Form W-14 (rather than completes Lines 10 through 12), the Contractor must identify and enter the specific exempt and nonexempt amounts in Line 15 of the IRS Form W-14; the Government will then withhold 2 percent only from the nonexempt amount. See the IRS Form W-14 and its instructions.

(e) Exemptions from the withholding under this clause are described at 26 CFR 1.5000C-1(d)(5) through (7). 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 [26 U.S.C. 5000C](#) tax are adjudicated by the IRS as the [26 U.S.C. 5000C](#) tax is a tax matter, not a contract issue.

(f) Taxes imposed under [26 U.S.C. 5000C](#) may not be—

(1) Included in the contract price; nor

(2) Reimbursed.

(g) A taxpayer may, for a fee, seek advice from the Internal Revenue Service (IRS) as to the proper tax treatment of a transaction. This is called a private letter ruling. Also, the IRS may publish a revenue ruling, which is an official interpretation by the IRS of the Internal Revenue Code, related statutes, tax treaties, and regulations. A revenue ruling is the conclusion of the IRS on how the law is applied to a specific set of facts. For questions relating to the interpretation of the IRS regulations go to <https://www.irs.gov/help/tax-law-questions>.

(End of clause)

52.229-13 [Reserved]

52.229-14 [Reserved]