

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 29 and 52**

[FAR Case 2000-016]

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: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend 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 regarding taxes-contracts performed in U.S. possessions or Puerto Rico, and updates and moves the definitions of "local taxes".

DATES: Interested parties should submit comments in writing on or before August 5, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2000-016@gsa.gov*.

Please submit comments only and cite FAR case 2000-016 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501-3221. Please cite FAR case 2000-016.

SUPPLEMENTARY INFORMATION:**A. Background**

This proposed 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 (Noncompetitive Contract); and 52.229-5, Taxes-Contracts Performed in U.S. Possessions or Puerto Rico. The contracting officer is directed to insert the clause at 52.229-3, Federal, State,

and Local Taxes, in fixed-price contracts exceeding the simplified acquisition threshold. However, for noncompetitive fixed-price contracts the contracting officer may instead insert the clause 52.229-4, Federal, State, and Local Taxes (State and Local Adjustments) if the contracting officer determines that the contract price would otherwise include an inappropriate amount in anticipation of potential postaward change in state or local taxes. In addition, the rule renames the clause at 52.229-4, deletes the clause at 52.229-5, moves the definition of "local taxes" from the clause at FAR 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.

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 Councils do not expect this proposed rule to 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 amendments clarify the intent of current policies and clauses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 29 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2000-016), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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: May 28, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 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 amount in anticipation of 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:

- Revise the date of the clause;
- Remove the paragraph designation (a) and add a new paragraph (a); and

c. In the newly designated 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 adding, 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 (Date)

(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.

* * * * *

6. Amend section 52.229-4 as follows:

a. Revise the section and clause headings, and the introductory paragraph;

b. Remove the designation for paragraph (a) and add a newly designated paragraph (a);

c. In the newly designated 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 the definitions in alphabetical order; and adding, 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) (Date)

(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 by removing from the introductory text "29.401-6(b)" and adding "29.401-4(b)" in its place; by revising the date of the clause; and by removing from paragraph (h) "29.401-6(b)(1)" and adding "29.401-4(b)(1)" in its place.

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

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State of New Mexico Gross Receipts and Compensating Tax (Date)

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