

# Subpart 29.4 - Contract Clauses

Parent topic: [Part 29 - Taxes](#)

## 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 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 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 [part 12](#) procedures for the *acquisition* of *commercial products* and *commercial services*, 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*).