

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)

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(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).)

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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.

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

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(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).

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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.

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

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(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.

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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.

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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.)

[FR Doc. 03-6373 Filed 3-17-03; 8:45 am]

BILLING CODE 6820-EP-P

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