



## U.S. Government - Federal Acquisition Regulation (FAR)

The **Federal Acquisition Regulation (FAR)** is the principal set of rules in the Federal Acquisition Regulation System. This system consists of sets of regulations issued by agencies of the Federal government of the United States to govern what is called the "acquisition process"; this is the process through which the government purchases ("acquires") goods and services. That process consists of three phases: (1) need recognition and acquisition planning, (2) contract formation, and (3) contract administration. The FAR System regulates the activities of government personnel in carrying out that process. It does not regulate the purchasing activities of private sector firms, except to the extent that parts of it are incorporated into government solicitations and contracts by reference.

The FAR is codified in Title 48 of the United States Code of Federal Regulations. Statutory authority to issue and maintain the FAR resides with the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration...

The FAR and its agency supplements are said by the Federal courts to have "the force and effect of law," see Davies Precision Machining, Inc. v. U.S., 35 Fed. Cl. 651 (1995). Nearly all government agencies are required to comply with the FAR. However, some agencies are exempt (e.g., the Central Intelligence Agency, the United States Postal Service, the Tennessee Valley Authority, the Federal Aviation Administration, and the Bonneville Power Administration); in those cases, the agency promulgates its own specific procurement rules. [http://en.wikipedia.org/wiki/Federal\\_Acquisition\\_Regulation](http://en.wikipedia.org/wiki/Federal_Acquisition_Regulation)

### **Subpart 29.3--State and Local Taxes**

<https://www.acquisition.gov/far/97-22delay/html/29.html#29.305>

#### **29.300 Scope of subpart.**

This subpart prescribes the policies and procedures regarding the exemption or immunity of Federal Government purchases and property from State and local taxation.

29.301 [Reserved]

29.302 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. Whether any specific purchase or lease is immune, however, is a legal question requiring advice and assistance of the agency-designated counsel.

(b) When it is economically feasible to do so, executive agencies shall take maximum advantage of all exemptions from State and local taxation that may be available. If appropriate, the contracting officer shall provide a Standard Form 1094, U.S. Tax Exemption Form (see Part 53), or other evidence listed in

29.305(a) to establish that the purchase is being made by the Government.

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

(a) Prime contractors and subcontractors shall not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any activity contends that a contractor is an agent of the Government, the matter shall be referred to the agency head for review. The referral shall include all pertinent data on which the contention is based, together with a thorough analysis of all relevant legal precedents.

(b) When purchases are not made by the Government itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction may not in fact be expressly exempt from the tax. The Government's interest shall be protected by using the procedures in 29.101.

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(c) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations may arise in which States or localities assert 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 shall seek review and advice from the agency-designated counsel on the appropriate course of action.

**29.304 Matters requiring special consideration.**

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

(a) With coordination of the agency-designated counsel, a contract may (1) state that the contract price includes or excludes a specified tax or (2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of State and local taxes to purchases by the Federal Government may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental may require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction. See 29.401-1 for the prescription of the contract clause to be included in contracts when delivery points are not known at time of contracting.

(d) *The North Carolina State and local sales and use tax.* (1) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In United States v. Clayton, 250 F. Supp. 827 (1965), it was held that the United States is entitled to the benefit of the refund, but must follow the refund procedure of the Act and the regulations to recover what it is due.

(2) The Act provides that, to receive the refund, claimants must file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue may require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner may require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. In the event the contractor makes several purchases from the same vendor, the certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid. The statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid by the contractor. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement must be shown separately from the State sales or use taxes.

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(3) The clause prescribed at 29.401-2 requires contractors to submit to contracting officers by November 30 of each year a certified statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The contracting officer shall ensure that contractors comply with this requirement and shall obtain the *annual refund* to which the Government may be entitled. The application for refund must be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form may be obtained from the--

State of North Carolina Department of Revenue  
PO Box 25000  
Raleigh North Carolina 27640.

**29.305 State and local tax exemptions.**

(a) *Evidence of exemption.* Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction.

Such evidence may include the following:

- (1) A copy of the contract or relevant portion.
  - (2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.
  - (3) A U.S. Tax Exemption Form (SF 1094).
  - (4) A State or local form indicating that the supplies or services are for the exclusive use of the United States.
  - (5) Any other State or locally required document for establishing general or specific exemption.
  - (6) Shipping documents indicating that shipments are in interstate or foreign commerce.
- (b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:
- (1) Under a contract containing the clause at 52.2293, Federal, State, and Local Taxes, or at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in accordance with the terms of those clauses.
  - (2) Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.
  - (3) Under a contract or purchase order that contains no tax provision, if--
    - (i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and
    - (ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

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Standard Form 1094 - Specimen  
<https://www.acquisition.gov/far/html/FormsStandard32.html>

Book No.

UNITED STATES TAX EXEMPTION FORMS  
NSN 7540-01-152-8080 PREVIOUS EDITION NOT USABLE

***These Are Accountable Forms***

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<b>U.S. TAX EXEMPTION FORM</b>		Read the instructions on the reverse side.	DEPARTMENT, AGENCY, OR OFFICE		SERIAL NO.	
ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT <i>(Describe)</i>					QUANTITY	UNIT PRICE (\$)
VENDOR FROM WHICH PURCHASED	NAME		A tax exemption form has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to:	AMOUNT OF TAX EXCLUDED (\$)		
	ADDRESS <i>(No., Street, City, State, and ZIP Code)</i>			STATE		
The information on this form is true and correct to the best of my knowledge and belief.			P.O. OR CONTRACT NO.	LOCAL		
PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS		DATE	DATES	FOR ADMINISTRATIVE OFFICE		
SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE		DATE	VOUCHER NO.		D.O. SYMBOL NO.	
			DATE:			

**STANDARD FORM 1094** (REV. 12-96)  
 Prescribed by GSA-FAR (48 CFR) 53.229

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**INSTRUCTIONS**

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.
2. This form shall NOT be used for:
  - (a) Purchases of quarters or subsistence made by employees in travel status.
  - (b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
  - (c) Merchandise purchased which is subject only to Federal Tax.
3. If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information.
4. If both State and local taxes are involved, use a separate form for each tax. The form will be provided to the vendor when the prices exclude State or local tax.
5. The serial number of each form prepared will be shown on the payment voucher.

**THE FRAUDULENT USE OF THIS FORM FOR THE PURPOSE OF OBTAINING EXCEPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.**

**STANDARD FORM 1094 (REV. 12-96) BACK**