Chapter 7
Bonds, Insurance, and Taxes

Chapter 7 **Bonds, Insurance, and Taxes**

SECTION 1 BONDS

7.1.1 General

7.1.1.a *Policy.* Except for performance and payment bonds required by the Miller Act (40 U.S.C. 270a–270f) for construction contracts (see 7.1.3.a and 7.1.4.a), bonds and performance guarantees must be obtained only when needed to protect the interest of the Postal Service. Procurement plans (see 2.1.5) must describe and explain any requirements for bonds and performance guarantees.

7.1.1.b *Definitions*

1. *Annual bond or annual proposal guarantee.* A single bond or proposal guarantee in place of separate bonds or guarantees to secure all of an offeror's or contractor's obligations under proposals submitted or contracts entered into during a specific fiscal year.
2. *Bond.* A written instrument executed for the benefit of the Postal Service as security for the offeror's or contractor's obligations, and to assure payment of any bond loss. A bond is executed by an offeror or contractor identified in the instrument as the principal, together with a second party identified as the surety. (The term "surety bond" is used in 7.1.9 for clarification. No distinction between "bond" and "surety bond" is intended.)
3. *Consent of surety.* An acknowledgment by a surety that its bond continues to apply to the contract as modified.
4. *Construction contract.* Any contract for construction (see 11.5.1.a).
5. *Fidelity bond.* A bond to assure the faithful performance of an employee's duties to his or her employer and the employer's clients. The bond is used to cover losses such as employee thefts or embezzlements.
6. *Patent infringement bond.* A bond given as security for a contractor's obligations under a patent clause.
7. *Payment bond.* A bond to assure payment of all persons supplying labor and material under a contract.
8. *Penal amount.* The amount specified in a proposal guarantee or bond (expressed in terms of dollars or a percentage of the proposal price) as the maximum payment for which the surety is obligated.
9. *Performance bond.* A bond given as security for the contractor's obligations under a contract.
10. *Proposal guarantee.* A firm commitment, such as a proposal bond, a postal money order, a certified check, a cashier's check, an irrevocable letter of credit, or certain bonds or notes of the United States, accompanying a proposal as assurance that the offeror will, upon acceptance of the proposal,

execute required contractual documents and promptly provide necessary bonds.

11. *Proposal bond, also known as bid bond.* A bond given to serve as an offeror's proposal guarantee in connection with an individual proposal or with proposals submitted during a specific fiscal year.
12. *Surety.* An individual or corporation legally liable for another's debt, default, or failure to satisfy a contractual obligation.

7.1.2 Proposal Guarantees

7.1.2.a *General.* A proposal guarantee may be required only when a performance bond is required, and only for purchases over $25,000. A proposal guarantee is normally used only in construction contracts. Annual proposal guarantees, such as annual proposal bonds, are not acceptable under solicitations for construction contracts but may be used for supplies or services.

7.1.2.b *Amount.* The penal amount of a proposal guarantee must be sufficient to protect the Postal Service from loss caused by a failure of the contractor to sign the contract or to get performance or payment bonds. The amount must be not less than 20 percent of the proposal price but may not exceed $3,000,000. If the amount is expressed as a percentage of the proposal price, a maximum dollar limit may also be stated. For indefinite-delivery contracts, the amount of any guarantee must be a specific amount equal to the largest single order that the contracting officer estimates will be placed under the contract.

7.1.2.c *Solicitation Provision.* Include Provision 7-1, *Proposal Guarantee*, in the solicitation when a proposal guarantee is required.

7.1.2.d *Failure to Submit Required Proposal Guarantee.* When a solicitation requires a proposal guarantee, a proposal failing to comply is unacceptable. However, if discussions are held (see 4.2.5.g) and the proposal is otherwise acceptable and in the competitive range, failure to furnish a proposal guarantee is a deficiency that may be corrected during discussions. If a proposal guarantee submitted with a proposal is less than the amount specified in the solicitation but is equal to or greater than the difference between the proposal price and the price of the next-higher acceptable proposal, the proposal may be accepted.

7.1.3 Performance Bonds

7.1.3.a *Construction Contracts*

1. *Requirement*
   (a) The Miller Act, made applicable to the Postal Service by 39 U.S.C. 410(b)(4)(B), requires a performance bond for any construction contract exceeding $25,000.
   (b) The requirement for performance bonding may be waived by the contracting officer as authorized by the Miller Act or other law.
2. *Amount.* The penal amount of a performance bond must equal 100 percent of the contract price, unless the contracting officer determines that a lesser percentage would adequately protect the Postal Service.
3. *Solicitation Provisions.* Include Provision 7-2, *Performance Bond Requirements*, in solicitations for construction contracts over $25,000 unless the requirement for performance bonding is waived. If the penal amount is

less than 100 percent of the contract price, the provision must be modified accordingly.

7.1.3.b *Other than Construction Contracts*

1. *Requirement.* Performance bonds may be required only if the contracting officer determines that performance bonding is essential to the interest of the Postal Service. Examples of situations in which a performance bond may be needed include times when:

   (a) A contract provides for the use of Postal Service property or funds in contract performance;

   (b) A contractor has sold all its assets to, or merged with, another firm and the Postal Service needs assurance of the new firm's responsibility; or

   (c) The product or service is not scheduled for first delivery until at least 12 months after contract award, and substantial progress payments are contemplated.

2. *Amount.* The penal amount must be the minimum needed to protect the Postal Service's interest.

3. *Solicitation Provision.* Include Provision 7-2, *Performance Bond Requirements*, in solicitations for nonconstruction contracts if it is determined that performance bonding is essential to the interest of the Postal Service. If the penal amount is less than 100 percent of the contract price, the provision must be modified accordingly.

7.1.3.c *Annual Performance Bonds.* Annual performance bonds may be used only for contracts other than construction contracts. The penal amount of such a bond may not be more than the total amount of all contracts secured by the bond.

7.1.4 Payment Bonds

7.1.4.a *Construction Contracts*

1. *Requirement*

   (a) The Miller Act, made applicable to the Postal Service by 39 U.S.C. 410(b)(4)(B), requires a payment bond for any construction contract exceeding $25,000.

   (b) The requirement for payment bonding may be waived by the contracting officer as authorized by the Miller Act or other law.

2. *Amount.* The penal amount of a payment bond must equal:

   (a) 50 percent of the contract price when the contract price is not more than $1,000,000;

   (b) 40 percent of the contract price when the contract price is more than $1,000,000 but not more than $5,000,000; or

   (c) $2,500,000 when the contract price is more than $5,000,000.

3. *Solicitation Provision.* Include Provision 7-3, *Payment Bond Requirements*, in solicitations for construction contracts over $25,000 unless the requirement for payment bonding is waived.

7.1.4.b *Other than Construction Contracts*

1. *Requirement.* Payment bonds may be required only if the contracting officer determines that payment bonding is essential to the interest of the Postal

Service. Examples of situations in which a payment bond may be needed include times when:

(a) A contract is for supplies or services unique to the Postal Service that can be obtained only from a source that is not the producer of the supplies or services;

(b) A contractor has sold all its assets to, or merged with, another firm and the Postal Service needs assurance of the new firm's responsibility;

(c) Supplies requiring substantial production costs are not scheduled for first delivery until several months after contract award, and no progress payments are contemplated; or

(d) Uninterrupted provision of the supplies or services is essential to the continued operation of Postal Service functions.

2. *Amount.* The penal amount must be the minimum needed to protect the Postal Service's interest.

3. *Solicitation Provision.* Include Provision 7-3, *Payment Bond Requirements*, in solicitations for nonconstruction contracts if it is determined that payment bonding is essential to the interest of the Postal Service.

7.1.4.c *Annual Payment Bonds.* Annual payment bonds may be used only for contracts other than construction contracts. The penal amount of such a bond must be sufficient to cover the bonded portions of the contracts awarded.

7.1.4.d *Furnishing Information to Subcontractors and Suppliers.* When a payment bond has been provided, the contracting officer may furnish the name and address of the surety or sureties to persons who have furnished, or have been requested to furnish, labor or materials for use in performing the contract. The contracting officer may furnish additional general information on such matters as the progress of the work, the payments made, and the estimated percentage of completion.

7.1.5 Patent Infringement Bonds

A patent infringement bond may be required under a contract containing a patent indemnity clause if a performance bond is not obtained. The penal amount must be the minimum necessary to protect the Postal Service's interest. Clause 7-1, *Patent Infringement Bond Requirements*, must be included in the contract if the contractor may be required to submit a patent infringement bond.

7.1.6 Fidelity Bonds

A fidelity bond in an amount sufficient to protect the interest of the Postal Service may be required for any contract that requires contractor employees to handle Postal Service funds. When a fidelity bond is required, Provision 7-4, *Fidelity Bond Requirements*, must be included in the solicitation, and the amount must be reviewed periodically to ensure that the Postal Service's interest is adequately protected.

7.1.7 Contract Postal Unit Bonds

Contract postal unit bonds impose obligations on a contractor similar to those required under performance, payment, and fidelity bonds. Generally, contract postal unit bonds are required before a contract postal unit contract may be awarded, but in certain circumstances this requirement can be waived by the contracting officer. See the relevant handbook for details.

7.1.8 Other Types of Bonds

Bonds other than those discussed in this chapter may be required when the contracting officer considers them in the Postal Service's interest. In these cases, appropriate solicitation provisions and contract clauses must be drafted with the assistance of assigned counsel.

7.1.9 Execution of Bonds

7.1.9.a *Prescribed Formats.* See the relevant handbook for guidance and procedures.

7.1.9.b *Other Formats.* When there is no prescribed format for a bond (as when a patent infringement or fidelity bond is required), a suitable commercial bond form may be used, or an appropriate format may be prepared with the assistance of assigned counsel.

7.1.9.c *Original Copy.* An original signed copy of any bond must be retained in the solicitation or contract file.

7.1.9.d *Authority of Agents.* Bonds signed by persons acting in a representative capacity must be accompanied by proof that the agent is authorized to act in that capacity. Proof may be a notarized power of attorney, or a properly executed corporate certificate or resolution, attested to by the corporate secretary.

7.1.9.e *Partnership as Principal.* When a partnership is a principal, the names of all members of the firm must be listed in the bond, following the trade name of the firm (if any) and the phrase "a partnership composed of." When a corporation is a principal, the state of incorporation must be listed.

7.1.9.f *Date.* Unless an annual bond is accepted, performance or payment bonds must be dated after the date of the contract. (See 11.5.1.p for award procedures for construction contracts.)

7.1.9.g *Contract Modifications*

1. When a contract modification changes the contract scope or increases the contract price by ten percent or more, or when the contracting officer determines that the amount of the original bond must be increased, the contractor and the surety must execute a consent of surety and increase of penal amount, and submit it to the contracting officer. When more than one surety's consent is required, each surety must execute the form.
2. When an increased bond amount is obtained from a party other than the original surety, the original surety must execute a consent of surety.
3. Novation agreements (see 6.5.4.a.2) require the execution of a consent of surety.

7.1.10 Sureties

7.1.10.a *Acceptable Sureties*

1. Bonds must be supported by acceptable corporate sureties, or by assets acceptable as security for the contractor's obligation.
2. Clause 7-2, *Additional Bond Security*, must be included in all contracts for which a bond is required.

7.1.10.b *Corporate Sureties.* Any corporate surety offered for a bond furnished the Postal Service must appear on the list contained in Treasury Department Circular 570. The amount of the bond may not exceed the underwriting limit stated for the surety in that list.

7.1.10.c *Individual Sureties.* The Postal Service does not accept individual sureties.

7.1.10.d *Deposit of Assets Instead of Surety Bonds*

1. In lieu of any bond (other than a payment bond for a construction contract), the contractor may deposit certain kinds of assets with the Postal Service instead of furnishing a bond.
2. The only assets acceptable in place of a surety bond are described below:
   (a) United States bonds or notes with a maturity date less than five years from the date of the contract, together with an agreement authorizing collection or sale in the event of default. The par value of the bonds or notes must be at least equal to the penal amount of the bond.
   (b) A certified check, cashier's check, bank draft, postal money order, currency, or an irrevocable, unconditional letter of credit issued by a federally insured financial institution. The deposit must be at least equal to the penal amount of the surety bond, and payable solely to the order of the Untied States Postal Service. Letters of credit must indicate that the financial institution may not cancel the letter of credit before 90 days following the scheduled contract completion date.
3. The contracting officer must deposit currency, checks, and drafts with the information service center, with instructions to hold the funds for the benefit of the contractor. A perpetual inventory of all deposited items must be kept by the senior contracting official at the purchasing office.
4. When the contractor pledges assets instead of providing a surety bond, the contractor must complete the bond form as principal, and the bond form must describe the assets pledged.
5. For all procurements involving the furnishing of bonds (other than payment bonds for construction contracts), include Provision 7-5, *Deposit of Assets Requirements*, in the solicitation.
6. Include Clause 7-3, *Deposit of Assets Instead of Surety Bonds*, in every contract requiring a bond for which assets may be deposited in lieu of bonds.

7.1.11 Contract Administration

7.1.11.a *Information and Notice to Sureties*

1. *Correspondence.* A copy of all correspondence relating to contract modification, termination, renewal, or nonperformance must be provided to each surety, with proof of delivery requested. Additional information on

contract performance and payment must be provided to sureties upon request.

2. *Failure to Perform.* The contracting officer must send each surety a copy of any notice of impending termination, demand for adequate assurances, assessment of liquidated or other damages, or other formal notice of failure to perform under the contract, with a notice that the surety may be liable for damages suffered by the Postal Service.

3. *Claims Against Sureties.* If a contractor's failure to perform necessitates a claim against a surety, the contracting officer must give the surety written notice of the amount of and reasons for the claim. If the surety refuses to pay or does not respond, the contracting officer must obtain procedural assistance from assigned counsel.

7.1.11.b *Surety Takeover Agreements*

1. Because of the surety's liability for damages resulting from a contractor's default, the surety has certain rights and interests in the completion of the contract work and the application of any undisbursed funds. Before terminating a contract for default, the contracting officer must consider any proposal by the surety for completion of the work. The surety should be permitted to complete the work unless the contracting officer has reason to believe that the persons or firms proposed by the surety to complete the work are not competent or qualified.

2. Because of the possibility of conflicting demands for the defaulting contractor's unpaid earnings (including retained percentages and unpaid progress payments), the surety may condition its offer of completion upon the execution of a takeover agreement establishing the surety's right to payment from the unpaid earnings. If so, with the concurrence of the appropriate VP, the contracting officer may enter into such an agreement with the surety in writing after the effective date of contract termination. The contracting officer should consider including the defaulting contractor as a party to the agreement in order to preclude any disagreement on the contractor's residual rights.

3. The agreement must provide that the surety will complete the work according to all contract terms and conditions, and that the Postal Service will pay the surety the balance of the contract price unpaid at termination, but not more than the surety's costs and expenses, subject to the following conditions:

   (a) Any unpaid earnings of the defaulting contractor, including retained percentages and progress payments for work accomplished before termination, are subject to debts owed the Postal Service by the contractor, except to the extent that the unpaid earnings are required to pay the completing surety the actual costs and expenses it incurs in completing the work, exclusive of the surety's payments and obligations under the payment bond given in connection with the contract.

   (b) The agreement may not waive or release the Postal Service's right to liquidated damages for any delay in completion of the work that is not excusable under the contract.

   (c) If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings unless the assignee consents to the payment in writing.

   (d) The surety may be reimbursed for discharging its liabilities under the payment bond of the defaulting contractor only when:

(1) There is mutual agreement among the Postal Service, the defaulting contractor, and the surety;

(2) The Postal Service Board of Contract Appeals makes a final determination of the amount due; or

(3) A court of competent jurisdiction orders payment.

7.1.11.c *Contract Completion*

1. Upon contractor completion of all contract obligations, the contracting officer must issue a Certificate of Completion to any surety. The certificate's terms may not release the surety from any obligation under a payment bond.
2. When the contractor has deposited assets instead of providing a surety on a payment bond, the contracting officer must refund the assets, with accrued interest, within 90 days after final completion of contract performance, unless notice of a claim is received during the 90-day period. If a claim is received, the assets may be released only with the agreement of the claimant or by order of a court of competent jurisdiction.
3. Assets deposited to secure any other bond may be refunded, with accrued interest, upon final completion and receipt of the contractor's release (see 6.4.3.c).
4. Upon request, the contracting officer will furnish a Certificate of Substantial Completion to sureties of a construction contractor if the project is substantially complete (usable for the purpose intended). If the contracting officer is uncertain whether the project is substantially complete, the advice of assigned counsel must be obtained.

Section 2 Insurance

7.2.1 Policy

7.2.1.a *General.* Contractors may be required to carry insurance only when necessary to protect the interest of the Postal Service. Examples of situations that may warrant insurance are when:

1. It is desirable to use the facilities and service of the insurance industry (for example, safety protection and claim services);
2. Insurance is necessary or desirable in connection with contract performance (for example, in transportation of valuable Postal property); or
3. Commingling of property or other contract conditions makes insurance reasonably necessary for protection of the parties' interests.

7.2.1.b *Fixed-Price Contracts*

1. The Postal Service is not usually concerned with the insurance carried by fixed-price contractors, except in special circumstances such as the following:

   (a) The contractor, or a segregated operation of the contractor, is engaged primarily in work for the Postal Service.

   (b) Postal Service property of substantial value is involved.

(c) The contract work required is performed within a Postal Service facility.

(d) The Postal Service agrees to assume risks for which the contractor ordinarily obtains commercial insurance.

2. In circumstances such as those described in subparagraph b.1 above, the types and amounts of liability insurance prescribed in 7.2.2 may be required. However, a qualified program of self-insurance (see 7.2.3) may be substituted for any of those types of insurance.

3. Professional services contractors must be required to carry errors and omissions insurance in accordance with 7.2.4.

7.2.1.c *Non-Fixed-Price Contracts*

1. The types of insurance referred to in 7.2.2, with limits of liability as prescribed in 7.2.2, are required under non-fixed-price prime contracts and any non-fixed-price subcontracts under them. However, a qualified program of self-insurance (see 7.2.3) may be substituted for any such type of required insurance.

2. Professional services contractors must be required to carry errors and omissions insurance in accordance with 7.2.4.

3. The contracting officer may waive a requirement for insurance with the advice of assigned counsel.

7.2.2 Types of Insurance

7.2.2.a *Workers' Compensation and Employers' Liability Insurance.* Compliance with applicable workers' compensation and occupational disease statutes is required, and employers' liability coverage must be obtained when available. In jurisdictions where occupational disease is not compensable by law, the contractor must carry insurance for occupational disease under the employers' liability section of the insurance policy.

7.2.2.b *General Liability Insurance*

1. The contractor must carry bodily injury liability insurance, with minimum limits of $100,000 per person and $500,000 per accident, on a comprehensive form of policy.

2. The contractor must carry property damage liability insurance in an amount determined by the contracting officer when the nature of the contract operations warrants it, or when those operations are not separable from the contractor's commercial operations.

7.2.2.c *Automobile Liability Insurance.* The contractor must carry automobile liability insurance on a comprehensive form of policy that provides for bodily injury and property damage liability covering the operation of all automobiles used in contract performance. Minimum limits of $100,000 per person and $500,000 per accident for bodily injury and $10,000 per accident for property damage must be carried.

7.2.3 Self-Insurance

A qualified program of self-insurance covering any kind of liability may be approved in place of any type of insurance discussed in 7.2.2 when found to be in the interest of the Postal Service. However, in a jurisdiction where workers' compensation does not completely cover employers' liability to employees, a program of self-insurance for workers' compensation may be approved only if:

7.2.3.a The contractor also maintains an approved program of self-insurance for any employer's liability that is not covered; or

7.2.3.b The contractor has shown that the combined cost to the Postal Service of self-insurance for workers' compensation and commercial insurance for employers' liability will not exceed the cost of covering both kinds of risks by commercial insurance.

7.2.4 Errors and Omissions Insurance

7.2.4.a *Professional Services.* Contractors providing the following categories of services must carry errors and omissions (malpractice) insurance:

1. Accountants.
2. Architects.
3. Engineers.
4. Fiscal agents.
5. Medical doctors and dentists.

7.2.4.b *Amount.* Insurance coverage should be at least $200,000, unless the contracting officer determines that a different limit is needed in the interest of the Postal Service.

7.2.4.c *Waiver.* The contracting officer may waive the requirement for errors and omissions insurance in whole or in part, with the concurrence of assigned counsel.

7.2.4.d *Other Professional Services.* The contracting officer may require other professional services contractors to carry errors and omissions insurance when in the interest of the Postal Service.

7.2.5 Insurance Policies

When insurance is required, it may be provided either by specific insurance policies or by the contractor's existing insurance policies. When existing policies are used, they must be amended to make the Postal Service a loss payee.

7.2.6 Contract Clauses

Include Clause 7-4, *Insurance*, when a contractor is required to carry insurance. Include Clause 7-5, *Errors and Omissions*, when errors and omissions insurance is required in accordance with 7.2.4.

7.2.7 Notice of Cancellation or Change

When insurance (other than errors and omissions insurance issued on an occurrence basis) is required by the contract, the insurance policy must contain an endorsement to the effect that a cancellation of or material change in the policy that adversely affects the interest of the Postal Service will not be effective until at least 30 days after written notice of the cancellation or change is given to the contracting officer.

SECTION 3 TAXES

7.3.1 General

7.3.1.a Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and pertinent tax laws and regulations. Therefore, when tax questions arise, contracting officers must request assistance from assigned counsel.

7.3.1.b To ensure consistent treatment within the Postal Service, the Senior Counsel, Contract Protests and Policies must be consulted before negotiating with any taxing authority for the purpose of:

1. Determining whether a tax is valid or applicable; or
2. Obtaining exemption from, or refund of, a tax.

7.3.1.c Normally, as discussed in 7.3.3.c.2, contractors are responsible for settling tax applicability questions in consultation with authorities, independent of Postal Service involvement. When the constitutional immunity of the Postal Service from state or local taxation is at issue, however, contractors should be discouraged from negotiating independently with taxing authorities, and assigned counsel should be consulted, if the contract is either:

1. A cost-reimbursement contract; or
2. A fixed-price contract containing a tax escalation clause.

7.3.1.d See 8.5.2.b.4 regarding taxes in connection with utility contracts.

7.3.2 Federal Excise Taxes

7.3.2.a *Applicability.* Federal excise taxes are levied on the sale or use of particular supplies and services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C. 4041 et seq., and its implementing regulations, 26 CFR 40 through 299, cover miscellaneous federal excise tax requirements. Questions on federal excise taxes should be directed to assigned counsel. The most common excise taxes are:

1. Manufacturers' excise taxes imposed on certain motor vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and
2. Special fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.

7.3.2.b *General Exemptions from Federal Excise Taxes.* No federal manufacturers' or special fuels excise taxes are imposed when the supplies are for any of the following:

1. Shipment to a United States possession or Puerto Rico, or for export. Shipment or export must occur within six months of the time when title passes to the Postal Service. When the exemption is claimed, the words “for export or shipment to a possession” must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export or shipment to a possession (see 26 CFR 48.4041-12).
2. Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes, however) (see U.S.C. 4221).
3. Emergency vehicles (see 26 U.S.C. 4064(a) and 4064(b)(1)(c)).

7.3.2.c *Solicitations.* Contracting officers must solicit price proposals on a tax-exclusive basis when it is known that the Postal Service is exempt from federal excise taxes and the exemption is at least $100. Proposals must be solicited on a tax-inclusive basis when no exemption exists or the exemption is less than $100.

7.3.3 State and Local Taxes

7.3.3.a *Definition.* State and local taxes means taxes levied by the states, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivision.

7.3.3.b *Applicability*

1. Although the Postal Service, as an establishment of the federal government, is constitutionally immune from state and local taxes imposed directly on it, the applicability of particular taxes is a legal question often requiring the advice and assistance of assigned counsel. The applicability of a tax in a Postal transaction may depend on the nature of the tax and whether its legal incidence, as opposed to its economic burden, is on the Postal Service as purchaser. In many instances in which the Postal Service is not constitutionally exempt, it may take advantage of statutory exemptions provided by state or local law.
2. Prime contractors and subcontractors may not normally be designated as agents of the Postal Service for the purpose of claiming exemption from state and local taxes. Such designation, when appropriate, must be accomplished in the solicitation, and only after coordination with assigned counsel.

7.3.3.c *Exemption from Tax*

1. Whenever a state or locality asserts its right to tax Postal Service property directly or to tax a contractor’s possession or use of, or interest in, Postal Service property, the contracting officer must obtain advice from assigned counsel concerning the appropriate course of action.
2. If the contract includes Clause 7-6, *Federal, State and Local Taxes*, Clause 7-7, *Federal, State, and Local Taxes (Short Form)*, or Clause 7-8, *Federal, State, and Local Taxes (Noncompetitive Contract)* (see 7.3.4), it is the offeror’s responsibility to determine to what extent state and local taxes are applicable to its proposal. The contracting officer should make no representations concerning the applicability of any state or local tax, and except as provided in subparagraph 3 following, the Postal Service should have no involvement in resolving any dispute between the contractor and a taxing authority concerning tax applicability.
3. Consistent with the clauses cited in subparagraph 2 preceding for fixed-price contracts, the Postal Service must, upon the contractor’s request, furnish the

contractor evidence to establish exemption from any specified tax if a reasonable basis for the exemption exists. When requested, the contracting officer may furnish such evidence under cost-reimbursement contracts. Evidence may also be furnished upon request under other contracts that contain no tax provision if the contractor (a) certifies that the contract price does not include the tax or, if the transaction or property is granted an exemption, (b) consents to a reduction in the contract price.

4. Evidence of exemption may include:
   (a) A copy of the contract.
   (b) Copies of other documents (such as purchase orders, shipping documents, or invoices) identifying the Postal Service as the buyer.
   (c) A U.S. Tax Exemption Certificate (Standard Form 1094).
   (d) A state or local form indicating that the supplies or services are for the exclusive use of the Postal Service or the federal government.
   (e) Any other state or locally required document for establishing exemption.
   (f) Shipping documents indicating that shipments are in interstate or foreign commerce.

7.3.3.d *Matters Requiring Special Consideration.* The resolution of tax issues requiring special consideration must be coordinated with assigned counsel in the course of solicitation preparation. The following are examples of state and local tax issues that may require special contract treatment.

1. When there is a reasonable question of the applicability or allocability of a tax, or when the applicability of a tax is in litigation, the contract may:
   (a) State that the contract price includes or excludes the particular tax and is subject to adjustment upon resolution of the tax question; or
   (b) Require the contractor to take specific actions regarding payment, non-payment, refund, protest, or other treatment of the tax.
2. When the applicability of state and local taxes depends on the place and terms of delivery, and the effect of tax on the contract price will be substantial, alternative places of delivery and contract terms should be considered in light of tax consequences.
3. When leased equipment is to be obtained under an indefinite-delivery contract, the contractor’s property may be subject to a wide variety of state and local property, use, or other taxes. Because these taxes can vary considerably from jurisdiction to jurisdiction, use Clause 7-9, *State and Local Taxes (Indefinite Delivery Equipment Rental)*, to relieve the contractor of uncertainty about tax consequences in this situation.

7.3.4 Contract Clauses

7.3.4.a Include Clause 7-6, *Federal, State and Local Taxes*, in competitively awarded fixed-price contracts, other than those (1) for real property or (2) awarded using simplified purchasing procedures.

7.3.4.b Include Clause 7-7, *Federal, State, and Local Taxes (Short Form)*, in fixed-price contracts, other than those for real property, awarded using simplified purchasing procedures.

7.3.4.c Include Clause 7-8, *Federal, State and Local Taxes (Noncompetitive Contract)*, in fixed-price noncompetitive contracts, other than those (1) for real property or (2) awarded using simplified procedures, when the contract price does not include any contingency for state or local taxes.

7.3.4.d Include Clause 7-9, *State and Local Taxes (Indefinite Delivery Equipment Rental)*, when leased equipment is to be obtained under a contract for indefinite delivery.