
DIRECT PURCHASE PROCEDURES
FOR CONTRACTORS OR CONSTRUCTION MANAGERS



OFFICE OF FACILITIES DESIGN & CONSTRUCTION
DUVAL COUNTY PUBLIC SCHOOLS
1701 PRUDENTIAL DRIVE
JACKSONVILLE, FLORIDA 32207
PHONE (904) 390-2279
FAX (904) 858-3578

www.duvalschools.org/facilities

MARCH 2014

Note: Pursuant to *Florida Statutes*, Duval County Public Schools (Owner) is exempt from Florida Sales Tax on the purchase of construction material and equipment and has elected to exercise this right. All bids are to be submitted with all applicable taxes included.

DIRECT PURCHASE PROCEDURES

MARCH 2014

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If you have any questions about these procedures, please contact:
Andy Eckert, Executive Director, Facilities 904-390-2279

LaShonda Phelps 904-390-2844
Phelpsl@duvalschools.org

I. GENERAL

Pursuant to *Florida Statutes*, Section 212.08(6), and *Florida Administrative Code*, Number 12A-1.094, Duval County Public Schools is exempt from Florida Sales Tax for the purchase of construction materials, supplies and/or equipment incorporated into a construction project. Under this program, only the Florida Sales Tax rate of 6% shall apply.

The Owner has elected to exercise this right to direct purchase *selected* materials on all construction projects and such direct purchase shall be without any additional cost to the Owner. **All bids are to be submitted with all applicable taxes included.** See project specifications for complete details and information.

The Contractor shall assume all risk and remain fully responsible for all material incorporated into any project, directly purchased by the Owner or not. This will include, but not be limited to, insurance, theft, storage, damage during installation, coordination, quantities ordered, submittals, protection, scheduling, shipping, security, expediting, receiving, installation, cleaning and all applicable warranties, etc.

The procedures outlined here may change at any time without prior notice to Contractor.

II. TERMS - For the purpose of this document, the following terms will be defined:

- a. **Change Order (CO):** A written order authorizing a change in the scope of work, contract amount or contract time.
- b. **Contractor:** A General Contractor (GC) or Construction Manager (CM).
- c. **Duval County Public Schools:** DCPS or Owner.
- d. **Direct Material Purchase (DMP):** A purchase made directly by the Owner from a vendor, and not through a contractor.
- e. **Direct Purchase Purchase-Order (DPPO):** A purchase order issued by the Owner directly to the Contractor's vendor for the purchase of materials exempt from sales tax.
- f. **Direct Purchase Procedures (DPP):** Guidelines outlined in this document.
- g. **Facilities:** The Facilities Design and Construction Department of DCPS.
- h. **Material:** Any material, supplies, or equipment incorporated into a DCPS construction project.
- i. **Purchase Requisition (PR):** A request to purchase stated material or services for a quoted price.
- j. **Purchase Order (PO):** A written authorization issued by the Owner for a vendor to delivery material or services at a specified price, which becomes a legally binding contract upon acceptance by the vendor.
- k. **Vendor:** A company supplying material to the Project, whether such provision includes installation or not.
- l. **Vendor Requisition Form (VRF):** A list of material and price quotes provided by the Contractor to the Owner for issuance of a **Direct Purchase Purchase-Order (DPPO)** by the Owner.
- m. **Vendor List:** A list provided by the Contractor of the vendors the Owner will direct purchase material from.

Summary of Steps for Direct Purchase of Material

1. Contract Awarded.
2. Contract Signed.
3. Purchase Order issued to Contractor for full amount of contract.
4. Schedule of Values reviewed by DCPS and selected item identified for Direct Purchase.
5. Contractor will submit a **Vendor List to Owner** of only the Vendors that DCPS will purchase from.
6. **Contractor will submit a Vendor Requisition Form (VRF) and required support document to Owner. Florida Sales Tax rate of 6% shall apply. VRF must include quote from Vendor.**
7. **Change Order** is issued to reduce Contractor's PO in the amount of direct materials purchased. MBE Form 6 also required.
8. Contractor's PO is reduced for amount of Direct Purchase Change Order.
9. Issuance of **Direct Purchase Purchase-Order (DPPO)** to Vendor for Direct Purchase as outlined in the Change Order.
10. DCPS issue a Letter to Vendor, Contractor and Subcontractor confirming DPPO for direct purchase material.
11. Contractor coordinates delivery with Vendor.
12. Material is delivered and Vendor sends invoice DIRECTLY to Owner.
13. Upon receipt, Owner records invoice and forwards to Contractor for approval.
14. Contractor approves invoice, returns to Owner (within 5 days).
15. Owner issued check to Vendor in payment for materials delivered.
16. Purchase orders are closed, and tax savings reverts to Owner.

III. INSTRUCTIONS

A. Overview

1. The Owner (DCPS) is exempt from sales tax on the purchase construction materials, supplies and/or equipment incorporated into a construction project. The Owner has elected to exercise this right to direct purchase selected materials on all construction projects and such direct purchase shall be without any additional cost to the Owner. **All bids are to be submitted with all applicable taxes included.**
2. The Owner shall, via **Direct Purchase Purchase-Order (DPPO)**, purchase material and the Contractor shall assist the Owner in the preparation of the DPPO. The Owner will purchase the material from Vendors selected by the Contractor for the price originally negotiated by the Contractor.
3. The Contractor's PO and contract amount shall be reduced by the amount of the DPPO plus Florida State Sales Tax. This reduction in the Contractor's PO and contract amount will occur through a **Change Order (CO)**, which will reference the Contractor's PO affected by the change. MBE Form 6 is also required.
4. Issuance of DPPO's by the Owner shall not relieve the Contractor of any contract responsibilities for any material purchased and incorporated into a construction project, directly purchased by the Owner or not, with the exception of the payments for the material or equipment purchased via DPPO.
5. The Contractor shall remain fully responsible for, insurance, theft, storage, damage during installation, coordination, quantities ordered, submittals, protection, scheduling, shipping, security, expediting, receiving, installation, cleaning and all applicable warranties, etc. The Contractor must maintain the Builder's Risk policy to include ALL material and equipment stored on-site and installed on-site.
6. It is recognized that the Contractor may encounter additional overhead costs in assisting the Owner with its Direct Purchase Program. The Contractor is charged with including all additional costs as part of the Bid or Proposal.
7. No payment will be made for material or equipment stored off-site.
8. All invoices must contain the Owner's DPPO number in order to be accepted and processed for payment.

B. Vendor List

1. Upon contract award of the construction project, the Owner will review the schedule of values with Contractor and determine which items the Owner will direct purchase.
2. Contractor will submit a Vendor List to Owner of only the Vendors that DCPS will purchase from (see example on page 9).

C. Purchase Order Request - Vendor Requisition Form

1. When the materials to be direct purchased have been determined, the Contractor shall issue a **Vendor Requisition Form (VRF)** addressed to the Owner. The VRF shall contain the following minimum information and be submitted at least 20 days prior to shipment of material. One request per Vendor (see example on page 10).
 - a. Date of VRF
 - b. Project name, number and location
 - c. Contractor contact information
 - d. Subcontractor contact information
 - e. Vendor's full business name, address, complete contact numbers - telephone, fax, e-mail, etc
 - f. Any special instruction; for delivery and contact person
 - g. Quantity of each material
 - h. Description of all material including item and/or serial number
 - i. Unit cost of each material
 - j. Extended price of each material (quantity times unit cost)
 - k. Sales tax on material to be purchased. Florida Sales Tax rate of 6% shall apply.
 - l. Shipping - The VRF and the quote must indicate FOB Destination or Job Site. The Owner will not pay shipping and handling charges.
 - m. Total price for all material ordered (extended prices plus sales tax)
 - n. Copy of detailed quote from Vendor indicating same information including sales tax amount**
 - o. Signature and printed name of Contractor
 - p. Signature of Duval County Public School Project Manager
2. All VRF's may be submitted at the same time.
3. All VRF's should be sent by E-mail or Fax to DCPS Facilities Department. Fax to the ATTENTION OF: LaShonda Phelps @ 904-390-2265, E-mail phelps@duvalschools.org. Any questions or concerns please call: 904-390-2844.

D. Change Order Request

1. **At the same time the VRF is requested, a Change Order must be submitted/executed** for reduction of the Contractor's PO and issuance of the DPPO. For this CO, the following documents are required (see example on page 11):
 - a. Three (3) completed and approved original CO's
 - b. Complete description of proposed change
 - c. The CO must indicate the amount of tax savings
 - d. List all VRF requested
 - e. Include a copy of MBE Form 6 (See Page 14)

E. Issuance of Purchase Order

1. The Owner will issue a DPPO in the amount of the VRF less sales tax. The DPPO will contain the following minimum information (see example of purchase requisition on page 12):
 - a. Date of DPPO
 - b. Project name, number and location
 - c. Vendor's full business name and address
 - d. Special instruction; for delivery and contact person
 - e. The authorized quantity, material description, unit cost, and extended price for each material
 - f. Total price for material ordered
2. The Owner will send the DPPO to the Vendor, with a copy retained by the Owner, and copies sent to the Contractor and subcontractor.
3. Upon receipt of the DPPO by the Vendor, the Vendor and Contractor shall coordinate and schedule delivery of the material to the job site.
4. After delivery, the Vendor must issue and deliver the invoice directly to the Owner. The invoice must clearly reference the Owner's DPPO number.
5. All material is to be delivered to the job site, where the Contractor assumes all responsibility and risk.

F. Invoice Approval and Payment

1. Upon receipt of the Vendor's invoice by the Owner, the Owner will fax a copy to the Contractor for verification and approval. The Contractor will have (five) 5 working days to process the invoice for payment. Once approved by the Contractor and Owner, the Vendor's invoice will be paid.
2. The Owner will issue payment to Vendor in the amount approved by the Owner and Contractor. The amount paid to the Vendor will not exceed the amount of the DPPO. In order to maintain timely payments, it will be the responsibility of the Contractor to process invoices in accordance with the payment schedule. The Contractor shall pay any late fees incurred as a result of the Contractor's failure to process invoices in a timely manner.

G. Contractor's Pay Request

1. The Contractor shall be responsible for maintaining details of direct material purchased and tax savings on the AIA Form G702, *Application and Certificate for Payment*, in the project. The material direct purchased by the Owner and the resulting sales tax savings must appear on each pay request along with all other CO's.
2. The Contractor's pay request:
 - a. Must have **Direct Material Purchases (DMP)** deducted from pay request
 - b. Must show all CO's and DPPO's (complete details)

- c. Facilities will reconcile pay request with their records
 - 1) Contractor will be contacted to resolve any discrepancies
 - 2) Owner will fax summary as transactions occur

H. End of Process

1. All DPPO's have been issued, materials delivered, invoices approved and paid.
2. Facilities will close all DPPO; no CO is required for this action.
3. Any discounts for prompt payment are for the account of the Owner.

I. Forms & Examples of Documents

1. Examples of the following forms are attached:
(electronic copy available via email phelpsl@duvalschools.org)
 - A. Vendor List - page 9
 - B. Vendor Requisition Form - page 10
 - C. DCPS Change Order Form - page 11
 - D. Example of a DMP Requisition issued by DCPS - page 12
 - E. Example of Certificate of Entitlement to be used by Vendor for DMP - page 13
 - F. Example of MBE Form 6 - page 14
 - G. Copy of DCSB Certificate of Tax Exemption - page 15
 - H. State of Florida -Sales and Use Tax, Florida Administrative Code 12A-1.094 - page 16-17
2. A Copy of a properly completed pay request with DMP and Owner CO information, Form AIA G702, is available upon request.
3. Working copies of applicable documents are available upon request.

VENDOR LIST

DATE: _____

CONTRACTOR: _____

DCPS PROJECT NAME: _____

DCPS PROJECT NO: _____

PROJECT ADDRESS: _____

NAME & ADDRESS	CONTACT	PHONE & FAX No.

Vendor Requisition Form

Date: _____	DCPS PO# _____																																													
DCPS Project Name: _____	Ship To Address: _____																																													
DCPS Project #: _____	Address: _____																																													
Contractor: _____	Contractor Tel: () _____																																													
Contr. Project #: _____	Contact Person: _____																																													
Address: _____	Delivery Date: _____																																													
Address: _____	Fax Number: () _____																																													
SubContractor: _____	SubContr. Tel: () _____																																													
SubContr.Project #: _____	Contact Person: _____																																													
Address: _____	Delivery Date: _____																																													
Address: _____	Fax Number: () _____																																													
Vendor/Supplier _____	Vendor Tel: () _____																																													
Project #: _____	Contact Person: _____																																													
Address: _____	Delivery Date: _____																																													
Address: _____	Fax Number: () _____																																													
Special Instructions: _____																																														
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">ITEM#</th> <th style="width: 40%;">DESCRIPTION</th> <th style="width: 10%;">QUANTITY</th> <th style="width: 15%;">UNIT AMOUNT</th> <th style="width: 25%;">TOTAL AMOUNT</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td colspan="3">Please submit quote from Vendor/Supplier with Vendor Requisition Form (VRF)</td> <td style="text-align: right;">SubTotal</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">FLORIDA Sales Tax ____%</td> <td style="text-align: right;">\$0.00</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">_____ 1% on first \$5000 only</td> <td style="text-align: right;">\$50.00</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">Total</td> <td style="text-align: right;">\$0.00</td> </tr> </tbody> </table>		ITEM#	DESCRIPTION	QUANTITY	UNIT AMOUNT	TOTAL AMOUNT					\$0.00					\$0.00					\$0.00					\$0.00	Please submit quote from Vendor/Supplier with Vendor Requisition Form (VRF)			SubTotal	\$0.00				FLORIDA Sales Tax ____%	\$0.00				_____ 1% on first \$5000 only	\$50.00				Total	\$0.00
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			Total	\$0.00																																										
<p>Important Note: It is imperative in the interest of prompt payment that all original invoices are sent directly to Duval County Public Schools, Attn: Facilities Business Office, 1701 Prudential Drive, 5th Floor, Rm 535 Jacksonville, FL 32207. All invoices must reference the Project Name, Number and DCPS Purchase Order Number.</p>																																														
Contractor Name: _____																																														
Verified & Approved by: _____	Contractor																																													
Approved by: _____	DCPS Project Manager																																													

DCPS Change Order

Duval County Public Schools---- Office of Facilities Design and Construction

Instructions: Submit three (3) originals of this form with proper back-up and a letter from A/E indicating who initiated each item of the change order and A/E's concurrence as to price and time extension (if any).

DUVAL COUNTY PUBLIC SCHOOLS CONSTRUCTION CHANGE ORDER

DCPS PROJECT:		CHANGE ORDER #:	
ARCHITECT/ENGINEER:		DATE:	
TO: CONTRACTOR ADDRESS		PROJ. #	
		A/E JOB #:	

YOUR PROPOSAL DATED _____ HAS BEEN ACCEPTED FOR MAKING THE FOLLOWING CHANGES:

DESCRIPTION OF PROPOSED CHANGE:	DECREASE	INCREASE
SUBTOTAL:		
TOTAL INCREASE/ (DECREASE):		

THE ORIGINAL CONTRACT SUM WAS:	
NET CHANGE BY PREVIOUSLY AUTHORIZED CHANGE ORDERS:	
THE CONTRACT SUM PRIOR TO THIS CHANGE ORDER WAS:	
THE CONTRACT SUM WILL BE INCREASED/ (DECREASED) BY THIS CHANGE ORDER:	
THE NEW CONTRACT SUM INCLUDING THIS CHANGE ORDER WILL BE:	
THE CONTRACT TIME WILL BE (INCREASED) (DECREASED) (UNCHANGED) BY For any change in TIME, it must be identified herein if the change is "Excusable non-compensatory" or "Excusable compensatory". If excused compensatory, compensation must be recited and documented herein and approved by the Owner.	DAYS
THE DATE OF SUBSTANTIAL COMPLETION THEREFORE IS:	

By execution of this Change Order the Contractor acknowledges that all issues related to compensation and time have been resolved and payment recited herein is full compensation for the work identified in this Change Order.

_____ Architect	_____ Contractor	Duval County School Board Owner
By: _____	By: _____	By: _____
Date: _____	Date: _____	Date: _____

Example of DCPS Direct Purchase Purchase-Order (DPPO)

PURCHASE REQUISITION (PR)

Page 1 of 1

PR NO: 1000090268
 MATERIAL GROUP: C120
 VENDOR: 18751
 84 LUMBER COMPANY

PR DATE: 01/23/2002
 G/L ACCOUNT:
 COST CENTER: 3267
 Performing Arts
 COST CENTER PH : 904-111-2222
 REQ.NAME :
 BUYER:

<u>Item</u>	<u>Material Reg. Date</u>	<u>Qty Unit A/C</u>	<u>Unit Price</u>	<u>Total</u>	<u>Value</u>
	<u>Material Description</u>		ASG.		

1	02/28/2002, Misc. Lumber Pursuant to quote received through on 2002. Please send invoice directly to DCPS Facilities Department 5th floor. This is a Direct Purchase Enter detail description here on what items will be purchase item code quantity cost total cost	46000 EA	p 1.00		46,000.00
---	--	----------	--------	--	-----------

Item Note :
 This is a Direct Purchase PO. Do not send to vendor. Please send the PO
 directly to Facilities Department: Building 3001: 5th floor Attention Ralin
 Melian. DCPS Project #
 Reference D PM PO#
 Reduce by \$,

Total Est. Price : \$46,000.00

CERTIFICATE OF ENTITLEMENT

(For direct purchase of construction materials by a governmental entity pursuant to 212.08(6), F.S. and Rule 12A-1.094, F.A.C.)

The undersigned authorized representative of Duval County Public Schools (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number 85-8013988912C-0, affirms that the tangible personal property purchased pursuant to DCPS Purchase Order Number _____ for _____ on or after DATE will be incorporated into or become a part of a public facility as part of a public works contract pursuant to DCPS Contract # C- with (Name of Contractor) for the construction of _____ at _____.

Governmental Entity affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

- LP 1. The attached Purchase Order is issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works.
- LP 2. The vendor's invoice will be issued directly to Governmental Entity.
- LP 3. Payment of the vendor's invoice will be made directly by Governmental Entity to the vendor from public funds.
- LP 4. **Governmental Entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor, upon receipt, inspection and acceptance by the Governmental Entity.**
- LP 5. **Upon receipt, inspection and acceptance by the Governmental Entity, the Governmental Entity assumes the risk of damage or loss at the time of delivery by the vendor.**

Governmental Entity affirms that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the tangible personal property purchased. If the Florida Department of Revenue determines that the tangible personal property purchased tax-exempt by issuing this Certificate does not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

	<u>Direct Purchase Specialist</u>
Signature of Authorized Representative	Title

<u>LaShonda Phelps</u>	
Purchaser's Name (Print or Type)	Date

Federal Employer Identification Number: 59-6000589

Telephone Number: 904-390-2844

**You must attach a copy of the Purchase Order to this Certificate of Entitlement.
Do not send to the Florida Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the contractor's books and records.**

MBE CHANGE ORDER PARTICIPATION FORM

Name of Contractor/Consultant				Change Order No.:	
Project Title:				Project No.:	
Date:			Project No.:		
In this chart, indicate all subcontractors scheduled to work on this Change Order (Both MBE and Non-MBE). Please indicate if it is an Additive (+) or Deductive (-) Change Order.					
MBE/ Non-MBE	Firm's Name	Phone #	Scope of Work to be subcontracted (indicate if the contract will include labor & material)	Dollar Value of Change Order	If Certified with a reciprocal agency (Name Agency)

MBE Code	Code Description (Participation)	Total Dollar Value [\$]	Percentage of Base Bid [%]
AA	African-American	_____	_____
HANA	Hispanic, Asian, Native American	_____	_____
WBE	Women-Owned	_____	_____
TOTAL	Minority	_____	_____

Please attach the justification letter to this form along with any necessary backup data.

ADDITIONAL INFORMATION:

Signature: _____

Title: _____

MBE FORM 6 Revised 5/01



Consumer's Certificate of Exemption
 Issued Pursuant to Chapter 212, Florida Statutes

DR-14
 R. 04/11

85-8013988912C-0	05/31/2013	05/31/2018	COUNTY GOVERNMENT
Certificate Number	Effective Date	Expiration Date	Exemption Category

This certifies that

DUVAL COUNTY SCHOOL BOARD
 1701 PRUDENTIAL DR
 JACKSONVILLE FL 32207-8152

is exempt from the payment of Florida sales and use tax on real property rented, transient rental property rented, tangible personal property purchased or rented, or services purchased.



Important Information for Exempt Organizations

DR-14
 R. 04/11

1. You must provide all vendors and suppliers with an exemption certificate before making tax-exempt purchases. See Rule 12A-1.038, Florida Administrative Code (F.A.C.).
2. Your *Consumer's Certificate of Exemption* is to be used solely by your organization for your organization's customary nonprofit activities.
3. Purchases made by an individual on behalf of the organization are taxable, even if the individual will be reimbursed by the organization.
4. This exemption applies only to purchases your organization makes. The sale or lease to others of tangible personal property, sleeping accommodations, or other real property is taxable. Your organization must register, and collect and remit sales and use tax on such taxable transactions. Note: Churches are exempt from this requirement except when they are the lessor of real property (Rule 12A-1.070, F.A.C.).
5. It is a criminal offense to fraudulently present this certificate to evade the payment of sales tax. Under no circumstances should this certificate be used for the personal benefit of any individual. Violators will be liable for payment of the sales tax plus a penalty of 200% of the tax, and may be subject to conviction of a third-degree felony. Any violation will require the revocation of this certificate.
6. If you have questions regarding your exemption certificate, please contact the Exemption Unit of Account Management at 800-352-3671. From the available options, select "Registration of Taxes," then "Registration Information," and finally "Exemption Certificates and Nonprofit Entities." The mailing address is PO Box 6480, Tallahassee, FL 32314-6480.

State of Florida Department of Revenue

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12A-1.094 Public Works Contracts.

(1) This rule shall govern the taxability of transactions in which contractors manufacture or purchase supplies and materials for use in public works, as that term is referred to in Section 212.08(6), F.S. This rule shall not apply to non-public works contracts as those contracts are governed under the provisions of Rule 12A-1.051, F.A.C. This rule shall also not apply to contractors who entered into road construction contracts during the period from January 1, 1988, through February 11, 1988, and who chose to remit the tax based on 50 percent of the contract price. See Emergency Rule 12AER88-16 for provisions governing such contracts. In applying this rule, the following definitions are used.

(a) "Contractor" is one who is engaged in the repair, alteration, improvement or construction of real property. Contractors include, but are not limited to, persons engaged in building, electrical, plumbing, heating, painting, decorating, ventilating, paperhanging, sheet metal, roofing, bridge, road, waterworks, landscape, pier or billboard work. This definition includes subcontractors.

(b) "Public works" are defined as construction projects for public use or enjoyment, financed and owned by the government, in which private persons undertake the obligation to do a specific piece of work. The term "public works" is not restricted to the repair, alteration, improvement, or construction of real property and fixed works where the sale of tangible personal property is made to or by contractors involved in public works contracts. Such contracts shall include, but not be limited to, building, electrical, plumbing, heating, painting, decorating, ventilating, paperhanging, sheet metal, roofing, bridge, road, waterworks, landscape, pier or billboard contracts.

(c) "Real property" within the meaning of this rule includes all fixtures and improvements to real property. The status of a project as an improvement or affixture to real property is determined by the objective and presumed intent of the parties, based on the nature and use of the project and the degree of affixation to realty. Mobile homes and other mobile buildings are deemed fixtures if they (1) bear RP license tags, or (2) have the mobile features (such as wheels and/or axles) removed, and are placed on blocks or footings and permanently secured with anchors, tie-down straps or similar devices.

(2) The purchase or manufacture of supplies or materials by the contractor for incorporation into a public works project is taxable to the contractor since he is the ultimate consumer. The applicable tax rate shall be determined on the basis of the invoice date, not the date of the contract, as follows:

- (a) If invoiced before February 1, 1988, and delivered within a reasonable period of time the tax rate shall be 5 percent.
- (b) If invoiced on or after February 1, 1988, the tax rate shall be 6 percent.

(3)(a) The purchase or manufacture of tangible personal property for resale to a governmental body is exempt from tax provided this exemption shall not include sales of tangible personal property made to contractors employed either directly or as agents of the United States Government, a state, or any county, municipality, or political subdivision of a state when such tangible personal property goes into or becomes a part of public works financed or owned by such governmental bodies or political subdivisions.

(b) With regard to contracts with government entities, the exemption in subsection (3)(a) is appropriate only where the levy would otherwise fall on the government itself, or on an agency or instrumentality so closely connected with that government that the two cannot realistically be viewed as separate entities, at least insofar as the activity being taxed is concerned. A finding of exempt status, however, requires something more than the implication of traditional agency notions, so that to resist a state's taxing power, a private taxpayer must actually stand in the government's shoes as a principal, rather than as a contractor employed either directly or as the government's agent. A contractor will not be deemed to actually stand in the government's shoes if the contractor has a substantial independent role in making purchases. Accordingly, the fact that title passes directly to the government and payment is made with government funds, in and of itself, cannot characterize the transaction as an exempt purchase if the purchasing entity, in its role as a purchaser, is sufficiently distinct from the government.

(4) The exemption in subsection (3)(a) is a general exemption for sales made to the government. The exception in subsection (2)(a) is a specific exception for sales to contractors. A determination of whether a particular transaction is properly characterized as an exempt sale to a government entity or a taxable sale to a contractor shall be based on the substance of the transaction, rather than the form in which the transaction is cast. The Executive Director or the Executive Director's designee in the responsible program will determine whether the substance of a particular transaction is governed by subsection (2)(a) or is a sale to a governmental body as provided by subsection (3) of this rule based on all of the facts and circumstances surrounding the transaction as a whole. The Executive Director or the Executive Director's designee in the responsible program will give special consideration to factors which govern the status of the tangible personal property prior to its affixation to real property. Such factors include provisions which govern bidding, indemnification, inspection, acceptance, delivery, payment, storage, and assumption of the risk of damage or loss for the tangible personal property prior to its affixation to real property. Assumption of the risk of damage or loss is a paramount consideration. A party may be deemed to have assumed the risk of loss if the party either:

insurance covering damage or loss; or enjoys the economic benefit of the proceeds of such bond or insurance. Other factors that may be considered by the Executive Director or the Executive Director's designee in the responsible program include whether: the contractor is authorized to make purchases in its own name; the contractor is jointly or severally liable to the vendor for payment: purchases are not subject to prior approval by the government; vendors are not informed that the government is the only party with an independent interest in the purchase; and whether the contractors are formally denominated as purchasing agents for the government. Sales made pursuant to so called "cost-plus", "fixed-fee", "lump sum", and "guaranteed price" contracts are taxable sales to the contractor unless it can be demonstrated to the satisfaction of the Executive Director or the Executive Director's designee in the responsible program that such sales are, in substance, tax-exempt sales to the government.

(5) Contractors who manufacture materials for incorporation into public works shall be liable for tax in the manner provided in Rule 12A-1.051, F.A.C.

(6) Contractors who supply raw materials such as rock, shell, fill dirt and similar materials for incorporation into public works shall be liable for tax in the manner provided in Rule 12A-1.051, F.A.C.

(7) Contractors who purchase tangible personal property outside the State of Florida, or inside the State but fail to pay sales tax, and use such property in a public works project shall be presumed to have the beneficial use of such property because the property is being used in furtherance of the contractor's essentially independent commercial enterprise. Accordingly, such contractors shall be liable for the use tax.

Specific Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(4), (10), (14), (15), (16), (19), (20), 212.06(1), (2), 212.07(1), 212.08(6), 212.14(5), 212.18(2) FS.

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