Procedure for Direct Purchase of Goods & Materials for State Sales Tax Exemption

I. Purpose

To define the guidelines under which the County purchases goods and/or materials directly from the supplier for sales tax exemption. The exemption in Section 212.08(6), F.S., is a general exemption for sales made directly to the government. The County must affirm that the tangible personal property purchased from that vendor will go into or become a part of a public work in accordance with Rule 12A-1.094, F.A.C.

II. Definitions:

A. “Contractor” is one that supplies and installs tangible personal property that is incorporated into or becomes a part of a public facility pursuant to a public works contract. “Contractor” does not include a person that provides tangible personal property that will be incorporated into or become part of a public facility if such property will be installed by another party. A person that provides and installs tangible personal property that is freestanding and can be relocated with no tools, equipment, or need for adaptation for use elsewhere is not a contractor within the scope of this procedure.

B. “Public works” are defined as projects for public use or enjoyment, financed and owned by the County, in which private persons undertake the obligation to do a specific piece of work that involves installing tangible personal property in such a manner that it becomes a part of a public facility. For purposes of this procedure, a public facility includes any land, improvement to land, building, structure, or other fixed site and related infrastructure thereon owned or operated by the County where governmental or public activities are conducted. The term “public works” is not restricted to the repair, alteration, improvement, or construction of real property and fixed works, although such projects are included within the term.

III. Process Overview

A. Decision to utilize Direct Material Purchase (DMP) Prior to Issuance of Solicitation:

Prior to issuance of documents named in Section II, the Procurement Strategist and project manager may mutually determine that it is in the best interest of the County to purchase all or a portion of materials, equipment and/or services directly from a vendor or manufacturer, rather than having the primary contractor purchase these items. This would enable the County to legitimately avoid payment of the state sales tax and any additional contractor markup that is computed based on inclusion of the sales tax. Language relating to the County’s options in this regard shall be included in the ITB or RFP solicitation document. Should the County decide to pursue this option, the contract shall be prepared, indicating what items, materials and/or services that the County will
purchase directly. A purchase requisition shall be entered by the using department and a subsequent purchase order will be issued to the appropriate vendor.

B. Decision to utilize Direct Material Purchase (DMP) Post Contract Execution:

In the event that a decision is made by the County to directly purchase some or all of the items, materials and/or services after a contract has been executed, the following process shall apply:

1. A change order to the contract along with the Contract Modification Form will be prepared by the project manager in accordance with the then current change order procedures. The change order shall identify the items for removal from the contract and the corresponding price adjustments.

2. A Purchase Order Modification form will be completed by the department and forwarded to the Purchasing Department along with a copy of the change order and Contract Modification Form. The original purchase order will be reduced by the amount of the associated direct purchase item(s).

3. The using department will create a purchase requisition(s) made out to the appropriate supplier(s), subcontractor(s) or other party with whom the County is contracting with directly for the purpose of lawful tax exemption. If the contractor has sourced and confirmed pricing for the materials, it will not be necessary for the using department to obtain quotes. The following language should be added to all requisitions in the “Item Text” field:

“The County retains the right at its sole discretion, to enforce any of the terms and conditions of the original contract as related to the provision of goods and/or services under this purchase order. This may include but not be limited to: retainage, defective material, warranty and adherence to schedule and/or any other contract section deemed to be applicable. Acceptance of this purchase order by the vendor shall be construed as agreement to these terms.”

4. The change order identified in step 1 above shall be attached to the purchase requisition, along with a properly executed Certificate of Entitlement in accordance with Section 212.08(6), F.S., (see Attachment B).

5. A subsequent purchase order will be issued by the Purchasing Department to the appropriate vendor(s). The using department shall be responsible for ensuring that the vendor and the contractor receive a copy of the purchase order and the Certificate of Entitlement.

IV. Application
Determined by department and project manager in coordination with design professional. (if applicable). Generally resultant of the following circumstances:

A. ITBs
B. RFPs
C. Negotiated agreements
D. Emergency Purchases
E. Valid Single Source Purchases

V. Eligibility Requirements

A. The County must issue its purchase order directly to the vendor supplying the materials the contractor will use and provide the vendor with a copy of the County’s Florida Consumer’s Certification of Exemption along with a properly executed Certificate of Entitlement;
B. Purchase should generally be resultant of competitive process, typically a bid, quotation, proposal or negotiation;
C. County must acquire title to and assume liability for the purchased goods and/or materials at the point in time at which it is delivered to the job site up until the time it is incorporated as real property;
D. Vendors must invoice the County directly;
E. The County must directly pay the vendor;
F. The County must assume all risk of loss or damage for the goods and/or materials at the time of the DMP. The County should acquire or be the insured party under liability insurance on the goods and/or materials.

VI. Non-Exempt Transactions

A. “Cost plus”, and “Fixed-fee” contracts will generally not qualify for exemption. (contractor has assumed the obligation to purchase goods and/or materials as part of the contract). Contracts utilizing “Guaranteed Maximum Price” such as the Construction Manager at Risk contract are subject to the provisions of the contract related to direct purchase of equipment and material.
B. Purchase of raw materials or components which are subsequently sent to another entity for finishing, assembly and/or processing are not exempt since the initial purchase was not intended for delivery to the County.
C. Purchase of supplies or materials that are installed by the vendor are taxable to the vendor since the contractor is the ultimate consumer of such supplies or materials.

VII. Competitive document/Agreement language

All formal solicitations should incorporate language referencing and briefly describing the Sales Tax Avoidance process. Representative language is included as per Attachment “A”

VIII. Preparation of Purchase requisitions—Departmental responsibilities

A. DMP Prior to Issuance of Solicitation:
   1. Include relevant Contract Number
   2. Include information on Contractor’s material supplier agreement number if applicable
   3. Include information on State Contract, SNAPS, GSA or other agreement if applicable
   4. Reference quotes and attach any written bids, quotations, proposal or negotiation if applicable
B. Post-Contract direct purchases (Purchase Order modifications) –
   1. Attach signed Change Order(s) which identify the DMP items to be deducted from the contract and the net effect. (Example: “All patching
material shall be directly purchased by the County and shall be deleted from the Contract resulting in a credit of $4000.”) Also identify if line item prices or other material prices are reduced from those quoted on the original solicitation offer (Example: “Line Item 4 price per piece shall be reduced from $7.25 to $6.00”)

2. Complete Purchase Order Modification form and send with signed Change order.
3. Initiate Purchase requisition with all appropriate information required for direct material purchase
4. List quantities, units and description of items to be purchased
5. Specify delivery address
6. Specify required delivery date(s)
7. Specify delivery method and cost if known
8. The following language should be added to all requisitions in the “Item Text” field:
   “The County retains the right at its sole discretion, to enforce any of the terms and conditions of the original contract as related to the provision of goods and/or services under this purchase order. This may include but not be limited to: retainage, defective material, warranty and adherence to schedule and/or any other contract section deemed to be applicable. Acceptance of this purchase order by the vendor shall be construed as agreement to these terms.”
9. Provide a properly executed Certificate of Entitlement

IX. **Project Manager’s responsibilities** (applies to County Project Manager, CM @ Risk, Design Professional or other designated Project Manager)

   A. Coordinating of material orders to meet schedule
   B. Identifying items and quantities to be ordered
   C. Tracking sales tax dollars saved by direct purchase
   D. Providing ordering information in a timely manner
   E. Supplying delivery information
      1. Delivery areas/loading and unloading locations
      2. Delivery schedule
      3. Acceptable delivery days and times
   F. Receiving materials
   G. Inspecting and accepting materials at time of delivery to ensure correct materials and quantities are received
   H. Approving vendor’s invoice for delivered material and matching delivery to Purchase Order, then forwarding invoice to Finance Department.
   I. Obtaining and providing to the County all applicable warranties and guarantees
   J. Promptly informing the County of any discrepancies, defects, or non-conformities and
   K. Taking appropriate action to correct any problems identified in item “J” above, in order to arrive at a solution.
   L. Initiating the Purchase Order Modification as per Section VIII (B) above, which shall include; but not be limited to, the following information:

      1. Description of the materials required including manufacturer or brand, model or specification number
2. Quantity required, unit, required delivery date(s), delivery address, delivery charges (if applicable)

3. Name and address of vendor

4. Any sales taxes associated with the quoted material

5. 100% performance bond cost (if applicable)

6. Identification of General Contractor’s cost for performance and/or payment bond (if applicable)

7. Detail concerning bonds or letters of credit provided by the vendor if included in their proposal (if applicable)

8. Any special terms and conditions that have been negotiated with the vendor (examples: letters of credit, terms, discounts, special payments)

9. Post-Contract direct purchases – Prepare Change order and Change Order Modification Form which includes a description of the direct purchase items, services and/or materials, the quantity, and the associated dollar savings. A copy of the Change order(s) shall be attached to the Purchase Order and Contract as backup. Change order credits for dollars saved on direct purchases and/or quotes if applicable, utilization of County or Contractor contracts with vendors, or utilization of other contracts, including but not limited to: State Contracts, GSA Contracts, SNAPS agreements

X. Purchasing Responsibility

Upon receipt of a proper requisition (including appropriate backup material(s), the Purchasing Department shall issue a Purchase Order for the material required. Each Purchase Order shall contain the County’s certificate of exemption number. The Purchase order shall be given to the Project Manager for completion of the ordering process. Unless the following items were included in the written bids, quotations, proposal or negotiation provided by the vendor to the Project Manager, the Purchase Order shall also provide for reimbursement of the cost to the supplier for:

A. Shipping and handling
B. Insurance costs
C. Performance Bond

Post-Contract direct purchases – Purchasing will modify Purchase Order upon receipt of Purchase Modification Form and appropriate back up material as supplied by the department which includes a description of the direct purchase items, services and/or materials, the quantity, and the associated dollar savings. A copy of the Change order(s) shall be attached to the Purchase Order and Contract as backup.
Attachment “A”

**Competitive Document/Agreement language**

1. The County reserves the right to require Contractor to assign some or all of its agreements with material suppliers directly to the County. Any such goods and/or materials purchased by the County pursuant to such an assignment of a material supply agreement shall be referred to as “County Furnished Materials” and the responsibilities of both the County and the Contractor relating to said materials shall be governed by the terms and conditions of this (choose one) ITB/RFP/Agreement which shall take precedence over other conditions and terms of this (choose one) ITB/RFP/Agreement where inconsistencies or conflicts exist.

Additionally, the County; at its sole option; may choose to purchase some or all of the goods and/or materials from other suppliers. In either instance the County may require the following information from the Contractor:

1. Required quantities of material.
2. Specifications relating to goods and/or materials required for job including brand and/or model number or type if applicable
3. Pricing and availability of goods and/or materials provided under Contractor’s agreements with material suppliers

2. **Purchasing**

Upon receipt of a proper requisition (including appropriate backup material(s), the Purchasing Department shall issue a Purchase Order for the material required. Each Purchase Order shall contain the County’s certificate of exemption number. The Purchase order shall be given to the Project Manager for completion of the ordering process. Unless the following items were included in the quote provided by the vendor to the Project Manager, the Purchase Order shall also provide for reimbursement of the cost to the supplier for:

A. Shipping and handling
B. Insurance costs
C. Performance Bond

3. **General Terms and Conditions**

A. Contractor shall be required to maintain records of all County-furnished materials that it incorporates into the project from the stock of County-furnished materials in its possession. Such records shall be furnished monthly to the Project Manager or their designee and shall include information on materials that have 1. been delivered into the Contractor’s possession and/or 2. been incorporated into the project.

B. Notwithstanding the transfer of County-furnished materials by the County to the Contractor’s possession, the County shall retain legal and equitable title to any and all County-furnished materials.
C. The transfer of possession of County-furnished materials from the County to the Contractor shall constitute a bailment for the mutual benefit of the County and the Contractor. The County shall be considered the bailor, and the Contractor the bailee for the County-furnished materials. County-furnished materials shall be considered returned to the County for purposes of their bailment at such time as they are incorporated into the Project.

D. The County shall purchase and maintain insurance sufficient to protect against any loss or damage to County-furnished materials. Such insurance shall cover the replacement cost of any County-furnished materials not yet incorporated into the Project during the period between the time the County first takes title to any such materials and the time when the last of said materials are incorporated into the project.

E. The County shall in no way be liable for any interruption or delay in the project, for any defects or other problems with the project, or for any additional costs resulting from any delay in the delivery of, or defects in, County-furnished materials, except in the event of the County’s gross negligence or willful misconduct.

F. Nothing herein contained shall create or be construed as creating a partnership between the County and the Contractor or to constitute the Contractor as an agent of the County.
CERTIFICATE OF ENTITLEMENT

The undersigned authorized representative of Collier County, a political subdivision of the State of Florida, Collier County, Naples, FL (hereinafter “Governmental Entity”), Florida Consumer’s Certificate of Exemption Number 85-8012621830C-2, affirms that the tangible personal property purchased pursuant to Purchase Order Number __________________________ from __________________________ (Vendor) 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 contract # ___________ with ____________________________ (Name of Contractor) for the construction of project # _____________________ for____________________________________________________________________________.

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.

____ 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.

____ 2. The vendor’s invoice will be issued directly to Governmental Entity.

____ 3. Payment of the vendor’s invoice will be made directly by Governmental Entity to the vendor from public funds.

____ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor.

____ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase or 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.

BY: __________________________ __________________________
Signature Date

____________________________________
Typed or Printed Name, Division Administrator

Purchaser - Collier County, FL
Federal Employer Identification Number: 596-00-0558
Telephone Number: __________________________

1/23/2012