



Florida Department of Revenue
Technical Assistance and Dispute Resolution

Jim Zingale
Executive Director

5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

QUESTION:

Whether Taxpayer's purchases of materials, supplies and equipment for its Supervisor of Elections Facility would qualify for the exemption in s. 212.08(6), F.S., for sales to governmental entities of tangible personal property which becomes part of public works owned by the governmental entity.

ANSWER:

Taxpayer's purchases of materials, supplies and equipment for its Supervisor of Elections Facility would qualify for the exemption in s. 212.08(6), F.S. Taxpayer has established that its purchases would meet the requirements of Rule 12A-1.094(4)(b), F.A.C., and that the items it will be purchasing would "go into or become a part of" public works pursuant to s. 212.08(6), F.S.

February 24, 2023

[REDACTED]

Via Email: [REDACTED]

Re: Technical Assistance Advisement – TAA #: 23A-004
[REDACTED] ("Taxpayer")
Sales and Use Tax – Public Works Contracts
Sections 212.06 and 212.08, Florida Statutes ("F.S.")
Rule 12A-1.094, Florida Administrative Code ("F.A.C.")
BP #: [REDACTED]

[REDACTED] ("Developer")
FEI #: [REDACTED]
BP #: N/A

Dear [REDACTED]:

This is in response to your letter dated January 9, 2023, requesting this Department's issuance of a Technical Assistance Advisement ("TAA") pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C., regarding the matter discussed below. Your request has been carefully examined, and the

Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

REQUESTED ADVISEMENT

Whether Taxpayer's purchases of materials, supplies and equipment for its Supervisor of Elections Facility would qualify for the exemption in s. 212.08(6), F.S., for sales to governmental entities of tangible personal property which becomes part of public works owned by the governmental entity.

FACTS

Taxpayer is working with a selected Developer to commence the public works construction project known as "[Taxpayer] Supervisor of Elections Facility" ("Project"). Taxpayer states that since it will wholly own the finished Project, the Project is considered a public works project.

Taxpayer states that the Direct Purchase procedures will be used exclusively for the purchase of supplies, goods, and materials from third party suppliers and not from contractors or subcontractors involved with the Project. Taxpayer states in its letter that purchases for the Project will be made in accordance with Rule 12A-1.094(4)(b)1. - 5., F.A.C., in the following manner:

1. Direct Purchase Order – [Taxpayer] will be issuing purchase orders directly to the vendor(s) supplying the contractor's materials and will provide the vendor(s) with a copy of [Taxpayer's] Florida Consumer's Certification of Exemption.
2. Direct Invoice - Vendor's invoice will be issued to [Taxpayer] and not the contractor.
3. Direct Payment - [Taxpayer] will make payment directly to the vendors, utilizing public funds.
4. Passage of Title - [Taxpayer] will take title to the tangible personal property from the vendor(s) at the time of purchase or delivery by the vendor(s).
5. Assumption of the Risk of Loss - [Taxpayer] will be assuming the risk of damage or loss at the time of purchase.

Taxpayer further states that its purchases will be made in accordance with Rule 12A-1.094(4)(c)1. – 4., F.A.C., as follows:

1. Issuance of a Certificate of Entitlement (Attachment C) to each vendor and to the [Taxpayer's] contractor(s) affirming tax-exempt purchases will go into or become a part of the public works project.
2. Attaching a Certificate of Entitlement to each purchase order.
3. Affirming that if the Department of Revenue determines that the sale is not qualified for the exemption under section 212.08(6), F.S., [Taxpayer] will be liable for any tax, penalty, and interest determined due.

4. Following the format for Certificate of Entitlement as shown on the Department of Revenue website.

LAW AND DISCUSSION

Sales tax is due at the moment of the transaction. See s. 212.06(1)(a), F.S.; Rule 12A-1.056(1)(a), F.A.C. There is an exemption, however, in s. 212.08(6), F.S., for sales of tangible personal property made directly to governmental entities when these items will go into or become part of public works owned by the governmental entity. Section 212.08(6)(b), F.S., provides that one of the criteria for exemption is that the governmental entity certify to the vendor and its contractor that it is entitled to the exemption by providing them with a Certificate of Entitlement to such exemption. The Department has also adopted Rule 12A-1.094, F.A.C. regarding this exemption. See s. 212.08(6)(c), F.S.

The criteria which must be met in order for a sale to be considered an exempt sale to a governmental entity of tangible personal property that will become part of public works is set forth in Rule 12A-1.094(4)(b), F.A.C., which provides:

(b) The following criteria that govern the status of the tangible personal property prior to its affixation to real property will be considered in determining whether a governmental entity rather than a contractor is the purchaser of materials:

1. Direct Purchase Order. The governmental entity 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 governmental entity's Florida Consumer's Certification of Exemption.

2. Direct Invoice. The vendor's invoice must be issued to the governmental entity, rather than to the contractor.

3. Direct Payment. The governmental entity must make payment directly to the vendor from public funds.

4. Passage of Title. The governmental entity must take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor.

5. Assumption of the Risk of Loss. Assumption of the risk of damage or loss by the governmental entity at the time of purchase is a paramount consideration. A governmental entity will be deemed to have assumed the risk of loss if the governmental entity bears the economic burden of obtaining insurance covering damage or loss or directly enjoys the economic benefit of the proceeds of such insurance.

Taxpayer has indicated that it will comply with the requirements set forth in subparagraphs (4)(b)1.-5. and (4)(c)1.-4. of Rule 12A-1.094, F.A.C.

Upon review of the documentation submitted, including the agreement between Taxpayer and the Developer (Attachment E1), Taxpayer's Direct County Purchase of Materials Program (Attachment E2),

Schedule of Owner Purchased Materials (Attachment E2), and other related documents, Taxpayer's procedure satisfies the requirements to claim tax-exempt status for its direct materials purchased. Taxpayer will issue its own purchase orders directly to the vendors for the purchased materials, and it will issue payment for those materials directly to the vendors. Taxpayer will also assume title to the materials at the time they are delivered to the job site. The vendors will issue invoices directly to the Taxpayer, and Taxpayer will issue a Certificate of Entitlement to the vendors, as well as to the contractors.

CONCLUSION

Taxpayer's purchases of materials, supplies and equipment for its Supervisor of Elections Facility would qualify for the exemption in s. 212.08(6), F.S. Taxpayer has established that its purchases would meet the requirements of Rule 12A-1.094(4)(b), F.A.C., and that the items it will be purchasing would "go into or become a part of" public works pursuant to s. 212.08(6), F.S.

This response constitutes a TAA under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for TAA, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the Taxpayer. Your response should be received by the Department within ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6701.

Sincerely,

Shundra McClean

Shundra McClean

Tax Law Specialist

Technical Assistance & Dispute Resolution

Record ID: 7000902645

TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's access bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7000902645

Respondent code: 44

Tax type: Sales and Use Tax

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at douglas.charity@floridarevenue.com.

Thank you.