



# E-589K

## Affidavit for a Purchase or Transaction for Certain Lump-Sum or Unit-Price Contracts (March 1, 2016 - December 31, 2016)

This affidavit is to be executed only for a purchase or transaction to fulfill a ***lump-sum or unit-price contract entered into or awarded on or after March 1, 2016 and prior to January 1, 2017, or entered into or awarded pursuant to a bid made on or after March 1, 2016 and prior to January 1, 2017*** ("Qualifying Contract").

The effective date of a tax change for tangible personal property, digital property, or taxable services applies to amounts received for items provided on or after the effective date, except amounts received for items provided under a lump-sum or unit-price contract entered into or awarded before the effective date or entered into or awarded pursuant to a bid made before the effective date. N. C. Gen. Stat. § 105-164.15A(a)(2).

Thus, where all or a portion of the work pursuant to a Qualifying Contract is performed on or after January 1, 2017, a purchase or transaction to fulfill a Qualifying Contract may continue to be taxed in accordance with the sales and use tax laws applicable to a real property contract in effect on or after March 1, 2016 and prior to January 1, 2017. A Qualifying Contract is subject to sales and use tax as a real property contract, no matter that the transaction may meet the definition of a single repair, maintenance, or installation service to real property on or after January 1, 2017.

This is to certify that \_\_\_\_\_, entered into a lump-sum or unit-price contract with

\_\_\_\_\_ on \_\_\_\_\_ or pursuant to a firm bid made

on \_\_\_\_\_. This affidavit is submitted to \_\_\_\_\_.

It is understood and agreed that a person that issues this form will retain the original or duplicate original of said lump-sum or unit-price contract and a copy of the issued form on file for examination by an authorized agent of the Secretary of Revenue of North Carolina with respect to the sales and use tax liability of the aforesaid real property contractor or retailer-contractor, or a subcontractor of a real property contractor or retailer-contractor.

\_\_\_\_\_  
Person (Issuer of Form)

By: \_\_\_\_\_  
Authorized Agent of Person Title Telephone Number Date

### General Guidance and Instructions

1. Sales and use tax laws effective on or after March 1, 2016 and prior to January 1, 2017 are applicable to a purchase or transaction to fulfill a ***lump-sum or unit-price contract entered into or awarded on or after March 1, 2016 and prior to January 1, 2017 or entered into or awarded pursuant to a bid made on or after March 1, 2016 and prior to January 1, 2017*** (“Qualifying Contract”) for the purposes of this affidavit.
2. For the purpose of this affidavit, a “person” may include a real property contractor, retailer-contractor, or a subcontractor of a real property contractor or retailer-contractor.
3. A real property contractor or a retailer-contractor who acts as a real property contractor on certain transactions who issues Form E-589K to another person must retain a copy of the form and other records to substantiate that sales and use tax applies to a purchase or transaction on or after January 1, 2017 to fulfill a Qualifying Contract based on the sales and use tax laws in effect on or after March 1, 2016 and prior to January 1, 2017. Additionally, a person who receives Form E-589K from a real property contractor or a retailer-contractor who acts as a real property contractor for a purchase or transaction between the parties to fulfill a Qualifying Contract must retain a copy of the form and other applicable records to substantiate that the purchase or transaction on or after January 1, 2017 is to fulfill a Qualifying Contract and sales and use tax is applicable to such purchase or transaction based on the sales and use tax laws in effect on or after March 1, 2016 and prior to January 1, 2017.
4. Where a retailer-contractor, acts as a contractor or subcontractor for a Qualifying Contract, withdraws tangible personal property from inventory on or after January 1, 2017 and installs or applies the tangible personal property to real property to fulfill a Qualifying Contract, such person must accrue and remit use tax on the retailer-contractor’s purchase price of the tangible personal property, unless an exemption for tangible personal property in effect prior to January 1, 2017 applies to the tangible personal property withdrawn, installed, or applied to fulfill a Qualifying Contract.
5. Effective January 1, 2017 for sales on or after such date, “[t]he liability of a retailer-contractor, a subcontractor, an owner, or lessee who did not purchase the property or service is satisfied by receipt of an affidavit from the purchaser certifying that the tax has been paid.” N.C. Gen. Stat. § 105-164.4H(b1). Additionally, N.C. Gen. Stat. § 105-164.6(b) provides “[t]he tax imposed by this section is payable by the person who purchases, leases, or rents tangible personal property or digital property or who purchases a service. *If the property purchased becomes a part of a building or other structure in the State and the purchaser is a contractor or subcontractor, the contractor, the subcontractor, and the owner of the building are jointly and severally liable for the tax. The liability of a contractor, a subcontractor, or an owner who did not purchase the property is satisfied by receipt of an affidavit from the purchaser certifying the tax has been paid.*” [Emphasis added.]
6. Purchase orders, invoices, shipping orders, delivery tickets, or any other pertinent records of a person will be subject to examination as evidence of facts.
7. Under the provisions of N.C. Gen. Stat. § 105-236(7), any person who willfully attempts, or who aids or abets any person to attempt in any manner to evade or defeat any tax imposed by law, or the payment of the tax, is guilty of a Class H felony. For misuse of an exemption certificate, the Secretary must assess against the purchaser a penalty of \$250.00.