



## **Owner-Direct Purchase Programs Public Works Contracts**

Under Florida law, real property contractors and subcontractors are the ultimate consumers of materials they use in the performance of real property construction contracts. Therefore, purchases of materials by real property contractors and subcontractors are subject to sales tax. This law applies to contractors and subcontractors who buy materials for public works construction contracts.

Florida law allows government entities to buy goods and services tax-free when the government entity makes payment directly to the vendor. When a government entity directly buys materials for use in a public works construction contract, these purchases are exempt from sales tax when the government entity follows certain procedures. These procedures are in Rule 12A-1.094, F.A.C.

Direct purchase of materials by the government entity for use in a public works construction project is commonly referred to an “owner-direct purchase program.” Government entities use owner-direct purchase programs to take advantage of their tax-exempt status to directly purchase materials for public works construction projects. If a contractor or subcontractor, rather than the government entity, buys materials for use in a public works construction contract, the contractor or subcontractor must pay sales tax.

Government entities, contractors, and subcontractors who enter into public works construction projects have asked questions about the requirements that must be met to qualify for the sales tax exemption available for direct purchases by a government entity. This is especially true when a contractor or subcontractor engaged in a public works construction contract provides the materials in an owner-direct purchase program or other similar arrangement.

To help the parties involved in a public works construction contract understand the conditions that must be met to satisfy the requirements of Rule 12A-1.094, F.A.C., and prove that the government entity rather than the contractor or the subcontractor is the purchaser of the materials, the Department provides the following guidance from this rule:

1. **Direct Purchase Order.** The government 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 government entity’s Florida Consumer’s Certificate of Exemption.
2. **Direct Invoice.** The vendor’s invoice must be issued to the government entity, rather than to the contractor.
3. **Direct Payment.** The government entity must make payment directly to the vendor from public funds.
4. **Passage of Title.** The government 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 government entity at the time of purchase is a paramount consideration. A government entity will be deemed to have assumed the risk of loss if the government entity bears the economic burden of obtaining insurance covering damage or loss or directly enjoys the economic benefit of the proceeds of such insurance.
6. Certificate of Entitlement. To be entitled to purchase materials tax exempt for a public works project, a government entity is required to issue a Certificate of Entitlement to each vendor and to the government entity's contractor to affirm that the tangible personal property purchased from that vendor will go into or become a part of a public work. This requirement does not apply to any agency or branch of the United States government.

**Purchases made by the government entity for a public works construction contract without a Certificate of Entitlement are subject to tax.**

**In some cases, the government entity is not able to use its tax exempt status on the purchase of materials.** For example, when the contractor or subcontractor installing the materials is also selling the materials to the government entity, the purchases are taxable, even if the government entity has established an owner-direct purchase program. See Rule 12A-1.094(5), F.A.C. Other instances where the government entity is not able to use its tax-exempt status and owner-direct purchase program include, but are not limited to:

1. When the contractor or subcontractor is the manufacturer of the materials.
2. When the contractor or subcontractor has exclusive rights from the manufacturer of the materials to furnish and install the materials.
3. When the contractor or subcontractor has already purchased the materials. The government entity cannot, after the fact, try to prepare or change the documentation to appear to have properly followed the procedures.

**References: Section 212.08(6), F.S.; Rule 12A-1.094, F.A.C.**

**For More Information**

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require compliance.

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For a detailed written response to your questions, write the Florida Department of Revenue, Taxpayer Services, Mail Stop 3-2000, 5050 West Tennessee Street, Tallahassee, FL 32399-0112.

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