

# The Florida Department of Revenue Changes Rules for Direct Purchase Orders



By Jason Moyer

**T**he FL Department of Revenue ("DOR") has changed the Rules for doing Direct Purchase Orders that qualify for tax exemption from Sales and Use Tax.

Many of the active construction projects in Florida are Government Jobs, where a municipality or other governmental entity is building a jail, or school, ect. In many cases, that Governmental entity intends to directly purchase the materials in order to avoid paying sales and use tax on the materials. In order for this transaction to be done properly, AND TO AVOID THE MUNICIPALITY, GENERAL CONTRACTOR OR SUBCONTRACTOR FROM BECOMING LIABLE FOR THIS TAX, the transaction must satisfy all the requirements of F.A.C. Rule 12A-1.094. It is this Rule which governs the taxability of transactions in which contractors manufacture or purchase supplies and materials for use in public works. "Public works" are 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.

In the past, we have had to make sure that the following criteria wer satisfied: (i) that the governmental entity 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 Certificate of Exemption, (ii) that the vendor's invoice be issued to the governmental entity, rather than to the contractor, (iii) that the governmental entity make payment directly to the vendor from public funds, (iv) that the governmental entity take title to the tangible personal property from the vendor at the time of purchase or delivery by the vendor, and (v) that the governmental entity assume the risk of damage or loss at the time of purchase. 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.

However, the FL DOR has added another hoop to be jumped through. Effective January 2, 2011, it is also required that the governmental entity issue a Certificate of Entitlement to purchase materials tax-exempt for a public works project to each vendor and each contractor certifying: (1) that the materials and supplies purchased will become part of a public facility; and (2) that the governmental entity will be liable for any tax, penalty, or interest due should the Department later determine that the items purchased do not qualify for exemption under Section 212.08(6), F.S. The law excludes a federal governmental entity from these requirements.

So watch out everyone!

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