

STANDARD PROCEDURE	Number: <u>  S410.19  </u>
Aviation Authority	Effective: <u>  11/14/14  </u>
	Revised: <u>  05/08/19  </u>
SUBJECT: OWNER DIRECT PURCHASE PROGRAM	Page: <u>  1  </u> of <u>  5  </u>

**PURPOSE:** To establish the process for enabling the Authority to direct purchase equipment, materials and supplies that are budgeted and included in projects pursuant to Section 212.08(6), F.S.; and Rule 12A-1.094, F.A.C.

**PROCEDURES:**

- A. The Vice President of Procurement, in consultation with the sponsoring department and the Legal Affairs Department (Legal Affairs), will determine if there is an opportunity for a benefit to the Authority to directly purchase equipment, materials and/or supplies required in a project directly from the supplier (Owner Direct Purchase). Items to be considered in making the determination may include the following:
  - 1. Potential sales tax savings by the Authority.
  - 2. Additional project management required by Authority personnel.
  - 3. Potential liability to the Authority for the delivery and storage of the material.
  - 4. Increase in insurance costs by the Authority for the protection of the equipment, material or supplies.
  - 5. Loss or gain of D/W/MBE opportunity.
  - 6. Contractor or design-builder competitive bid process.
  - 7. Other specific project risks, including but not limited to, potential for delay as determined by the Vice President of Procurement.
  
- B. If it is determined there is an opportunity and benefit to direct purchase equipment, materials and/or supplies, the Vice President of Procurement will instruct the Procurement Agent to ensure the direct purchase contract language in Appendix A is included in the project contract.
  
- C. The Procurement Agent, with assistance from Legal Affairs, will confirm the project contract includes the direct purchase contract language from the State of Florida

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Department of Revenue. The State of Florida Department of Revenue contractual language will control over other contractual terms. The following six factors must be proved in order for the Authority to be exempt from sales tax for equipment, materials and supplies purchases:

1. Direct Purchase Order: The Authority must issue its purchase order directly to the supplier supplying the equipment, materials or supplies and must provide the supplier with a copy of the Authority Florida Consumer's Certification of Exemption.
  2. Direct Invoice: The supplier's invoice must be issued to the Authority, rather than to the contractor or design-builder.
  3. Direct Payment: The Authority must make payment directly to the supplier from public funds.
  4. Passage of Title: The Authority must take title to the tangible personal property from the supplier at the time of purchase or delivery by the supplier.
  5. Assumption of the Risk of Loss: Assumption of the risk of damage or loss by the Authority at the time of purchase is a paramount consideration. The Authority will be deemed to have assumed the risk of loss if the Authority 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 direct purchase equipment, materials or supplies without sales tax for a public works project, the Authority is required to issue a Certificate of Entitlement to each supplier and to the Authority's contractor or design-builder to affirm that the tangible personal property purchased from that supplier 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.
- D. The Procurement Agent will advise the contractor or design-builder that the Owner Direct Purchase has been approved and instruct the contractor or design-builder on the Authority direct purchase process. This approval may occur prior to receipt of bids for bid projects

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and may occur either prior to or after award of design-build projects.

- E. The Board will be notified that the projects contract includes a provision for Owner Direct Purchase when the contract is presented to the Board for award.
- F. The mechanism for Owner Direct Purchase is as follows:
  - 1. During design development, the design professional for bid projects or the design-build team for design-build projects, in conjunction with the Project Director and project team will discuss and identify specific opportunities for Owner Direct Purchases. This Owner Direct Purchase analysis with respect to the specific opportunities for Owner Direct Purchase will consider the factors listed in Paragraph A above for all purchases that will exceed \$10,000.00 in total dollar amount per purchase. The Vice President of Procurement will make specific finding of fact justifying the use of the Owner Direct Purchase Program for each specific opportunity. Any purchases below that dollar amount will be awarded on a case-by-case basis for determination on the benefit to the Authority.
  - 2. The design professional for bid projects will include a list in the bid documents of all equipment, material, and/or suppliers that may be subject to an Owner Direct Purchase. For design-build projects, the design-build team will propose equipment, material, and/or suppliers that may be subject to an Owner Direct Purchase.
  - 3. On bid projects, the awarded contractor will meet with the Authority's Project Manager and Procurement Agent at the kick-off meeting or soon thereafter to review all Owner Direct Purchase quotes and the recommended company or companies to be awarded an Owner Direct Purchase Order. Likewise on design-build projects, the design-build team will meet with the Authority Project Manager and Procurement Agent either prior to or following the award of the Part 2 Contract to review all Owner Direct Purchase quotes and the recommended company or companies to award an Owner Direct Purchase Order.
  - 4. Upon approval of any Owner Direct Purchase, the Authority will provide a Purchase Order Requisition Form to the contractor or design-builder.

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5. The contractor or design-builder will provide to the Authority Project Manager a Purchase Order Requisition package as a pdf document to include: a detailed scope, a delivery schedule, pricing for the Owner Direct Purchase with the Purchase Order Requisition in full agreement with any subcontractor and/or supplier, a copy of the subcontractor or supplier's W-9 IRS form, verification of the subcontractor or supplier's registration with the Authority, and quotes received from all subcontractors or suppliers to serve as backup to the Purchase Order Requisition.
6. The Authority Project Manager will instruct the designated person in their department to enter a requisition for the Owner Direct Purchase into Oracle and attach a copy of the contractor or design-builder's Purchase Order Requisition package.
7. A Procurement Agent will initiate a purchase order and attach a copy of the Authority Florida Consumer's Certification of Exemption and Certificate of Entitlement to the purchase order.
8. The Authority Project Manager will initiate a deductive change order with the contractor or design-builder. For bid and design-build projects, the deductive change order will be for the value of the purchase order plus sales tax and any other adjustments deemed necessary. In the event the purchase order is for an indefinite quantity, the change order will be initiated once the contractor or design-builder knows the final quantity. The Procurement Agent processing change orders for Owner Direct Purchases will track all Owner Direct Purchases to verify and reconcile accounts at the end of the project.
9. The contractor or design-builder will assume liability for the equipment, materials and/or supplies upon delivery to the jobsite. The contractor or design-builder will approve the delivery by verification and indicate so on the delivery ticket.
10. Suppliers will invoice the Authority directly. Upon receipt of the invoice, the Authority will forward a copy to the contractor or design-builder for verification and approval. Upon verification and approval of the invoice, the contractor or design-builder will then forward the invoice to the Authority Project Manager for approval and payment.

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11. The Authority will issue payment for the approved invoice amount and send the payment directly to the supplier. The payment will be accompanied by a Certificate of Entitlement. A copy of the payment and Certificate of Entitlement will be forwarded to the contractor or design-builder in order to accurately track and summarize all Authority Owner Direct Purchases. The Authority will comply with Fla. Stat. Section 218.735, Timely payment for purchases of construction services. In the event the Authority fails to make a payment by the time periods specified in the Statute, the Authority will comply with F.S. 218.735(9) and pay interest on the payment per the terms specified in this section of the Statute.
12. The contractor or design-builder will be responsible for obtaining and managing all warranties and guarantees in favor of and for the benefit of the Authority for all equipment, materials and supplies as required by the Contract Documents. All repairs, maintenance or damage repair calls shall be forwarded to the contractor or design-builder for resolution with the appropriate supplier.

APPROVED: Joe Lopano

DATE: 5/8/19

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TERMS OF ATTACHMENT <NO. X > <THIS DOCUMENT WILL BE ATTACHED TO ALL CONTRACTS USING OWNER DIRECT PURCHASE.>

The Owner reserves the right, at the Owner's option, to direct purchase materials, equipment, supplies and furnishings involved in the Project, so as to save sales tax which would otherwise have been due with regard to the purchase of the materials, equipment, supplies and furnishings. The Contractor/Design-Builder will assure that the materials, equipment, supplies and furnishings to be considered for direct purchase were included in a competitive solicitation during the preparation of the Bid or Guaranteed Maximum Price Proposal. Pursuant to Section 212.08 Fla. Stat. and Rules 12A-1.094 and 12A-1.038 Fla. Admin. Code, the Owner and Contractor/Design-Builder agree to the following procedure regarding the Owner's direct purchase from suppliers, vendors and materialmen of certain material, equipment, supplies and furnishings to be used in the Project:

1.1 The Contractor/Design-Builder shall provide the Owner a list of all materials, equipment, supplies and furnishings required for the project and the proposed suppliers, vendors and materialmen for those materials, equipment, supplies and furnishings as well as the date upon which those materials, equipment, supplies and furnishings are required to be delivered to the site, a description of the materials, estimated quantities and prices. This list shall be submitted at the same time as the preliminary schedule of values and the Project schedule.

1.2 The Owner shall determine the materials, equipment, supplies and furnishings it will direct purchase and provide that information to the Contractor/Design-Builder no later than 60 days after award of the Contract.

1.3 In order to not delay the project, the Contractor/Design-Builder shall submit to the Owner no later than ten calendar days prior to the date that the purchase order must be issued for timely delivery of the materials, equipment, supplies and/or furnishings a Purchase Order Requisition Form indicating the proposed supplier, vendor or materialman for the materials, equipment, supplies and furnishings, the description of the materials, equipment, supplies and furnishings and the price, quantity, delivery terms, delivery location, warranties and guarantees. Prior to the delivery of the Purchase Order Requisition Form, the Design-Builder must enter into a contractual relationship with the supplier, vendor or materialman that includes the materials, equipment, supplies and furnishings to be direct purchased and incorporates these terms. All purchase orders made by the Owner that direct purchase materials, equipment supplies or furnishings shall be subject to the Owner's standard PO terms and conditions which are made a part hereof.

1.4 No later than 10 calendar days after receipt of the Purchase Order Requisition Form, Owner shall prepare its Purchase Order for materials, equipment, supplies and furnishings specified by the Contractor/Design-Builder which the Owner chooses to purchase directly. The Owner will

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deliver the Purchase Order to the Contractor/Design-Builder and promptly upon receipt of each Purchase Order, Contractor/Design-Builder shall verify the terms and conditions of the Purchase Order prior to Owner's issuance to supplier and in a manner to assure proper and timely delivery of items. After such verification by the Contractor/Design-Builder, the Owner shall issue the Purchase Order to the supplier, vendor or materialman. The Purchase Order shall require that the supplier, vendor or materialman provide the required shipping and handling insurance and retain ownership until received in an acceptable condition by the Contractor/Design-Builder. The Purchase Order shall also require that the supplier, vendor or materialman invoice the Owner directly for the purchase price of the Owner Direct Purchased materials, equipment, supplies and furnishings. The Purchase Order shall also require the delivery of the Owner Direct Purchased materials, equipment, supplies and furnishings on the delivery date provided by the Contractor/Design-Builder in the Purchase Order Requisition Form and shall indicate F.O.B. jobsite. The Owner's Purchase Orders shall contain or be accompanied by the Owner's exemption certificate and must include the Owner's name, address, and exemption number with issue and expiration date shown. The Owner shall issue each supplier, vendor or materialman a Certificate of Entitlement on the Certificate of Entitlement Form attached hereto with each Purchase Order.

1.5 Contractor/Design-Builder shall be fully responsible for all matters relating to the receipt of materials, equipment, supplies and furnishings in accordance with these Procedures, including, but not limited to, verifying correct quantities, verifying documentation of orders in a timely manner, coordinating purchases, providing and obtaining all warranties and guarantees in favor of and for the benefit of the Owner required by the Contract Documents, inspection and acceptance of the goods at the time of delivery and insuring that all materials, equipment, supplies and furnishings meet the contract requirements and specifications. At the time of, and subsequent to, the delivery of such materials, equipment, supplies and furnishings, the Owner shall be liable for all loss or damage to materials, equipment, supplies and furnishings purchased pursuant to the Purchase Order. To the maximum extent permitted by law and in addition to the Contractor/Design-Builder's obligations to provide insurance and defend the Owner, the Contractor/Design-Builder agrees to indemnify and hold harmless the Owner, and its Board Members, officers, employees, servants, volunteers, and agents, from any and all claims of whatever nature resulting from non-payment of goods to suppliers, vendors and materialmen arising from the actions or directions of Contractor/Design-Builder. In addition to the duty to indemnify and hold harmless, the Contractor/Design-Builder agrees to defend the Owner, and its Board Members, officers, employees, servants, volunteers and agents from any and all claims of whatever nature resulting from non-payment of goods to suppliers, vendors and materialmen resulting from the actions or directions of the Contractor/Design-Builder. Notwithstanding the foregoing, the Owner shall be responsible for payment of the invoices issued by the supplier, vendor or materialman pursuant to the procedures outlined herein and will rely on the Contractor/Design-Builder's proper acceptance of the delivered materials, equipment, supplies and furnishings.

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1.6 Upon receipt of the materials, equipment, supplies and furnishings, the Contractor/Design-Builder shall verify in writing to the Owner that the materials, equipment, supplies and furnishings were received and agree to approve the invoice for payment. The invoice shall be thereupon furnished to the Owner for processing and payment in the manner as all other Owner invoices are processed. Once the invoice is paid, the Owner and Contractor/Design-Builder shall agree to a deductive change order for the amount of the materials plus the amount of the sales tax saved through the direct purchase and any other adjustments deemed necessary. These deductive change orders may be combined and issued monthly for the convenience of the Owner at the Owner's discretion.

1.7 The Contractor/Design-Builder shall be responsible for obtaining and managing all warranties and guarantees in favor of and for the benefit of the Owner for all materials, equipment, supplies and furnishings as required by the Contract. All repairs, maintenance or damage repair calls shall be forwarded to the Contractor/Design-Builder for resolution with the appropriate supplier, vendor or materialman pursuant to the terms of the warranty provisions contained elsewhere in the Agreement.

1.8 The transfer of possession of Owner Direct Purchased materials, equipment, supplies and furnishings from the Owner to the Contractor/Design-Builder shall constitute a bailment for mutual benefit of the Owner and the Contractor/Design-Builder. The Owner shall be considered the bailor and the Contractor/Design-Builder the bailee of the Owner Direct Purchased materials, equipment, supplies and furnishings. Owner Direct Purchased materials, equipment, supplies and furnishings shall be considered returned to the Owner for purposes of its bailment at such time as they are incorporated into the Project or consumed in the process of completing the Project. Bailee shall have the duty to safeguard, store and protect all Owner Direct Purchased materials, equipment, supplies and furnishings.

1.9 The Contractor/Design-Builder shall maintain insurance in favor of and for the benefit of the Owner pursuant to the Contract requirements which shall be sufficient to protect against any loss of or damage to Owner Direct Purchased materials, equipment, supplies and furnishings. Such insurance shall cover the full value of any Owner Direct Purchased materials, equipment, supplies and furnishings not yet incorporated into the Project from the time the Owner first takes title which shall be at the time of delivery and acceptance of the materials, equipment, supplies and furnishings by the Contractor/Design-Builder as provided in above.

1.10 In order to arrange for the prompt payment to the supplier, vendor or materialman, the Contractor/Design-Builder shall provide to the Owner, a list indicating the acceptance of the materials, equipment, supplies and furnishings in accordance with the established monthly Payment Request Schedule. The list shall include a copy of the applicable Purchase Order, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the Owner. Upon receipt and verification of the appropriate documentation, the Owner shall prepare a payment to the supplier, vendor or

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materialman based upon the receipt of data provided. This payment will be released, delivered and remitted directly to the supplier, vendor or materialman by the Owner. The Contractor/Design-Builder agrees to assist the Owner to immediately obtain partial or final release of lien waivers or bond waivers as appropriate.

1.11 From the time of delivery and acceptance, the Owner shall have and retain title to any and all Owner Direct Purchased materials, equipment, supplies and furnishings.

### 1.12 Risk of Loss

1.12.1 Notwithstanding any provision in this Agreement to the contrary, except with respect to tangible personal property purchased by the Owner for the purpose of receiving a tax exemption under Section 212.08(6), Fla. Stat., if any, the risk of loss shall remain with the Contractor/Design-Builder until Final Completion.

1.12.2 The Owner shall retain the risk of loss of and damage to Owner furnished materials, equipment, supplies and furnishings for the purpose of receiving a tax exemption under Section 212.08(6), Fla. Stat., which meets the criteria in Rule 12A 1.094(4)(b)(1-4), Fla. Admin. Code, to determine if the Owner is the purchaser for the purposes of the tax exemption under Section 212.08(6), Fla. Stat.

1.12.3 The Owner shall be solely entitled to the proceeds paid and attributable to damage or loss to Owner furnished materials, equipment, supplies and furnishings under the Property/Builders Risk policies.

1.13 The Contractor/Design-Builder shall provide a final summary of the materials, equipment, supplies and furnishings purchased directly by the Owner and the sales tax savings recognized by the Owner at the close out of each Project.

1.14 The current State Sales Tax is 6% and the current Hillsborough County Discretionary Sales Tax is 2.5%. The sales tax calculation is 6% on the total purchase and 2.5% on the purchase up to and including the first \$5,000.00.