

SEWERAGE & WATER BOARD OF NEW ORLEANS



Procurement Department Policy

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Policy Summary

Procurement Operations

Overview

This manual outlines the required policy and procedures for the procurement of any items or services in compliance with state laws which utilizes public funding to pay for goods, services, or construction for the Sewerage and Water Board of New Orleans (SWBNO). All procurements in which federal funds are used or contemplated must be conducted in accordance with federal procurement requirements.

Mission

Our mission is to provide procurement services to ensure efficient and timely acquisition of goods and services in accordance with the federal and state laws and statutes that govern the Sewerage and Water Board of New Orleans.

Values

Sewerage and Water Board of New Orleans Procurement Department adheres to the National Institute for Public Procurement’s (NIGP) “Values and Guiding Principles of Public Procurement.”

- Accountability – Taking ownership and being responsible to stakeholders for our actions.
- Ethics – Doing the right thing by acting and conducting business with honesty and integrity.
- Impartiality – Unbiased decision-making and actions.
- Professionalism – Upholding high standards of job performance and ethical behavior.
- Service – Obligation to assist stakeholders.
- Transparency – Easily accessible and understandable policies and procedures.

Vision

To deliver innovative, timely, and accurate solutions by using best practices to provide added value and streamline processes for the benefit of the Sewerage and Water Board of New Orleans.

Legal Reference to Governing Laws

Federal and state requirements as well as local ordinances, policies and procedures create the legal framework for the Procurement Department's activities. The primary legal references are Title 33, Title 38 and Title 39 of the Louisiana state statutes. Federal grants are referenced by 2 CFR 200 (See Procurement Federal Grants Policy). Where specific reference is made to a state or federal law, the most current statement of that law is applicable. Please note that laws are subject to change. This manual provides an alignment of the methods of procurement outlined in these citations.

Although reference is made to legal requirements, this manual is not intended to cover all the legal aspects of Procurement, but only to establish the basis for procedures. This manual may not cover all situations but is intended as a guide to address most contracting processes. Departments are encouraged to contact Procurement if there is any doubt as to the proper procedure to be followed. Any interpretations, determinations or conflicts relating to the application or meaning of any of the procedures contained herein shall be made to the Procurement Director or their designee. Any proposed changes to this document must be submitted in writing to and approved by the Procurement Director.

Procedures for handling emergency purchases or contracts are provided by Louisiana state statute and Procurement Department policies which allow waiver of certain requirements in order to expedite the purchase or award of the contract.

Responsibilities

Responsibilities of Procurement Department

The Procurement Department works directly with each user department for all procurement related activities. This includes procuring supplies, materials, contractual services, support and oversight of solicitation, vendor selection, negotiation, award, contract management, reporting, and emergency event support, of which the Board is the governing authority that may request such services.

The requesting User Department is responsible for providing technical details including but not limited to the specifications. Procurement is responsible for providing support, all required forms and administration of procurement activities. The Procurement Department will work with all departments to ensure forms are current and up to date.

Policy Revisions

The Executive Director is the Policy Approver and has the authority to approve the policy upon recommendation by the Procurement Director.

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The CFO has the authority to initiate revisions to the policy. Feedback from other Executive Management team members can be solicited on proposed revisions.

The Procurement Director has the authority to ensure that the policy is regularly reviewed, updated, and consistent with other governance policies.

Compliance

The following roles are designated at each department to implement compliance monitoring for this Policy:

- The CFO is accountable for reviewing the administration of this Policy.
- The Procurement Department is responsible for implementing this Policy.
- Individual departments are responsible for understanding the content of and following the Policy.

No employee has authority to make any purchases on behalf of the Sewerage and Water Board of New Orleans without proper approvals.

Noncompliance with this Policy

Noncompliance with this Policy is handled in accordance with all applicable Human Resources policies on disciplinary and separation matters.

Definitions

Amendment is an agreed addition to, deletion from, correction, or modification of a document or contract.

Bid Bond is an insurance agreement, accompanied by a monetary commitment, by which a third party (the surety) accepts liability and guarantees that the bidder will not withdraw the bid. The bidder will furnish bonds in the required amount and if the contract is awarded to the bonded bidder, the bidder will accept the contract as bid, or else the surety will pay a specific amount.

Change Order is a written modification or amendment to a contract

The **Construction Review Committee (CRC)** is a joint effort of representatives from the City of New Orleans, SWBNO, and representatives of local contractor organizations that determines the percent participation of Disadvantaged Business Enterprise (DBE) required per Public Works Contract. (Representatives include Mayoral – 3, Associated General Contractors of Louisiana, Associated Builders and Contractors of Louisiana, Coalition of Minority Contractors of Louisiana, National Association of Women in Construction)

Emergency Purchase is a purchase made due to an unexpected and urgent request where health and safety or the conservation of public resources is at risk. Usually formal competitive bidding procedures are waived.

Materials and supplies are commonly understood to be the movable property necessary to conduct public business, from paper and pens to computers and printers.

Non-professional services include any service that is not defined as a professional service. Such services include but not limited to janitorial or cleaning work, repair to a moveable property, or software support and maintenance.

Non-Responsible Bidder is a bidder who does not have the capability in all respects to fully perform the contract requirements or does not have the integrity and reliability that will assure good faith performance. Factors considered in evaluating responsibility may include financial resources, past performance, delivery capability, experience, organization, personnel, technical skills, operations controls, equipment, or facilities.

Non-Responsive Bidder is a bidder who has not submitted a bid which conforms in all material respects to the requirements set forth in the ITB, IFB, RFQ, or RFP.

Payment Bond is a financial or contractual instrument, issued by a surety to a Contractor that guarantees that subcontractors will be paid for labor and materials

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expended on the contract. Acceptable forms of payment bonds may include cashier's check, certified check, or irrevocable letter of credit issued by a financial institution; a surety or blanket bond; United States Treasury bond; or certificate of deposit. Also known as Labor and Materials Bond.

Performance Bond is a type of surety bond, subsequent to award, by a successful bidder, that protects the public entity from loss because of the bidder's inability to complete the contract as agreed. A risk mechanism that secures the fulfillment of all contract requirements. May be referred to as a completion bond.

Pre-Bid/Pre-Proposal Meeting is a meeting held by the Procurement Department with potential bidders/proposers prior to the opening of the solicitation for the purpose of answering questions, clarifying any ambiguities, and responding to general issues to establish a common basis for understanding all of the requirements of the solicitation. May result in the issuance of an addendum to all potential providers. In certain situations, a mandatory conference may be advisable.

Procurement Analyst is a purchaser or procurer of products and services. This title may also refer to an individual who is responsible for the procurement activities of an entity, also commonly referred to as a purchasing or procurement agent.

Professional Service is a service rendered by a member(s) of a recognized profession or possessing a special skill. Such service is generally acquired to obtain information, advice, training, or direct assistance.

Proprietary Purchase is an item produced and marketed by a person or company having the exclusive right to manufacturer and sell it. May result from a trade secret or patent.

Public work means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

Quote is an informal purchasing process which solicits pricing information from several sources.

Sealed Bid refers to a written bid placed in a sealed envelope. The sealed bid is not opened until the stated bid opening date, at which time all submitted bids are opened together. The lowest responsible and responsive bidder is usually awarded the contract after the evaluation and recommendation process.

Scope of Work (SOW) is developed at the beginning of the procurement cycle and is a written description of the entity's needs and desired outcomes for the procurement and becomes the basis for any resulting solicitation. The scope of work helps to ensure that the product or service meets the stated outcome and establishes the parameters of the resulting contract.

Small Purchase is any procurement not exceeding a given upper monetary limit, as established by law, regulation, or executive order. Usually applies to purchases of small dollar amounts under a certain monetary threshold.

Sole Source Procurement is a non-competitive method of procurement used when only one supplier possesses the unique ability or capability to meet the particular requirements of the entity or because only one supplier is practicably available.

The **Staff Contract Review Committee (SCRC)** is composed of representatives from SWBNO who recommend suitable percentage and feasible areas of Disadvantaged Business Enterprise (DBE) participation on Goods and Services and Professional Services contracts. (representatives include Legal, General Superintendent’s Office, Executive Director’s Office, Purchasing and Support Services)

Statute is a written law enacted by a legislative body. Also known as legislation.

User Department is an individual or department who actually uses a procured good or service. Can also be referred to as an End User.

Vendor is a person or entity that provides goods and/or services, usually for low-cost, low-risk, and short-term engagements.

Types of Bidding

A **Request for Information (RFI)** is used to obtain general information about products, services, or vendors. It is primarily used to gather information to help decide on what steps to take next. In addition to gathering basic information, an RFI is often used as a solicitation sent to a broad base of potential vendors for the purpose of conditioning vendors' minds, developing strategy, building a database, and preparing for an RFP or RFQ.

An RFI may be used to “survey” the marketplace to understand what products or services are available and the approximate cost that may be incurred for a purchase/contract. A contract may not be awarded from an RFI. An RFI is used to help develop an RFQ or RFP.

A **Request for Quotation (RFQ)** is a business process in which a public entity requests a quote from a vendor for the purchase of specific products or services.

To receive correct quotes, RFQs often include the specifications of the items/services to make sure all the vendors quoting on the same item/service. Logically, the more detailed the specifications, the more accurate the quote will be and comparable to the other vendors.

An RFQ is also used for architect and engineer design services. Public entities are prohibited under Louisiana state law from selecting providers of design services where price or price-related information is a factor in selecting an architect, engineer, or other design professional. Public entities should utilize a **Request for Qualifications (RFQx) or Request for Proposals (RFP)** process to seek and select a provider of design services and then attempt to negotiate a price with the provider selected as most qualified.

An **Invitation to Bid (ITB)** is a method used to solicit competitive sealed bid responses where the lowest responsive and responsible bidder will be awarded.

The purpose of an invitation to bid is to provide standardized information to all bidders. Contractors/vendors will submit their price in sealed envelopes which are publicly opened to maintain transparency.

A **Request for Qualifications (RFQx)** is a formal process of procuring a product or service used as a screening step to establish a pool of vendors (businesses or individuals to provide a product or service) that are then qualified, and thus eligible to submit responses to a Request for Proposal (RFP). The response to the RFQ will describe the company or individual's general qualifications to perform a service or supply a product but generally will not include specific details or price proposals. Examples include but not limited to: architecture, engineering services, legal services, asbestos removal, specialized labor, and maintenance labor.

Evaluation criteria are established and included in an RFQx. Evaluation criteria cannot include price as a factor in an RFQx.

A **Request for Proposal (RFP)** is a document that solicits proposals, often made through a bidding process, by an agency or company interested in procurement of a commodity, service, or valuable asset, to potential vendors to submit business proposals. It is submitted early in the procurement cycle, either at the preliminary study, or procurement stage.

An RFP is used where the request requires technical expertise, specialized capability, or where the product or service being requested does not yet exist, and the proposal may require research and development to create whatever is being requested.

The RFP presents preliminary requirements for the commodity or service and may dictate to varying degrees the exact structure and format of the vendor's response. Effective RFPs typically reflect the strategy and short/long-term business objectives, providing detailed insight upon which vendors will be able to offer a matching perspective.

In principle, an RFP:

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- Informs vendors that an organization is looking to procure and encourages them to submit their best effort.
- Requires the company to specify what it proposes to purchase. If the requirements analysis has been prepared properly, it can be incorporated quite easily into the Request document.
- Alerts vendors that the selection process is competitive.
- Allows for wide distribution and response.
- Ensures that vendors respond factually to the identified requirements.
- Is generally expected to follow a structured evaluation and selection procedure, so that an organization can demonstrate impartiality - a crucial factor in public sector procurements.

Policy

Procurement Methods

Purchases should never be artificially divided to circumvent laws or policies.

Small Purchases Under \$10,000

Louisiana Revised Statute 33:4084(B) states: *Contracts for materials and supplies amounting to less than ten thousand dollars shall not be advertised unless the board deems it advisable. In all cases the board may reject all bids and advertise for new bids.*

Louisiana Revised Statute 38:2212 states: *Procurements not exceeding the amounts established by executive order of the governor may be made in accordance with small purchase procedures prescribed by such executive order*

Materials, Supplies, and Non-Professional Services

Aggregate dollar amount valued at less than \$10,000:

No competitive process is required for purchases not exceeding ten thousand dollars per single purchase transaction. However, one (1) quote is required from a reputable vendor with fixed, firm pricing.

Small Purchase Non-Professional Services Contract:

Scope of Work (SOW) may determine if a contract may be required for work. Procurement should consult with the User Department and the Procurement Director to determine if the SOW constitutes a bid.

A non-professional service will not be considered a public works project or a professional service per the definitions included in this manual.

Small Purchases Under \$30,000

Louisiana Revised Statute 33:4084(A)(1)(b) states: *However, purchases of ten thousand dollars or more, but not more than thirty thousand dollars, shall be made by obtaining not less than three quotes by telephone, facsimile, email, or any other electronic form. If telephone quotes are received, a written confirmation of the accepted offers shall be obtained and made a part of the purchase file. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded in the purchase file.*

Louisiana Revised Statute 33:4084(D) states: *All contracts for repair or renewal work not executed by the regular employees of the board and exceeding ten thousand dollars*

in amount shall be advertised and let to the lowest responsible bidder as provided in R.S. 33:4084(A). The board shall have the same right to reject bids as provided in R.S. 33:4084(B).

Louisiana Revised Statute 38:2212.1(A)(1)(b) states: *Purchases of ten thousand dollars or more, but less than thirty thousand dollars, shall be made by obtaining not less than three quotes by telephone, facsimile, email, or any other printable electronic form. If telephone quotes are received, a written confirmation of the accepted offers shall be obtained and made a part of the purchase file. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded in the purchase file.*

Small Purchases for Materials, Supplies, and Non-Professional Services

Aggregate dollar amount valued at \$10,000 or more, but less than \$30,000:

Procurement should solicit at least three (3) quotes from qualified vendors. DBE participation is encouraged, but not required, for all non-professional services.

Procurement may, at its discretion, require that services that will be performed on SWBNO property obtain a written contract based on the complexity of and risk involved with the scope of work.

Small Purchases for Professional Services

Aggregate dollar amount valued at less than \$15,000:

No competitive process is required for purchases not exceeding fifteen thousand dollars per single purchase transaction. However, one quote is required from a qualified vendor with fixed, firm pricing.

Small Purchase Professional Services Contract: Scope of work may determine if a contract may be required for work. Procurement should consult with the User Department and the Procurement Director to determine if the Scope of Work constitutes a bid or contract.

Purchases for Public Works under \$250,000

Louisiana Revised Statute 38:2241(A)(1) states: *Whenever a public entity enters into a contract in excess of five thousand dollars for the construction, alteration, or repair of any public works, the official representative of the public entity shall reduce the contract to writing and have it signed by the parties. When an emergency as provided in R.S. 38:2212(D) is deemed to exist for the construction, alteration, or repair of any public works and the contract for such emergency work is less than fifty thousand dollars, there shall be no requirement to reduce the contract to writing.*

Louisiana Revised Statute 38:2241(A)(2) states: For each contract in excess of twenty-five thousand dollars per project, the public entity shall require of the contractor a bond with good, solvent, and sufficient surety in a sum of not less than fifty percent of the contract price for the payment by the contractor or subcontractor to claimants as defined in R.S. 38:2242. The bond furnished shall be a statutory bond and no modification, omissions, additions in or to the terms of the contract, in the plans or specifications, or in the manner and mode of payment shall in any manner diminish, enlarge, or otherwise modify the obligations of the bond. The bond shall be executed by the contractor with surety or sureties approved by the public entity and shall be recorded with the contract in the office of the recorder of mortgages in the parish where the work is to be done not later than thirty days after the work has begun.

Procurement should solicit at least three (3) quotes utilizing the Public Works under \$250k Bid Template. DBE participation is encouraged, but not required.

Aggregate dollar amount exceeding \$5,000:

Shall be reduced to a written contract.

When an **emergency** is deemed to exist for the construction, alteration, or repair of any public works and the contract is less than \$50,000, there is no requirement to reduce the contract to writing.

Aggregate dollar amount exceeding \$25,000:

Shall require a performance and payment bond and shall be recorded with the Clerk of Court along with the written contract.

Aggregate dollar amount exceeding \$50,000:

Shall require the use of state licensed contractors and subcontractors.

Sealed Bids

A **sealed bid** refers to a written bid placed in a sealed envelope. The sealed bid is not opened until the stated bid opening date, at which time all submitted bids are opened together. The lowest responsible and responsive bidder is usually awarded the contract after the evaluation and recommendation process.

Sealed Bids for Materials, Supplies, and Non-Professional Services

Louisiana Revised Statute 33:4084(A)(1)(a) states: *All purchases of materials or supplies required by the board for the conduct, operation, maintenance, and repair of the public systems of sewerage, water, and drainage exceeding the sum of thirty thousand dollars shall be advertised and let by contract to the lowest responsible bidder who has bid according to the contract plans and specifications as advertised.*

Louisiana Revised Statute 33:4084(A)(2) states: *The advertisement required by this Section shall be in accordance with R.S. 38:2212.1(B).*

Louisiana Revised Statute 38:2212.1(B)(1) states: *The advertisement required by this Section for any contract for materials or supplies shall be published two times in a newspaper in the locality, the first advertisement to appear at least fifteen days before the opening of the bids. In addition to the newspaper advertisement, a public entity may also publish an advertisement by electronic media available to the general public.*

Louisiana Revised Statute 38:2212.1(B)(2) states: *The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until twenty-four hours before the bid opening date.*

Louisiana Revised Statute 38:2212.1(B)(3) states: *Any proposal shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity may accept alternates in any order which does not affect determination of the low bidder.*

Louisiana Revised Statute 38:2212.1(B)(4)(a) states: *Contractors shall be provided the option to submit bids for public contracts through a uniform and secure electronic interactive system. Political subdivisions shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of technology services as provided for in LAC 4:XV.701, and shall make the appropriate provisions necessary for the acceptance of electronic bids for all purchases*

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requiring competitive bidding as required by this Section. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.

Louisiana Revised Statute 38:2212.1(B)(4)(f) states: *Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.*

Aggregate dollar amount exceeding \$30,000:

All purchases of any materials or supplies exceeding the sum of thirty thousand dollars to be paid out of public funds shall be advertised and let by contract to the lowest responsive and responsible bidder who has bid according to the specifications as advertised, and no such purchase shall be made except as provided in this Part.

User departments are required to submit bid/contract documents to the Staff Contract Review Committee (SCRC). The SCRC will issue an inter-office memorandum following its monthly meeting listing each contract's budgeted amount, DBE percentage goal, and renewal options. Procurement will store a copy of this memorandum in its contract files.

Advertisement Requirements for Materials, Supplies, and Non-Professional Services:

Published at least twice in the official journal (The Advocate) of record for the SWBNO. Request an Affidavit from the newspaper to be filed in the Procurement Department.

- a. Published on State of Louisiana LaPAC website.
- b. Published on the SWBNO website
- c. Advertisement must begin a minimum of 15 days before the opening of the bids.
 - i. First publication of an advertisement shall not occur on Saturday, Sunday, or other legal holiday.

Sealed Bids for Professional Services

Louisiana Revised Statute 38:2318.1(A) (Louisiana “No Bidding of Architectural and Engineering Professional Services” policy) states: *It is the policy of the state of Louisiana, its political subdivisions, and agencies to select architectural and engineering professional services on the basis of competence and qualifications for a fair and reasonable price. Neither the state nor any of its political subdivisions or agencies may select architects, engineers, landscape architects, and land surveyors wherein price or price-related information is a factor in the selection.*

Aggregate dollar amount exceeding \$15,000:

See Procurement Procedure for Policy 95

Bids are not publicly opened.

Advertisement Requirements for Professional Services:

Published at least twice in the official journal (The Advocate) of record for the SWBNO. Request an Affidavit from the newspaper to be filed in the Procurement Department.

- a. Published on State of Louisiana LaPAC website.
- b. Published on the SWBNO website
- c. Advertisement days are at the discretion of the User Department.
 - i. First publication of an advertisement shall not occur on Saturday, Sunday, or other legal holiday.

Sealed Bids for Public Works

Louisiana Revised Statute 33:4085(B)(1) states: For all public works contracts where the amount of the contract exceeds the limit in accordance with R.S. 38:2212, the Sewerage and Water Board of New Orleans shall let the contract to the lowest responsible and qualified bidder after advertising as required by R.S. 38:2212.

Louisiana Revised Statute 33:4085(B)(2) states: All bidders bidding on public works for the Sewerage and Water Board of New Orleans shall submit all bid forms required by statute or by the Louisiana Administrative Code to the governing authority of the Sewerage and Water Board of New Orleans prior to the opening of all bids relative to a contract for public works in accordance with R.S. 38:2212(B)(3)(a). In all such contracts, regardless of the amount, which require or involve the employment of mechanics or laborers the specifications shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the secretary of the Department of Labor of the United States to be the prevailing wage of the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work within the city of New Orleans.

Louisiana Revised Statute 38:2212(A)(1)(a) states: All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible and responsive bidder who bid according to the bidding documents as advertised, and no such public work shall be done except as provided in this Part.

Louisiana Revised Statute 38:2212(A)(1)(b) states: Notwithstanding any other provision of law to the contrary and in addition to any other requirements provided by this Subsection, the Acknowledgment of Addenda to the bid form provided for in this Section for the public bid of public works conducted by the New Orleans Sewerage and Water Board shall also include attachment of the addenda if pricing information is contained therein and the addenda requires attachment.

Louisiana Revised Statute 38:2212(B)(2) states: Any public entity advertising for public work shall use only the Louisiana Uniform Bid Form as promulgated in accordance with the Administrative Procedure Act by the division of administration, office of facility planning and control. The bidding documents shall require only the following

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information and documentation to be submitted by a bidder at the time designated in the advertisement for bid opening: Bid Security or Bid Bond, Acknowledgment of Addenda, Base Bid, Alternates, Signature of Bidder, Name, Title, and Address of Bidder, Name of Firm or Joint Venture, Corporate Resolution or written evidence of the authority of the person signing the bid, and Louisiana Contractors License Number, and on public works projects where unit prices are utilized, a section on the bid form where the unit price utilized in the bid shall be set forth including a description for each unit; however, unit prices shall not be utilized for the construction of building projects, unless the unit prices and their extensions are incorporated into the base bid or alternates.

Louisiana Revised Statute 38:2212(B)(3)(a) states: *The bidding documents shall not require any bidder, other than the apparent low bidder, to furnish any other information or documentation, including the Attestation Affidavit and the E-Verification Form, any sooner than ten days after the date bids are opened; however, the apparent low bidder may submit such information or documentation at any time prior to the expiration of the ten-day period. If the apparent low bidder does not submit the proper information or documentation as required by the bidding documents within the ten-day period, such bidder shall be declared non-responsive, and the public entity may award the bid to the next lowest bidder, and afford the next lowest bidder not less than ten days from the date the apparent low bidder is declared non-responsive, to submit the proper information and documentation as required by the bidding documents, and may continue such process until the public entity either determines the low bidder or rejects all bids. The ten-day period shall not be altered or waived by any public entity except the governing authority of any publicly owned commercial aviation airport, the Sewerage and Water Board of New Orleans, the Regional Transit Authority, and all agencies of the City of New Orleans, including but not limited to the New Orleans Aviation Board, who shall require that the other documentation and information referred to in this Subparagraph be furnished by the two apparent low bidders no sooner than three days after the bid opening. The two apparent low bidders may submit such information or documentation at any time prior to the expiration of the three-day period. If the two apparent low bidders do not submit the proper information or documentation as required by the bidding documents within the three day period, such bidders shall be declared non-responsive, and from that date, award may be made to the next lowest bidder, and afford that bidder not less than three days to submit the required information or documentation, and the process may continue until either a low bidder is determined or all bids are rejected.*

Louisiana Revised Statute 38:2212(B)(4) states: *Notwithstanding any other provision of law to the contrary and in addition to any other requirements provided by this Subsection, the Acknowledgment of Addenda to the bid form provided for in this Section for the public bid of public works conducted by the New Orleans Sewerage and Water Board shall also include attachment of the addenda if pricing information is contained therein and the addenda requires attachment.*

Louisiana Revised Statute 38:2212(B)(5) states: *Written evidence of the authority of the person signing the bid for public works shall be submitted at the time of bidding. The authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met:*

Louisiana Revised Statute 38:2212(B)(5)(a) states: *The signature on the bid is that of any corporate officer listed on the most current annual report on file with the secretary of state, or the signature on the bid is that of any member of a partnership, limited liability company, limited liability partnership, or other legal entity listed in the most current business records on file with the secretary of state.*

Louisiana Revised Statute 38:2212(B)(5)(b) states: *The signature on the bid is that of an authorized representative as documented by the legal entity certifying the authority of the person.*

Louisiana Revised Statute 38:2212(B)(5)(c) states: *The legal entity has filed in the appropriate records of the secretary of state of this state, an affidavit, resolution, or other acknowledged or authentic document indicating the names of all parties authorized to submit bids for public contracts. Such document on file with the secretary of state shall remain in effect and shall be binding upon the principal until specifically rescinded and canceled from the records of the office.*

Louisiana Revised Statute 38:2212(B)(6)(a) states: *Each bid shall be either hand delivered by the bidder or his agent in which instance the deliverer shall be handed a written receipt, or such bid shall be sent by registered or certified mail with a return receipt requested, or shall be submitted electronically as provided in Subsection E of this Section. No public entity shall accept or take any bids, including receiving any hand delivered bids, on days which are recognized as holidays by the United States Postal Service.*

Louisiana Revised Statute 38:2212(C)(1) states: *Except as provided in Paragraphs (2), (3), and (4) of this Subsection, the term "contract limit" as used in this Section shall be equal to the sum of two hundred fifty thousand dollars per project, including labor, materials, and equipment as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate Book and administrative overhead not to exceed fifteen percent, provided that beginning February 1, 2025, and annually on February first of each subsequent year, the office of facility planning and control within the division of administration shall adjust the "contract limit" by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year. The office of facility planning and control within the division of administration shall publish the new contract limit for public works contracts in the Louisiana Register in January of each year.*

Louisiana Revised Statute 38:2212(D) states: *Each public entity advertising and letting for bid a public works contract under the provisions of this Section shall furnish all prime bidders who request bidding documents and who are properly licensed by the Louisiana State Licensing Board for Contractors with at least one set of complete bidding documents. The public entity may require a deposit on the bidding documents; however, the total cost of the deposit, including handling fees and other costs shall not exceed twice the actual cost of reproduction. Deposits on the first set of documents furnished prime bidders shall be fully refunded upon return of the documents no later than ten days after receipt of bids. On other sets of documents furnished to bidders, the deposit less the actual cost of reproduction shall be refunded upon return of the documents no later than ten days after receipt of bids. Where the public entity, itself, prepares and distributes the bidding documents, the public entity may, in lieu of a deposit, charge a fee for the documents, which fee shall not exceed the actual cost of reproduction. Prime bidders shall obtain an original set of electronic or paper bidding documents either from the public entity or the design professional who prepared such documents. Either the public entity or the design professional may choose the method and service of plan distribution. When the public entity utilizes an electronic bid submittal system, bidding documents shall be distributed in the manner chosen by the public entity. At its sole discretion, the public entity may authorize its design professional of record to choose an electronic bid submittal system. The public entity or its design professional of record shall maintain a list of all prime bidders for the purpose of addenda distribution.*

Louisiana Revised Statute 38:2212(E)(1) states: *Public entities shall provide, as an additional bidding option, a uniform and secure electronic interactive system for the submittal of bids for public works requiring competitive bidding. Any public entity providing such system shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of technology services as provided for in LAC 4:XV.701. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.*

Louisiana Revised Statute 38:2212(E)(6) states: *Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.*

Louisiana Revised Statute 38:2212(E)(7) states: *Public entities shall include all "bidding documents" as defined in R.S. 38:2211(A), on the electronic website accepting the electronic bids.*

Louisiana Revised Statute 38:2212(G)(1) states: *The advertisement required by this Section for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, and the first advertisement shall appear at least twenty-five days before the opening of bids. In addition to the newspaper*

advertisement, a public entity may also publish an advertisement by electronic media available to the general public.

Louisiana Revised Statute 38:2212(G)(2) states: *The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. All bidding documents shall be available to bidders on the day of the first advertisement and shall be available until twenty-four hours before the bid opening date.*

Louisiana Revised Statute 38:2212(H) states: *Every public entity intending to advertise a public work for bids shall estimate the probable construction costs of such public work or obtain such estimate from the project designer prior to advertising such public work for bids. No public entity shall advertise a public work for bids unless funds that meet or exceed the estimate of the probable construction costs have been budgeted by the public entity for the project. The estimate of probable construction costs for the project shall be made available at the time of bid opening, either by posting such estimate electronically or announcing aloud such estimate at the bid opening. Any and all bidders' information shall be available upon request, either no sooner than fourteen days following the bid opening or after the recommendation of award by the public entity or the design professional, whichever occurs first, and the requester shall pay reasonable reproduction costs.*

Louisiana Revised Statute 38:2212(I) states: *When a design professional or public entity mandates attendance by prospective bidders at pre-bid conferences as a prerequisite to bid on a public works project, the date, place, and time of the pre-bid conference shall be stated in each advertisement notice.*

All prospective bidders shall be present at the beginning of the pre-bid conference and shall remain in attendance for the duration of the conference. Any prospective bidder who fails to attend the conference or remain for the duration shall be prohibited from submitting a bid for the project.

Louisiana Revised Statute 38:2212(J) states: *Bidding documents shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity shall reserve the right to accept alternates in any order which does not affect determination of the low bidder.*

Louisiana Revised Statute 38:2212(O)(2)(a) states: *If a public entity issues or causes to be issued on a public work exceeding the contract limit any addendum modifying the bidding documents within a period of seven days prior to the advertised time, or the time extended as provided for in this Section, for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays, then the public entity shall transmit a copy of the addendum to all prime bidders who have requested bidding documents pursuant to*

Subsection D of this Section. This shall be completed within twenty-four hours of the issuance of the addendum and may be delivered by either facsimile transmission, e-mail, other electronic means, by hand, or by overnight delivery using a nationally recognized carrier provided the prime bidder has supplied the facsimile transmission number or e-mail address to the public entity. If the addendum cannot be transmitted by facsimile transmission, e-mail, other electronic means, overnight delivery using a nationally recognized carrier, or otherwise effected by hand delivery, the public entity shall postpone the bid opening by at least seven days.

Louisiana Revised Statute 38:2212(O)(2)(b) states: *No public entity shall issue or cause to be issued any addenda modifying the bidding documents within a period of seventy-two hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying the bidding documents within the seventy-two-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least seven but not more than twenty-one working days, without the requirement of re-advertising as provided by Subsection A of this Section. The addendum shall state the revised time and date for the opening of bids.*

Louisiana Revised Statute 38:2212.1(4)(a) states: *Contractors shall be provided the option to submit bids for public contracts through a uniform and secure electronic interactive system. Political subdivisions shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of technology services as provided for in LAC 4:XV.701, and shall make the appropriate provisions necessary for the acceptance of electronic bids for all purchases requiring competitive bidding as required by this Section. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.*

Louisiana Revised Statute 38:2212.1(4)(f) states: *Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.*

Louisiana Revised Statute 38:2215(A) states: *A public entity shall act not later than forty-five calendar days after the date of opening bids to award such public works contract to the lowest responsible and responsive bidder or to reject all bids. However, the public entity and the lowest responsible and responsive bidder, by mutually written consent, may agree to extend the deadline for award by one or more extensions of thirty calendar days.*

Louisiana Revised Statute 38:2215(B) states: *If the lowest responsible and responsive bidder has timely provided all documents required by R.S. 38:2212, and no injunction or temporary restraining order is in effect, the lowest responsible and responsive bidder*

and the public entity shall execute the contract not later than sixty calendar days after the date of the public entity's award of the contract to the lowest responsible and responsive bidder.

Louisiana Revised Statute 38:2215(C) states: *The public entity shall issue to the contractor a notice to proceed with the project or work order not later than thirty calendar days following the date of execution of the contract by both parties, whichever execution date is later. However, the public entity and the contractor, upon mutual written consent of both parties, may agree to extend the deadline to issue the notice to proceed.*

Louisiana Revised Statute 38:2215(D) states: *The provisions of this Section shall not be applicable when the contract is to be financed by bonds which are required to be sold after opening of bids on the contract, or when the contract is to be financed in whole or in part by federal or other funds which will not be readily available at the time bids are opened, or on contracts which require a poll of the Legislature of Louisiana before funds are available to fund the contract. If any time limit stipulated in this Section is not applicable because of one of the exceptions outlined in this Subsection, this fact shall be mentioned in the bidding documents for the project and in the official advertisement for bids required in accordance with R.S. 38:2212.*

Louisiana Revised Statute 38:2215(E) states: *These provisions shall not be subject to waiver.*

Aggregate dollar amount exceeding \$250,000:

All public work exceeding \$250,000.00, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible and responsive bidder who bid according to the bidding documents as advertised, and no such public work shall be done except as provided in this Part.

User departments are required to submit contract documents to the Construction Review Committee (CRC). The CRC will issue an inter-office memorandum following its monthly meeting listing each contract's budgeted amount, DBE percentage goal, and renewal options. Procurement will store a copy of this memorandum in its contract files.

Advertisement Requirements for Public Works:

Published at least three times in the official journal (The Advocate) of record for the SWBNO. Request an Affidavit from the newspaper to be filed in the Procurement Department.

- a. Must be published once a week for three different weeks
- b. Published on State of Louisiana LaPAC website.
- c. Published on SWBNO website

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- d. Advertisement must begin a minimum of 25 days before bids are opened.
 - i. First publication of an advertisement shall not occur on Saturday, Sunday, or other legal holiday.
- e. Mandatory jobsite visits and pre-bid conferences must be advertised

Other Procurement Methods

State Contract

A public entity that is a “local public procurement unit” that enters into a state procurement contract causes the contract to be subject to the Louisiana Procurement Code.

State of Louisiana, Office of State Procurement, Louisiana Electronic Catalog (LA eCat)
https://wwwcfprd.doa.louisiana.gov/osp/lapac/eCat/dsp_eCatSearchLagov.cfm

Louisiana Administrative Code Title 34:2705. Cooperative Purchasing Agreement in Form of Open-Ended State Contract

A. Cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

B. Any agreement between the state and a local public procurement unit entered into pursuant to R.S. 39:1702 which provides that certain open-ended state procurement contracts shall be available to the local public procurement unit, shall also provide that:

1. the state shall conduct the procurement in compliance with the Louisiana Procurement Code;
2. when the local public procurement unit agrees to procure any supply or service under the state contract, its requirements for such supply or service shall be obtained by placing purchase orders against the appropriate state contract in accordance with the terms and conditions of such contract;
3. payment for supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;
4. inspection and acceptance of supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;
5. the state may terminate the agreement for failure of the local public procurement unit to comply with the terms of the contract or pay a contractor to whom the state has awarded an open-ended contract;
6. the exercise of any warranty rights attaching to supplies or services received by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit; and
7. failure of a local public procurement unit which is procuring supplies or services under a state contract to secure performance from the contractor in accordance with the terms and conditions of its purchase order will not necessarily require the state or any other local public procurement unit to consider the default or to discontinue procuring under the contract.

Louisiana Revised Statute 39:1702(A)(1) states: Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, major repairs, or construction with one or more public procurement units or external procurement activities or one or more private procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made

Louisiana Pricing Schedule (LaPS)

Louisiana Pricing Schedules or LaPS is a program where state contracts that were established as Brand Name, LaMAS or Multi-State Contracts are used to seek best value procurements where multiple contracts exist for like or similar items. Where LaPS exist for the same or similar item(s), and the total procurement exceeds \$25,000.00, all eligible users of these contracts are to utilize the attached rules.

[Louisiana Office of State Procurement Memorandum OSP 08-02](#)

The LaPS Rule:

- Prepare a Request for Response (RFR) from at least three (3) LaPS contract holders offering functionally equivalent products and/or services that will meet the department's need
- Evaluate responses to make best value determination and select the contractor to receive the order
- Document responses on the SWBNO LaPS form; include the 3 responses as backing document

How to determine if the contract is a LaPS Contract:

LaPS Contract Indicator is set to "Yes" on the state contract. See example below:



STATE OF LOUISIANA Competitive Contract

Vendor: 310014021
Company
INSIGHT PUBLIC SECTOR INC.
6820 S HARL AVE
TEMPE AZ 85283
Phone : 800-467-4448
Fax : 480-760-8015

T Number: 92890
Version: 11
LAPS Contract: Yes
Fiscal Year: 2016
Min.Ord.Value: 0.00
Distributor Contract: Yes
PCard:Yes
Co-op Agreement:Yes

Contract number: 4400008009
Description: INSIGHT SOFTWARE VAR- NASPO VP

Buyer Information
Name: TRISTAN BABIN
Tel Number: 2253424824
Email: tristan.babin@la.gov

SEBD Vendor: No
SEHI Vendor: No
VSE Vendor: No
DVSE Vendor: No
Contract Valid Dates:
11/04/2015 - 01/07/2022

Cooperative Purchasing

Louisiana Revised Statute 38:321.1 states: *In addition to the procurement methods available to all political subdivisions, as an alternate cost-effective means of acquiring materials, supplies, vehicles, and equipment, the state of Louisiana and any levee district, levee drainage district, municipality, parish, or other political subdivision of the state may purchase these items through an existing public contract of another political subdivision within one year of the opening of bids, provided that the following conditions are met:*

- (1) The contract was bid in compliance with R.S. 38:2211 et seq.*
- (2) The total purchases on the contract do not exceed two times what was purchased by the political subdivision bidding the contract.*
- (3) The written consent of the political subdivision which bid the contract is obtained, as well as the contract number, and if applicable, the resolution accepting the contract.*
- (4) The vendor agrees to the additional purchase.*
- (5) The vendor, product, materials, supplies, vehicles, or equipment are identical to those specified in the existing public contract of the other political subdivision, and the price is the same as the original contract price.*

Louisiana Revised Statute 39:1702(A)(1) states: *Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative Procurement agreement for the acquisition of any supplies, services, major repairs, or construction with one or more public procurement units or external procurement activities or one or more private procurement units in accordance with an agreement entered into between the participants. Such cooperative Procurement may include but is not limited to joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.*

According to the Louisiana Office of State Procurement, no public entity is allowed to engage in any contract directly with any cooperative purchasing groups such as NASPO ValuePoint, MMCAP, Sourcewell, Omnia, etc.

The Sewerage and Water Board utilizes a competitive bid proposal process for Materials, Supplies, and/or Services valued over \$30,000 or may utilize an existing Office of State Procurement contract or other competitive Louisiana Municipality contracts, including other businesses, if it seems cost-effective narrowing the steps of a competitive bid process through its' agency.

Examples of contracts the Sewerage and Water Board have utilized under Cooperative Procurement are:

- City of New Orleans at <https://contracts.nola.gov/>
- Jefferson Parish at <https://www.jeffparish.net/departments/purchasing/parish-contracts>

Maintenance Contracts

Louisiana Revised Statute 38:2212(U) states: *Public entities may enter into maintenance contracts for the repair and maintenance of public facilities owned, controlled, or operated by a public entity for a fixed annual fee. Such contracts shall extend for a duration of not less than two years. Any such contract entered into by a public entity shall include a no appropriation clause and shall not be considered a debt of the public entity. Such maintenance contract shall not be considered a public works contract.*

Exceptions of Procurement

Sole Source

A **sole source** purchase is one where there is only one vendor capable of providing an item or service, and therefore it is not possible to obtain competitive bids.

Louisiana Revised Statute 39:1554(E)(1) states: *Political subdivisions authorized to adopt this Chapter. The procurement of supplies, services, major repairs, and construction by political subdivisions of this state shall be in accordance with the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, except that all political subdivisions are authorized to adopt all or any part of this Chapter and its accompanying regulations.*

Adopted by Sewerage & Water Board Resolution R-206-2019

Louisiana Revised Statute 39:1597 states: *A contract may be awarded for a required supply, service, or major repair without competition when, under regulations, the chief procurement officer or his designee above the level of procurement officer determines in writing that there is only one source for the required supply, service, or major repair item.*

Requirements for determining sole source:

- Vendor will need to provide written documentation on their letterhead stating they are a sole source vendor.
- If necessary, confirm by doing a Google search that no other vendor can provide the needed item or service.

Proprietary Purchase

A **proprietary purchase** is when no other is suitable or acceptable to meet the need, but there is more than one potential bidder because the manufacturer has chosen to sell his product through multiple distributors.

Louisiana Revised Statute 38:2212.1(C)(1) states: *Whenever a public entity desires to purchase technical equipment, apparatus, machinery, materials, or supplies of a certain type and such purchases are clearly in the public interest, the public entity may specify a particular brand, make, or manufacturer in the specifications let out for public bid as provided by this Part. If a particular brand, make, or manufacturer is specified, the model or catalog number also shall be specified.*

Louisiana Revised Statute 39:1655(A) states: *All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the needs of the state, and shall not be unduly restrictive. A specification may be drafted which describes a product which is proprietary to one company only when one of the following applies:*

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(1) No other kind of specification is reasonably available for the state to describe its requirements.

(2) There is a requirement for specifying a particular design or make of product due to factors of compatibility, standardization, or maintainability.

(3) Such specification includes language which specifically permits an equivalent product to be supplied. Such specification shall include a description of the essential characteristics of the product.

(4) Such specification is determined to be in the best interest of the state as provided for by R.S. 39:1568.1.

Louisiana Revised Statute 39:1655(B) states: *Except as provided in Paragraph (A)(2) of this Section, whenever such proprietary specifications are used, the specifications shall clearly state that they are used only to denote the quality standard of supplies, services, or major repairs desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of supplies, services, or major repairs desired; and that equivalent supplies, services, or major repairs will be acceptable.*

Adopted by Sewerage & Water Board Resolution R-056-2022

Requirements for determining proprietary purchase:

- Manufacturer will need to provide written documentation on their letterhead stating the vendors that are authorized to sell their product.
- If necessary, confirm by doing a Google search that no other vendor can provide the needed item or service.

Purchase of Used Equipment

Louisiana Revised Statute 39:1554(E)(1) states: *Political subdivisions authorized to adopt this Chapter. The procurement of supplies, services, major repairs, and construction by political subdivisions of this state shall be in accordance with the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, except that all political subdivisions are authorized to adopt all or any part of this Chapter and its accompanying regulations.*

Adopted by Sewerage & Water Board Resolution R-206-2019

Reference Louisiana Revised Statute 39:1600(C)

Any department may procure any equipment which is used or which has been previously purchased by an individual or corporation where the agency proposing to make such procurement can present satisfactory information to Procurement to illustrate that the procurement of said equipment is cost effective to the SWBNO.

The used equipment shall be purchased within the price range set by the Procurement Director in a statement of written approval for the purchase which must be obtained by the department, prior to the purchase.

The department head shall certify in writing to the Procurement Director all of the following:

- i. The price for which the used equipment may be obtained.
- ii. The plan for maintenance and repair of the equipment and the cost thereof.
- iii. The savings that will accrue to the state because of the purchase of the used equipment.
- iv. The fact that following the procedures set out in the Louisiana Public Bid Law will result in the loss of the opportunity to purchase the equipment.

See “**Purchase of Used Equipment**” form

Authorized Dealers

Louisiana Revised Statute 39:1554(E)(1) states: *Political subdivisions authorized to adopt this Chapter. The procurement of supplies, services, major repairs, and construction by political subdivisions of this state shall be in accordance with the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, except that all political subdivisions are authorized to adopt all or any part of this Chapter and its accompanying regulations.*

Adopted by Sewerage & Water Board Resolution R-206-2019

No competitive process is required for the following items:

1. Repair parts for equipment obtained from an authorized dealer. A Louisiana authorized dealer shall be used if available. This provision does not apply to the stocking of parts;
2. Equipment repairs obtained from an authorized dealer. A Louisiana authorized dealer shall be used if available;
3. Vehicle repairs not covered by a competitive state contract or the state fleet maintenance repair contract, obtained from an authorized dealer. A Louisiana authorized dealer shall be used if available;
4. Vehicle body repairs covered by insurance recovery and in accordance with insurance requirements

Requirements for determining authorized dealer:

- Manufacturer will need to provide written documentation on their letterhead the authorized dealers available in the State of Louisiana for the product or service.
- If necessary, confirm by doing a Google search that no other vendor can provide the needed item or service.

Emergency Purchase

Louisiana Revised Statute 33:4084(C) states: *In the event of an emergency the executive director or the general superintendent of the board may, with the written consent of the president pro tempore of the board or the mayor of the city, contract a bill for such supplies and materials, not exceeding ten thousand dollars in amount. However, all bills so contracted shall be reported, with the reasons for the emergency, to the board at its next meeting.*

Louisiana Revised Statute 38:2211(A)(5)(a) states: *“Emergency” means an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury or as the result of an order from any judicial body to take any immediate action which requires construction or repairs absent compliance with the formalities of this Part, where the mischance or court order will not admit of the delay incident to advertising as provided in this Part.*

Extreme Emergency Purchase

Louisiana Revised Statute 33:4084(E) states: *In the event of extreme emergencies, or an imminent extreme emergency, including but not limited to fires, storms, floods, and other disasters, whether natural or man-made, necessitating major repairs or replacement of equipment and machinery, the executive director or the general superintendent of the board may purchase the necessary machinery, equipment, and materials and furnish the necessary labor to make all necessary emergency repairs and replacements without the formality of advertising for bids. Such purchases may be made without limitation as to cost and without regard as to the designation or source of the funds collected, invested, or maintained by the board.*

Louisiana Revised Statute 38:2211(A)(5)(b) states: *An “extreme public emergency” means a catastrophic event which causes the loss of ability to obtain a quorum of the members necessary to certify the emergency prior to making the expenditure to acquire materials or supplies or to make repairs necessary for the protection of life, property, or continued function of the public entity.*

Louisiana Revised Statute 38:2212(K) states: *The purchase of materials or supplies in the case of an extreme public emergency shall be governed by the provisions of R.S. 38:2212(P).*

Louisiana Revised Statute 38:2212(P)(1)(a) states: *This Section shall not apply in cases of public emergency where such emergency has been certified to by the public entity and notice of such public emergency shall, within ten days thereof, be published in the official journal of the public entity proposing or declaring such public emergency.*

Louisiana Revised Statute 38:2212(P)(1)(b)(i) states: *This Section shall not apply in the event that an extreme public emergency occurs.*

Louisiana Revised Statute 38:2212(P)(1)(b)(ii) states: *The president of the police jury, the president of the parish council, the mayor of the municipality, or a person designated to act on behalf of the governing authority of any other political subdivision, shall declare that an extreme emergency exists and shall cause such declaration to be published in the official journal within ten days or as soon as practicable thereafter.*

Exception to Competitive Bid

When deemed in the best interest of the Sewerage and Water Board of New Orleans, the Procurement Director has authority to approve the purchase of materials, supplies and/or services at \$10,000 or greater without competitive bidding when justified.

The following are exceptions to the competitive bid process:

Exception	Definition
Sole Source	See Sole Source Resolution R-206-2019
Public Utilities	Public utilities and services procured from the area’s sole provider as duly authorized and singularly licensed to operate and provide services in a given area.
Non-Competitive Bid	Upon receiving inadequate results from two (2) bid opportunities (initial bid and rebid) and either receiving no bids or non-responsive/non-responsible bids that resulted in no bids.
Shipping/Postage Charges	Postage and shipping charges from USPS, Fedex, or UPS or charges to operate equipment using these services
Grant Requirement	The awarding agency or pass-through entity expressly authorized non-competitive proposals in response to written request. If a vendor or branded item is required and specified in the award, attach a copy of the award or requirement page.
Highly Unique Services	Technical Services: Another vendor cannot be chosen because the vendor provides services in connection with the assembly, installation or servicing of equipment of a highly technical nature.
Lease/Rental of Equipment or Real Estate	The lease of space, buildings or real estate, or the rental of equipment as required to conduct business
Demo Equipment	This request is for the purchase of used or demonstration equipment, available at a lower-than new cost. Provide cost for price of equipment, if purchased as new.
Regulation	Due to constraints and time to adhere to State/Federal regulation for equipment approval or services. Attach regulation.

The department must fill out the Exception to Competitive Bid Form and turn in with needed documentation to proceed in processing their request for purchase. These exceptions are not exclusive and are subject to change.

Other Procurement Information

Contract Change Order/Amendment

Louisiana Revised Statute 38:2192 states: *Each amendment or other revision to any service or insurance contract which adds an amount of ten percent or more of the original contract amount and which additional amount is at least ten thousand dollars or all amendments and other revisions to any service or insurance contract aggregating to an amount of twenty percent or more of the original contract amount and which additional amount is at least ten thousand dollars shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the public entity is domiciled not later than thirty days after the date of the amendment or other revision which requires that the recordation take place. In addition, the original contract shall be recorded together with the amendments or other revisions if not previously recorded.*

Louisiana Revised Statute 38:2211(3)(a) states: *"Change order" means any contract modification that includes an alteration, deviation, addition, or omission as to a preexisting public work contract, which authorizes an adjustment in the contract price, contract time, or an addition, deletion, or revision of work*

Louisiana Revised Statute 38:2211(3)(b) states: *"Change order outside the scope of the contract" means a change order which alters the nature of the thing to be constructed or which is not an integral part of the project objective.*

Louisiana Revised Statute 38:2211(3)(c) states: *"Change order within the scope of the contract" means a change order which does not alter the nature of the thing to be constructed and which is an integral part of the project objective.*

Louisiana Revised Statute 38:2212(M)(1) states: *All public work contracts shall contain provisions authorizing the issuance of change orders within the scope of the contract.*

Louisiana Revised Statute 38:2212(M)(2) states: *All change orders shall be in writing or in electronic format if the public entity has the capability to receive change orders electronically. All change orders shall be signed by the contractor and the public entity or its design representative.*

Louisiana Revised Statute 38:2212(M)(3) states: *The public entity shall pay the contractor for work performed by change order not later than sixty days after the date the public entity approves the application for payment for completion of the work performed in the change order.*

Louisiana Revised Statute 38:2212(M)(4) states: Any change order outside the scope of the contract in excess of the contract limit as defined herein shall be let out for public bid as provided by this Part.

Louisiana Revised Statute 38:2212(M)(5) states: Any change order pertaining to public work, not required by this Part to be let out for public bid, shall either be negotiated in the best interest of the public entity or let out for public bid as provided by this Part. Where the change order is negotiated, the public entity shall require that such change order be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit, and overhead. Where certain unit prices are contained in the initial contract, no deviations shall be allowed in computing negotiated change order costs.

Louisiana Revised Statute 38:2212(N) states: Those contracts let by any public entity for public works estimated to cost in excess of the contract limit shall be advertised and let by contract to the lowest responsible and responsive bidder. Public works which are estimated to cost less than the contract limit may be undertaken by the public entity with its own employees.

Louisiana Revised Statute 38:2222 states: Each change order to a public works contract or to a contract for materials and supplies which adds an amount of ten percent or more of the original contract amount and which additional amount is at least ten thousand dollars or all change orders to a contract aggregating to an amount of twenty percent or more of the original contract amount and which additional amount is at least ten thousand dollars shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or, if not a public work, where the entity is domiciled not later than thirty days after the date of the change order which requires that the recordation take place. In addition, the original contract shall be recorded together with the change orders if not previously recorded. The provisions of this Section shall not apply to the office of facility planning and control, and the office of state procurement.

A change order or amendment must be filed with the Recorder of Mortgages (Clerk of Court) if the following changes are made to a contract:

10% or more of the original contract and at least \$10,000

Or

20% or more of all the change orders and at least \$10,000

20% or more of all amendments and at least \$10,000

Bonding Requirements

Louisiana Revised Statutes 38:2212.1(L) states: *The public entity purchasing the materials or supplies may require a written contract or bond as provided in R.S. 38:2216(B).*

Louisiana Revised Statutes 38:2216(A)(1) states: *When any bid is accepted for the construction or doing of any public works, a written contract shall be entered into by the successful bidder and the public entity letting the contract, and the party to whom the contract is awarded shall furnish good and solvent bond in an amount not less than one-half of the amount of the contract, for the faithful performance of his duties.*

Louisiana Revised Statutes 38:2216(B) states: *When any bid is accepted for the purchase of materials or supplies, the public entity purchasing the materials or supplies may require that a written contract be entered into between the successful bidder and the public entity and further, the public entity may require that the successful bidder shall furnish good and solvent bond in an amount not less than one-half of the amount of the contract, for the faithful performance of his duties. Any such requirements shall be incorporated in the specifications and advertisement.*

A **bid bond** guarantees compensation to the bond owner if the bidder fails to begin a project. Bid bonds are often used for construction jobs or other projects with similar bid-based selection processes.

The function of the bid bond is to provide a guarantee to the project owner that the bidder will complete the work if selected. The existence of a bid bond gives the owner assurance that the bidder has the financial means to accept the job for the price quoted in the bid.

A **payment bond** is a surety bond issued to contractors that guarantees that the contractor will pay their subcontractors, material suppliers, and laborers in a timely fashion.

Payment bonds are usually obtained by contractors or subcontractors prior to the commencement of a construction project. Their function is to guarantee that the labor and materials provided by subcontractors and suppliers to a general contractor will be paid for in due time and in compliance with the contract. These bonds also guarantee that payments for labor and material will comply with state and federal laws and regulations.

A **performance bond** is an instrument executed, subsequent to award, by a successful offeror, that protects the public entity from loss because of the offeror's inability to complete the contract as agreed. A risk mechanism that secures the fulfillment of all contract requirements.

If a contractor fails to meet the terms outlined in the contract, the project owner can make a claim against the contractor's bond seeking to recover financial damages. If a claim is valid, the surety will compensate the project owner on behalf of the principal up to the bond amount. It's important for contractors to know that performance bonds are fully indemnified, so in the event of a claim, the contractor is responsible for repaying the surety the amount of the claim plus expenses. In some instances, a surety may work with a project owner following a claim to hire a new contractor in lieu of providing a cash settlement to the project owner.

Non-Responsive and Non-Responsible Bidder

*A **Non-Responsive Bidder** is a bidder who has not submitted a bid which conforms in all material respects to the requirements set forth in the ITB, IFB, RFQ, or RFP.*

*A **Non-Responsible Bidder** is a bidder who does not have the capability in all respects to fully perform the contract requirements and does not have the integrity and reliability will assure good faith performance. Factors considered in evaluating responsibility may include financial resources, past performance, delivery capability, experience, organization, personnel, technical skills, operations controls, equipment, and facilities.*

***Louisiana Revised Statute 38:2212(3)(a) states:** The bidding documents shall not require any bidder, other than the apparent low bidder, to furnish any other information or documentation, including the Attestation Affidavit and the E-Verification Form, any sooner than ten days after the date bids are opened; however, the apparent low bidder may submit such information or documentation at any time prior to the expiration of the ten-day period. If the apparent low bidder does not submit the proper information or documentation as required by the bidding documents within the ten-day period, such bidder shall be declared non-responsive, and the public entity may award the bid to the next lowest bidder, and afford the next lowest bidder not less than ten days from the date the apparent low bidder is declared non-responsive, to submit the proper information and documentation as required by the bidding documents, and may continue such process until the public entity either determines the low bidder or rejects all bids. The ten-day period shall not be altered or waived by any public entity except the governing authority of any publicly owned commercial aviation airport, the Sewerage and Water Board of New Orleans, the Regional Transit Authority, and all agencies of the City of New Orleans, including but not limited to the New Orleans Aviation Board, who shall require that the other documentation and information referred to in this Subparagraph be furnished by the two apparent low bidders no sooner than three days after the bid opening. The two apparent low bidders may submit such information or documentation at any time prior to the expiration of the three-day period. If the two apparent low bidders do not submit the proper information or documentation as required by the bidding documents within the three day period, such bidders shall be declared non-responsive, and from that date, award may be made to the next lowest bidder, and afford that bidder not less than three days to submit the required*

information or documentation, and the process may continue until either a low bidder is determined or all bids are rejected.

Louisiana Revised Statute 38:2212(X) states:

(1) If the public entity letting the contract proposes to disqualify any bidder, either as a potential bidder or as the low bidder, on grounds that such bidder is not a "responsible bidder" such public entity shall do all of the following:

(a) Give written notice of the proposed action to such bidder and include in the written notice all reasons for the proposed action.

(b) Give the bidder who is proposed to be disqualified the opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the proposed action.

(2) The informal hearing shall be conducted prior to award of the public work.

(3) The informal hearing shall be a condition precedent to any action by the bidder adverse to the public entity, its representatives, employees, and designers.

(4) The informal hearing shall be conducted by the public entity not later than five business days after the date of the notice of disqualification of such bidder. The public entity shall issue a ruling in writing and deliver it to the affected bidder not later than five business days after the date of the informal hearing.

(5) No award of the contract for the public work shall be made by the public entity prior to the expiration of at least five working days following the date of issuance of the decision by the hearing official.

Examples of determining a non-responsive bidder:

- No bid bond or cashier's check included with bid (if applicable)
- No signature
- Addendum(s) not acknowledged
- Contractor's license number not on bid envelope
- Voluntary Extension sheet should be included and signed.
- Affidavit
- DBE Summary Sheet, along with their subcontractor's correspondence (if applicable)
- Public Works (if the required documents were not sent in within 3 days after bid opening).

Examples of determining a non-responsible bidder:

- Contractor's or Specialty License expired or not available
- Louisiana Secretary of State status not active
- Inability to provide Certificate of Insurance

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- Criminal record (Affidavit)
- Inability to perform the job after award.

Note: Determining a non-responsive bidder depends on the requirements that the User Department has set in the bid documents for the bidder to submit. Procurement must verify the required documents that are stated to be submitted in the bid proposals before advertisement. The Procurement Department is responsible for determining a non-responsive and/or non-responsible bidder.

Vendor Registration

Vendors will submit to vendor@swbno.org a completed Vendor Registration Form including a W-9 form and Certificate of Liability Insurance.

All new and updated vendor registration and all vendor inquiries regarding doing business will need to be emailed to the vendor@swbno.org email address for processing.

Vendors need to provide documentation to be setup:

1. W-9
2. Vendor Registration Form
3. Certificate of Insurance (if applicable)

For Risk Management vendors that are associated with healthcare, the following documents are needed:

1. W-9
2. Vendor Registration Form
3. Secretary of State Business License
4. If Doctor, Medical License

State of Louisiana Contractors Licensing Law

Louisiana Administrative Code Title 46:309 XXIX (Construction Management)

A.1. Any person who performs, attempts to perform, or submits a price, bid or offer to perform work in construction management or program management whose scope of authority and responsibility includes supervision, oversight, direction, or in any manner assuming charge of the construction services provided to an owner by a contractor or contractors, in which the value of the construction project is:

a. in excess of \$50,000 for a commercial construction project must possess a license from this board in the major classification of building construction, heavy construction, highway, street, and bridge construction or municipal and public works construction or

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b. in excess of \$75,000 for a residential construction project must possess a license from this board in the classification of residential building contractor. Any licensed contractor with any of these major classifications shall be able to bid and perform any such project specified for construction and/or program management within the scope of the classification(s) they hold.

2. If a construction or program manager whose scope of authority and responsibilities does not include any of the above stated tasks, and who does not subcontract actual construction work, that construction or program manager does not need a contractor's license.

Louisiana Revised Statute 37:2163(A)(1) states: *It is the intent of this Section that only contractors who hold an active license be awarded contracts either by bid or through negotiation. All architects, engineers, and awarding authorities shall place in their bid specifications the requirement that a contractor shall certify that he holds an active license under the provisions of this Chapter by displaying his license number on the bid envelope. In the case of an electronic bid proposal, a contractor may submit an authentic digital signature on the electronic bid proposal accompanied by the contractor's license number in order to meet the requirements of this Paragraph. Except as otherwise provided herein, if the bid does not display the contractor's license number on the bid envelope, the bid shall be automatically rejected, shall be returned to the bidder marked "Rejected", and shall not be read aloud.*

Louisiana Revised Statute 37:2163(A)(2) states: *Any bid that does not require the contractor to hold an active license shall state the exemption on the bid envelope and shall be treated as a lawful bid for the purpose of this Section.*

Louisiana Revised Statute 37:2163(A)(3) states: *On any project that has been classified by the architect or engineer, prior to the bid, as a plumbing project, bids may only be accepted from those who have as a qualifying party a person who has complied with the provisions of Chapter 16 of this Title, R.S. 37:1361 et seq.*

Louisiana Revised Statute 37:2163(A)(4) states: *Any contractor who submits a bid for a type of construction for which he does not hold an active license to perform shall be acting in violation of this Section and shall be subject to all provisions for violations and penalties thereof.*

Louisiana Revised Statute 37:2163(A)(5) states: *Any subcontractor who submits a bid or quotes a price to any unlicensed or inactive prime contractor shall be subject to all provisions for violations and penalties thereof.*

It is the duty of the awarding authority to ascertain if a contractor is duly licensed under the provisions of R.S. 37:2150-2192 before permitting the contractor to obtain plans and specifications, submit a bid or offer to construct a commercial project. Licenses of active

contractors can be verified in real-time by visiting the website of the board at www.lacontractor.org.

A Commercial license is required for commercial projects of fifty thousand dollars (\$50,000) or more; one dollar (\$1) or more for hazardous materials; or in excess of ten thousand dollars (\$10,000) for Plumbing, Electrical or Mechanical. The total value of the project includes the cost of all labor and materials.

A Mold Remediation license is required for mold remediation projects of one dollar (\$1) or more. Mold contractors are required to submit certificates evidencing workers' compensation coverage in compliance with Title 23 of the Louisiana Revised Statutes of 1950, and general liability insurance in a minimum amount of fifty thousand dollars (\$50,000) during the application and renewal process.

Related Information

State of Louisiana Revised Statutes:

http://www.legis.la.gov/legis/laws_Toc.aspx?folder=75&level=Parent

Louisiana Administrative Code

<https://www.doa.la.gov/doa/osr/louisiana-administrative-code/>

SWBNO Procurement Page (Intranet):

<https://intranet.swbno.org/Departments/Procurement/>

Revision History

No revisions.