

SEWERAGE & WATER BOARD OF NEW ORLEANS



Federal Grants Procurement Policy

Responsible Officer	Chief Financial Officer
Responsible Office	Purchasing
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Contact:	Yvette R.D. Downs
Title:	Chief Financial Officer
Email:	Ydowns@swbno.org
Phone #	(504) 585-2371

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1. Introduction and Purpose

When appropriate, the Sewerage and Water Board of New Orleans (“SWBNO”) requests Federal grant monies for projects that benefit residents of New Orleans. The SWBNO will follow all Federal guidance and ensure the proper financial stewardship of taxpayer resources. The document serves to outline the SWBNO’s procurement policy for all federally-funded projects and purchases. These policies and procedures reflect applicable state and local laws and their conformity to the applicable federal laws and standards identified in 2 CFR 200.318-326.

All procurements, that use or contemplate federal funds, shall be overseen by the Purchasing Department (Purchasing), in strict accordance with the Purchasing Department’s Procedures. In instances when state or local laws are more restrictive than Federal law, they are noted in Purchasing’s Procedures, which are available to the public on the SWBNO website. This document will be updated as needed to reflect changes in federal regulations or state and local laws.

All procurements in which federal funds are contemplated or used must be conducted in accordance with federal procurement requirements. This policy explains the roles of various SWBNO personnel with respect to federally-funded procurements by providing a cross-reference between federal procurement regulations and explains the applicable SWBNO procurement policy and how it conforms with federal requirements.

All SWBNO User Departments shall consult this policy when dealing with any procurements in which federal funds are contemplated or used. To ensure compliance, the User Department shall liberally construe as to whether a project may utilize federal funding, and thereby subject to the Federal Grant Procurement Policy. If a procurement is subject to the Federal Grant Procurement Policy, the User Department shall utilize the Federal Procurement Checklist to ensure compliance with all federal requirements.

Any interpretations, determinations or conflicts relating to the application or meaning of any of the provisions contained in this policy shall be made in the sole discretion of the Director of Purchasing or their designee. This shall include any interpretations as to whether a particular procurement is subject to the Federal Procurement Policy.

2. Code of Conduct

1. No employee, officer, or agent of the SWBNO shall participate in the selection, award, or administration of any contract supported by federal funds if a conflict of interest, real or apparent, is or would be involved. Such a conflict could arise if the employee, officer, or agent; any member of his/her immediate family; his/her partner; or an organization which employs (or is about to employ) any of the above, has a financial or other interest or a tangible personal benefit from a firm considered

for a contract. All members of the Selection Committee agree to evaluate proposals independently. They must execute a disclosure certifying that they do not possess a conflict of interest involving any of the respondents and are required to submit a standard disclosure form to identify any potential conflicts of interest. **2CFR 200.318(c)(1).**

2. No employee, officer, or agent of the SWBNO shall solicit or accept gratuities, favors, or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial. All SWBNO officials, employees and agents are subject to the State of Louisiana Ethics Code, which prohibits the solicitation or acceptance of gratuities, favors, or anything of economic or monetary value from any person or entity for performance of their official duties, including issuance, review, and awarding of solicitations. This restriction not only applies to the SWBNO employee, officer, or agent, but also to that person's family or any entity in which that person or their spouse has control interest or owns more than 25%. All SWBNO employees must complete annual ethics training regarding all applicable State ethics laws. **2 CFR 200.318(c)(1).**
3. The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every written contract and solicitation. It shall be a breach of ethical standards for any public employee or former employee, officer, or agent knowingly to use confidential information for his actual or anticipated personal gain or the actual or anticipated personal gain of any other person. Such a breach shall subject the public employee or former employee, officer, or agent to the jurisdiction of the Louisiana State Ethics Board. **2 CFR 200.318(c)(1).**
4. The Louisiana State Ethics Code mandates that all Agency Heads, through the SWBNO's Human Resources Department, must report alleged violations of the established standards of conduct to the Louisiana Ethics Review Board. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action by the Louisiana Ethics Review Board, including but not limited to dismissal, suspension, or reduction in pay or position; censure and/or fine of not more than \$10,000.00 per violation; prohibition of appearing before the public agency; prohibition of negotiating or entering into contract with the public agency; rescission of contracts, permits, and licenses without public contractual liability; forfeiture of any gifts or payments made in violation of the Louisiana State Ethics Code; imposition of late fees for failure to pay imposed fines; and objection to candidacy of person with outstanding fine, fee, or penalty resulting from violation of

Louisiana State Ethics Code equal to or greater than \$250. Ethics allegations and violations are personal violations and the SWBNO shall not provide any SWBNO employees, officers, or agents with legal assistance or defense related to such allegations or violations. **2 CFR 200.318(c)(1).**

5. As outlined in Purchasing's Procedures, the SWBNO utilizes a two-step check on all vendors during the procurement process. First, if federal funds are utilized, the SWBNO checks the potential vendor list against SAM.gov to verify that the potential awardee is not subject to federal debarment or suspension status. Second, if non-federal funding is used, the SWBNO consults its database of Vendor Evaluation forms to determine if there was a previous violation. Additionally, vendors are required as a part of their response to a solicitation to attest to the fact that they have not violated any standards in their submission to the Board. If the SWBNO determines that the vendor has been debarred, the SWBNO will not award a contract to the entity. **2 CFR 200.318(b)(c)(1).**

3. Pre-Solicitation

Section 3 is the responsibility of the Project Manager, User Department head, and Purchasing Department.

1. The SWBNO's Purchasing Department, led by the SWBNO's Purchasing Director and their designee, retain full control of all SWBNO's procurement actions, including actions related to the SWBNO's administration of federal funding. Purchasing coordinates with various SWBNO departments to gather information necessary to complete procurement activities, including language needed for solicitation documents (e.g. scope of work for a Request for Proposals), independent cost estimates for inclusion in bid packages, and maximum contract amounts. While SWBNO department personnel may sometimes play an active role in a particular procurement, Purchasing maintains authority over all aspects of the procurement process and leads the development and implementation of key forms, templates, checklists, and workflows. It is the Purchasing Director's responsibility to review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. User Groups will make the initial determination of when to analyze lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach based on the procurement request. Once it is determined whether leasing is the most economical form of procurement, the

Purchasing Director will review the analysis and sign off on the procurement. **2 CFR 200.318(d).**

2. The SWBNO will maintain records sufficient to detail the history of each procurement activity. These records will include, but are not limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. The Procurement Checklist will be utilized for every federal procurement (with a copy kept in the procurement file) to ensure compliance with applicable federal, state, and local regulations and requirements. Purchasing will own all aspects of the procurement process and review the checklist to ensure compliance. While the User Department and other appropriate SWBNO personnel may complete certain forms and checklists, the Purchasing Director must provide approval of every formal procurement. The User Department may keep a procurement file, but complete procurement files will remain with Purchasing. **2 CFR 200.318(i).** The records will be maintained in accordance with the SWBNO retention policy.

The procurement checklist is the responsibility of the Project Manager and is to be verified by the User Department head or designee and the Purchasing Director to ensure items are properly completed and checked off.

3. The requesting SWBNO User Group will perform cost or price estimates in connection with every procurement, including change orders and contract modifications or amendments. The method and degree of analysis is dependent on the facts surrounding the procurement situation. As a starting point, the SWBNO will perform an independent cost estimate prior to receiving bids or proposal. The independent cost estimate will be tailored to the particular procurement and may include evaluation of historical documentation of past projects of a similar scope and scale, average costs for similar work in the area, published unit costs from a national cost estimating database and federally established cost codes, equipment rates, and engineering and design services curves. **2 CFR 200.323(a).**
4. A cost reasonableness analysis and associated documentation are required for every RFQ or RFP or any time price competition is not the main evaluation factor. This analysis must be completed before awarding the contract. A Cost Analysis is the evaluation of separate elements (e.g. labor, materials, profit, etc.) that make up a contractor's total cost proposal or price, to determine if costs are allowable, directly related to the requirement, and, ultimately, reasonable. Cost analyses are used when there is no price competition or when price competition is not the only

evaluation factor, such as procuring architectural and engineering (A/E), professional, consulting, or program administrator services. **2 CFR200.323(a).**

5. Where appropriate, the SWBNO will explore the feasibility of entering into State and local intergovernmental agreements or cooperative endeavor agreements. This process, known as piggybacking, is used to foster greater economy and efficiency in accordance with efforts to promote cost-effective use of shared services. The SWBNO will also explore the use of federal excess and surplus property in lieu of purchasing new equipment and property if feasible and if it reduces project costs. The SWBNO will also explore the feasibility of using value engineering (the systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost) in the following two scenarios: (1) if a cost estimate is over budget or (2) if bids come in through the procurement over budget. The Purchasing Director or their designee, will complete the assessments above prior to bidding. Notwithstanding any other State or City laws, regulations or policies, the SWBNO shall not enter into contracts that involve federal funding or assistance, utilizing non-competitive procurement, except as expressly provided in the unique and non-competitive procedures outlined in Section 4(e) of the Procurement Procedures. **2 CFR 200.318(e)(f)(g)**
6. The SWBNO will take all necessary affirmative steps to assure that minority businesses, women-owned business enterprises, and labor surplus area firms are procured when feasible. The SWBNO's affirmative steps shall be implemented through the SWBNO's Economically Disadvantaged Business Program (EDBP), which is outlined below. Through explicit requirements, goals, and contractual language, the EDBP requires that all contractors take proactive steps and make all reasonable efforts to benefit disadvantaged business enterprises, in accordance with formally adopted rules and procedures.

To ensure that a broad spectrum of local and small businesses receive equitable contracting opportunities with the Sewerage & Water Board, its Board of Directors authorized the State Local Disadvantaged Business Enterprise Program beginning in September 1997.

All contractors agree to use their best efforts to carry out the applicable requirements of the SWBNO's EBDP, including, without limitation, all reporting requirements and established EBD participation percentage. The Contractor's failure to carry out these requirements, as determined in good faith by the Economically Disadvantaged Business Department shall be deemed a material breach. This material breach may result in the termination of the contract and the pursuit of any

other remedies available to the SWBNO under any applicable law, ordinance, or rule. **2 CFR 200.321(a)(b)**

7. The SWBNO will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 containing the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. For federally-funded solicitations, the requesting SWBNO department shall include in the specifications the use of fully or partially-recovered (recycled) materials to the greatest extent consistent with reasonable performance standards in accordance with federal regulations. **2 CFR 200.322**

8. Bonding requirements for procurements with federal funds will include the minimum requirements listed below:

To be submitted with the bidding documents:

*A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified. **2 CFR 200.325(a).***

The bid bond or other security may be enclosed with the other bid documents submitted by a bidder and need not be submitted in a separate envelope attached to the envelope enclosing the other bid documents.

To be submitted at time of contract award:

*A performance bond on the part of the contractor for 100 percent of the contract price. "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. **2 CFR 200.325(b).***

A payment bond on the part of the contractor for 100 percent of the contract price.

A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. CFR Reference: 2 CFR 200.325(c).

4. Solicitation Procedures

Section 4 is the responsibility of the requesting User Department and the Purchasing Department.

Items outlined in Section 4 are verified through the Procurement Checklist. The SWBNO will complete the checklist as part of all federal procurements.

4.1 Full and Open Competition

1. All procurements utilizing federal funds, where the SWBNO is a direct party, shall be procured in a manner that provides maximum full and open competition. Procurement procedures will not restrict or eliminate competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals are excluded from competing for such procurements. **2 CFR 200.319(a).**
2. The SWBNO shall not place unreasonable requirements on firms in order for them to qualify to do business, require unnecessary experience and excessive bonding, or encourage or participate in non-competitive practices among firms or affiliated companies. The SWBNO shall remain alert to organizational conflicts which would jeopardize the negotiation process and limit competition. The SWBNO shall not award non-competitive consultant retainer contracts except as expressly provided by funding source regulations. The SWBNO will not specify only a “brand name” product instead of allowing a “product equal to” to be offered. A “product approved equal to” description may be used to define the performance or other salient requirements of procurement. The specific features, performance, or other relevant requirements of the named brand which must be met by offerors shall be clearly stated. No arbitrary actions will be undertaken in the procurement process. **2 CFR 200.319(a)(1-7); 2 CFR 200.319(c)(1).**
3. The SWBNO will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed local geographical preferences as selection criteria in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This section

does not preempt State or local licensing laws. When contracting for A/E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms given the nature and size of the project to compete for the contract. **2CFR 200.319(b).**

4. All solicitations shall incorporate a clear and accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurements, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and, when necessary, the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. The solicitation must identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals. **2 CFR 200.319(c) (1 - 2).**
5. The SWBNO will engage in a full and open RFQ process to provide the SWBNO with a prequalified list of persons, firms, or products that may be utilized for acquiring goods and services. The prequalified list shall be updated every two (2) years and include enough qualified sources to ensure maximum open and free competition for procurement of all goods and services, (including professional, nonprofessional and construction services), among the SWBNO's prequalified list of persons, firms, or products. **2 CFR 200.319(d).**
6. To be prepared for emergencies (e.g., hurricanes), the SWBNO will sometimes procure certain items in advance, before an actual need arises. In these instances, the SWBNO will follow the same procurement procedures, outlined in Section 4 (f) of the Procurement Procedures.

4.2 Methods of Procurement

Direct procurement by the SWBNO shall be made by using small purchases, formal sealed bids, competitive proposals, unique and non-competitive proposals, and emergency procurements. The SWBNO details each method of procurement (reflective of the item being procured) in the Purchasing Department's Procedures. For example, for small purchases, the SWBNO has separate procedures for construction, goods, non-professional services, and professional services.

Small Purchases

Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or

rate quotations must be obtained from an adequate number of qualified sources. **2 CFR 200.320**

Formal Sealed Bids

Procurement by sealed bids (formal advertising). Bids are publicly solicited, and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- (i) A complete, adequate, and realistic specification or purchase description is available;
- (ii) Three or more responsible bidders are willing and able to compete effectively for the business; and
- (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (v) Any or all bids may be rejected if there is a sound documented reason. **2 CFR 200.320.**

Competitive Proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The Non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The Non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort. **2 CFR 200.320.**

Unique and Non-competitive Procurement

Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate. **2 CFR 200.320**

Sewerage & Water Board of New Orleans – Policy PRO-12
Federal Grants Procurement Policy

Construction Projects

Thresholds	Procurement Type	Advertisement Period	Signature Required
Under \$150,000	Informal Bid	No formal advertising, three (3) quotes including one DBE are required.	Deputy Director of Requesting User Department
Between \$150,000 and \$999,999	Formal Sealed Bid	A minimum of twenty-one (21) consecutive days and publication in the Official Journal of the SWBNO supplemental publications, and the on the SWBNO website.	Executive Director
Above 1,000,000	Formal Sealed Bid	A minimum of twenty-one (21) consecutive days and publication in the Official Journal of the SWBNO supplemental publications, and the on the SWBNO website.	Mayor

Goods, Non-Professional Services, and Materials

Thresholds	Procurement Type	Advertisement Period	Signature Required
Under \$30,000	Informal Bid	No formal advertising, three (3) quotes including one DBE are required.	Deputy Director
Between \$30,000 and \$999,999	Formal Sealed Bid	A minimum of twenty-one (21) consecutive days and publication in the Official Journal of the SWBNO supplemental publications, and the on the SWBNO website.	Executive Director
Above \$1,000,000	Formal Sealed Bid	A minimum of twenty-one (21) consecutive days and publication in the Official Journal of the SWBNO supplemental publications, and the on the SWBNO website.	Mayor

Professional Services

Thresholds	Procurement Type	Advertisement Period	Signature Required
Under \$15,000	Informal Proposals	No formal advertising, three (3) proposals are required.	Deputy Director
Between \$15,000 and \$999,999	Procurement by Competitive Proposals	At a minimum of two (2) consecutive weeks and at least one publication in the Official Journal of the SWBNO supplemental publications, and the on the SWBNO website.	Executive Director
Above 1,000,000	Procurement by Competitive Proposals	At a minimum of two (2) consecutive weeks and at least one publication in the Official Journal of the SWBNO supplemental publications, and the on the SWBNO website.	Mayor

5. Award

Section 5 is the responsibility of the Purchasing Department, User Department, and Legal Department.

5.1 Awarding Contracts

Contracts will only be awarded to responsible and responsive firms that possess the ability to perform successfully under the terms and conditions of the proposed procurement. “Responsibility” refers to the character or quality of the bidder, with consideration being given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. “Responsiveness” refers to the bidder’s compliance with all technical required specifications in the formal solicitation, inclusive of any addenda. Any bidders listed on the SAM.gov Excluded Party List will be deemed non-responsive and automatically excluded from consideration for award for any public assistance programs or activities.

1. Any or all solicitations may be deemed non-responsive or determined non-responsible for a sound documented reason. Respondents disqualified due to non-responsiveness or lack of responsibility will be notified in writing as to why their bid was deemed non-responsive, or not responsible. Construction bidders have the right to protest within seventy-two hours after the bid or proposal submission deadline. Full procedures for rejecting bids or proposals are outlined in Section 5 of the Procurement Procedures. **2 CFR 200.318(h); 2 CFR 200.320(c)(2)(v).**

2. Prior to award, the SWBNO shall review the successful respondent's bids and Purchasing shall access the SAM.gov system, to review bidder's status. Bidders that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities are prohibited from being considered for award. Hard copy results of these comparisons shall be included in the procurement file. **2 CFR 200 Appendix II(I); 2 CFR 200.318(h); 2 CFR 2424**
3. Contracts resulting from sealed bids shall be awarded to the lowest responsive and responsible bidder and documented by publicly-available bid tabulation forms. Sealed Bid procedures are outlined in Section 4 (c) of the Procurement Procedures. **2 CFR 200.318(h); 2 CFR 200.320(c)(2)(iv); 2 CFR 200 Appendix II(I).**
4. Requests for Proposals shall be awarded to the proposal providing the best value to the SWBNO as determined using the selection criteria provided in the Request for Proposal and documented by publicly-available evaluation forms. Procedures for procurement by competitive proposals are available in Section 4 (d) of the Procurement Procedures. **See 2 CFR 200.320(d)**

5.2 Contract Costs/Prices

1. The SWBNO must conduct a cost analysis for all federal contracts to determine the reasonableness, allocation, and acceptability of such costs. To satisfy this requirement, the User Department shall prepare and submit a Cost Analysis Form to Purchasing along with the Bid Tabulation Form.
2. Documentation of full and open competition resulting in at least three bidders shall be deemed reasonable. **2 CFR 200.319(a).**
3. For professional services contracts, the SWBNO may negotiate price as a separate element, following consideration and ranking of all respondents based upon technical proposals, to select the proposal that provides the best value to the Board. Should the SWBNO fail to reach agreement on a lower price with the contractor determined to provide the best value, it may select the contractor providing the second-best value or terminate the procurement. **2 CFR 200.323(a)-(d).**
4. For federally funded contracts, the SWBNO may only use estimated costs as a basis for cost analysis for A/E contracts. **2 CFR 200 Subpart E Cost Principles; 2 CFR 200.323(a)-(d); 2 CFR 200.320(d)(5); 2 CFR 200.400 et seq.**
5. For contracts without price competition or where cost analysis is required in accordance with 2 CFR 200.323(a), the SWBNO must negotiate profit as a separate price element. To establish a fair and reasonable profit, consideration will be given

to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. The SWBNO utilizes a profit rate calculator to assess a reasonable level of profit for each contract. Board-generated performance reports and contractor reports on prior contracts shall also be considered for past performance. **CFR Reference: 2 CFR 200.323(a)-(d); 2 CFR 200.320(d)(5);**

5.3 Prohibited Contracts

1. Cost plus percentage of cost contracts and percentage of construction cost contracts may not be used under any circumstances. **CFR Reference: 2 CFR 200.323(a)-(d);**
2. Time and material contracts may not be used unless the SWBNO determines that no other contract is suitable. Time and materials contracts prescribe cost to the SWBNO as the sum of: 1) actual cost of materials; and 2) direct labor hours, charges at fixed hourly rates that reflect wages, general and administrative expenses, and profit. Use of such contracts shall require an established price ceiling to ensure that the agreement does not allow for an open-ended contract price with no profit incentive for the contractor to control costs or labor efficiency. Such contracts shall be subject to frequent oversight to ensure that the contractor employs efficient methods and effective cost controls. **2 CFR 200.318(j)(i-ii(2)).**

6. Contract Provisions

Section 6 is the responsibility of the Requesting User Department and the Legal Department.

Contracts involving federal funding or assistance shall include appropriate funding source compliance provisions and clear performance measures. The User Department shall inform the Purchasing of the use or potential use of federal funds or assistance prior to solicitation. Purchasing shall coordinate with the User Department to ensure that the proper funding source compliance provisions are included as part of any related Invitation to Bid or Request for Qualifications or Proposals. The Legal Department shall ensure that the appropriate Special Conditions, Declared Disaster and Performance Measures language, and appropriate compliance provisions are included as part of the agreement sent to the contractor for signature requesting User Department is responsible for updating the funding source compliance provisions.

6.1 Special Conditions

All contracts utilizing federal funding shall expressly incorporate the relevant funding source compliance provisions into the contract.

6.2 Federal Funding Compliance Provisions

All federal funding source compliance provisions shall include the following:

1. Contracts for more than the Simplified Acquisition Threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. **2 CFR Appendix II Part 200(A).**
2. **Termination for Cause/Convenience.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the Board, including the manner in which it will be affected and the basis for settlement. **CFR Appendix II Part 200(B).**
3. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b) in accordance with Executive Order 11246. “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp. p. 339) as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” Federal assisted construction contract “means any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.” **2 CFR Appendix II Part 200(C).**
4. **Davis-Bacon Act.** All prime construction contracts in excess of \$2,000 awarded by the SWBNO must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts

Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The SWBNO shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a SWBNO contract or subcontract must be conditioned upon the acceptance of the wage determination. The SWBNO shall report all suspected or reported violations to the Federal awarding agency.

2 CFR Appendix II Part 200(D).

5. **Copeland “Anti-Kickback” Act.** All contracts must include provisions provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The SWBNO shall report all suspected or reported violations to the Federal awarding agency.
CFR Appendix II Part 200(D).
6. **Contract Work Hours and Safety Standards Act.** All contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
2 CFR Appendix II Part 200(E).
7. **Rights to Inventions Made Under a Contract or Agreement.** All contracts under federal award that meets the definition of “funding agreement” under 37 CFR §401.2(a) and the recipient or subrecipient wish to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401 “Rights to Inventions Made by Nonprofit

Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. **Appendix II Part 200(F).**

8. **Clean Air Act/Clean Water Act.** All contracts and subgrants of amounts in excess of \$150,000, shall contain a provision which requires agreement to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q), and the Federal Water Pollution Control Act as amended (33 USC 1251-1387), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). **CFR Appendix II Part 200(G).**
9. **Energy Efficiency Standards.** All contracts shall include mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201). **2 CFR Appendix II Part 200(H).**
10. **Debarment and Suspension.** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p.235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. **2 CFR Appendix II Part 200(I).**
11. **Byrd Anti Lobbying Amendment.** Contractors applying or bidding for an award of \$100,000 or more must file the required Byrd Anti-Lobbying Amendment certification and ensure each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award. **2 CFR Appendix II Part 200 (J).**
12. **Procurement of Recovered Materials.** Contracts must contain a clause stating contractors will comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds

\$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. **2 CFR 200.322 and 2 CFR Appendix II Part 200(K).**

7. Contract Administration

Section 7 is the responsibility of the User Department and the Legal Department.

1. The SWBNO shall ensure contractors and firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors or firms will be a factor in subsequent contract negotiations and award. Remedial action by the SWBNO through legal processes shall be considered in instances of identified significant non-performance. **2 CFR 200.318(b)**
2. The SWBNO will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards will not relieve the SWBNO of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the SWBNO's unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction. **2 CFR 200.318(k)**

8. Awarding Agency Review

Section 8 is the responsibility of the Purchasing Department and Requesting User Department

1. The SWBNO will make available, upon request of the awarding federal agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure the item and/or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the SWBNO desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase. **2 CFR 200.324(a)**
2. The SWBNO will make available upon request procurement documents, such as requests for proposals, invitations for bids, independent cost estimates, for the Federal awarding agency or pass-through entity's pre-procurement review

when:

- a. The SWBNO's procurement procedures or operation fails to comply with the procurement standards in this part;
 - b. The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
 - c. The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name or equivalent" product;
 - d. The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
 - e. A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold. **2 CFR 200.324(b).**
3. The SWBNO will be exempt from the pre-procurement review in the above paragraph (2) if the Federal awarding agency or pass-through entity determines SWBNO procurement systems comply with the standards of this part. **2 CFR 200.324(c).**
- a. The SWBNO has cited specific policies, procedures, regulations, or standards as being in compliance with these requirements and has its procedures available for review. **2 CFR 200.324(2).**

9. Protest Policy

Section 9 is the responsibility of the Purchasing Department and the Requesting User Department

The SWBNO shall utilize standard procedures to process and resolve procurement-related disputes. Purchasing is responsible for all aspects of protests. Detailed protest procedures are outlined in Section 6 of the Procurement Procedures and provided on Purchasing's website (<http://swbno.org/business.asp>). Protestors must exhaust all administrative remedies provided by SWBNO outlined in the time frames given in Section 6 of the Procurement Procedures. The awarding agency shall be notified of all formal protests. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. **2 CFR 200.318(k)**

10. Amendments/Task Orders/Change Orders

Section 10 is the responsibility of the Purchasing Department and Requesting User Department

Changes to existing contracts and purchase orders may be issued for construction, goods, materials and non-professional services that are procured through a sealed bid

process. Change Orders may not be used for informal bids. For construction contracts, a change order must be used. Professional Services, Goods, Materials, and Non-Professional Services agreements shall be amended via formal contract amendment.

11. Related Information

This section provides sources and other reference guides, policies, laws or regulations related to the policy. All applications, reporting and management of grants will be the responsibility of the Chief Financial Officer.

12. Frequently Asked Questions

Not applicable.

13. Revision History

SEWERAGE & WATER BOARD OF NEW ORLEANS



PRO-1: Procurement Policy Statement

Responsible Officer	Chief Financial Officer
Responsible Office	Procurement
Issuance Date:	
Effective Date:	
Last Review Date:	
Scope:	Applies to all positions/employees/departments

Contact:	Yvette R.D. Downs
Title:	Chief Financial Officer
Email:	Ydowns@swbno.org
Phone #	(504) 585-2371

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1. Governing Authority

This policy is governed by the Rules and Regulations of the Sewerage & Water Board of New Orleans (SWBNO) and all applicable State regulations. This policy will take precedence over all other procurement related policies generated by SWBNO.

2. Introduction and Purpose

It is the mission of the Sewerage and Water Board of New Orleans (“SWBNO”) to serve the people of New Orleans and improve their quality of life by providing safe drinking water, removing waste water for safe return to the environment and draining storm water to protect our community. In order to achieve this mission reliably and at a reasonable cost SWBNO adheres to a procurement process that meets all State and local regulatory requirements and in a way that is intended to deliver goods and services, including construction services, in a timely, economical and effective manner.

The procurement process includes supporting departments in forecasting their procurement needs, developing efficient and effective bid documents, managing the selection process and administration of each contract. The process also encourages full participation from the contractor community to respond to solicitations in a competitive manner while encouraging economic development within the New Orleans Parish.

3. Scope

This policy applies to all SWBNO employees and the Board of Directors. It is designed to assist responsible Board staff to ensure that all procurements:

- A. Are made in an ethical manner that is impartial and above reproach, with preferential treatment for none
- B. Are made efficiently and economically
- C. Are made within a defined contract management process that ensures at a minimum, that:
 - i. Solicitations and contracts are properly issued
 - ii. The methods of contractor selection and contract type are appropriate to the procurement and represent the Board’s best interest
 - iii. Bonding and security are obtained as appropriate
 - iv. Contractors have the necessary insurance to protect the board’s interests
 - v. Liquidated damages, when appropriate, are included in contracts
 - vi. Contractors perform in accordance with the terms and conditions of their contractors
 - vii. Payments are made only for goods and services, including construction services, received and authorized within the contract

- D. Contracts are made only to responsible contractors
- E. Contracts are made only to contractors selected in accordance with the stated evaluation criteria and Scope of Work
- F. Contracts are made without restrictive specifications that limit or inhibit full and open competition
- G. Exceptions are made by the Executive Director only when necessary for emergencies or to meet the best interests of SWBNO
- H. Include reasonable efforts to increase the opportunity for participation of business enterprises eligible under the Board's EDBP program
- I. Are approved at the appropriate level
- J. Have approved funding
- K. Meet all applicable Federal, State, Local and Municipal codes and regulations as applicable to the particular contract.

4. Policy Administration

SWBNO shall administer this policy through the Office of Procurement:

- A. A **Procurement Procedures Manual** shall be implemented and available for all employees. This manual will comply with procurement best practices, applicable laws and provide the administrative guidance necessary for all staff involved in the purchasing of contracts, goods and services to be able to conduct the operations of the Board in a way that complies with all regulations.
- B. The SWBNO reserves the right at any time and in its sole discretion to modify, rescind, delete or otherwise change the Procurement Procedures Manual and will review the manual for applicable updates no less than every 3 years.
- C. The Board of Directors delegates to the Executive Director the authority to develop, implement and enforce such procedures, consistent with the SWBNO rules and regulations and applicable State or local laws.
- D. Where SWBNO has procurement contracts that have any federal funding, the Board shall develop, implement and enforce a **Federal Grants Policy** that will be available to all staff for review.

Organizational conflicts of interest provide an offeror or a contractor (prime contractor or subcontractor) with an unfair competitive advantage or render the offeror or contractor unable, or potentially unable, to provide impartial assistance or advice to SWBNO. To avoid such conflicts, all SWBNO staff and Directors shall comply with the Conflict of Interest Policy. In addition, all staff working in the administration and oversight of third party contractors shall adhere to a Code of Conduct as follows:

- A. No employee, officer, or agent of the SWBNO shall participate in the selection, award, or administration of a contract if a conflict of interest, real or apparent, is or would be involved. Such a conflict could arise if the employee, officer, or

agent; any member of his/her immediate family; his/her partner; or an organization which employs (or is about to employ) any of the above, has a financial or other interest or a tangible personal benefit from a firm considered for a contract. All members of the Selection Committee agree to evaluate proposals independently. They must execute a disclosure certifying that they do not possess a conflict of interest involving any of the respondents and are required to submit a standard disclosure form to identify any potential conflicts of interest. **2CFR 200.318(c)(1).**

- B.** No employee, officer, or agent of the SWBNO shall solicit or accept gratuities, favors, or anything of monetary value from contractors or firms, potential contractors or firms, or parties to sub-agreements, except where the financial interest is not substantial. All SWBNO officials, employees and agents are subject to the State of Louisiana Ethics Code, which prohibits the solicitation or acceptance of gratuities, favors, or anything of monetary value from any person or entity for performance of their official duties, including issuance, review, and awarding of solicitations. This restriction not only applies to the SWBNO employee, officer, or agent, but also to that person's spouse or any entity in which that person or their spouse own at least 25%. All SWBNO employees must complete annual ethics training regarding all applicable State ethics laws. **2 CFR 200.318(c)(1).**
- C.** The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every written contract and solicitation. It shall be a breach of ethical standards for any public employee or former employee, officer, or agent knowingly to use confidential information for his actual or anticipated personal gain or the actual or anticipated personal gain of any other person. Such a breach shall subject the public employee or former employee, officer, or agent to the jurisdiction of the Louisiana State Ethics Board. **2 CFR 200.318(c)(1).**
- D.** The Louisiana State Ethics Code mandates that all Agency Heads, through the SWBNO's Human Resources Department, must report alleged violations of the established standards of conduct to the Louisiana Ethics Review Board. Where violations appear to have occurred, the offending employee, officer or agent shall be subject to disciplinary action by the Louisiana Ethics Review Board, including but not limited to dismissal, suspension, or reduction in pay or position; censure and/or fine of not more than \$10,000.00 per violation; prohibition of appearing before the public agency; prohibition of negotiating or entering into contract with the public agency; rescission of contracts, permits,

and licenses without public contractual liability; forfeiture of any gifts or payments made in violation of the Louisiana State Ethics Code; imposition of late fees for failure to pay imposed fines; and objection to candidacy of person with outstanding fine, fee, or penalty resulting from violation of Louisiana State Ethics Code equal to or greater than \$250. Ethics allegations and violations are personal violations and the SWBNO shall not provide any SWBNO employees, officers, or agents with legal assistance or defense related to such allegations or violations. **2 CFR 200.318(c)(1).**

The SWBNO may take action against employees, officers and agents as well as others who violate any provision of the procurement policy and procedures. Such action may include termination of the relationship with SWBNO. Any effort made by or on behalf of a non-employee, including an offeror or contractor, to influence an employee to breach the ethical standards of SWBNO is prohibited and may be referred to appropriate authorities for civil enforcement or criminal prosecution. A violation by a contractor or subcontractor of any procurement regulation may constitutes a major breach of each SWBNO contract or subcontract to which the violator is a party. Additionally, SWBNO may determine an offeror or contractor to be non-responsible, or may suspend or debar any offeror or contractor who violates or whose representative violates any provision of SWBNO's procurement policies and procedures.

5. Frequently Asked Questions

Not applicable.

6. Revision History