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COMMISSIONER OF ADMINISTRATION

State of Louisiana
Division of Administration
Office of State Purchasing

MEMORANDUM OSP 14-01

DATE: July 16, 2013

TO: All Agency Heads, Department Undersecretaries and Purchasing Personnel

FROM: Sandra G. Gillen-CPPB
Director *Sandra G. Gillen*

RE: Public Work, Capital Project vs Procurement Code Procurements

In recent months, it was brought to our attention that some procurements previously handled under the Procurement Code as Labor and Materials contracts or Major Repairs should be handled as Public Work under the Public Works Act (La. R.S. 38:2211 et seq.). When a project is a Public Work or Capital Project, it does not fall under the statutory authority of the Office of State Purchasing and the Louisiana Procurement Code (La. R.S. 39:1551 et seq.).

Enclosed with this memo is a Power Point presentation developed in an effort to provide simplified guidelines for determining if a project procurement is to be handled as a Public Work/Capital Project, or as a procurement under the statutory authority of the Office of State Purchasing and the Louisiana Procurement Code.

Please direct any questions to us via Hilary Stephenson at 225-342-8022 or Hilary.stephenson@la.gov. We will facilitate responses required, if any, with the appropriate staff. Training relative to this matter is under discussion. We will keep you posted as this develops.

Enclosure

Public Work, or Capital Project or Procurement Code

Which process to follow and when?



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If it is a **public work** or **capital project**...it does not fall under the statutory authority of the Office of State Purchasing and the Louisiana Procurement Code (Title 39, Chapter 17)



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What does OSP procure?

- Supplies
- Services
- Major repairs

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What are “supplies”?

For purposes of this discussion, “Supplies” are defined as all property, including but not limited to equipment, insurance, and leases on real property excluding land or a permanent interest in land.

*Note: this includes the labor to deliver and install certain materials (“labor and materials contracts”) so long as the procurement is not a public work. **All labor and materials contracts valued at or above \$5000 must be handled by OSP.***

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What are “services”?

“Services” are defined as the furnishing of labor, time, or effort by a contractor not involving the delivery of a specific end product other than reports which are merely incidental to the required performance (“operating services”).

Note: this does not include contracts for the provision of professional, personal, consulting, or social services.

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What are “Major repairs”?

“Major repairs” are defined in La. R.S. 39:1556(13) as those repairs payable with funds appropriated in the general appropriations act, except those funds transferred from the operating budget of one governmental body to supplement and complete a project under contract by the division of administration facility planning and control section.

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What is a “Public Work”?

- “Public work” is defined in R.S. 38:2211 as the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

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Public work includes:

- Permanent Construction/Improvement (upgrading, renovating, improving, or building a public structure, facility, or system according to a plan or definite process).
- Acquisition/Installation of permanent equipment necessary to the functioning of a public facility.
- Permanent preservation (restoration to working order of faulty components or systems).
- Demolition of a public facility.

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Other examples of Public Work that fall in Capital Outlay

1. land acquisition;
2. site development and improvement;
3. acquisition or construction of buildings or other structures;
4. additions of expansions to existing facilities;
5. major repair or renovation of existing facilities;
6. installation, extension or replacement of utility systems or major building system components;
7. roof replacement;
8. asbestos abatement;
9. fixed equipment which is connected to building utility systems;
10. initial equipment and furnishings for new buildings. However, depending on the useful life of equipment and furnishings, a decision may be made to fund these items through alternate sources.

LAC Title 34, Part III sect 201

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Capital projects

According to R.S. 39:101:

“...the head of each budget unit **shall** present to the office of facility planning and control of the division of administration a request for all expenditures for capital projects falling within the definition contained in R.S. 39:2(9)...”

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What is a Capital Outlay?

According to R.S. 39:2(9):

“Capital outlays” means expenditures for acquiring lands, buildings, equipment, or other permanent properties, or for their preservation or development or permanent improvement.”

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Capital projects

Louisiana Administrative Code, Title 34, Part III, Chapter 2 further limits Capital Outlay projects to those with a design life of at least 20 years and costing at least \$50,000.

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Determining applicable law & regulations in project procurement...

Respond to the following questions to determine if a project is to be procured under the Public Works Act (La. R.S. 38:2211 et seq.) or under the statutory authority of OSP and the Louisiana Procurement Code (La. R.S. 39:1551 et seq.).

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Question 1

- Q. Is the project a service (i.e. routine maintenance, trash collection, debris removal, etc.)?
- A. YES -Title 39/OSP requirements apply
NO - see Question 2

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Question 2

Q. Does the project involve a public facility or immovable property (owned or leased)?

A. YES- see Question 3
NO- Title 39/OSP requirements apply

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Question 3

Q. Does the project involve razing, demolition, or disposal of a building or a structure?

A. YES - Title 38 requirements apply
NO - See Question 4

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Question 4

Q. Is the project for repairs to the facility or property ?

- A. YES (w/funds from Operating Budget) – see Question 5
YES (w/funds from Capital Outlay) – Title 38 requirements apply
NO - see Question 5

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Question 5

Q. Is the end product permanent (a useful life of 10 years or more)?

- A. YES -see Question 6
NO -Title 39/OSP requirements apply

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Question 6

- Q. Does the project involve the:
- a) use of and coordination between different trades; or,
 - b) requires the services of a professional architect, engineer or landscape architect; **and**
 - c) is a cost greater than \$50,000?
- A. YES- Title 38 requirements apply
NO- see Question 7

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Question 7

- Q. Is the project for purchase and installation of permanent equipment necessary to the functioning of a public facility?
- A. YES- (funds from operating budget)- Title 39/OSP requirements apply
YES- (funds from Capital Outlay)-Title 38 requirements apply
NO- Title 39/OSP requirements apply.

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Questions?

If you have any questions regarding this process please contact Hilary Stephenson at 225-342-8022 or hilary.stephenson@la.gov.

State agencies that have questions regarding Title 38 public works may visit the website of the Office of Facility Planning and Control at:

<http://www.doa.louisiana.gov/fpc/fpc.htm>