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# Emergency Rules

## DECLARATION OF EMERGENCY

### Department of Commerce Licensing Board for Contractors

Effective September 30, 1981, the Louisiana State Licensing Board for Contractors, has exercised those powers conferred by the emergency provision of the Administrative Procedure Act, R.S. 49:953, to adopt the following rules and regulations. This action has been taken to protect the safety and welfare of the citizens of the State of Louisiana from eminent danger and to permit the State Licensing Board for Contractors to fulfill its obligation and function under Louisiana Revised Statutes 37:2950, et seq., to protect the health, safety and general welfare of all of those persons dealing with persons engaged in the contracting vocation, and the affording of such persons of an effective and practical protection against the incompetent, inexperienced, unlawful and fraudulent acts of contractors with whom they contract. Because of previous court challenges there exists a serious legal question as to whether any of the rules and regulations of the State Licensing Board for Contractors now in existence are valid and enforceable. In connection with this situation, therefore, it has become necessary to promulgate the following emergency rules.

I. A. 1. Under R.S. 37:2157 A, it is the Board's interpretation that a contractor is defined as any person, firm, partnership, co-partnership, association, corporation or other organizations, or any combination thereof, who undertakes, attempts, or submits a bid or offer to construct, supervise, superintend, oversee, direct, or in any manner assume charge of the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or furnishing labor, material or equipment and installing same for any building, highway, road, railroad, sewer, grading, excavation, pipeline or public utility structure, project, development, housing or housing development, improvement, or any other construction undertaking. Additionally, it is the Board's interpretation that, under R.S. 37:2162 (b), a contractor is a person who contracts directly with the owner, a primary contractor, or a subcontractor as a subcontractor; also any Architect or Engineer who receives an additional fee for the employment or direction of labor, or any other work beyond the normal Architectural or Engineering services, shall be considered as a contractor.

2. It is the Board's interpretation that the provisions of R.S. 37:2157 shall apply but are not limited to any project, development, housing or housing development which exceeds \$50,000 in cost. The terms "development" and/or "housing development" are hereby defined to include multi-unit developments comprised of a number of units, no matter how many families each said unit is designed to house.

B. In addition to those specialty classifications listed as subclassifications in Section 2156.2, the definition also includes specialty work as follows, but is not limited thereto: oil and gas well drilling and storage; directional drilling; X-ray of wells; water well drilling; cathodic protection; environmental control systems; solar energy, nuclear energy; mining; boat building; furnishing and installing permanent building fixtures; building restoration work; carpentry work; dumb waiters, elevators and escalators; glazing; site development; waterproofing; construction management; owner acting as own contractor which will be for rent, sale, public use or public assembly; public address systems; communication lines and systems; sound systems; alarm systems; control systems;

instrumentation and calibration; industrial and commercial maintenance; demolition with or without explosives; industrial painting, coating and sandblasting; refractory work.

C. 1. A license shall not be required to bid on any projects funded in any amount by the Federal government designated for a particular project by an agency of the Federal government where a Federal regulation or law prohibits such requirement, provided said agency presents specific evidence of a Federal regulation or law prohibiting same in the bid documents. Should the agency fail to present such evidence, the bidder shall be required to have a license before bidding. Any successful bidder shall submit an application for a license completed in its entirety, pay the fee, and take and pass the required examination prior to commencement of work on Federal jobs. After meeting said requirements, a letter shall be issued to said successful bidder authorizing the commencement of work in accordance with R.S. 37:2157 D. Thereafter, the application shall be presented to the Board at its next regular meeting and following compliance with all remaining requirements including delay periods, a license shall be issued with an "F" classification.

2. A license is not required by a public utility subject to regulation by the Louisiana Public Service Commission or the Council of the city of New Orleans or a contractor bidding on projects for said utility companies. However, contractors doing business for public utilities prior to commencement of actual work shall file an application for a license and pay the fee and take and pass the required examination. Thereafter, at the next regular meeting, the application shall be presented to the Board and a restricted license with an "R" classification shall be issued immediately restricted to public utility projects only.

II. Application for contractor's licenses shall contain all information required on the form which is available at the offices of the State Licensing Board for Contractors, 7434 Perkins Road, Baton Rouge, LA. 70808. Application shall be time dated when received and considered at the next regular meeting of the Board, provided the application is complete with financial statement, references, fee, Federal Employer I.D. Number, properly notarized and examination requirements have been met.

No license will be issued until:

A. 60 days have elapsed from time of receipt in the Baton Rouge office;

B. All requirements of the statute and rules and regulations have been met and the application approved by the Board.

III. All licenses and renewals shall expire December 31 of the year they are issued and the license becomes invalid unless renewed; provided, however, that after a license has expired the person or firm to whom such license was issued shall have until the second Tuesday of January next, following the expiration date to renew the license without penalty and without further examination. Any person or firm applying for renewal after the second Tuesday of January next following the expiration date will be required to pay a penalty of \$50. Any license not renewed within a period of one year from the date of expiration will be considered as a new application.

IV. The annual fee for renewal of licenses shall be \$100 for any one major classification or subdivision thereof and \$50 will be charged for each specialty, additional major classification or subdivision thereof. The maximum fee shall not exceed \$300. In addition there will be a \$25 charge for each examination and a \$25 charge for a structural change.

V. The license for which a person becomes the qualifying party belongs to the entity of the licensee, as: a corporate license belongs to the corporation, a partnership license belongs to the partnership and an individual license belong to the individual regardless of the status of the qualifying party of the entity.

VI. A. All applicants shall be required to register a qualifying

party or parties who shall successfully pass a written examination for the classification requested, unless otherwise provided by the Board.

B. The qualifying party or parties authorized to take the examination are:

1. Any individual contractor, co-partner or any corporate officer who was an organizer in the articles of incorporation, provided no person shall be allowed to be the qualifying party for more than one company and two subsidiaries. If more than two subsidiaries are formed or acquired by a parent company, a separate qualifying party shall be registered with the Board for each two additional subsidiary companies.

2. Any employee of said applicant who has been in fulltime employment for 120 consecutive days immediately preceding. He shall be prepared to execute an affidavit furnished by the Board at the time he takes the examination giving his length of employment and Social Security number. If requested, he shall be prepared to show evidence of his eligibility by furnishing four cancelled payroll-checks representing four preceeding months.

c. Additional classification(s) may be obtained at any time by licensed contractors provided:

1. The request for additional classification(s) be in writing.

2. The required additional license fee of \$50 and a \$25 examination fee is paid; and the qualifying party as provided under Sub-section (B) successfully passes a written examination.

3. The classification(s) will not become effective for 30 days following a request for same or until approved by the Board at a regular meeting, whichever is the lesser.

D. All initial applicants shall be required to take and successfully pass Part I of our examination and Part II where we have a written examination for same.

E. 1. A contractor who is a subsidiary of a currently licensed contractor and who is making application for a license in the same classifications as that of the currently licensed contractor, shall not be required to take an examination on the subject for which said subsidiary contractor is seeking a license, with the approval of the board, provided that the holders of a majority of the stock in the subsidiary contractor are the same as the holders of the majority stock in the currently licensed company, and further provided that the individual who was designated as the qualifying party at the time a license was originally issued to the currently licensed contractor remains in the employ of the currently licensed contractor at the time of application for license by the subsidiary contractor.

2. A licensed firm, making application for a subsidiary license for the same classifications as those in which the licensed firm has qualified, may be exempt from the taking of an examination, provided that the qualifying party on record with the State Licensing Board of Contractors for the licensed firm making application for a subsidiary license is the same as that of the parent company, and further provided that no person shall be allowed to be the qualifying party for more than one company and two subsidiaries. If more than two subsidiaries are formed or acquired by a parent company, a separate qualifying party shall be registered with the board for each two additional subsidiary companies. It is further provided that any subsidiaries qualifying under the terms of this section shall not be permitted to assume the position of a parent company or firm for the purpose of forming additional subsidiaries.

F. A qualifying party making application for a license as an individual or stockholder of a corporation may be exempt from taking another examination for the same classification for which he has previously taken and passed subject to approval by the Board.

G. 1. Initial applicant requesting a specialty class where there is no written examination shall be examined by the Board on the experience shown on his application.

2. Licensed contractors requesting additional classification(s) of a specialty where there is no written examination shall submit no less than three jobs they have performed in the requested specialty field and be examined by the Board on experience.

VII. When the qualifying party terminates employment with the licensee, the State Licensing Board for Contractors must be notified in writing, by the qualifying party and the licensee, within 30 days of the disassociation and another party must qualify within 60 days or licensee will be subject to citation for suspension or revocation of license.

VIII. In the event an unlicensed contractor or licensed contractor without proper classification bids in violation of R.S. 37:2150-2163, regardless of whether he is awarded the contract, action may be brought before the Board and/or court in accordance with the statutes, rules and regulations, and laws of this State.

IX. Any application for a license for a subsidiary shall be considered as a new application and subject to all laws and rules and regulations governing same.

X. In the event of the dissolution of a partnership, the license may be retained by one of the partners provided that all partners agree by whom it shall be retained and further provided that all this agreement be made by affidavit.

XI. The Board, pursuant to R.S. 37:2161 may bring suit to enjoin violations of this Act and the Executive Director and/or his designated agent and/or legal council for the Board is hereby authorized to institute such suit on behalf of the Board and to sign the verification of the petition for injunction and to do all things necessary in connection with the institution of such legal proceedings when so directed by the Board.

XII. Hearings may be conducted by the Board at regular or special meetings whenever deemed necessary. Written notice by certified mail shall be given to all parties at least five days prior to such hearings and special meetings. The Board members shall be notified at least three days prior to such hearings or special meetings. The notice shall include the time, place and purpose of the hearing or special meeting and may be held at any place within the State unless conducted at a special meeting and may be held in Baton Rouge, Louisiana. Hearings shall be governed by R.S. 49:951 et seq.

XIII. Special meetings of the Board may be held at any place provided that the time, place and purpose of the meeting is specified in the notice to the members of the Board and to any parties involved in that particular special meeting.

XIV. It shall be the responsibility of licensed contractors to secure the current valid license number of any subcontractor who submits a bid to them or performs work in the amount of \$50,000 or more. If any licensed contractor accepts a bid and/or awards a contract in the amount of \$50,000 or more to any unlicensed subcontractor, the license of the contractor may be suspended, revoked or rescinded after a hearing is conducted by the Board.

XV. Any change in officers, or address of a company, partnership, or corporation as reflected on the application shall be reported to the Board by written notification within 15 days after such change. Any change in the name of a contractor as it appears on the license certificate or any change from an individual to a partnership or corporation; or a partnership to an individual or corporation; or a corporation to an individual or partnership, shall be reported in writing to the Board within 15 days after such change. No change in the name or status of licensed firm shall be made until all documents and information as required by the Board has been satisfactorily furnished.

XVI. A. All licensed contractors bidding in the amount of \$50,000 or more shall be required to have qualified for the classification in which they bid.

b. When two or more contractors bid as a joint venture on

any project in the amount of \$50,000 or more, not in conflict with R.S. 37:2150 et seq., all parties are required to be licensed at the time the bid is submitted, within the applicable classification of the work of which each party is to perform.

XVII. All contractors shall bid and perform work in the name which appears on the official records of the State Licensing Board for contractors for the current license. If a licensed contractor assigns a contract, or any portion of a contract, in the amount of \$50,000 or more to another contractor, the person or firm to which it is assigned, and who performs the work, must possess the proper current license. No unlicensed contractor shall be permitted to assign a contract, or any portion of a contract, in the amount of \$50,000 or more to a licensed contractor in circumvention of the laws of the State of Louisiana.

XVIII. Under R.S. 37:2163 A. providing for certification and license number to be shown on the bid, and when the awarding authority requires bids to be submitted in sealed envelopes, the license number shall be required to appear only on the outside of the envelope. It shall not be a violation for the license number to appear on both the bid document and the outside of the envelope.

XIX. Any division of a contract into parts less than \$50,000 when combined is \$50,000 or more, will be treated as one contract totalling the amount of these parts when combined.

XX. Whenever a licensed contractor bids a project within the scope of this Act, and is awarded the contract, is unable or refuses to provide bonding and insurance coverage as required by the proposal bid for the execution of the project, the awarding authority or owner may file a complaint with the Board. The Board shall investigate such complaint and, after due hearing, may suspend or revoke the contractors' license, in accordance with R.S. 37:2150-2163 inclusive.

XXI. The classification under which a person must be licensed in order to bid a job or perform work on a job in accordance with R.S. 37:2159 shall be made by determining in which major classification or subclassification in R.S. 37:2156.2 the majority of the work falls.

A. On all jobs involving mechanical or electrical work the Board shall consider the monetary value of the electrical or mechanical material and/or equipment furnished by the owner or builder, if any, in determining the amount of electrical or mechanical work involved.

B. The Board takes cognizance of all local ordinances and codes regulating the licensing of electrical and mechanical contractors.

XXII. If a possible violation is known to the Board, the Board may correct it or take appropriate action without formal complaint.

XXIII. As provided by R.S. 37:2150 after granting said license, the licensee shall at all times show his ability to serve the public economically, expediently and properly; possess the necessary qualifications of responsibility, skill, experience and integrity so that the licensee will not tear down standards of construction established within the industry, and shall continue to maintain the qualifications established in R.S. 37:2156.1.

If any licensed contractor refuses to sign a contract at his bid price and a complaint is filed with the Board, the Board shall investigate such complaint and, after due hearing, may suspend or revoke the contractor's license in accordance with R.S. 37:2150-2163 inclusive.

XXIV. It shall be the responsibility of any contractor who, voluntarily or involuntarily, is subjected to any provision of the laws of bankruptcy, to notify this Board immediately and to make available to this Board any and all information pertinent thereto.

A. Any contractor who is ordered by a competent court to cease operations or whose operations are closed due to operation of any law, shall notify this Board immediately and make available to this Board any and all information pertinent thereto.

B. Whenever an order issued by a competent court and/or referee in bankruptcy forces cessation of a contractor's business operations, a hearing shall be scheduled at the earliest feasible date, in accordance with the applicable laws and the rules and regulations of this Board, for the purpose of determining whether said contractor's license shall be suspended or revoked, and such an order by a competent court or referee shall create a presumption in favor of suspension or revocation.

C. If any contractor is ordered by a competent court to pay a final and executory judgment awarded against him in the operation of his business, for charges for labor, material, breach of contract, etc., and fails to pay said judgment immediately upon its becoming final and executory, a hearing may be scheduled by the Board for the purpose of determining whether said contractor's license shall be suspended or revoked.

XXV. All initial applicants are required to submit a financial statement, prepared by an independent auditor and signed by the applicant and auditor before a notary public, stating the assets of the person, firm, partnership, co-partnership or corporation; such assets shall include a net worth of at least \$10,000.

XXVI. It shall be unlawful and illegal for any primary contractor, contractor owner, awarding authority, subcontractor, or any other person to contract or subcontract all or any portion of work involved herein, to any other contractor or subcontractor unless said contractor or subcontractor was duly licensed by the Board as of the final date fixed for the submission of bids on said work from the primary contractor to the owner or awarding authority. This rule shall be subject to the provisions and limitations established by R.S. 37:2157 B and D.

If work is subcontracted as per this Rule, and the subcontractor should default for any reason, the awarding authority shall have the right to take bids from any subcontractor that is properly licensed at the time of this default.

XXVII. Any person, firm or corporation duly licensed under the provisions of R.S. 37:2150, et seq. who violates any provisions of the said Louisiana contractors' licensing law or any rule or regulation of this Board may, after due and proper hearing, have its license suspended or revoked by this Board. Prior to the Board's action on suspension or revocation of licenses as aforesaid, the licensee shall be given a hearing in accordance with the Louisiana Administrative Procedure Act.

XXVIII. In any instance where approval of an application has been withheld under the terms of R.S. 37:2157 D., a contractor shall have the right to apply to the Board for a hearing following which the Board may continue to withhold approval or grant its approval at its own discretion.

XXIX. Proper notification under R.S. 37:2160 E., shall be five days' notice. Notification shall constitute placing of said notice in the U. S. mail certified. The five days' notice shall commence to run on the date of the issuance of notification.

Robert A. Riley  
Executive Director

## **DECLARATION OF EMERGENCY**

### **Board of Elementary and Secondary Education**

The State Board of Elementary and Secondary Education, at its meeting on September 24, 1981, exercised those powers conferred by the emergency provisions of the Administrative Procedure Act, R.S. 49:953B, and adopted the following as an emergency rule:

Act 754 Regulations, Section 486.

486. Procedures for Application for State or Federal Funds for Special Education from Non-formula Distributed Revenue.

## DECLARATION OF EMERGENCY

### Department of Health and Human Resources Office of Human Development

In accordance with the Appropriations Act of 1981 Louisiana Legislature, the Department of Health and Human Resources, Office of Human Development adopts the following increases in the rates for Foster Care board payments effective September 1, 1981.

1. Daily board rate for a foster child in Foster Family Care under age six - from \$5.24 per day (\$160 per month) to \$6.03 per day (\$180 per month).

2. Daily board rate for a foster child in Foster Family Care between the ages of six years and twelve years - from \$6.11 per day (\$185 per month) to \$7.03 per day (\$210 per month).

3. Daily board rate for a foster child in Foster Family Care ages 13 and above - from \$6.98 per day (\$212 per month) to \$8.03 per day (\$240 per month).

4. Monthly subsidy for specialized foster care \$700 per month to \$800 per month.

George A. Fischer  
Secretary

## DECLARATION OF EMERGENCY

### Department of Health and Human Resources Office of Human Development

Effective October 1, 1981 the Department of Health and Human Resources, Office of Human Development, has exercised those powers conferred by the emergency provisions of the Administrative Procedure Act, R.S. 49:953 B, to adopt a Vocational Rehabilitation Operations Manual Parts I and II for the administration of its Rehabilitation Services Program which assists physically/mentally handicapped individuals to prepare for and enter into gainful employment.

This previously unadopted Operations Manual contains the rules, policies, and procedures under which this program has been operating but includes the following changes:

1. Section 304 - Page 13.

Occupational tools will be limited to \$150.

2. Section 306.3 - Page 16.

Maximum transportation - \$77 per month.

3. Section 404.1.

Eligibility criteria will now include an order of selection for services by priority groups as follows:

a. Severely disabled - severely handicapped individuals.

b. Individuals referred under Third Party Agreements (signed agreements between Division of Rehabilitation Services and other agencies/organizations).

c. Public safety officers who become disabled in the line of duty (police officers, probation/parole agents, etc.).

d. Individuals who receive public assistance such as Aid to Families with Dependent Children (AFDC), General Assistance (GA), Unemployment Compensation, Food Stamps, etc.

e. Individuals with dependents other than themselves.

f. Non-severely disabled, but unemployed or underemployed individuals.

g. All other individuals not fitting categories "a" through "f".

4. Section 405.7 - Page 17.

Economic need criteria is now applicable to recipients of Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI).

A. State and federal funds for special education and/or related services available for awarding of subgrants projects shall be recommended to the State Board for approval only after the following activities have been completed:

1. Issuance of a Notice of Availability of Funds by the Department to specify:

a. The priority in the Department budget which the Notice of Availability of funds addresses.

b. The types of agencies eligible for the funds to be used.

c. The anticipated amount to be available for the subgrant period.

d. The dates for response to the Notice of Availability of Funds and

e. The criteria for review of Notice of Availability of Funds.

2. The receipt and review of the Notice of Availability of Funds according to predetermined criteria by the Department.

3. The receipt, review and rankings of proposals by an external review council appointed by the State Board.

B. The State Superintendent may submit to the State Board requests for subgrants/contracts without completion of activities in A(1-3) only after the individual situations have been established according to procedures prepared by the Department and approved by the State Board, which may also include a review by the council referred to in A-3 above.

Revised regulations administering Act 754 of 1977 were approved at the Board's meeting of June 25, 1981 and became effective July 1, 1981. Two Sections were not included when the regulations were advertised as a Rule in the *Louisiana Register* of August, 1981. Therefore, the Board adopted Section 486 relative to an External Review Council's recommendations on discretionary funding. This emergency action was necessary to complete the document already in effect. Additionally, the Section provides procedures for the expenditure of funds which are currently being spent for special Education projects.

James V. Soileau  
Executive Director

## DECLARATION OF EMERGENCY

### Department of Health and Human Resources Office of Human Development

Effective October 1, 1981 the Department of Health and Human Resources, Office of Human Development, has exercised those powers conferred by the emergency provisions of the Administrative Procedure Act (R.S. 49.953 B) to adopt an Operations Manual for the administration of its Blind Services Program.

This previously unadopted Operations Manual contains the rules, policies and procedures under which this program has been operating, but includes the following changes:

(1) Section 305.5 - Economic Need.

Resources of parents of clients under age 21, instead of age 18, are to be considered in determining economic need.

Recipients of Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) are now subject to the economic need criteria.

Income level exemptions will change from (a) \$50,000 to \$40,000 annual gross income from a business or farming operation and (b) from \$12,000 to \$10,000 annual earned gross income.

George A. Fischer  
Secretary