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This public document was published at a cost of \$2.72 per copy, by Baton Rouge Printing Co., Inc., P. O. Box 97, Baton Rouge, La. as a service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:951-968. This material was printed in accordance with the standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Emergency Rules

EMERGENCY RULE

Department of Health and Human Resources Office of Family Security

The Department of Health and Human Resources, Office of Family Security, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953 B, to increase the maximum allowable monthly income limit for long term care eligibility for an individual from \$794.10 to \$852.90, effective July 1, 1982. For a couple occupying the same room in a long term care facility, the double rate of \$1,705.80 would apply.

This increase allows the Medical Assistance Program to be in compliance with federal regulation 42 CFR 435.1005 which sets the maximum income limit before deductions, at 300% of the Supplemental Security Income (SSI) payment amount.

Effective July 1, 1982, the monthly SSI payment was increased to \$284.30. Therefore, it is important that the maximum monthly income limit be increased simultaneously so that some persons receiving or applying for long term care services will not lose or be denied eligibility.

Roger P. Guissinger
Secretary

Rules

RULES

Board of Elementary and Secondary Education

Rule 3.03.02

The Board adopted the "Full-time/Part-time Student Attendance Policy" for vocational-technical schools and the revised "Absentee and Tardiness Student Attendance Policy" established for vocational-technical schools.

Rule 4.03.44

The Board adopted a policy whereby all agencies other than BESE, and the Legislative Branch and Executive Branch of state government, be required to secure permission from the Office of Vocational Education before surveying vocational-technical directors.

Rule 6.03.95., 12

The Board adopted the revised sabbatical leave policy for vocational-technical directors as recommended by the Director's Association.

Rule 3.03.10

The Board adopted the Guidelines for Implementation of Cooperative Education Programs in the Post-Secondary Vocational-Technical Schools.

Rule 4.00.04b

The Board adopted an amendment to Section 450 of Act

754 Regulations, *Duration of Educational Placement Rules* as presented by the Office of Special Education, State Department of Education as follows:

Duration of Educational Placement Rules

A. School systems shall provide education and related services to exceptional students in accordance with an IEP for no less than the normal 180-day school cycle.

B. School systems shall provide special education and related services in excess of the 180 school days to exceptional children when the IEP, developed on the basis of teacher assessment, parental input, experiences of persons who work with the student, educational records, evaluation reports, and other reliable multi-source data, indicates the need for and specifies the goals and objectives of the extended school year program. The determination concerning the need or lack of need for an educational program beyond 180 school days made by the IEP meeting participants shall be reviewed annually to ascertain any changes in the student's needs.

C. The IEP may include special education and related services in excess of 180 school days when the multi-source data specified in B above indicates that the student's handicap is of such severity that without instruction in excess of 180 school days, there will occur a significant loss of educational skills.

COMMENT: Significant loss means a regression caused by an interruption in educational programming, together with a rate of reacquisition of a skill (compared to the student's initial rate of acquisition of a skill) which renders it impossible or unlikely that the child can attain the long range educational goals specified in the IEP without extended programming.

COMMENT: IEP participants in determining the length and type of an extended program shall not be bound or limited by any prescribed program or its length. The type and length of the extended program shall be determined on an individual basis for each child. A program ranging anywhere from 181 up to 240 school days shall be available when appropriate.

Rule 5.00.50.e

The Board adopted the formula recommendation for the Consolidation of Federal Programs for Elementary and Secondary Education Title V, Chapter 2, P.L. 97:35, Fiscal Year 1983-85.

Rule 4.01.90.a

The Board adopted the State-Funded Compensatory/Remedial Regulations as amended May 26, 1982.

Rule 3.02.14 and 4.00.43

The Board adopted as a Rule, the grievance procedures for vocational-technical schools (Rule 4.00.43), Board Special Schools and Special School District No. 1 (Rule 3.02.14) which were submitted to the Board on June 24, 1982 by Bruce MacMurdo and amended by the Board.

Rule 4.00.04.c

The Board adopted as a Rule, Revised Section 459 of Act 754 Regulations as amended to include new language and revision to Section 449(E) as follows:

SECTION 459

A. Each teacher is authorized to hold each student to a strict accountability for any disorderly conduct in the school or on the playground of the school or on any school bus going to or returning from school or during recess or intermission. Teachers, principals, and administrators may subject to any rules as may be adopted by a local parish/city school board, apply reasonable disciplinary and corrective measures to maintain order in the schools. In addition, school principals may suspend from school, any student, including an exceptional child for good cause, in accordance with parish/city school board policy and this Subpart.

B. An exceptional child shall neither be expelled nor suspended from school if the behavior for which action is being taken is related to the child's exceptionality.

1. The need for a structured program of behavior therapy should be considered at each IEP meeting;

2. Any structured program of behavior therapy which is included in a child's IEP shall not be considered disciplinary action;

3. Any in-school alternative discipline program shall not be considered a suspension for the purpose of this Subpart.

COMMENT: When the behavior of the exceptional child is presenting an immediate danger to self or others or is significantly destructive to property the child may be immediately removed from the school premises, providing that the necessary procedure in this Subpart shall be completed as soon as possible.

** C. The determination as to whether the behavior is related to the child's exceptionality shall be made by at least one appraisal staff member knowledgeable regarding the exceptionality in question and at least one other professional staff member of the school system. In order that the appropriate personnel make the determination, the Special Education Supervisor shall be contacted within three operational days regarding the child's exceptionality and the behavior(s) for which disciplinary action is being taken.

1. If an out-of-school suspension or expulsion is proposed, the exceptional child may be excluded from the school environment while the determination is being made. Such exclusion shall be as short as possible and in no event shall such exclusion be longer than the period of suspension assigned to that behavior(s) by local school system policy, or nine school days, whichever is less.

2. If the determination is made that the child's behavior is not related to the child's exceptionality, the child shall be disciplined in accordance with discipline policies for non-exceptional students. If a long term suspension or expulsion of more than nine school days is determined to be the appropriate disciplinary action, then an alternative education program shall be provided to the student.

3. If the determination is made that the child's behavior is not related to the child's exceptionality, no official suspension or expulsion shall be taken against the child and/or entered in the child's student records. The child shall be allowed to make up all school work missed during the child's period of exclusion.

D. After a pattern of behaviors, resulting in any form of disciplinary action(s) regarding each exceptional child has been established, the child's IEP Committee shall be convened to review the child's program and/or placement. A due process hearing may be requested should the child/parent disagree with any placement proposed by the school.

COMMENT: It is suggested that a pattern of behaviors is determined to range from three of five occurrences.

SECTION 449E

E. An exceptional child is undergoing disciplinary action. Time limits are subject to the provisions of Subpart 459. Rule 4.01.93

The Board adopted the *Guidelines for Compliance and Accreditation Program*.

James V. Soileau
Executive Director

RULE

Teaching Professions Practices Commission

PREAMBLE

The following Procedural Rules of the Louisiana Teaching Professions Practices Commission are adopted pursuant to the

authority of R.S. 17:1338(2), subject to the approval of the Louisiana Board of Elementary and Secondary Education.

JURISDICTION

PART I.

§1 GENERAL JURISDICTION

Consistent with R.S. 17:1338(3), the Commission is authorized to:

1. Make recommendations to the State Superintendent, the State Board, or any local board on improvement of the teaching profession.

2. Provide technical assistance and consultative services to the local boards upon request of said boards on all matters pertaining to educators.

§2 SPECIFIC JURISDICTION

The Commission may:

1. Investigate any reasonable alleged grievance which constitutes ground for which the potential penalty is revocation or suspension of certificate.

2. Investigate:

(a) the alleged violation of any civil law of this state pertaining to educators;

(b) the alleged violation of any policy, rule or minimum accepted standard adopted by the State Board or any local board (R.S. 17:1339(3)).

3. Make recommendations to local boards upon their request as to the termination, suspension, or nonrenewal of contract of employment of any educator in the employ of such local board (R.S. 17:1339(5)(a)).

4. Make recommendations to the State Board upon its request as to the termination, suspension or nonrenewal of contract of employment of any educator in the employ of the State Board (R.S. 17:1339(5)(a)).

5. Make any other recommendation such as remedial programs for educators that may be necessary (R.S. 17:1339(6)).

6. Make recommendations to the State Board in cases involving the suspension or revocation of certificates, endorsement, license, or permit (R.S. 17:1339(7)).

PART II. PROCEDURE

§3 COMPLAINTS OR GRIEVANCES

A complaint or grievance may be lodged with the Commission by a local board, an educator, a parent or concerned citizen with a vested interest in the subject matter of the complaint or grievance as more fully proscribed in R.S. 17:1339(3). The form or content of a complaint or grievance shall be substantially as follows:

BEFORE THE LOUISIANA
TEACHING PROFESSION'S PRACTICES COMMISSION
IN THE MATTER OF)
)
NAME OF COMPLAINANT)
) COMPLAINT
) (GRIEVANCE)
)

Complainant (here state name) hereby files this complaint (grievance) and in support thereof shows to the Commission the following:

(A plain, concise statement of the facts alleged constituting the substance of the complaint or grievance.)

WHEREFORE, the complainant prays that;

1.

The Commission assume jurisdiction;

2.

Investigate the matter as provided by law;

3.

Conduct a hearing as provided by law;

4.

Determine such findings of fact and conclusions of law as may be appropriate;

5.

Report as to its conclusions of law and findings of fact together with its recommendations to the Louisiana State Board of Elementary and Secondary Education (Parish School Board).

(SIGNATURE OF COMPLAINANT)

§4 FILING

Complaints or grievances must be filed as soon as practicable following an alleged violation.

§5 AMENDMENT

A complaint or grievance or any portion thereof may be amended or withdrawn by the complainant at any time prior to the issuance of the Notice of Hearing and thereafter at the discretion of the hearing committee appointed to hear the case.

§6 PRELIMINARY INQUIRY

Upon the receipt of a complaint or grievance the commission director shall conduct or cause to be conducted a preliminary inquiry into the validity of the complaint to determine whether or not sufficient cause exists for the commission to accept the complaint and begin formal investigation. In the exercise of this authority the staff member may at his discretion hold conferences for the settlement or simplification of the issues involved.

§7 CONFIDENTIAL REPORTS

Until the complaint is accepted by the commission, no person except the involved educator shall be notified, and all records and documents relating to the complaint and preliminary inquiry shall be kept confidential.

§8 PRELIMINARY REPORT

The staff member conducting the preliminary inquiry shall at the conclusion of the inquiry submit a report to the executive committee of the commission which report shall contain:

- a) all obtained factual information relevant to the complaint
- b) a recommendation as to whether or not sufficient cause exists to warrant acceptance of jurisdiction and to commence with formal procedures in the matter.

§9 FORMAL COMPLAINT; DISMISSAL

If the executive committee finds no sufficient cause, it shall by formal vote reject jurisdiction, dismiss the case and notify the parties in the matter accordingly.

§10 FORMAL COMPLAINT; ACCEPTANCE PROCEDURE

If the executive committee does find sufficient cause, it shall by formal vote accept jurisdiction and direct the commission director to institute formal proceedings by first notifying in writing the chief administrative officer of the local board or state board and the educator being investigated, and to otherwise proceed in accordance with the applicable provisions of R.S. 17:1339 et seq., including the following:

At least sixty days in advance of the date of a formal hearing, the commission director shall furnish the educator who is the respondent in the matter

- (a) a copy of the written complaint or grievance;
- (b) a list of the names and last known addresses of all witnesses the commission may or will use at the formal hearing;
- (c) a copy of all documents the commission may or will use at the formal hearing;
- (d) the name and address of the person or persons filing the complaint.

§11 ANSWER

Upon receipt of notice of complaint the respondent shall have at least twenty days to file an answer. Any answer may be filed by mailing to the commission director who shall forward a copy to the complainant. There is no prescribed form for the

answer, but it should contain the name and address of the respondent, a reference to the complaint and specific statements regarding any or all of the allegations in the complaint. The answer should bear the signature of the respondent or his counsel. Such answer shall however not limit in any way the respondent's right to present additional information during the course of the proceedings.

§12 WITNESSES: DOCUMENTATION EVIDENCE

At least thirty days in advance of the date of the formal hearing the respondent shall furnish to the commission

- (a) a list of names and addresses of all witnesses the respondent may or will use at the hearing;
- (b) a copy of all documents the respondent may or will introduce during the course of the hearing.

§13 NOTICE OF HEARING: SUBPOENAS

When a hearing is ordered, the commission director shall set a date, time and place for the hearing to be held at the domicile of the local board employing the respondent. The commission director shall issue formal hearing notice at least fifteen days prior to the date of the proceeding. A form shall be adopted for notification, and notification shall be by certified mail. The commission director shall issue such subpoenas as may be requested by either party in accordance with the provisions of R.S. 17:1339 A(2).

§14 HEARING COMMITTEE: EXAMINER: APPOINTMENT

1. The president of the commission shall appoint three commissioners to hearing committee, one of whom shall be named as chairperson of the committee to preside over the hearing. The president of the commission shall also appoint a hearing examiner who shall assist and counsel with the tribunal on all matters of law. The hearing examiner shall be competent by reason of training and experience. The president shall appoint, upon request, legal counsel to assist and represent the commission director in presenting the case under consideration to the tribunal.

§15 RECORD OF HEARING

The commission shall by stenographic or mechanical device record and preserve all pleadings, testimony, exhibits and all other documents which are part of the commission proceedings, and they shall constitute the exclusive record for the commission recommendations.

§16 AUTHORITY OF THE HEARING COMMITTEE, EXAMINER

The hearing committee or the hearing examiner shall have authority subject to law to:

1. administer oaths and affirmations;
2. rule upon offers of proof and receive evidence;
3. take depositions or cause them to be taken;
4. regulate the course of the hearing;
5. hold conferences for the settlement or simplification of the issues by consent of those involved as principals;
6. dispose of procedural requests or similar matters;
7. enter into the record any recommendations for an order to the commission, the state board or any local board, as the case may be, which recommendations shall include findings of fact, and, if applicable conclusions of law.

§17 DUE PROCESS

The hearing committee shall afford all parties authorized by law to participate in the commission proceeding the right to:

1. present his case of defense by testimony and documentary evidence;
2. submit rebuttal evidence and conduct such cross-examination as may be required for a full and true disclosure of the facts;
3. subpoena witnesses and documents;
4. make offers of settlement or proposals of adjustments;
5. be accompanied, represented and advised by counsel or to represent himself.

§18 EVIDENCE

All hearings before the commission shall be conducted in

accordance with the rules of evidence applicable to civil proceedings in the district courts of this state.

§19 SEPARATION OF FUNCTIONS

No commissioner shall sit as a member of the hearing committee where he participated in the preliminary investigation or where he was an informed party to the investigation preliminary to the commission proceedings.

§20 REPORTS AND PUBLICATIONS OF ADJUDICATION

At the conclusion of the hearing, the hearing committee shall in executive session deliberate upon the findings and the proposed recommendations. In this endeavor, the committee shall be assisted and advised by the hearing examiner on all matters of law. The hearing committee shall by formal vote, reach a decision in the matter and direct the hearing examiner to draft proposed findings of fact, conclusions of law, if applicable, and recommendations for the tribunal's approval. Upon approval, the commission director shall submit to the full commission for consideration and action the drafted documents along with the hearing transcript. The final adjudication by the commission shall be reduced to written form and mailed to the parties and such persons or official boards as the commission shall direct.

PART III.

§21 DEFINITIONS

Except as otherwise clearly indicated by their contexts, the terms in these Rules of Procedure shall have the meanings as ascribed to them in R.S. 17:1333.

§22 RULES GOVERNING

These Rules shall be subject to the statutory provisions of the Louisiana Teaching Profession's Practices Act (R.S. 17:1331 et seq.) To the extent that the Teaching Profession's Practices Act or these Procedural Rules are silent, procedures for hearings and discovery shall be governed by the Louisiana Code of Civil Procedure and the laws of the State of Louisiana.

James H. Perry
Executive Director

RULE

Office of the Governor Division of Administration

The Office of the Governor, Division of Administration, in accordance with Notice of Intent published June 20, 1982, adopted the following Rules for Conduct of Hearing for Protests.

CONDUCT OF HEARING

In accordance with the
LOUISIANA PROCUREMENT CODE
Revised Statutes: Title 39

Definition of Hearing Officer: "The chief procurement officer or his designee shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved person concerning the solicitation or award of a contract. This authority shall be exercised in accordance with regulations." (Title 39:1671 B)

APPLICATION

The following Rules shall apply to all hearings held in accordance with Sections 1601, 1671, 1672 and 1673 of Title 39 of the Louisiana Revised Statutes.

OPENING THE HEARING

1. The hearing officer, before he begins the hearing, should inquire of each person present his name and address (including correct spelling), the capacity on which he appears at the hearing, and whether or not he intends to testify.

2. The hearing officer may then dictate for the record as follows:

"This is a hearing before the Hearing Officer of the Division of Administration, State Purchasing, in reference to the protest of Bid Proposal Number _____ filed by _____. This hearing is being held at _____ before _____, Hearing Officer."

3. The hearing officer may then summarize for the file the nature of the protest. The protest must be in writing.

4. The hearing shall be limited to issues presented in the written protest.

CONDUCT OF HEARING

1. The procedural burden is on the protesting party. It is his duty to establish the complete and accurate facts pertinent to the issue under consideration.

2. The protesting party will be given the opportunity to present his case first. Other parties will have the opportunity to present responses in order determined by the hearing officer.

OATH

1. The hearing shall be informal and oaths are not required.

Testimony of Parties

1. The hearing officer should at all times be in control of the hearing. He may conduct the direct examination of the witnesses. In that examination the hearing officer should allow each party to tell his story in full and in his own way.

2. Only one person should testify at a time. The hearing officer should prevent interruption. When a number of witnesses are to be heard or in mass hearings, one chair may be designated as the witness chair. Individuals will sit in that chair when they testify and will move out of it when they have finished.

3. Questions should be short, simple and direct. Only one question should be asked at a time, and the witness should be required to answer it before proceeding to the next question. Questions should be kept interrogative. If the hearing officer finds himself making a statement to a witness, he should conclude by asking him whether that statement is correct.

4. Witnesses should be instructed to speak slowly and clearly. When a witness uses proper names in his testimony, the hearing officer should ask how they are spelled and should get the witness to identify the individual according to position, i.e., president of the company, attorney, etc. If dates are mentioned, the day, month and year should be given. The hearing officer should ask witnesses to explain form numbers, symbols or technical terms which appear in their testimony.

5. The hearing officer should see to it that a person's testimony is as nearly as possible complete before the next witness is questioned.

6. Under no circumstances should the hearing officer permit harassment or intimidation of witnesses or engage in such practice. The dignity of the tribunal, the decorum of a hearing, and the ordinary courtesy due to parties and witnesses require also that

the hearing officer prevent haranguing, altercations, or any other form of rowdyism during the hearing.

7. In an informal hearing, cross-examination is not allowed. Questions are at the discretion of the hearing officer.

Adjournment and Continuances

1. Whether a hearing shall be adjourned or continued is discretionary with the hearing officer. In exercising that discretion, he should remember that useless delays should be avoided.

2. When the hearing officer adjourns or continues a hearing, he should consult with the parties about fixing a convenient date for further hearing.

3. When adjourning a hearing, the hearing officer should state for the record who requested the adjournment, why it is being granted, and his recommendations for a further hearing.

4. The hearing officer may adjourn the hearing and then continue at some later time the same day.

Conclusion of Hearing

1. In concluding the hearing, the hearing officer should be careful to inform all parties of their right to appeal from his decision. This advice should not, however, take the form of encouraging further appeal.

2. Written notification of the decision shall be made in a timely fashion, in any case that the hearing officer anticipates that decision cannot be rendered within 14 days of receipt of the protest, the hearing officer shall set a date agreeable on the record.

Record of Testimony

1. The record shall be made by a court stenographer with transcripts made available upon request to all interested parties at cost. In addition, the records of previous actions, exhibits, reports and all related papers become part of the record.

2. The hearing officer is responsible for the record. Statements can be made "off the record" only when he so directs. This device should be used only when an informal discussion may clarify the issues and avoid excessive testimony of matters not in dispute. The hearing officer should require the parties to confirm on the record the chief conclusions of the "off the record" discussion.

EVIDENCE

Admission of Evidence

1. Only testimony pertinent to the issues involved in the protests shall be admitted. Technical rules of evidence will not be applicable. Hearsay testimony will be admitted. Hearsay testimony may be considered by the hearing officer in making his decision only to substantiate or corroborate other direct testimony.

2. Hearing officer should receive all pertinent evidence, without regard to statutory rules of evidence. The mere admission of evidence will not entitle it to credence or to use as a basis for the decision. It is the function of the hearing officer to pick out the relevant and probative evidence to be used as a basis for his decision.

3. Hearing Officer should exercise a rule of reason in admitting and using evidence. It should not allow parties to give testimony which is clearly immaterial, irrelevant, personal or slanderous.

4. If a party objects on technical grounds to the admission of pertinent evidence, the hearing officer may note the objection, but should admit the evidence.

5. If offered evidence does not appear directly related to the matters in dispute, the hearing officer may admit it if he thinks it may throw a light on the issues. The true worth of such evidence may be better assessed after all the testimony has been taken. Liberality in admitting evidence also helps to satisfy parties that they have had an opportunity to make a full presentation of their case.

Weight of Evidence

1. In deciding what weight should be allotted to the various items of evidence, the hearing officer may exercise the widest discretion permissible under the law of the state. The hearing officer is best able to assess the credibility of the witnesses who testified before him and to evaluate the probative effect of the evidence. To attempt to limit his action by specific Rules or "presumptions" would only damage his independence without guaranteeing a just decision based on the merits of the case.

2. In general, the hearing officer should be careful to base his decision upon strictly reliable evidence. He should be conscious of the weakness and disadvantages of evidence that might be excluded under the formal Rules and should try to check and corroborate such evidence whenever possible.

3. The hearing officer's freedom from technical Rules of evidence does not release him from the general duty of acquainting the parties with all the evidence which he will consider and to give them an opportunity to explain or refute. This opportunity is an essential step in evaluating evidence. Review of evidence by the opposing parties will help the hearing officer to determine what weight it should be given.

Exhibits

1. The hearing officer shall admit, regardless of objection, all papers, books, and records submitted which have a bearing upon the issues of the protest. As in the case of other evidence, it is for the hearing officer to determine the effect to be given them.

2. The hearing officer should number all exhibits consecutively, and he should read the number and description of the exhibit into the record. (For example, the hearing officer may state for the record: "The claimant hands me a letter dated June 20, 1980, written to him and signed by Elmer Brown, President, Q Steel Company. This is numbered exhibit number one.")

3. When documentary evidence presented by the parties cannot be left with the hearing officer to be included in the file, then copies should be made. If such evidence consists of short letters, records, entries contained in ledgers, or the like, the hearing officer may find it advisable to dictate it into the record in its entirety.

APPEALS

Decision

1. The basis for appeal is stated in the law as follows:
"R.S. Title 39:1681 Administrative Appeals Procedures - Authority of the Commissioner of Administration. The Commissioner of Administration shall have the authority to review and determine any appeal by an aggrieved person from a determination by the State Director of Purchasing or his designee which is authorized by R.S. 39:1671, R.S. 1672, or R.S. 39:1673."

Form of Decision

1. The opening paragraph should give a brief resume' of the protest, giving the date the protest was filed, the decision and the basis for that decision. (With minutes of protest hearing attached.)

2. The second paragraph should show the date, time and place the hearing was held, and who appeared at the hearing.

Disposition of Decision and File

1. Under an appeal, additional evidence may be submitted to the Commissioner of Administration, only if relevant and not obtainable at the hearing.

2. The Commissioner of Administration decides whether a future hearing is necessary.

E. L. Henry
Commissioner

RULE

Office of the Governor Division of Administration

The Office of the Governor, Division of Administration, in accordance with Notice of Intent published June 20, 1982, adopted the following Purchasing Rules and Regulations.

PURCHASING RULES AND REGULATIONS

In accordance with the
LOUISIANA PROCUREMENT CODE
Revised Statutes: Title 39:1594-1736

SECTION I COMPETITIVE SEALED BIDDING R.S. 39:1594

A. Content of the Invitation for Bids

1. **Invitations for Bids.** No purchases where the estimated cost is over \$5,000 shall be made except by advertising in accordance with R.S. 39:1594 and sending out written invitations for bids to at least eight bona fide, qualified bidders and where feasible, use should be made of State Purchasing's computerized vendor list. All advertisements or written invitations for bids shall contain general descriptions of the classes of commodities on which bids are wanted and shall state:

- a. The date and time when bids will be received, opened and publicly read.
- b. The names and locations of the Louisiana agencies for which the purchases are to be made.
- c. Where and how specifications and bid forms may be obtained.

The invitation for bids shall be submitted on standard forms (Form DA-101 or FACS-101). All pertinent information shall be full and complete including specifications, quantities, units, packaging and number of containers to the case.

2. **Content.** The invitation for bids shall include the following:

- a. The purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and
- b. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

3. **Incorporation by Reference.** The invitation for bids may incorporate documents by reference provided that the invitation for bids specifies where such documents can be obtained.

4. **Special Conditions.** If any special conditions are to apply to a particular contract they shall be included in the invitation for bids.

5. **Types of Purchases** - Purchases are made in two different ways:

- a. Open Market Purchases initiated by a requisition and consummated with the issuance of a purchase order, after bidding.
- b. Contract Purchases - after bidding, purchase contracts are awarded to cover state requirements over a period of time at a

specified and agreed upon price. Purchases are made by issuance of a release order against the contract.

B. Bidding Time

Bidding time is the period of time between the date of distribution of the invitation for bids and the date set for opening of bids. In each case bidding time will be set to provide bidders a reasonable time to prepare their bids. A minimum of 21 days shall be provided unless the chief procurement officer or his designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days, except as provided in R.S. 39:1598 and Section IV of these Rules and Regulations.

C. Addenda Modifying Plans and Specifications

Addenda modifying plans and specifications shall not be issued within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended exactly one week, without the requirement of readvertising.

D. Bidder Submissions

1. **Bid Forms.** All written bids, unless otherwise provided for, must be submitted on, and in accordance with, forms provided, properly signed with ink. Bid prices shall be typewritten or in ink. Bids must be received at the address specified in the invitation for bids prior to bid opening time in order to be considered. Telephone quotations for formal bids will not be accepted. Telegraphic alterations to bids received before bid opening time will be considered provided formal bid and written telegram have been received and time-stamped before bid opening time.

2. **Special Envelope.** All bids should be submitted in special bid envelope furnished for that purpose. Bids presented in other than special bid envelope may not be considered. In the event bid contains bulky subject material, the special bid envelope must be firmly affixed to the mailing envelope.

3. Bid Samples and Descriptive Literature.

a. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, packaging, or operation of an item which enables Louisiana to consider whether the item meets its specifications and needs.

b. Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

c. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

d. The invitation for bids shall state whether bid samples or descriptive literature should be submitted. Regardless of any attempt by a bidder to condition the bid, unsolicited bid samples or descriptive literature are submitted at the bidder's risk, will not be examined or tested, and will not be deemed to vary any of the provisions of the invitation for bids.

e. When required, samples must be received not later than the time set or specified for bid opening, free of expense to

Louisiana, marked plainly with name and address of bidder, bid number and opening date of bid, also memorandum indicating whether bidder desires return of sample or samples. Providing they have not been used or made useless through tests, when requested, samples submitted will be returned at bidder's risk and expense. All samples submitted are subject to mutilation as the result of tests by the agency. Failure to submit samples when requested will result in disqualification or nonconsideration of bid.

f. The invitation for bids shall include any special conditions regarding the return or the purchase of samples.

4. **Conditional Bids.** Qualified bids are subject to rejection in whole or in part.

5. **All or Part.** Bids may be considered for all or part of total quantities.

6. **Bids Binding.** Unless otherwise specified all formal bids shall be binding for a minimum of 30 days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the State may award to this bidder after this period has expired or the period as specified in the formal bid.

7. **Net Prices.** Bid prices, unless otherwise specified, must be net including transportation and handling charges prepaid by contractor to destination.

8. **Taxes.** All bids and quotations shall be submitted exclusive of all federal taxes. Tax exemption certificate will be furnished when necessary. Louisiana state sales tax should not be included in the bid price unless otherwise specified in the invitation for bids. Same shall be added to invoice and will be paid by the state agency. Other applicable State taxes may be included in bid price.

E. Bidder Lists

1. **Purpose.** Bidder lists may be compiled to provide Louisiana with the names of businesses that may be interested in competing for various types of Louisiana contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a Louisiana contract.

2. **Public Availability.** Names and addresses on bidder lists shall be available for public inspection provided these lists shall not be used for promotional, commercial, or marketing purposes.

3. If a business on the bidders list does not respond to six consecutive invitation for bids, its name may be removed from the bidders list.

F. Pre-Bid Conferences

Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation for bids. The conference should be held long enough after the invitation for bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the invitation for bids unless a change is made by written amendment as provided in Subsection F (Amendments to Invitations for Bids) and the invitation for bids and the notice of the pre-bid conference shall so provide.

G. Amendments to Invitation for Bids

1. **Form.** Amendments to invitation for bids shall be identified as such. The amendment shall reference the portions of the invitation for bids it amends.

2. **Distribution.** Amendments shall be sent to all prospective bidders known to have received an invitation for bids.

3. **Timeliness.** Amendments shall be distributed not later than three working days before bid opening.

H. Pre-Opening Modification or Withdrawal of Bids

1. **Procedure.** Bids may be modified or withdrawn by written or telegraphic notice received at the address designated in

the invitation for bids prior to the time set for bid opening.

2. **Withdrawal of Bids.** A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening. If a bidder withdraws a bid, all bid documents shall remain the property of the state.

3. **Disposition of Bid Security.** Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

4. **Records.** All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

I. Late Bids

Formal bids, amendments thereto, received at the address designated in the invitation for bids after time specified for bid opening will not be considered, whether delayed in the mail or for any other causes whatsoever.

J. Receipt, Opening and Recording of Bids

1. **Receipt.** Upon receipt, all bids and modifications will be time-stamped but not opened. They shall be stored in a secure place until bid opening time.

2. **Opening and Recording.** Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the invitation for bids. The names of the bidders, the bid price, and such other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise made available and shall be recorded. The opened bids shall be available for public inspection, in accordance with Chapter I, Title 44.

3. **Postponed Openings; Exceptions.** In the event that bids are scheduled to be opened on a day that is a federal holiday or if the Governor proclaims a previously unscheduled non-working day, bids scheduled to be opened on that day should be opened on the next working day at the same address and time specified in the invitation for bids.

K. Mistakes in Bids

1. **Correction or Withdrawal of Bids.** Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under these regulations. Carelessness in quoting prices or in preparation of bid will not relieve the bidder. Erasures, write-overs, or corrections in bids should be explained over bidder's signature.

2. Mistakes Discovered After Opening.

a. **Minor Informalities.** Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The chief procurement officer may waive such informalities or allow the bidder to correct them depending on which is in the best interest of Louisiana. Examples include the failure of a bidder to:

(1) Return the number of signed bids required by the invitation for bids;

(2) Sign the bid, but only if the unsigned bid is accompanied by other signed material indicating the bidder's intent to be bound.

(3) Sign or initial explanation of erasures, writeovers, or corrections in bids.

b. **Mistakes Where Intended Bid is Evident.** If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetic-

al errors. When an error is made in extending total prices, the unit bid price will govern. Under no circumstances will a unit bid price be altered or corrected.

L. Bid Guaranty and Bond

1. **Bid Guaranty.** When specified in the invitation for bids or advertisement for bids, a bond or certified check, made payable to the Department of the Treasury of the state of Louisiana, in the amount of five percent of the bid, must accompany each bid.

2. **Performance Bond.** When required, the successful bidder must furnish a satisfactory bond of a surety company licensed to do business in Louisiana with all fees current, in a sum equal to the amount and in accordance with the specifications in the invitation for bids.

M. General Guaranty

Contractor agrees to:

1. Save the state, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented, invention, article or appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee, or licensee.

2. Protect the state against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit.

3. Furnish adequate protection against damage to all work and to repair damages of any kind, to the building or equipment, to his own work or to the work of other contractors, for which he or his workmen are responsible.

4. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, Rules and regulations of the city or town in which the installation is to be made, and of the state of Louisiana.

5. Protect the state from loss in case of accident or fire.

N. Bid Evaluation and Award

1. **General.** The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids." See R.S. 39:1594 (G) (Competitive Sealed Bidding, Award) of the Louisiana Procurement Code. The invitation for bids shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the invitation for bids.

2. **Responsibility and Responsiveness.** Responsibility of prospective contractors is covered by Section VI (Responsibility and Prequalification) of these regulations. Responsiveness of bids is covered by R.S. 39:1591 of the Louisiana Procurement Code which defines "responsive bidder" as "a person who has submitted a bid which conforms in all material respects to the invitation for bids."

3. **Product Acceptability.** The invitation for bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

- a. Inspection or testing of a product prior to award for such characteristics as quality or workmanship;
- b. Examination of such elements as appearance, finish, taste, or feel; or
- c. Other examinations to determine whether the product conforms with any other purchase description requirements.

The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the invitation for bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

4. **Determination of Lowest Bidder.** Following determination of product acceptability as set forth in Subsection M,3 of this Section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to Louisiana in accordance with the evaluation criteria set forth in the invitation for bids. Only objectively measurable criteria which are set forth in the invitation for bids shall be applied in determining the lowest bidder. Examples of such criteria include but are not limited to transportation cost, and ownership or life-cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible such evaluation factors shall:

- a. Be reasonable estimates based upon information Louisiana has available concerning future use; and
- b. Treat all bids equitably.

5. **Restrictions.** A contract may not be awarded to a bidder submitting a higher quality item than that required by the invitation for bids unless the bid is also the lowest bid as determined under Subsection A of this Section. Further, this Section does not permit negotiations with any bidder.

O. Tie Bids.

1. **Definition.** Tie bids are low responsive bids from responsible bidders that are identical in price and which meet all the requirements and criteria set forth in the invitation for bids.

2. **Award.** In the discretion of the chief procurement officer or the head of a purchasing agency, award shall be made in any manner that will discourage tie bids. A written determination justifying the manner of award must be made.

3. **Resident Business Preference.** In state contracts awarded by competitive sealed bidding, resident businesses shall be preferred to nonresident businesses where there is a tie bid and where there will be no sacrifice or loss in quality.

P. Awarding of Bids

1. **Rejection of Bids.** The right is reserved to reject any or all bids in whole or in part, and to award by items, parts of items, or by any group of items specified. Also the right is reserved to waive technical defects when the best interest of the state thereby will be served.

2. **Increase or Decrease in Quantities.** Unless otherwise specified in the invitation for open-market bids, the right is reserved to increase or decrease the quantities of any item or items shown in the bid by 10 percent.

3. **Information on Bid Results.** Information pertaining to results of bids may be secured by visiting the agency daily, except weekends and holidays, during normal working hours.

4. Cash Discounts.

(a) Open Market Bids - Cash discounts will be considered in determining awards. Time shall be counted from date of delivery at destination or from date correct invoice is received from contractor, if latter date is later than date of delivery. A cash discount for less than 30 days will not be considered in making an award.

(b) Contracts - Cash discounts will be accepted and taken but will not be considered in determining awards. Time shall be counted as indicated in Section (a) above.

5. **Availability of Funds.** A contract shall be deemed executory only to the extent of appropriations available to each agency for the purchase of such articles.

6. **Assignments.** No contract or purchase order may be assigned, sub-let or transferred without written consent of the commissioner.

7. **All or None Bids.** A business may limit a bid on acceptance of the whole bid, whereupon the state shall not thereafter reject part of such bid and award on the remainder. An award shall be made to the "all or none" bid only if it is the overall low bid on all items, or those items bid.

"Overall low bid shall be that bid whose total bid, including all items bid, is the lowest dollar amount; be it an individual's bid or

a computation of all low bids on individual items of those bids that are not conditioned "all or none".

(a) **Open Market Purchases.** Purchase orders. When multiple items are contained on any solicitation and the state chooses to make an item or group award, in order to save the state the cost of issuing a different purchase order, an award may be made to a vendor who is not low bidder on that item if the total bid for said item is \$500 or less and the difference between the low bidder and the bidder receiving the award is \$25 or less.

An "all or none" bid may be awarded in a similar fashion, to save the state the cost of issuing another purchase order, if the difference in the overall cost between the low vendor or vendors is \$25 or less and no single item exceeds \$500.

Q. Documentation of Award

Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file.

R. Publicizing Awards

Written notice of award shall be sent to the successful bidder. In procurements over \$20,000, each unsuccessful bidder shall be notified of the award provided that he submitted with his bid a self-addressed stamped envelope requesting this information. Notice of award shall be made available to the public.

S. Deliveries

1. **Interpretation.** Deliveries must be made as directed when not in conflict with bid. If no delivery instruction appears on an order it will be interpreted to mean prompt delivery required. The decision of the chief procurement officer as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of commodities shall rest with the contractor.

2. **Extension of Time.** Any extension of time on delivery as specified must be in writing by the chief procurement officer with such extension applicable only to the particular item or shipment affected.

3. **Additional Charges.** No delivery charges shall be added to invoices except when express delivery is substituted on order for less expensive methods specified in contract. In such cases, when requested by the agency, difference between freight or mail and express charges may be added to the invoice.

4. **Weight Checking.** Deliveries shall be subject to reweighing over official scales designated by the state. Payments shall be made on the basis of net weight of materials delivered.

5. **Rejection Deliveries, Payment for Used Portion.** Payment for any used portion of delivery found (as a result of tests or otherwise) to be inferior to specifications or contract requirements, will be made by the state on an adjusted price basis.

6. **Contracts - Reduction in Prices.** All state of Louisiana agencies will receive the benefit of any reduction in price on any unshipped portion of any commodity contract. In the event the contractor reduces his price to any one state agency or political subdivision of the state, or makes a general reduction in price, all state agencies being supplied under these contracts are automatically entitled to the lower price; and the contractor shall rebate to all state agencies in a proportional amount. Also, in the event the total purchases of all state agencies of any items covered by the contract entitle the state to a greater quantity discount, the state shall receive the quantity discount appropriate to the total amount of actual purchases made by all state agencies. All price reductions made by any supplier under these contracts, designed for the benefit of any state agency, shall be made directly to Purchasing, Division of Administration. Also, the state of Louisiana agencies shall report any offer of a reduction in contract price to Purchasing, and the right is reserved to accept or reject such offers; but the best interest of the state as a whole will always be considered.

7. **Ordering Procedure.** The Division of Administration, or any state of Louisiana agency, may issue release orders for

materials and supplies required by them under any commodity contract. In some instances only Purchasing, Division of Administration may issue a purchase order where stated quantities are purchased. Such purchase orders will state the item, or items, and the quantity of each, required for the state agency's needs, as well as all other pertinent data necessary to assist the contractor to make prompt delivery. In no event shall any deliveries of any kind be made without proper authorization.

8. **Invoices.** Upon delivery of each order and its acceptance by the state agency, the supplier shall bill the state agency by means of invoice and the invoice shall make reference to the purchase order number, contract award number, and/or purchase requisition number. All invoices shall be submitted by the supplier on the supplier's own invoice forms, in duplicate, directly to the accounting office of the state agency as required by the purchase order. Invoices shall have the state sales tax added and the same shall be paid by the state agency.

9. **Payment.** After receipt and acceptance of order and receipt of valid invoice, payment will be made by the state agency within 30 days. Payment will be made at the respective unit prices shown on the bid or price schedule, less any percentages off list price, less federal excise tax, less cash discount earned.

SECTION II
SMALL PURCHASES
R.S. 39:1596

Any procurement not exceeding the amount established by executive order of the Governor may be made in accordance with Small Purchase Procedures prescribed by such Executive Order, except that procurement requirements shall not be artificially divided so as to constitute a Small Purchase under this Section.

See appropriate Executive Order entitled "Small Purchases."

SECTION III
SOLE SOURCE PROCUREMENT
R.S. 39:1597

A. Application

The provisions shall apply to all sole source procurements unless emergency conditions exist as defined in Section IV (Emergency Procurements) of these regulations.

B. Statutory Provision

R.S. 39:1597 (Sole Source Procurement) of the Louisiana Procurement Code provides in pertinent part: "A contract may be awarded for a required supply, service, or major repair without competition when, under regulations, the chief procurement officer or his designee above the level of procurement officer determines in writing that there is only one source for the required supply, service, or major repair item."

C. Conditions for Use of Sole Source Procurement

Sole source procurement is permissible only if a requirement is available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. Examples of circumstances which could necessitate sole source procurement are:

1. Where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
2. Where a sole supplier's item is needed for trial use or testing;
3. Procurement of items for resale;
4. Procurement of public utility services.
5. Registered breeding stock may be purchased on a selective basis without bids, after approval as to price and quality of such stock by the Commissioner of Agriculture and a specialist of the department of Louisiana State University to be designated by the head of the department.

6. Other livestock may be purchased on a selective basis without bids after approval as to health by the Commissioner of Agriculture, provided that the cost per head does not exceed \$1,000; any livestock purchases above this amount must have prior approval of the chief procurement officer.

The determination as to whether a procurement shall be made as a sole source shall be made by the chief procurement officer, head of a purchasing agency, or designee of such officer. Such determination shall be in writing. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

D. Purchase of Antiques, Used or Demonstrator Equipment

If it should become necessary for a state agency to secure antiques, used or demonstrator equipment or supplies due to inability to secure new equipment or because of absolute lack of funds, the chief procurement officer will give such consideration only if supplied with the following data:

1. Requisition fully describing equipment.
2. Signed bid or bids secured by agency.
3. If only one bid secured, statement as to why there is no competition.
4. Letter or signed statement from bidder or bidders guaranteeing quality and condition of merchandise offered.
5. Letter from agency head justifying why it is necessary to purchase used merchandise, and the approximate cost of same if purchased new.
6. Letter from qualified, responsible person connected with state agency, stating he has personally examined equipment or supplies, giving his opinion as to condition and value.
7. Appraisals from one or more disinterested experts who are familiar with the type of equipment, giving their opinion as to price, value and condition.

E. Record of Sole Source Procurements

A record of sole source procurements shall be maintained that lists:

1. Each contractor's name;
2. The amount and type of each contract;
3. A listing of the supplies, services, or major repairs procured under each contract; and
4. The identification number of each contract file.

The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

SECTION IV EMERGENCY PROCUREMENTS R.S. 39:1598

A. Application

The provisions of this Section apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

B. Definition of Emergency Conditions

An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the commissioner of administration. The existence of such condition creates an immediate and serious need for supplies, services, or major repairs that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. The functioning of Louisiana government;
2. The preservation or protection of property; or
3. The health or safety of any person.

C. Scope of Emergency Procurements

Emergency procurement shall be limited to only those supplies, services, or major repair items necessary to meet the emergency.

D. Authority to Make Emergency Procurements

Any Louisiana agency may make emergency procurements of up to \$5,000 when an emergency condition arises and the need cannot be met through normal procurement methods, provided that, whenever practical, approval by the procurement officer of the Louisiana agency or the chief procurement officer shall be obtained prior to the procurement. Prior to all such emergency procurements of \$5,000 or more, the chief procurement officer, head of a Louisiana agency, or either officer's designee shall approve the procurement.

E. Source Selection Methods

1. **General.** The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained. Any offer accepted shall be confirmed in writing.

2. **After Unsuccessful Competitive Sealed Bidding.** Competitive sealed bidding is unsuccessful when bids received pursuant to an invitation for bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

F. Determination and Record of Emergency Procurement

1. **Determination.** The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of the particular contractor. Such determination shall be sent promptly to the chief procurement officer.

2. **Record.** A record of emergency procurements shall be maintained that lists:

- a. Each contractor's name;
- b. The amount and type of each contract;
- c. A listing of the supplies, services, or major repairs procured under each contract; and
- d. The identification number of each contract file.

The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

SECTION V CANCELLATION OF SOLICITATIONS; REJECTION OF BIDS OR PROPOSALS R.S. 39:1599

A. Scope

The provisions of this Section shall govern the cancellation of solicitations issued by Louisiana and rejections of bids or proposals in whole or in part.

B. Policy

Solicitations should only be issued when there is a funded, valid need unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of Louisiana time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be cancelled only when there are cogent and compelling reasons to believe it is in Louisiana's best interests.

C. Cancellation of Solicitations - Notice

Each solicitation issued by Louisiana shall state that the