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# Executive Orders

## EXECUTIVE ORDER DCT 80-7

WHEREAS, due to natural and incidental man-made catastrophes and disaster which have resulted and will continue to result from the torrential rains, highwater levels and flooding of certain areas of the State of Louisiana, causing, or threatening to cause widespread and severe damage and injury, including loss of life or property; and

WHEREAS, persons and property in and near False River in Pointe Coupee Parish may be victimized or threatened by such catastrophes and disasters; and

WHEREAS, the seriousness of the current emergency has been publicly announced by the Police Jury of Pointe Coupee Parish, Louisiana with the request that specific emergency action be taken; and

WHEREAS, when such conditions exist and valid requests are made to him, it is necessary and appropriate, under the constitution and laws of this state, for the Governor to take such action as he considers necessary and appropriate to protect lives and property to the end that existing hazards and dangers will be decreased and hopefully eliminated; and

WHEREAS, power boat navigation on False River during this time of crisis can only serve to cause damage and injury and to maintain the level of or to increase existing hazards and danger to life and property; and

WHEREAS, the Chief Executive of Louisiana is required to act in the public interest in times of emergency, catastrophe, and disaster,

NOW, THEREFORE, by virtue of the powers vested in me to preserve law and order and to curtail and reduce the injury and damage to persons and property resulting from catastrophe and disaster, I, DAVID C. TREEN, acting under the authority granted to me and the duties imposed upon me by Article 4, Section 5(A) and (J) of the Louisiana Constitution of 1974, Act 636 of 1974 as amended by Section 1 of Act 645 of 1975 (The Louisiana Disaster Act of 1974), do hereby, and for an indefinite period not to exceed 30 days from this date, order and proclaim that power boat navigation on False River be and the same is hereby prohibited.

IN WITNESS WHEREOF, I have hereunto set my hand officialy and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 17th day of May, A.D., 1980.

David C. Treen  
Governor of Louisiana

## EXECUTIVE ORDER DCT 80-8

WHEREAS, the State of Louisiana recognizes the importance of its rural areas to the state's economic, social and cultural well-being; and

WHEREAS, these rural areas are suffering population decline, economic stagnation and increased demand for government services; and

WHEREAS, state, federal, and local governments and agencies are vitally interested in maintaining and developing rural areas of Louisiana;

NOW, THEREFORE, I, DAVID C. TREEN, Governor of the State of Louisiana, by virtue of the power vested in me by the constitution and the laws of this state, do hereby create a Gov-

ernor's Rural Development Council which will allow public officials, government agencies and private agencies to assemble and develop coordinated programs for rural development.

BE IT FURTHER RESOLVED, that the Governor's Rural Development Council shall propose means to coordinate state, federal and local governmental resources with private resources to develop rural areas of Louisiana. The activities of the Council shall include but not be limited to:

Research on rural conditions and problems and governmental actions to alleviate these conditions;

Development of intergovernmental programs for the development of rural areas that will allow for the more efficient use of public resources;

Provide advice to the Governor and the Legislature on the need for and suggested composition of a state rural development policy;

Formation of subcommittees composed of Council members and other appropriate public and private interests to impact on specific rural development problems.

BE IT FURTHER RESOLVED, that said Council shall be composed of six members to be appointed by the Governor one from each of the following organizations: 1) the Louisiana Association of Planning and Development Districts, 2) the Louisiana Farm Bureau, 3) the Louisiana Municipal Association, 4) the Police Jury Association of Louisiana, 5) the Louisiana Ozarks Regional Commission, 6) a representative of commercial agribusiness.

The Louisiana Commissioner of Agriculture; the Secretary of the Louisiana Departments of Commerce, Health and Human Resources, Natural Resources, Transportation and Development, Urban and Community Affairs, and Wildlife and Fisheries; the Director of the Louisiana Cooperative Extension Service and the Executive Director of the Louisiana State Planning Office will serve as ex-officio members representing state agencies.

The State Executive Director, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture; State Director, Farmers Home Administration, U.S. Department of Agriculture; the State Conservationist, Soil Conservation Service, U.S. Department of Agriculture; the Louisiana Economic Development Representative, Economic Development Administration, U.S. Department of Commerce; the District Engineer, New Orleans District, U.S. Army Corps of Engineers; and the Regional Director, Federal Region VI, U.S. Department of Housing and Urban Development will serve as ex-officio members representing federal agencies.

The Louisiana Congressional Delegation is requested to designate a representative to this Council.

The Louisiana Senate and the Louisiana House of Representatives are each requested to designate a representative to this Council.

BE IT FURTHER RESOLVED, that the Governor's Rural Development Council shall elect a chairman from among its members and meet at the discretion of its members but not less often than once each quarter.

IN WITNESS WHEREOF, I have hereunto set my hand officialy and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 27th day of May, A.D., 1980.

David C. Treen  
Governor of Louisiana

## EXECUTIVE ORDER DCT 80-9

WHEREAS, by Public Law 94-482 Congress established the National Occupational Information Coordinating Committee for the purposes of improving coordination among vocational educa-

tion, vocational rehabilitation, and manpower training programs, and to develop a source of information which will facilitate the accurate analysis and prediction of occupational supply and demand; and

WHEREAS, the Congressional Act mandates each state receiving funds under the Comprehensive Employment and Training Act of 1973 (CETA) to participate in this occupational information program, and to form a State Occupational Information Coordinating Committee, and to create a coordinated system of employment information; and

WHEREAS, in order to provide more realistic employment opportunities and to generate information necessary to achieve the related but distinct objectives of vocational, educational, and rehabilitative programs, there should be developed uniform definitions of employment terminology, standards for estimating jobs, standards for estimating the labor force, and standard occupational classifications; and

WHEREAS, all of the above are national goals which can best be accomplished by full cooperation and coordination of efforts between the Federal government and the governments of the participating states; and

WHEREAS, this Administration is aware of the urgent need to manage public vocational programs in the most efficient manner and to provide a system of common information so as to contribute to the development of our state's economy; and

WHEREAS, the Congress has appropriated funds to initiate a coordinated occupational information system; and

WHEREAS, by participation in this program the State of Louisiana will realize many benefits, including improved governmental response to the needs of employers and job seekers, more effective management, more reliable occupational information for the use and benefit of public entities and private enterprise alike, more clearly identified employment opportunities, and improved reporting on the labor market.

NOW, THEREFORE, I, DAVID C. TREEN, Governor of the State of Louisiana, by the power and authority vested in me by the Constitution and the laws of the State, do hereby create and establish in the Department of Labor the State Occupational Information Coordinating Committee. Fiscal responsibility shall be vested in the State Department of Labor which embraces the Office of Employment Security. The Committee shall be an interagency public body composed of the Assistant Secretary of the Office of Employment Security, Department of Labor; the Assistant Secretary of the Office of Rehabilitation Services, Department of Health and Human Resources; the Director of the State Employment and Training Council; and a representative of the Vocational-Technical Education Committee of the State Board of Elementary and Secondary Education (The State Board of Vocational Education).

The Committee shall:

1) Create an occupational information system for the State of Louisiana. This system, shall be housed in the Department of Labor, shall serve the State's programs in vocational education, vocational rehabilitation, manpower training, and economic development.

2) Execute an interagency agreement for the purpose of coordinating a program of occupational information.

3) Develop a delivery system which will provide occupational and educational information to be used for career choice and job search purposes.

4) Develop information on labor demand and supply, using uniform employment definitions, standard estimation and projection procedures, and standard occupational classifications.

5) Upon request, provide State agencies, members of the Legislature, or private citizens with accurate, pertinent information.

6) Submit an annual plan of operation to the Louisiana Department of Labor and the National Occupational Information Coordinating Committee.

BE IT FURTHER PROVIDED, that only the four statutory members as established by the Congressional Act, who are the administrators of the State Manpower Services, Vocational Education, Vocational Rehabilitation, and Employment Security Programs, or their delegated representatives, may decide any matter concerning the expenditure of funds.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 27th day of May, A.D., 1980.

David C. Treen  
Governor of Louisiana

### EXECUTIVE ORDER DCT 80-10

WHEREAS, the State of Louisiana's telecommunications services represents a multimillion dollar annual expenditure; and

WHEREAS, modern day telecommunications services is one of the most effective tools of management; and

WHEREAS, consolidated management of the state's telecommunications systems can result in a significant cost savings to state government; and

WHEREAS, consolidated purchase lease and/or a procurement of telecommunication equipment, circuits, lines and instruments can assure that a uniform and high quality of telecommunication service can be provided to all of state government; and

WHEREAS, consolidated billing for service can allow the state to take advantage of the use of high volume, low cost, intra and inter state private line telecommunication circuits and switching systems; and

WHEREAS, emerging new technologies in telecommunication services must be investigated and integrated into the state telecommunication system when applicable,

NOW, THEREFORE, I, DAVID C. TREEN, Governor of the State of Louisiana, by virtue of the authority vested in me under the Constitution and laws of this State, specifically Louisiana Revised Statutes, Title 39, do hereby establish and affirm the duties and responsibilities of the Office of Telecommunications Management, a subdivision of the Division of Administration, as herein after prescribed.

The Office shall establish, manage and operate, through either state ownership or commercial leasing, telecommunication systems and services as they affect management and operation of state government. Telecommunications system or service as defined in this order, shall mean the equipment, personnel, policies and means necessary to provide:

- 1) Central telephone systems and telephone networks,
- 2) Teleprocessing and data transmission networks,
- 3) Teletype and facsimile networks,
- 4) Satellite services,
- 5) Radio paging services,
- 6) Mobile telephone service,
- 7) Intercom and electro-mechanical paging system,
- 8) Any and all systems based on emerging and future telecommunication technologies, and
- 9) Any other telecommunication service or activity mandated to the agency by statute, rule, regulation or order.

State agencies as referred to in this order are those state agencies defined in Louisiana Revised Statutes, Title 39.

The Office shall act as the sole centralized customer for the acquisition, billing and record keeping of all leased telecommunication systems or services provided to state agencies.

The Office, under the authority of the Centrex Revolving Fund, shall charge respective user agencies for their proportionate cost of the installation, maintenance and operation of the telecommunications systems and services, including the operation of the Office.

# Emergency Rules

The Office shall develop coordinated telecommunications systems or services within and among all state agencies, departments and institutions, and require, where appropriate cooperative utilization of telecommunication equipment and services by aggregating users.

The Office shall review, coordinate, approve or disapprove all requests by state agencies for the procurement, through purchase or contract for lease, of telecommunications systems or services including telecommunication proposals, studies and telecommunication consultation contracts.

The Office shall establish and define telecommunications systems and services specifications and designs so as to assure compatibility of telecommunication systems and services within state government.

The Office shall provide a continuous comprehensive analysis and inventory of telecommunications costs, facilities, systems and personnel within state government.

The Office shall promote, coordinate and/or assist in the design and engineering of emergency telecommunications systems, including but not limited to "911" service, emergency medical services and other emergency telecommunications services.

The Office shall advise and provide consultation to agencies and institutions of telecommunications management planning and related matters and provide training to users within state government in telecommunications technology and system use.

The Office shall develop policies, procedures and long range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems, and to base such policies or current information about state telecommunications activities in relation to the full range of emerging technologies.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 2nd day of June, A.D., 1980.

David C. Treen  
Governor of Louisiana

## EXECUTIVE ORDER DCT 80-11

WHEREAS, Executive Order No. 80-7, issued the 17th day of May, 1980, ordered and proclaimed power boat navigation on False River to be prohibited; and

WHEREAS, such Executive Order was issued because power boat navigation on False River at that time could have caused damage and injury to life and property; and

WHEREAS, the threat of danger has passed and such emergency condition no longer exists,

NOW, THEREFORE, by the powers vested in me, and acting under the authority granted to me and the duties imposed upon me by Article 4, Section 5 (A) and (J) of the Louisiana Constitution of 1974, and Act 636 of 1974, as amended by Section 1 of Act 645 of 1975 (The Louisiana Disaster Act of 1974), I, DAVID C. TREEN, Governor of the State of Louisiana, do hereby cancel and rescind Executive Order No. 80-7, ending the prohibition of power boat navigation on False River.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this the 6th day of June, A.D., 1980.

David C. Treen  
Governor of Louisiana

## DECLARATION OF EMERGENCY

### Board of Elementary and Secondary Education

The State Board of Elementary and Secondary Education, at its meeting on May 22, 1980, exercised those powers conferred by the emergency provisions of the Administrative Procedures Act R.S. 49:953B in order to protect the welfare of the handicapped children of the State of Louisiana.

The Board adopted a policy change regarding employment of school psychologists as presented by the State Department of Education. This policy change was adopted for temporary implementation to expire as of January 1, 1981, in order that persons meeting these adopted requirements could perform evaluations this summer. Otherwise evaluations could be delayed because of limited personnel. This change would permit evaluations to be conducted quicker to better serve the needs of the handicapped children of the State of Louisiana.

### Policy Change Regarding Employment of School Psychologists

A school psychologist or school psychological assistant certified under the provisions of the Board of Elementary and Secondary Education established in Bulletin 746 and who meets the following criteria shall be considered as meeting the requirements in Section 432 (d) of the regulations implementing Act 754 for an educational consultant on each multidisciplinary team.

1. At least three semester hours in psycho-educational assessment, educational diagnosis, or academic assessment which includes the administration, scoring and interpretation of academic achievement tests.

2. At least three semester hours in the remediation of reading or learning problems, task analysis, curriculum development, or diagnostic-prescriptive instruction.

3. Three semester hours in course work covering behavioral intervention strategies in the classroom.

4. At least one year of experience conducting psycho-educational evaluations and providing recommendations for educational interventions. This experience requirement may be satisfied by either:

- a. Supervised internship or externship experience of one school year (minimum nine months or one thousand clock hours) or the equivalent, the successful completion of which is verified by the university or the individual's transcripts, or;

- b. One year of successful experience as a school psychologist in a public or private school setting providing services which included psycho-educational assessment and recommendations for educational interventions, such duties being a regular aspect of the school psychologists job description. This experience shall be documented by the job description and verified in writing by the individual's immediate supervisor for the required year.

- c. A combination of documented university practicum or internship experience and at least six months work experience, the combination of which covers at least a full school year, and which is verified as in (a) and (b) above.

When a psychologist as described above is used on the multidisciplinary team for a child, that student's teacher (or if on secondary level counselor or chosen "lead teacher") shall be a full member of that evaluation team and must be present at the evaluation staffing and sign the report as a full member of the multidiscipline team.

These criteria shall be in effect until new certification requirements for school psychologists are revised in accordance with the intent of this policy. Persons who qualify under the provisions of this policy shall retain their qualified status subject to certification renewal requirements to be specified in the new certification re-

quirements for school psychologists.

Rationale: The intent of P.L. 94-142 and Act 754 with respect to evaluations conducted by multidisciplinary appraisal teams is to ensure appropriate and valid evaluations for placement and instructional decisions for suspected handicapped children.

Certain evaluation areas (e.g., hearing) clearly fall within the professional expertise of one discipline (e.g., audiological evaluations). Other evaluations may be conducted by trained professionals in more than one discipline, and educational evaluations are of this type.

Educational consultants **and qualified** school psychologists may both be trained to administer, interpret and make recommendations on the basis of educational and "psycho-educational" instruments.

Formal training programs in school psychology include considerable course work and practicum experience in educational assessment and intervention. The accreditation standards of the National Council for Accreditation of Teacher Education (NCATE) and the National Association of School Psychologists (NASP) require that school psychology training programs include in their curriculum content areas such as:

- a. Instructional and remedial techniques
- b. Psycho-educational assessment
- c. Consultation
- d. One thousand hours of internship experience
- e. Behavioral interventions.

Efforts are currently under way to begin formal school psychology training programs in Louisiana which will meet NCATE accreditation requirements and which will train school psychologists to provide a broad range of psychological services in the schools, for more than the traditional role of only a "tester". Although many school psychologists in Louisiana do not have the necessary training and experience to conduct psycho-educational evaluations and make recommendations for educational interventions, others do have these skills either as a result of additional graduate study in education in Louisiana or as a result of receiving their training in formal school psychology programs in other states.

It would be to our advantage, in terms of service needs, manpower needs, and cost-efficiency, to fully utilize the training and experience of our personnel. It is also our belief that the adoption of this recommended policy would encourage psychologists currently employed in Louisiana to obtain the training advocated in this recommendation as such training will be recommended in the revised certification requirements for school psychologists which will be presented for your adoption by the end of this calendar year.

James V. Soileau  
Executive Director

## **DECLARATION OF EMERGENCY**

### **Department of Natural Resources Office of Conservation**

Pursuant to the provisions of R.S. 49:953B, the Commissioner of Conservation has adopted Section 185.22(b) of Statewide Order 29-0-1 relative to in situ processing activities in connection with surface mining activities under the Louisiana Surface Mining Program.

This rule is being adopted on an emergency basis due to the Surface Mining Control and Reclamation Act of 1976. Failure to adopt Section 185.22(b) could imperil approval by the Department of the Interior of final authority for the State of Louisiana over surface coal mining operations within the State and an imminent peril to public welfare requires this emergency action.

This rule is designed to clarify the existing Section 185.22(b) as it presently appears in Statewide Order 29-0-1 and as it applies to in situ processing activities.

This section shall be effective on or after June 20, 1980.

### **Rule**

#### **Section 185.22(b)**

An application for a permit for operations covered by this Section shall be made according to all requirements of 30 CFR Subchapter G applicable to underground mining activities, which are, for the specific and limited purposes of this Section, hereby adopted and made a part hereof. In addition, the mining and reclamation operations plan for operations involving in situ processing activities shall contain information establishing how those operations will be conducted in compliance with the requirements of Part 228, including:

1. Delineation of proposed holes and wells and production zone approval of the Office;
2. Specification of drill holes and casings proposed to be used;
3. A plan for treatment, confinement or disposal of all acid-forming, toxic-forming or radioactive gases, solids, or liquids constituting a fire, health, safety or environmental hazard caused by the mining and recovery process; and
4. Plans for monitoring surface and ground water and air quality, as required by the Office.

R. T. Sutton  
Commissioner of Conservation

# **Rules**

## **RULE**

### **Department of Agriculture State Market Commission**

#### **Procedures for Authorization and Administration of**

#### **State Market Commission Loans and Loan Guarantees**

##### **1.0 Eligibility.**

1.1 Any person, firm, corporation, partnership, or association engaged in the marketing, processing, and/or storage of Louisiana farm products shall be eligible for a State Market Commission loan or loan guaranty, upon proper application and approval therefore, as set forth herein.

1.2 "Farm products" means any agronomic, horticultural, silvicultural, or aquacultural crop; any commercially raised livestock or raw product derived therefrom; or any final derivative resulting from a combination or breakdown of raw farm products.

1.3 Costs associated with the purchase, construction, or necessary improvement of any agricultural plant shall be eligible for a State Market Commission loan.

1.4 The State Market Commission shall give priority to persons, firms, corporations, partnerships, and associations which utilize Louisiana agricultural products to the maximum extent possible.

1.5 The State Market Commission shall also give preference to those persons, firms, partnerships, corporations, and associations which, at the time of the loan application, provide, or expect to provide upon completion of a facility, new or expanded job opportunities for the Louisiana work force.

##### **2.0 Time for filing applications.**

2.1 Applications may be filed at any time throughout the year and may be personally delivered to the State Market Commission office in Baton Rouge or forwarded through the United States Mail.

2.2 An application will be considered filed only upon provision of all information required in Rule 3.0.

2.3 A complete application, consisting of all information required in Rule 3.0, must be physically on hand in the State Market Commission office at least twenty working days prior to the State Market Commission meeting at which the application will be consi-

dered by the Commission.

### 3.0 Contents of Application.

3.1 Every applicant for a Market Commission loan, whether for a direct or participation loan, or for a loan guaranty, shall submit the following information to the State Market Commission:

- (a) Names and addresses of all principals.
- (b) A statement of the nature and amount of the interest held by each principal.
- (c) Sworn statement of the relationship, if any, of any of the principals with any state official and/or with any employee of the State Department of Agriculture.
- (d) Location and legal description of the property to be offered as security.
- (e) Evidence that title is or can be vested in the name of the applicant.
- (f) Personal financial statements of every principal of the firm, corporation, partnership, or association, prepared in accordance with generally accepted accounting principles. In the case of corporations and cooperative associations, every member of the Board of Directors, by whatever name known, must provide personal financial statements.
- (g) Credit analyses of the principals, to be provided by an independent source, such as a bank or other lending institution.
- (h) A property appraisal, prepared in accordance with Rule 4.0 hereof, of all movable and immovable property to be offered as security.
- (i) Listing of all equipment and furnishings, both movable and immovable by destination, with amortization tables as appropriate, if equipment and furnishings will be offered as part of the security.
- (j) Evidence of rejection, with written reasons therefor, from at least two private lending institutions in the area or at least two public lending institutions other than the State Market Commission.
- (k) Evidence of satisfactory interim financing.
- (l) A three-year projected cash flow statement.
- (m) An evaluation of the professional management capability of the individual(s) primarily responsible for the operation of the facility, to be provided by an independent, reputable source not involved in the firm, partnership, corporation, or association.
- (n) An explanation of how the marketing facility for which the loan is sought will benefit the community in which the facility is to be located.
- (o) Written authorization for the State Market Commission to perform any credit check(s) which the Commission may, in its discretion, deem advisable.

3.2 Every applicant for a loan for new construction shall provide, in addition to the information required by Rule 3.1, the following information:

- (a) Blueprints and construction specifications, if available at date of application. In the absence of blueprints and construction specifications, the applicant shall provide a written description of the planned construction at the time of application, to be followed by blueprints and construction specifications as set forth herein. It is not the intent of the Market Commission to require unnecessary expenditure of the applicant's funds; however, in the event that blueprints and construction specifications cannot be provided at the time of application, any applicant receiving approval for a loan shall be required to provide, within 90 days after approval of the loan, either (1) copies of blueprints and construction specifications, or (2) a written statement of the reasons for delay in provision of such blueprints and construction specifications. Reasons acceptable to the Market Commission shall include, but not be limited to, failure of the architect to timely provide all drawings and specifications.
- (b) A statement of the number of jobs to be made available upon completion of the facility.
- (c) Evidence of adequate operating funds for a period of at least one year following completion of the facility.

(d) A projected construction schedule, with anticipated completion date.

3.3 Every applicant for a loan for the purchase or expansion of existing facilities shall provide, in addition to the information required by Rule 3.1, the following information:

- (a) Profit and loss statements for the three years immediately preceding date of the application.
- (b) Balance sheets for the three years immediately preceding date of the application.
- (c) Statement demonstrating the marketability of the product or process for which the funds are sought.
- (d) Such additional market data as will enable the State Market Commission to determine the advisability of loan approval.
- (e) A statement of the number of jobs existing at the time of the application and the number of additional jobs to be created as a result of the proposed purchase and/or expansion of the facility.
- (f) Blueprints of the existing facility, if purchase is contemplated, and, in the case of proposed expansions, blueprints of the existing and proposed facility. The applicant shall provide a detailed statement of reasons when prints cannot be provided. In the event that blueprints and specifications cannot be provided at the time of the application, any applicant receiving approval for a Market Commission loan will be required to provide blueprints and construction specifications within 90 days after approval of the loan. The Market Commission may, however, at its discretion, waive the requirement for provision of blueprints and construction specifications for simple additions, but shall waive such requirement only in open session with adequate explanation for its actions.

3.4 Any applicant for a loan guarantee shall provide, in addition to the information required by Rule 3.1, a letter of commitment from a lending institution setting forth the terms and conditions upon which the loan sought to be guaranteed will be made.

### 4.0 Appraisal.

4.1 The State Market Commission shall develop and maintain for public examination at any time a listing of approved appraisers and a file of the credentials of such approved appraisers.

4.2 In order to have his or her name included on the State Market Commission Listing of Approved Appraisers, an applicant shall submit the following information:

- (a) A personal financial statement, prepared in accordance with generally accepted accounting principles.
- (b) At least three written statements of his or her competence as an appraiser from organizations such as banks or other financial institutions, real estate boards or licensed real estate brokers, mortgage loan institutions, and so forth.
- (c) A written statement of his or her areas of expertise in appraising property.
- (d) A written statement of his or her years of experience as an appraiser.
- (e) Evidence of inclusion on the approved appraising listing of any state or federally chartered banks, or such public agencies as the Small Business Administration, the Farmers Home Administration, the Production Credit Association, the Federal Housing Authority, or other similar institution.
- (f) A written statement containing any additional information which the applicant thinks would be beneficial to the Market Commission's determination of qualifications.

4.3 Applicants for inclusion on the State Market Commission Listing of Approved Appraisers shall pay a fee of twenty-five dollars at the time of filing request for inclusion on the list, which fee shall be deposited in the General Fund of the State of Louisiana and shall be non-refundable to the applicant regardless of the decision of the Market Commission with respect to the listing.

4.4 Any applicant for listing on the State Market Commission Listing of Approved Appraisers who is denied a listing may appeal the decision of the State Market Commission under the general appeals procedures of the State Department of Agriculture.

4.5 Pending development of a comprehensive Listing of Approved Appraisers, the Market Commission may approve appraisers on an individual basis, but the Market Commission shall not approve appraisers in the absence of all information required under Rule 4.2 after November 1, 1980.

4.6 Applicants for inclusion on the State Market Commission Listing of Approved Appraisers may make application at any time throughout the calendar year, and the names of approved applicants shall be added to the listing immediately upon approval action by the Market Commission.

4.7 All applicants for a Market Commission direct or participation loan, or loan guaranty, must submit, as a part of the application package, an appraisal performed by an appraiser selected as follows from the State Market Commission Listing of Approved Appraisers:

(a) The applicant may review the file of credentials of approved appraisers, except for personal financial statements, and shall select from the Listing of Approved Appraisers three appraisers who are acceptable to the applicant.

(b) The applicant shall notify the Market Commission in writing the names of the three appraisers selected by the applicant.

(c) The Market Commission staff shall select one appraiser from the list of three appraisers submitted by the applicant and shall notify the applicant in writing of the appraiser selected by the staff to perform the appraisal.

(d) The applicant and the State Market Commission staff shall meet with the appraiser selected and negotiate a fee satisfactory to the applicant and the appraiser.

(e) The agreement for performance of the appraisal shall be in writing for the protection of all parties, the agreement to be prepared by the State Market Commission staff unless the applicant wishes to secure private legal counsel.

(f) Failure to agree upon a fee shall result in selection of another appraiser. In such circumstance, the applicant shall be permitted to add one additional name, selected from the Listing of Approved Appraisers, to the list and the Market Commission staff shall again select from the list and follow the procedures outlined in Rule 4.7.

4.8 The applicant shall be responsible for payment of the agreed-upon appraisal fee.

4.9 The Market Commission may, at its discretion, directly employ an appraiser listed on the Listing of Approved Appraisers to conduct any appraisal.

(a) When the Market Commission directly employs an appraiser, such appraisal shall be performed at the cost of the Market Commission.

(b) The applicant shall cooperate fully with any appraiser employed directly by the Market Commission.

(c) The Market Commission shall give weight to the appraisal performed by the appraiser selected by the applicant as well as to the appraisal performed by the appraiser employed by the Commission.

4.10 The listing of any appraiser on the State Market Commission Listing of Approved Appraisers shall be valid for a period of two years from the date of the Commission's approval.

(a) Thirty days prior to the second anniversary of each listing, the Market Commission staff shall notify the appraiser, at the last address furnished by the appraiser, of the date on which approval for listing will terminate.

(b) The appraiser so notified may renew his or her listing for an additional two-year period upon payment of a five dollar renewal fee, without the necessity for submission of the information required in Rule 4.2.

4.11 The Market Commission staff may recommend to the Market Commission at any time the removal from the Listing of Approved Appraisers the name of any appraiser who, in their judgment, should be removed.

4.12 Any appraiser so removed from the Listing of Approved Appraisers shall be immediately notified in writing of the removal

and may appeal such removal under the general appeals procedures of the State Department of Agriculture.

4.13 Upon request, the Market Commission shall furnish any applicant or interested citizen a copy of the Listing of Approved Appraisers.

5.0 Conditions for approval of application for Market Commission loan.

5.1 The applicant must provide all required information at least twenty working days prior to the meeting at which the application will be considered. The Market Commission shall not consider any incomplete application.

5.2 The applicant must appear in person at the meeting at which the application will be considered, in order to provide any additional information which may be required by the Market Commission.

5.3 Approval of the loan must not result in encumbrance(s) on the property offered as security in excess of seventy-five percent of the appraised value of the property.

5.4 The period for which the loan is requested must not exceed five years, provided, however, that the State Market Commission may, under conditions hereinafter set forth, extend the period of the loan for an additional period not to exceed a total of fifteen years from the date of the original loan, as required under R.S. 3:407 (G).

5.5 Approval of a direct loan application shall be limited to seventy-five percent of the value of the property offered as security when covered by a first mortgage to the State Market Commission.

5.6 Approval of a direct loan application shall be limited to fifty percent of the value of the property offered as security when covered by a second mortgage to the State Market Commission.

5.7 Approval of a loan guaranty application shall be limited to seventy-five percent of the total amount required by the borrower.

5.8 Approval of a direct loan or seventy-five percent of the amount expended for purchase, construction, or necessary improvement to facilities that manufacture containers for farm products must be secured by a first mortgage to the Market Commission if the amount loaned is in excess of fifty percent of the value of the property offered as security, but may be secured by a second mortgage to the Market Commission if the amount loaned is fifty percent or less than the value of the property offered as security, as provided in R.S. 3:407 (C) (3).

5.9 A market assessment and/or feasibility study conducted or secured by the Market Commission staff must support the advisability of the loan.

5.10 The loan application must satisfy all legal requirements, as evidenced by the written approval of the Department attorney.

6.0 Conditions for disbursement of Market Commission loan proceeds and Market Commission concurrence in loan guarantees.

6.1 Prior to the setting of a date for the loan closing, the applicant must submit satisfactory proof that the facility, if new construction and/or additions to the existing facilities, has been completed in accordance with the plans submitted to the Commission for its consideration of the loan application.

6.2 Prior to the setting of a date for the loan closing, the applicant must provide a copy of the note and the mortgage to be executed at the closing for examination and approval by the Department attorney.

6.3 Prior to the setting of a date for the loan closing, the applicant must provide a copy of a plat survey by a registered surveyor, provided, however, that the Department attorney is authorized to waive, in writing, provision of the survey, at his discretion.

6.4 Prior to the setting of a date for the loan closing, the applicant must provide evidence of adequate title insurance.

6.5 Prior to the setting of a date for the loan closing, the applicant must carry and provide evidence of the following insurance coverage:

(a) Public liability insurance of \$500,000, naming the Market

Commission as additional insured. The applicant must also provide a certificate evidencing such insurance, which certificate must provide that the insurance cannot be cancelled without thirty days prior notice to the State Market Commission.

(b) Fire and extended coverage and vandalism insurance to the full extent of the amount loaned or guaranteed by the Market Commission, naming the Market Commission as loss payee, the total amount of the insurance to meet the 80% co-insurance requirements. The applicant must also provide a certificate evidencing such insurance, which certificate must provide that the insurance cannot be cancelled without thirty days prior notice to the State Market Commission.

6.6 Prior to the setting of a date for the loan closing, the applicant must provide satisfactory proof that all materials suppliers and workmen have been fully paid.

6.7 Prior to the setting of a date for the loan closing, all legal instruments must be examined and approved by the Department attorney.

6.8 On or before the loan closing date, the applicant must provide a title opinion by a title attorney selected in accordance with Rule 7.0, which title opinion shall provide evidence of clear title and shall include, but not be limited to, the following:

(a) A property description,

(b) Identification of the property owner, with pertinent recordation data,

(c) Satisfactory evidence that all taxes due on the property have been paid,

(d) A full and complete list of all mortgages, liens, encumbrances, and/or servitudes on the property, and

(e) Such other information as may be necessary for a full recital of the facts surrounding such property.

6.9 On or before the loan closing date, the applicant must provide a mortgage certificate from the Clerk of Court for the parish in which the property is located.

6.10 On the loan closing date, in the case of direct loans or participation loans paid direct to the borrower, the borrower must execute a note secured by a first or second mortgage payable to the Market Commission setting forth in full the terms and conditions under which the loan will be repaid, and containing such endorsements as the Market Commission shall require.

6.11 On the loan closing date, in the case of direct loans or participation loans paid direct to the borrower, the borrower must execute a first or second mortgage payable to the Market Commission, which mortgage shall contain, but not necessarily be limited to, the following:

(a) The amount loaned,

(b) The rate of interest,

(c) The repayment schedule,

(d) Description of real property and all equipment and/or furnishings to be included in the security,

(e) Provision for executory process,

(f) Provision for payment of all costs of foreclosure, including attorney's fees at twenty-five percent of the principal balance and interest accrued at foreclosure,

(g) Authorization for the addition to the principal balance of the amount of any taxes and/or insurance premiums paid by the Market Commission, upon failure of the mortgagee to pay such amounts when due, to protect the security position of the Market Commission.

6.12 On the loan closing date, in the case of participation loans the proceeds for which are paid direct to the bank or other lending institution, the borrower shall provide a participation certificate executed by the bank or other lending institution, payable to the State Market Commission, setting forth in full the terms and conditions under which the Commission agrees to such participation, the security pledged for repayment, and the time within which the loan shall be liquidated.

6.13 On or before the loan closing date, in the case of a loan

guaranty, the borrower must pay to the State Market Commission an amount equal to one percent of the amount guaranteed by the State Market Commission, which payment shall be deposited in the Market Loss Fund.

6.14 In the case of all direct loans and participation loans paid directly to the borrower, the individual borrower and/or all partners of a partnership shall personally endorse the note securing the first or second mortgage.

6.15 In the case of all direct loans and participation loans paid directly to the borrower, all members of the Board of Directors, by whatever name known, of the corporation or cooperative association shall personally endorse the note, in solido, securing the first or second mortgage.

6.16 In the case of a loan guaranty, the borrower must provide for the Market Commission file record a copy of the note and the mortgage payable to the lending institution and any other data deemed necessary by the Market Commission staff.

6.17 The State Market Commission shall authorize the setting of a loan closing date and the disbursement of loan proceeds upon presentation of all information required in Rule 6.0.

6.18 The Commissioner of Agriculture, or his designee, as official representative of the State Market Commission, shall execute all necessary legal instruments at the loan closing.

6.19 The loan guaranty agreement shall be executed by the borrower, the lending institution, and the Commissioner of Agriculture, or his designee, as official representative of the State Market Commission.

#### 7.0 Title Opinion.

7.1 The State Market Commission shall develop and maintain for public examination at any time a listing of attorneys whose title opinions will be acceptable to the Market Commission.

7.2 In order to have his or her name included on the State Market Commission Listing of Approved Attorneys, an applicant shall submit the following information:

(a) A resume of his or her experience in the practice of real estate law.

(b) A personal financial statement prepared in accordance with generally accepted accounting principles.

(c) A list of three or more attorneys who are familiar with his or her practice in real estate law who may be contacted for reference.

7.3 Minimum requirements for approval of attorneys providing title opinions shall be as follows:

(a) One or more years since admission to the Bar,

(b) A minimum of twenty-five percent of the attorney's practice devoted to real estate matters,

(c) At least twenty-five prior real estate closings and/or title opinions,

(d) A favorable recommendation from the attorneys given as reference,

(e) Favorable recommendation from three or more lending institutions, savings and loan associations, finance companies, the Small Business Administration, the Farmers Home Administration, the Production Credit Association, the Federal Housing Authority, and other similar organizations to whom the attorney has rendered title opinion letters on property.

7.4 The attorney may also provide evidence of prior approval to write title insurance for any title insurance company.

7.5 Applicants for inclusion on the State Market Commission Listing of Approved Attorneys shall pay a fee of twenty-five dollars at the time of filing request for inclusion on the list, which fee shall be deposited in the General Fund of the State of Louisiana and shall be non-refundable to the applicant regardless of the decision of the Market Commission with respect to the listing.

7.6 Any applicant for listing on the State Market Commission Listing of Approved Attorneys who is denied a listing may appeal the decision of the State Market Commission under the general appeals procedures of the State Department of Agriculture.

7.7 Pending development of a comprehensive Listing of

Approved Attorneys, the Market Commission may approve attorneys on an individual basis, but the Market Commission shall not approve attorneys for title opinions in the absence of all information required under Rule 7.2 after November 1, 1980.

7.8 Applicants for inclusion on the State Market Commission Listing of Approved Attorneys may make application at any time throughout the calendar year, and the names of approved applicants shall be added to the listing immediately upon approval action by the Market Commission.

7.9 The applicant for a Market Commission loan shall be responsible for the payment of any fee for the required title opinion.

7.10 The listing of any attorney on the State Market Commission Listing of Approved Attorneys shall be valid for a period of two years from the date of the Commission's approval.

(a) Thirty days prior to the second anniversary of each listing, the Market Commission staff shall notify the attorney, at the last address furnished by the attorney, of the date on which approval for the listing will terminate.

(b) The attorney so notified may renew his or her listing for an additional two year period upon payment of a five dollar renewal fee without the necessity for submission of the information required in Rule 7.2.

7.11 The Market Commission staff may recommend to the Market Commission at any time the removal from the Listing of Approved Attorneys any attorney who, in their judgment, should be removed.

7.12 Any attorney so removed from the State Market Commission Listing of Approved Attorneys shall be immediately notified in writing of the removal and may appeal such removal under the general appeals procedures of the Department of Agriculture.

7.13 Upon request, the State Market Commission shall furnish any applicant or interested citizen a copy of the Listing of Approved Attorneys.

#### 8.0 Termination of approval for loan.

8.1 Loan proceeds shall remain committed, after approval of the loan, for the following periods, which shall begin to run from the date of the State Market Commission approval for the loan:

(a) For new construction and/or expansion of existing facilities ranging from 0 to 50,000 square feet - four hundred fifty days,

(b) For new construction and/or expansion of existing facilities ranging from 50,001 to 100,000 square feet - seven hundred twenty days,

(c) For new construction and/or expansion of existing facilities in excess of 100,001 square feet - eight hundred sixty days.

8.2 At the expiration of the period of commitment as indicated in Rule 8.1, and in the absence of evidence of completion of all work, approval for the loan shall be terminated by the Market Commission, provided, however, that approval may be extended on a month-to-month basis by the Market Commission upon submission of reasons acceptable to the Commission for the delay in completion. In the event that the Market Commission extends the period of time for finalization of the loan beyond the period indicated in Rule 8.1, the Market Commission shall do so only in open session with adequate explanation for its actions.

8.3 If approval for any loan is terminated as provided in Rule 8.2, the applicant shall be required to provide a complete current loan application in order to be again considered for approval.

#### 9.0 Interest on Market Commission loans.

9.1 The State Market Commission shall, at its first regularly scheduled meeting in each calendar year, establish its interest rate for that calendar year.

9.2 The interest rate established by the Market Commission shall be not less than the average of the rates charged by the Small Business Administration, the Farmers Home Administration, and the Bank of Cooperatives, as required under the provisions of R.S. 3:407 (H).

9.3 The interest rate in effect at the time of the loan approval shall govern the interest to be paid on the loan.

#### 10.0 Requirements subsequent to disbursement of loan proceeds.

10.1 Each year, on the anniversary of the disbursement of loan proceeds, each loan recipient, whether a direct or participation loan or a loan guaranty, shall provide the following:

(a) A listing of all stockholders, with the number of shares held by each, at any time during the previous year.

(b) A statement of its operations, including an analysis of profits and losses.

(c) A statement of financial condition, including but not limited to a Balance Sheet for the most recently completed fiscal year of the firm, partnership, corporation, or association.

(d) A personal financial statement of all principals, including all members of the Boards of Directors of corporations and cooperatives, who have endorsed in solido on the note or are liable for repayment of the loan.

10.2 Each recipient of a loan guaranty shall authorize the bank or other lending institution holding the loan record to file quarterly statements with the Market Commission showing the principal balance remaining outstanding and any defaults in payment.

#### 11.0 Balloon notes and re-scheduling of payments.

11.1 The Market Commission shall not approve a final balloon note payment in excess of seventy-five percent of the total amount of the original loan.

11.2 If the State Market Commission votes in open session to approve re-scheduling of a balloon note, such re-scheduled payments shall be financed at the interest rate prevailing at the time of renewal.

11.3 No payment schedule shall be extended to more than a total of fifteen years from date of the final loan disbursement to date of the final payment under the loan.

11.4 Any balloon note shall be personally endorsed by the individual, by all partners if the note is for a partnership, and/or by all members of the Board of Directors if the note is for a cooperative association or a corporation.

11.5 Any request for a renewal of a balloon payment shall be accompanied by:

(a) A statement of current financial condition, including Profit and Loss Statement and Balance Sheet for the most recent full year of operation, prepared in accordance with generally accepted accounting principles.

(b) Names and addresses of all stockholders, and the number of shares held by each.

(c) Detailed explanation of the reason for the requested renewal.

11.6 Regularly scheduled payments of principal and/or interest shall not be deferred for more than three months; such unpaid payments shall not be added to an existing balloon note if such increase will result in a balloon payment amounting to more than seventy-five percent of the original amount of the loan.

#### 12.0 Delinquency and foreclosure.

12.1 Any unpaid principal and/or interest shall be considered delinquent on the tenth day following the due date.

12.2 After the tenth day following the due date, a \$15.00 delinquency fee shall be levied. Interest at the same rate as applied to the loan shall be charged on any unpaid delinquency fee from the date of the assessment until paid. No loan shall be closed out if there are any outstanding unpaid delinquency fees. All moneys collected as delinquency fees shall be deposited into the Market Commission Revolving Fund.

12.3 Routine written notification of delinquency shall be sent to the borrower on the thirtieth day following the due date.

12.4 In the absence of response to the 30-day notification, the Market Commission staff shall send a specific written notification concerning the delinquency on the sixtieth day following the due date, which notification shall be sent by certified mail, return receipt requested.

12.5 In the absence of response to the 60-day notification, the

delinquency shall be reported to the Market Commission at the next regularly scheduled Commission meeting, and the Market Commission shall officially place the borrower on the list of delinquent loans.

12.6 Subsequent to notification to the Market Commission, the staff, unless otherwise directed by the Commission, shall forward a demand letter, again by certified mail with return receipt requested, informing the borrower that the remaining balance is advanced, together with all interest accrued, and the full sum of the obligation is due and payable to the Market Commission.

12.7 In the absence of satisfactory arrangements for repayment of the delinquency thereafter, the Market Commission shall initiate foreclosure proceedings on the ninetieth day following the due date of the unpaid principal and interest.

12.8 The Market Commission shall secure a judgment and foreclose on the collateral securing the loan and, if deemed in the best interest of the Market Commission, the assets of all personal endorsers.

12.9 The Market Commission staff shall select an appraiser from the State Market Commission Listing of Approved Appraisers to do any appraisal necessary for foreclosure.

13.0 Prohibitions.

13.1 The Market Commission shall not approve any loan or loan guaranty for any applicant who fails to submit all required information.

13.2 The Market Commission shall not approve any loan or loan guaranty for any person, firm, corporation, partnership, or association which is not domiciled in Louisiana.

13.3 The Market Commission shall not approve any loan or loan guaranty if the amount so loaned shall result in the property offered as security thereunder having an indebtedness in excess of seventy-five percent of the appraised value of such property.

13.4 The Market Commission shall not approve any loan or loan guaranty for any person, firm, corporation, partnership, or association with any pending or outstanding charge or liability relating to failure or inability to pay promissory notes or other evidence of indebtedness.

13.5 The Market Commission shall not approve any loan or loan guaranty for any person, firm, partnership, corporation, or association, which has presently pending, at the Federal, State, or local level, any proceeding concerning the denial or revocation of a necessary license or permit.

13.6 The Market Commission shall not approve any loan or loan guaranty when the security offered for the loan consists of livestock and/or commodities.

13.7 The Market Commission shall not approve any loan or loan guaranty the proceeds of which are to be, or may be, used for the consolidation of existing, previous financial obligations.

13.8 The Market Commission shall not approve any loan or combination of loans to a single person, firm, partnership, corporation or association which is in excess of ten percent of the Commission's total assets (net of loan guarantees).

13.9 The Market Commission shall not approve any loan or loan guaranty for any facility constructed or to be constructed on leased land except as follows:

(a) The lease is for a term extending five years beyond the period of the loan.

(b) The Market Commission receives an assignment on the lease and the right of re-assignment.

(c) If the loan repayment schedule includes a balloon note, the Market Commission, at its discretion, may require a lease running for twenty years from the date of the approval of the loan.

(d) A waiver of landlord's lien and privilege on movables must be provided.

13.10 The Market Commission shall not make any loan or loan guarantee on equipment unless the property on which it is located is secured by a first mortgage to the Market Commission. The Market Commission shall give a low priority on loans secured by a

mortgage on specialized equipment.

13.11 The terms or conditions imposed and made part of any loan or guaranty agreement authorized by vote of the Market Commission shall not be amended or altered by any member of the Commission or employee of the Department of Agriculture except by subsequent vote of approval by the Market Commission in open session with full explanation for such action.

13.14 The Market Commission shall not subordinate its interests if such subordination will result in any risk to its security position.

Bob Odom  
Commissioner of Agriculture

## **RULE**

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

#### **Rule 4.00.02**

The Board adopted a Comprehensive Training Plan for the Coordination of Federal and State Funds for Training Activities of Education Personnel.

#### **Rule 3.05.01**

(Replaces existing policy). The Board adopted a Migrant Education State Plan for Fiscal Year 1981.

#### **Rule 3.01.81**

(Revision to existing policy). The Board adopted revision to ordering cycles for textbooks by moving Dictionaries from the 1979-80 cycle to 1980-81 cycle to be included with Language and Composition with no additional call for dictionaries in 1980-81; and to move Drug Abuse Education to the 1981-82 cycle along with Science, with the consideration of further call for Drug Abuse materials in 1981-82 because of new research that may have been developed.

#### **Rule 4.02.05**

The Board adopted Summary Guidelines for Tri Party Agreement as required by Act 728 of 1979.

James V. Soileau  
Executive Director

## **RULE**

### **Board of Trustees for State Colleges and Universities**

Part IX, Section 9.3 E, Finances, of the Policies and Procedures Manual of the Board of Trustees for State Colleges and Universities is changed to read as follows:

"E. In order for Revenue Producing Summer Camps to be held on campuses using school employees who are hired on a 12-month basis, the personnel must be on annual leave; the school must be compensated at its regular rate of rental for the use of facilities and equipment; and insurance must be provided by the promoters, with the state and school being held harmless. All monies earned and placed in outside or agency funds must be subject to audit. None of the above will apply if all funds are retained by the institution."

Bill Junkin  
Executive Director

## **RULE**

### **Board of Trustees for State Colleges and Universities**

Part IX, Section 9.6 D 1, Pre-enrollment Applications and Letters of Intent, of the Policies and Procedures Manual of the Board of Trustees for State Colleges and Universities is changed to read as follows:

"1. Pre-enrollment Applications or letters of Intent shall be signed on forms furnished and/or approved by the Coordinator of Athletics. A parent's (or guardian's) signature shall be required on the form if and only if the student-athlete is under eighteen years of age. When both parents are alive and are not divorced or judicially separated, then the father shall sign this application on behalf of the minor. If one or both parents are deceased, then the tutor of the minor is the proper party to sign the application. If the parents are separated or divorced, then the parent bearing legal custody and/or with whom the minor resides shall sign this application."

Bill Junkin  
Executive Director

**RULE**  
**Division of Administration**  
**Central Purchasing**

The Division of Administration, Central Purchasing has adopted the following Rules and Regulations as promulgated by the Louisiana Procurement Code, R.S. 39:1551 - 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 five thousand dollars 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.
- 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 Bid.

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 twenty-one 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 ten 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 seventy-two 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 seventy-two 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 Bid 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 thirty days.

7. Net Prices — Bid prices, unless otherwise specified, must be net including transportation and handling charges fully prepaid by contractor to destination and subject only to cash discount.

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

*2 Register*

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 Conference** — 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 Invitation 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 Invitations 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** — 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 the Governor proclaims a previously unscheduled nonworking day, bids scheduled to be opened on that day should be opened 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, not 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, write-overs, 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 arithmetical 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.

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 lifecycle 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.

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 Contracts.

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 Bids, the right is reserved to increase or decrease the quantities of any item, or items, shown in the bid by ten 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 — Cash discounts offered will be considered in determining awards. Time shall be counted from date of delivery at destination or from date correct invoice is received from contrac-

tor, if latter date is later than date of delivery. A cash discount for less than thirty days will not be considered in making an award.

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 may be assigned, sub-let or transferred without written consent of the Commissioner.

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 twenty thousand dollars, 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 purchase 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 thirty 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.

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.
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.
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 five thousand dollars 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 five thousand dollars 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 deter-

mination 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.
- 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 solicitation may be cancelled as provided in these regulations.

D. Reasons for Cancellation.

1. A solicitation may be cancelled in whole or in part when the Chief Procurement Officer or the head of a Purchasing Agency determines in writing that such action is in Louisiana's best interest for reasons including but not limited to:

- a. Louisiana no longer requires the supplies, services, or major repairs.
- b. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable.
- c. Ambiguous or otherwise inadequate specifications were part of the solicitation.
- d. The solicitation did not provide for consideration of all factors of significant cost to Louisiana.
- e. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds.
- f. All otherwise acceptable bids received are at unreasonable prices.

g. Or there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

2. When a solicitation is cancelled, prior to opening, notice of cancellation shall be sent to all businesses solicited.

3. The notice of cancellation shall:

- a. Identify the solicitation.
- b. Briefly explain the reason for cancellation.
- c. Where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar supplies, services, or major repairs.

4. Documentation — The reasons for cancellation shall be made a part of the procurement file and available for public inspection.

E. Rejection of Individual Bids or Proposals.

1. General — This Subsection applies to rejections of individual bids in whole or in part.

2. Notice in Solicitation — Each solicitation issued by Louisiana shall provide that any bid may be rejected in whole or in part when in the best interests of Louisiana as provided in these regulations.

3. Reasons for Rejection.

a. Bids — As used in this Section "bid" means any bid submitted in competitive sealed bidding and includes submissions under Section II (Small Purchases). Reasons for rejecting a bid include but are not limited to:

(1) The business that submitted the bid is nonresponsible as determined under Section VI (Written Determination on Nonresponsibility Required) of these regulations.

(2) The bid is not responsive, that is, it does not conform in all material respects to the Invitation for Bids; see Section I (Responsiveness of Bids) of these regulations.

(3) Or the supply, service, or major repair item is unacceptable, that is, it fails to meet the specifications or permissible alternates or other acceptability criteria set forth in the Invitations for Bids; see Section I, Subsection M, (Bid Evaluation and Award, Product Acceptability).

F. "All or None" Bids or Proposals — When provided in the solicitation, a business may limit a bid on acceptance of the whole bid. Louisiana shall not thereafter reject part of such bid and award on the remainder. Otherwise, such bids shall be deemed to be nonresponsive.

G. Disposition of Bids — When bids or proposals are rejected, or a solicitation cancelled after bids are received, the bids or proposals which have been opened shall be retained in the procurement file.

Section VI - Responsibility and Prequalification  
R.S. 39:1601 and 1602

A. Definitions.

1. Responsible Bidder or Offeror means "a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance." See (Definitions of Terms Used in this Article, Responsible Bidder or Offeror) R.S. 39:1601 of the Louisiana Procurement Code. For the purpose of these regulations, "capability" as used in this definition means capability at the time of award of the contract.

2. Prequalification for Inclusion on Bidders Lists means determining that a prospective bidder or offeror satisfies the criteria established for receipt of solicitations when and as issued.

3. Solicitation means an Invitation for Bids, or any other document, such as a request for quotations, issued by Louisiana for the purpose of soliciting offers to perform a Louisiana contract.

4. Suppliers, as used in R.S. 39:1602 (Prequalification of Suppliers) of the Louisiana Procurement Code, means prospective bidders or offerors.

B. Application — A determination of responsibility or nonresponsibility shall be governed by this Section.

C. Standards of Responsibility.

1. Standards — Factors to be considered in determining whether the standard of responsibility has been met include whether a prospective contractor has:

a. Available the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability of meeting all contractual requirements.

b. A satisfactory record of performance.

c. A satisfactory record of integrity.

d. Qualified legally to contract with Louisiana.

e. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility.

Nothing herein shall prevent the Procurement Officer from establishing additional responsibility standards, provided that these additional standards are set forth in the solicitation.

2. Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the Procurement Officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the Procurement Officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

D. Ability to Meet Standards — The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

1. Evidence that such contractor possesses such necessary items.

2. Acceptable plans to subcontract for such necessary items.

3. Or a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

E. Duty Concerning Responsibility — Before awarding a contract, the Procurement Officer must be satisfied that the prospective contractor is responsible.

F. Written Determination of Nonresponsibility Required.

1. If a bidder or offeror who otherwise would have been awarded a contract of five thousand dollars or more is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the Chief Procurement Officer, or head of a Purchasing Agency. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The determination shall be made part of the procurement file.

2. Give such bidder who is proposed to be disqualified, a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

G. Prequalification — Prospective suppliers may be prequalified for particular types of supplies and services.

#### Section VII - Types of Contracts

R.S. 39:1611 - 1615

A. Centralization of Contracting Authority — If the central purchasing agency has entered into a statewide contract for supplies or services, all state governmental bodies, excluding those exempt from central purchasing by R.S. 39:1572.B., shall use such statewide contracts when procuring such supplies or services.

B. Policy Regarding Selection of Contract Types. 1. General — The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or major repairs to be procured, the uncertainties which may be involved in contract performance, and the extent to which Louisiana or the contractor is to assume the risk of the cost of performance of the contract.

The objective when selecting a contract type is to obtain the greatest value of supplies, services, or major repairs at the lowest cost or price to Louisiana. In order to achieve this objective, the Chief Procurement Officer, before choosing a contract type, should review those elements of the procurement which directly affect the cost and risk of performance and profit incentives bearing on the performance.

Among the factors to be considered in selecting any type of contract are:

a. The type and complexity of the supply, service, or major repair items being procured.

b. The difficulty of estimating performance costs such as the inability of Louisiana to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract.

c. The administrative costs to both parties.

d. The degree to which Louisiana must provide technical coordination during the performance of the contract.

e. The effect of the choice of the type of contract on the amount of competition to be expected.

f. The stability of material or commodity market prices or wage levels.

g. The urgency of the requirement.

h. The length of contract performance.

2. Use of Unlisted Contract Types — The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may

be used provided the Chief Procurement Officer or head of a Purchasing Agency determines in writing that such use is in Louisiana's best interest.

C. Cost-Plus-A-Percentage-Of-Cost-Contracts — The cost-plus-a-percentage-of-cost system of contracting shall not be used.

D. Fixed-Price Contracts.

1. General — A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or major repairs in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of major repairs or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

2. Firm Fixed-Price Contract — A firm fixed-price contract provides a price that is not subject to adjustment because of variations in the contractor's cost of performing the work specified in the contract.

3. Fixed-Price Contract with Price Adjustment — A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. Conditions governing price adjustments and documentation required for substantiation should be considered carefully and defined precisely in the solicitation and the resulting contract. Any adjustment allowed may be downward only or both upward and downward. Clauses providing for most-favored-customer prices for Louisiana, that is, the price to Louisiana will be lowered to the lowest priced sales to any other customer made during the contract period, may be used. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

a. Changes in the contractor's labor contract rates (such as in contracts for coal).

b. Changes due to rapid and substantial price fluctuations, which can be related to an accepted index (such as contracts for gasoline, heating oils, and dental gold alloys). If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to Louisiana the right to reject the price increase and terminate without cost the future performance of the contract. Notice of such price increase shall be given within such time as is specified in the contract.

E. Cost-Reimbursement Type Contracts.

1. General — The cost-reimbursement type contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with (Cost Principles) of R.S. 39:1603 and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed (except at its own expense) without prior approval or subsequent ratification by the Procurement Officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever first occurs. This contract type is appropriate when the uncertainties involved in contract performance are of such magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by Louisiana personnel during per-

formance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study type contracts.

2. **Determination Prior to Use** — A cost-reimbursement type contract may be used only when the Commissioner of Administration determines in writing that:

a. Such a contract is likely to be less costly to Louisiana than any other type or that it is impracticable to obtain otherwise the supplies, services, or major repairs.

b. The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated.

c. The proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

3. **Cost Contract** — A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

4. **Cost-Plus-Fixed Fee Contract** — This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost established for such work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

F. **Cost Incentive Contracts.**

1. **General** — Cost incentive contracts provide for the sharing of cost risks between Louisiana and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to ceiling amount and establishes a formula whereby the contractor is rewarded for performing at less than target cost (that is, the parties' agreed best estimate of the cost of performing the contract) or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

2. **Fixed-Price Cost Incentive Contract.**

a. **Description** — In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit (that is, the profit which will be paid if the actual cost of performance equals the target cost), a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with Part 7 (Cost Principles) of these regulations and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers a loss.

b. **Objective** — The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between Louisiana and contractor depending on the nature of the supplies, services, or major repairs being procured, the length of the contract performance, and the performance risks involved.

3. **Cost-Plus Contract with Cost Incentive Fee** — In a cost-plus contract with cost incentive fee, the parties establish at the outset a

target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with a maximum and minimum fee limitation; and a cost ceiling which represents the maximum amount which Louisiana is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with (Cost Principles) of these regulations and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

4. **Determinations Required** — Prior to entering into any cost incentive contract, the Commissioner of Administration shall make the written determination required by Subsection D (Cost-Reimbursement Type Contracts, Determination Prior to Use) of these regulations. In addition, prior to entering any cost-plus contract with cost incentive fee, the Procurement Officer shall include in such written determination the determination required by Subsection E of these regulations.

G. **Performance Incentive Contracts** — In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle Louisiana to a price decrease.

H. **Time and Materials Contracts; Labor Hour Contracts.**

1. **Time and Materials Contracts** — Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently, all such contracts shall contain a stated cost ceiling and shall be entered into only after the Commissioner of Administration determines in writing that:

a. Louisiana personnel have been assigned to closely monitor the performance of the work.

b. No other type of contract will suitably serve Louisiana's purpose.

2. **Labor Hour Contracts** — A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the Commissioner of Administration shall make the same determinations before it is used.

I. **Definite Quantity and Indefinite Quantity Contracts.**

1. **Definite Quantity** — A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

2. **Indefinite Quantity** — An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity Louisiana is obligated to order and may also provide for a maximum quantity provision that limits Louisiana's obligation to order.

3. **Requirements Contracts** — A requirements contract is an indefinite quantity contract for supplies or services that obligates Louisiana to order all the actual, normal requirements of designated Using Agencies during a specified period of time. For the protection of Louisiana and the contractor, requirements contracts shall include the following:

a. A provision which requires Louisiana to order its normal requirements of the supplies or services covered. However, Louisiana may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity

requirement arises which exceeds an amount specified in the contract.

b. Two exemptions from ordering under the contract when:

1. The Chief Procurement Officer approves a finding that the supply or service available under the contract will not meet a non-recurring, special need of Louisiana.

2. Supplies are produced or services are performed incidental to Louisiana's own programs, such as industries or correctional institutions and other similar industries that can satisfy the need.

#### J. Progressive and Multiple Awards.

1. Progressive Award — A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required. A progressive award may be in Louisiana's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

2. Multiple Award — A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and Louisiana is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in Louisiana's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet Louisiana's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of Using Agencies. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that:

a. Louisiana shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract.

b. Louisiana shall reserve the right to take bids separately if the Chief Procurement Officer approves a finding that the supply or service available under the contract will not meet a non-recurring or special need of Louisiana.

c. The contract shall allow Louisiana to procure supplies produced, or services performed, incidental to Louisiana's own programs, such as industries of correctional institutions and other similar industries, when such supplies or services satisfy the need.

3. Intent to Use — If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award should be stated in the solicitation.

4. Determination Required — The Chief Procurement Officer shall make a written determination setting forth the reasons for a progressive or multiple award, which shall be made a part of the procurement file.

#### K. Leases

1. Description — A lease is a contract for the use of equipment under which title does not pass to Louisiana.

2. Use — A lease may be entered into provided:

a. It is in the best interest of Louisiana.

b. All conditions for renewal and costs of termination are set forth in the lease.

c. The lease is not used to avoid a competitive procurement.

#### L. Multi-Year Contracts - General.

1. Description — The multi-year method of contracting is to be used when special production of definite quantities of supplies for more than one fiscal period is necessary to best meet Louisiana needs but funds are available only for the initial fiscal period.

Special production refers to production for contract performance which requires alteration in the contractor's facilities or operations involving high start-up costs. The contractual obligation of both parties in each fiscal period succeeding the first is subject to the appropriation and availability of funds therefor. When funds are not appropriated to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year shall be terminated. When a contract is terminated under these conditions, no additional funds shall be paid to the contractor as a result of such action. A multi-year contract is also appropriate when it is in the best interest of Louisiana to obtain uninterrupted services extending over more than one fiscal period, where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period.

2. Objective — The objective of the multi-year contract is to promote economy and efficiency in procurement by obtaining the benefits of sustained volume production and consequent low prices, and by increasing competitive participation in procurements which involve special production with consequent high start-up costs and in the procurement of services which involve high start-up costs or high phase-in/phase-out costs during changeover of service contractors.

3. Multi-Year Contract Regulations Inapplicable — Subsection L (Conditions for Use of Multi-Year Contracts) and Subsection M (Multi-Year Contract Procedure) apply only to contracts for supplies or services described in this Section and do not apply to any other contract including, but not limited to, contracts for construction and leases (including leases of real property).

M. Conditions for Use of Multi-Year Contracts — A multi-year contract may be used when it is determined in writing by the Chief Procurement Officer that:

1. Special production of definite quantities is required to meet Louisiana needs.

2. That such a contract will serve the best interests of Louisiana by encouraging effective competition or otherwise prompting economies in Louisiana procurement.

3. A multi-year contract will serve the best interests of Louisiana by encouraging effective competition or otherwise promoting economies in Louisiana procurement. The following factors are among those relevant to such a determination:

a. Firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance.

b. Lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices.

c. Stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality.

d. Or the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

4. Unless otherwise provided by law, a contract for supplies or services may be entered into for periods of not more than three years, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be subject to the availability and appropriation of funds therefor. No contract shall be entered into for more than one year unless the length of the contract was clearly stated in the specifications. Any lease or similar agreement affecting the allocation of space in the state capitol shall have the prior approval of the Legislative Budgetary Control Council if it extends for more than one year.

#### N. Multi-Year Contract Procedure.

1. Solicitation — The solicitations shall state:

a. The amount of supplies or services required for the proposed

contract period.

b. Whether a unit price discounted off of established catalog price shall be given for each supply or service, and that such unit prices or discount shall be the same throughout the contract; (except to the extent price adjustments may be provided in the solicitation and resulting contract).

c. That the multi-year contract will be cancelled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either Louisiana's rights or the contractor's rights under any other termination clause in the contract.

d. That the Chief Procurement Officer must notify the contractor that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period.

e. Whether bidders or offerors may submit prices for:

1. The first fiscal period only.
2. The entire time of performance only.
3. Or both the first fiscal period and the entire time of performance.

f. That a multi-year contract may be awarded and how award will be determined including, if such prices are submitted, how prices for the first fiscal period and entire time of performance will be compared (including the dollar amount of deductions of savings of administrative costs resulting from use of a multi-year contract, provided such savings can be reasonably estimated).

2. Award — Award shall be made as stated in the solicitation and permitted under the source selection method utilized. Care should be taken when evaluating multi-year prices against prices for the first fiscal period that award on the basis of prices for the first period does not afford the successful bidder or offeror an undue competitive advantage in subsequent procurements.

3. Cancellation.

a. "Cancellation", as used in multi-year contracting, means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available.

b. Cancellation results when the Procurement Officer: notifies the contractor of nonavailability of funds for contract performance for any subsequent fiscal period.

c. These provisions on cancellation of multi-year contracts do not limit the rights of Louisiana or the contractor under any termination clause of the contract if the contract is terminated pursuant to that clause rather than cancelled as provided in this Subsection.

O. Option Provisions.

1. Contract Provision — When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at Louisiana's discretion only, and shall be at the mutual agreement of Louisiana and the contractor.

2. Exercise of Option — Before exercising any option for renewal, extension, or purchase, the Chief Procurement Officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to Louisiana than renewal or extension of the existing contract.

3. Lease with Purchase Option — Unless a requirement can be met only by the leased supply as determined in writing by an officer above the level of the Procurement Officer, a purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive Sealed bidding. Before exercising such an option the Chief Procurement Officer shall:

a. Investigate alternative means of procuring comparable supplies.

b. Compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the

estimated, initial savings associated with exercise of a purchase option.

P. Penal or Charitable Institution Manufactured Products — Louisiana Statutes provide that any class of materials, supplies and services which any charitable, reformatory or penal institution of the State is prepared to supply in whole or in part through the labor of inmates, shall be given preference to the extent that such products are of equal quality to, and can be supplied at prices not higher than, those of the lowest acceptable bid received in response to advertisements. The Statutes further provide a penalty for evasion: "Any intentional violation of this Section by any such department, institution, agency, or political subdivision which continues after notice from the Governor to desist, shall constitute a malfeasance in office and shall subject the officers responsible for this violation to suspension and removal from office, as may be provided by law and other cases of malfeasance."

Section VIII - Plant or Site Inspection; Inspection of Supplies or Services  
R.S. 39:1621 - 1622

A. Statutory Provision — R.S. 39:1621 (Right to Inspect Plant) of the Louisiana Procurement Code states:

"The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the state."

B. Inspection of Plant or Site — Circumstances under which the State may perform inspections include, but are not limited to, inspections of the contractor's plant or site in order to determine:

1. Whether the standards set forth in Section 39:1601 (Standards of Responsibility - Rules and Regulations.) have been met or are capable of being met.

2. If the contract is being performed in accordance with its terms.

C. Access to Plant or Place of Business — The State may enter a contractor's or subcontractor's plant or place of business to:

1. Inspect supplies or services for acceptance by the State pursuant to the terms of a contract.

2. Audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to R.S. 39:1622 (Right to Audit Records) of the Louisiana Procurement Code.

3. Investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to R.S. 39:1672 (Authority to Debar or Suspend) of the Louisiana Procurement Code.

D. Inspection of Supplies and Services — Louisiana contracts may provide that the State may inspect supplies and services at the contractor or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or, after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract.

E. Conduct of Inspections.

1. Inspectors — Inspections or tests shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector other than the Procurement Officer may change any provision of the specifications or the contract without written authorization of the Procurement Officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

2. Location — When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

3. Time — Inspection or testing of supplies and services performed at the plant or place of business of any contractor or subcontractor shall be performed at reasonable times.

F. Inspection of Major Repair Projects — On-site inspection of

major repairs shall be performed in accordance with the terms of the contract.

**Section IX - Reporting of Suspected Collusive Bidding  
or Negotiations  
R.S. 39:1626**

A. Statutory Provision — R.S. 39:1626 (Reporting of Anticompetitive Practices) of the Louisiana Procurement Code provides:

1. Notification to the Attorney General — When for any reason collusion is suspected among any bidders or offerors, a written notice of the relevant facts shall be transmitted to the attorney general.

2. Retention of all Documents — All documents involved in any procurement in which collusion is suspected shall be retained for a minimum of six years or until the attorney general gives written notice that they may be destroyed, whichever period is longer. All retained documents shall be made available to the attorney general or a designee upon request and proper receipt therefor.

B. Anticompetitive Practices — For the purposes of this Section, an anticompetitive practice is a practice among bidders or offerors which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products. Indications of suspected anticompetitive practices include identical bids or proposals, rotated low bids or proposals, sharing of the business, “tie-in” sales, resale price maintenance, and group boycotts. See Identical Bidding (Section F) (Possible Anticompetitive Practices).

C. Independent Price Determination — Every solicitation shall provide that by submitting a bid or offer, the bidder or offeror certifies that the price submitted was independently arrived at without collusion.

D. Reporting Suspected Anticompetitive Practices — The Chief Procurement Officer, in consultation with the Attorney General, shall develop procedures, including forms, for reporting suspected anticompetitive practices. A Procurement Officer who suspects that an anticompetitive practice has occurred or may be occurring shall follow these procedures.

E. Detection of Anticompetitive Practices — In order to ascertain whether or not an anticompetitive practice may have occurred or may be occurring, the Procurement Officer will often find it necessary to study past procurements including, as appropriate, the following:

1. A study of the bidding history of a supply, service, or major repair items over an amount of time sufficient to determine any significant bidding patterns or changes.

2. A review of similar Louisiana contract awards over a period of time.

3. Or consultation with outside sources of information, such as bidders or offerors who have competed for similar Louisiana business in the past but who are no longer competing for such business.

F. Identical Bidding — The term “identical bidding” means the submission by bidders or offerors of the same total price or the same price on a particular line item. The submission of identical bids may not signify the existence of collusion. In some instances, price controls imposed by State or federal governments result in the submission of identical bids. Bids may also be identical as a result of chance. Identical bids for supplies are more likely to occur due to chance if:

1. The supply is a commodity with a well-established market price or a brand name with a “suggested retail price.”

2. The quantity being purchased is small in relation to the supplier’s total sales.

3. Early delivery is required.

4. Transportation expenses are low relative to total costs.

In seeking to determine whether collusion has taken place, the

Procurement Officer should view the identical bids against present and past pricing policies of the bidders or offerors, the structure of the industry involved including comparisons of prices f.o.b., shipping point and f.o.b. destination, and the nature of the supply, service, or major repairs involved, such as whether it is a basic chemical or material. Identical bids may also result from resale price maintenance agreements which are described in Section G3 (Possible Anticompetitive Practices, Resale Price Maintenance).

G. Possible Anticompetitive Practices.

1. General — The practices which are described in Subsection 2 through Subsection 6 of this Section and which the Procurement Officer suspects might be anticompetitive shall be reported in accordance with Section D (Reporting Suspected Anticompetitive Practices).

2. Rotated Low Bids or Proposals — Rotated low bids or proposals result where all bidders or offerors participating in the collusive scheme submit bids but by agreement alternate being the lowest bidder or offeror. In order to determine whether rotation may be occurring, the Procurement Officer must review past similar procurements in which the same bidders or offerors have participated.

3. Resale Price Maintenance — The practice of resale price maintenance consists of an agreement between a manufacturer and a distributor or a dealer to fix the resale price of a supply. A Procurement Officer should consider the possibility that such an agreement exists where prices offered adhere to an established pattern, such as a published price schedule, and identical bidding occurs.

4. Sharing of the Business — Sharing of the business occurs where potential bidders or offerors allocate business among themselves based on the customers or the territory involved. Thus a Procurement Officer might discover that a potential bidder or offeror is not participating in a State procurement because a particular Louisiana agency, or a particular territory has not been allocated to such bidder or offeror by the producer or manufacturer.

5. “Tie-in” Sales — “Tie-in” sales are those in which a bidder or offeror attempts to sell one supply or service only upon the condition that the Procurement Officer purchase another particular supply or service.

6. Group Boycott — A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a State procurement until the boycotting competitors’ conditions are met by the boycotted competitor or the State. The boycott of a competitor by other competitors may have an effect on the market structure or price of a supply, service, or major repair items needed by the State.

**Section X - Specifications**

**R.S. 39:1651 - 1657**

A. Definitions — The following definitions are not in any order of preference.

1. Brand Name Specification means a specification calling for one or more products by manufacturers’ names or catalogue numbers.

2. Brand Name or Equal Specification means a specification which uses a brand name specification to describe the standard of quality, performance, and other characteristics needed to meet State requirements, and which also provides for the submission of equivalent products.

3. Qualified Products List means a list of supplies, services, or major repair items described by model or catalogue numbers, which, prior to solicitation, Louisiana has determined will meet the applicable specification requirements.

4. Specification means any description of the physical, functional, or performance characteristics, or of the nature of a supply, service, or construction item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the con-