

## **POLICY MANUAL**

### **CHAPTER 1 - PROCUREMENT POLICIES**

#### **1.1 – DISPUTE RESOLUTION**

##### **1.1.1 DEFINITIONS**

- A. “Act” means the Tennessee Education Lottery Implementation Law, as may be amended from time to time.
- B. “Aggrieved Person” means, subject to the provisions of section 1.1.4.C.3, any person or entity including a Vendor (but excluding an Employee and/or a Lottery Retailer) who complains of a matter within the scope of these Dispute Resolution Procedures set forth in Section 1.1.2.
- C. “Board” means the board of directors of the Corporation.
- D. “Chief Executive Officer” means the Chief Executive Officer of the Corporation.
- E. “Corporation” means the Tennessee Education Lottery Corporation.
- F. “Dispute Resolution Request” means a written request by which an Aggrieved Person seeks a determination with respect to any matter which is adverse to the Corporation which is within the scope of these Procedures as set forth in Section 1.1.2 hereof.
- G. “Employee” means any at-will employee of the Corporation, and any person employed by the Corporation pursuant to an employment contract or otherwise.
- H. “Hearing Officer” means the Chief Executive Officer or his or her designee who shall serve as a Hearing Officer within the scope of these Dispute Resolution Procedures.
- I. “Lottery Retailer” means a person or entity who sells lottery tickets or shares on behalf of the Corporation pursuant to a contract.
- J. “Major Procurement Contract” means a contract with a Vendor for any gaming product or service costing in excess of \$75,000.00, including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Tennessee lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of a corporation.

- K. “Vendor” means a person or entity who provides or proposes to provide goods or services to the Corporation pursuant to a Major Procurement Contract, but does not include an Employee, a Lottery Retailer, or a state agency or instrumentality thereof. Such term does include any corporation whose shares are publicly traded and which is the parent company of the contracting party in a Major Procurement Contract.

### **1.1.2 SCOPE AND APPLICABILITY OF THESE POLICIES**

These Dispute Resolution Procedures apply to and shall constitute the exclusive procedure for binding resolution of all claims, disputes, complaints and Dispute Resolution Requests of any kind filed by an Aggrieved Person relating in any way to any agreement entered into by the Corporation, whether in an administrative proceeding or litigation, at law or equity, including, but not limited to, those arising out of or relating to any aspect of a solicitation or bid or a failure to conduct a solicitation or bid, the performance of any party, the interpretation of any contractual provision, the applicability or interpretation of any law, rule or regulation, or any decision to award, deny, suspend or cancel, terminate or not renew any contract or agreement.

### **1.1.3 FILING OF A DISPUTE RESOLUTION REQUEST**

- A. Any Aggrieved Person may file a Dispute Resolution Request seeking a determination with respect to any matter which is included within the scope of these Dispute Resolution Procedures as set forth in Section 1.1.2. An Aggrieved Person who files a Dispute Resolution Request is hereinafter referred to as a “Petitioner.” Other than as expressly set forth in these Dispute Resolution Procedures, nothing contained herein shall confer any rights or remedies upon any Aggrieved Person and/or Petitioner, or impose any duties or obligations upon the Corporation, which are not otherwise so conferred or imposed by the Act.
- B. The Dispute Resolution Request shall be in writing, shall be filed by delivery by hand or courier to the Chief Executive Officer with a copy to the General Counsel of the Corporation at the address listed below, or at such other address at which the headquarters of the Corporation may be located from time to time:

Chief Executive Officer	General Counsel
Tennessee Education Lottery Corporation	Tennessee Education Lottery Corporation
200 Athens Way, Suite 200	200 Athens Way, Suite 200
Nashville, Tennessee 37228	Nashville, Tennessee 37228

- C. The Dispute Resolution Request shall include the following information:
  - 1. The name, address and telephone number of the Petitioner;
  - 2. The signature of the Petitioner;

3. Identification of the solicitation or contract number that is the subject of the dispute;
4. A statement of the legal and factual grounds supporting the position of the Petitioner, including copies of relevant documents;
5. Any other documentation the Petitioner wishes to submit in support of Petitioner's position; and
6. A statement of the relief requested whether legal, equitable or otherwise. If a monetary award is requested, the amount shall be stated.

For a Dispute Resolution Request to be timely filed, the original Dispute Resolution Request manually signed by the Petitioner must be physically received by the Corporation within the time period prescribed in Section 1.1.4 below. Facsimile and/or other electronically transmitted copies of the Dispute Resolution Request will not be accepted.

- D. The Petitioner shall be required to provide a suitable Dispute Resolution Request/Litigation Bond to the Corporation in certified funds at the time the Dispute Resolution Request is filed. The purpose of this bond is to:
1. Discourage frivolous Dispute Resolution Requests and litigation;
  2. Assure payment by the Petitioner of the costs incurred as a result of the Dispute Resolution Request, including reasonable Attorney's fees of the Corporation, employees or the Board, in the event Petitioner appeals and such costs are adjudged against the Petitioner pursuant to T.C.A. § 4-51-127; and
  3. Assure payment of all other amounts for which the Petitioner may be found liable, including, but not limited to, any loss of income to the Corporation resulting from the institution of a frivolous appeal.

Failure to provide such bond with any Dispute Resolution Request will result in the dismissal of such Dispute Resolution Request. An Aggrieved Person/Petitioner shall not have met the requirement in Section 1.1.4 to timely file a Dispute Resolution Request unless the applicable Dispute Resolution Request/Litigation Bond accompanies the Dispute Resolution Request when it is timely filed. This requirement does not apply to any Petitioner who has already provided a Dispute Resolution Request/Litigation Bond in the proper bond amount as part of a bidding process.

- E. The amount of the Dispute Resolution Request/Litigation Bond shall be the amount established in the applicable solicitation. In the event that no amount is specified in

the applicable solicitation, the Dispute Resolution Request/Litigation Bond shall be \$10,000 or 50% of the contract amount in controversy, whichever is less.

#### **1.1.4 TIME FOR FILING A DISPUTE RESOLUTION REQUEST**

- A. Dispute Resolution Requests concerning a solicitation.
1. A Dispute Resolution Request in regard to a Major Procurement Contract solicitation for which the basis for the Dispute Resolution Request is apparent before the closing date for receipt of initial proposals shall be filed within five (5) business days after the deadline for vendor questions established in the solicitation. A Dispute Resolution Request in regard to any other solicitation for which the basis for the Dispute Resolution Request is apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals. Dispute Resolution Requests based upon a solicitation that are apparent before the bid opening shall be filed before bid opening.
  2. Dispute Resolution Requests based upon an amendment to any solicitation, or upon any additional information requested or accepted by the Corporation with respect to any solicitation or response thereto, that are apparent before the closing date for receipt of proposals or any supplemental information requested by the Corporation shall be filed within five (5) business days after the deadline for vendor questions or the date of the amendment, whichever date is later.
  3. Subject to the provisions of Section 1.1.4.C, if a Dispute Resolution Request is filed with the CEO and the General Counsel of the Corporation before the award of a contract, the award of such contract may be made before a decision is rendered on the Dispute Resolution Request.
- B. If the Board files with the Lottery Procurement Panel (as described in T.C.A. § 4-51-126(c)(1)) notice of the Board's intent not to require competitive bidding of a Major Procurement Contract, the Dispute Resolution Request must be filed within five (5) business days of the date such notice is filed with the Lottery Procurement Panel, and is posted, published or otherwise made available to the public.
- C. Dispute Resolution Request concerning an award of contract.
1. Subject to 1.1.4.C.3 below, any Aggrieved Person may protest the Corporation's decision to award a contract. Any such written Dispute Resolution Request shall be filed (a) in the case of a contract that has not been competitively bid by the Corporation, within five (5) business days after either the Corporation's issuance of a notice of intent to award such contract or the Corporation's award of such contract is posted, published or otherwise made publicly available, whichever occurs first; and (b) in the

case of a contract that has been competitively bid by the Corporation, within five (5) business days after the Corporation's issuance of a notice of intent to award such contract is posted, published or otherwise made publicly available.

2. If a Dispute Resolution Request seeking equitable relief regarding the award of any contract is filed with the General Counsel of the Corporation in accordance with Section 1.1.4.C.1, the Corporation may award and enter into such contract only if (a) such Dispute Resolution Request shall have been resolved in accordance with these Dispute Resolution Procedures, or (b) the Board shall have made a written determination that the award of such contract without delay is necessary to protect substantial interests of the Corporation.
  3. Only persons or entities that submit a bid, offer, quote or proposal with respect to a procurement solicitation for a competitively bid contract may be considered an "Aggrieved Person" with standing to file a Dispute Resolution Request with respect to the award of such contract or the issuance of a notice of intent to award such contract.
- D. In all other cases pertaining to a solicitation or award of an agreement or a contract other than those covered in Sections 1.1.4.A thru C, above, a Dispute Resolution Request must be filed within five (5) business days after the announcement of the Board's decision to award is posted, published or otherwise made publicly available, whichever occurs first.
- E. In all cases other than those covered in Sections 1.1.4.A thru D, above, the Dispute Resolution Request must be filed within five (5) business days after the Aggrieved Person knows or should have known of the facts giving rise to the action complained of.
- F. Failure to file a written Dispute Resolution Request in accord with Section 1.1.3 within the applicable time limit provided in Section 1.1.4 shall bar any further administrative, legal, or equitable action.
- G. Failure to provide the applicable Dispute Resolution Request/Litigation Bond in the amount required and as otherwise provided in Sections 1.1.3.D and E within the applicable time frame shall result in an untimely filing and bar any further administrative, legal, or equitable action.

### **1.1.5 NOTICE OF FILING OF A DISPUTE RESOLUTION REQUEST**

In the event a Dispute Resolution Request is filed, the Chief Executive Officer shall immediately give notice of the Dispute Resolution Request to the Board and to the successful person or entity, if an award has been made, or, if no award has been made, to all persons or entities who have submitted bids or proposals.

### **1.1.6 CONFIDENTIAL INFORMATION**

- A. Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.
- B. If the Petitioner believes the Dispute Resolution Request contains material that should be withheld, a statement advising the General Counsel of this fact shall accompany the Dispute Resolution Request submission.

### **1.1.7 DECISION BY THE CHIEF EXECUTIVE OFFICER**

- A. The Chief Executive Officer, or a Hearing Officer designated by him/her, shall have the exclusive authority to decide all Dispute Resolution Requests.
- B. The Chief Executive Officer or Hearing Officer shall issue a written decision within thirty (30) calendar days after a Dispute Resolution Request has been filed. The decision shall include:
  - 1. A brief description of the claim;
  - 2. A reference to the pertinent contract provision;
  - 3. A brief statement of the factual and legal issues;
  - 4. A statement of the Chief Executive Officer's or Hearing Officer's decision, with supporting rationale and the remedial action and/or award, if any.
- C. The Chief Executive Officer or Hearing Officer shall furnish a copy of the decision to the Petitioner by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, express mail or overnight express courier.
- D. The time limit for decisions set forth in Section 1.1.7.B may be extended by the Chief Executive Officer or Hearing Officer for good cause for a reasonable time not to exceed thirty (30) additional calendar days. The Chief Executive Officer or Hearing Officer shall notify the Petitioner in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- E. If the Chief Executive Officer or Hearing Officer fails to issue a decision within the time limits set forth in Sections 1.1.7.B or 1.1.7.D, the Petitioner may proceed as if the Chief Executive Officer or Hearing Officer had issued an adverse decision.
- F. In lieu of a written decision, the Chief Executive Officer may, in his or her sole discretion, within thirty (30) calendar days after a Dispute Resolution Request is filed, give written notice to the Petitioner that the Dispute Resolution Request shall

be resolved by a hearing conducted by the Chief Executive Officer or Hearing Officer pursuant to the procedures for hearing set forth in Section 1.1.8. Notwithstanding the foregoing, the Board may at any time on its own motion direct that a Dispute Resolution Request be resolved by a hearing conducted by the Chief Executive Officer or Hearing Officer pursuant to the procedures for hearing set forth in Section 1.1.8.

- G. Nothing in these Dispute Resolution Procedures shall prohibit a contractor who is also an Aggrieved Person or Petitioner from submitting an invoice to the Corporation for final payment after the work is completed and accepted.
- H. Pending claims shall not delay payment for undisputed amounts from the Corporation to a contractor who is also an Aggrieved Person or Petitioner.

### **1.1.8 HEARING PROCEDURES**

- A. All hearings conducted under this section shall be conducted by the Chief Executive Officer or by a Hearing Officer designated by the Chief Executive Officer. The decision as to whether the Chief Executive Officer or a Hearing Officer will conduct the hearing shall be in the sole discretion of the Chief Executive Officer. The Hearing Officer's actions, decisions and orders shall be deemed to be on behalf of the Chief Executive Officer and effective as though taken by the Chief Executive Officer, subject to the appeals procedures as hereinafter provided.
- B. If the Chief Executive Officer determines under Section 1.1.7.F that the Dispute Resolution Request will be resolved after a hearing, the hearing shall be held within thirty (30) calendar days following the Chief Executive Officer's determination under Section 1.1.7.F to resolve a Dispute Resolution Request by this procedure for a hearing. A notice which will set forth the time, date and location of the hearing will be sent to the party or parties at least seven (7) calendar days before the date set for such hearing.
- C. In connection with the hearing, the Chief Executive Officer or Hearing Officer may:
  - 1. Conduct the hearing in an informal manner without formal rules of evidence or procedure;
  - 2. Hold pre-hearing conferences to:
    - a) Settle, simplify or identify the issues involved in the hearing;
    - b) Consider other matters that may aid in the expeditious disposition of the hearing;

- c) Rule on any parties' request for injunctive or other equitable relief.
  3. Require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;
  4. Require each party to produce for examination those relevant witnesses and documents under its control;
  5. Rule on motions and other procedural items pending before him or her, including, without limitation, the methods, scope and extent of discovery available to the parties;
  6. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
  7. Establish time limits for submission of motions or memoranda;
  8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;
  9. Administer oaths or affirmations;
  10. Issue subpoenas; and
  11. Join any necessary parties to the hearing.
- D. The hearing shall be conducted before a court reporter. The Petitioner shall procure, at Petitioner's own cost and on Petitioner's own initiative, the court reporting services (including the preparation of the transcript) for such hearing. The original transcript of any such proceedings shall be submitted to the Chief Executive Officer or Hearing Officer as soon as the transcript is available, and in no event later than five (5) calendar days following the conclusion of the hearing, and shall be made a part of the record. The Petitioner shall also submit a copy of the transcript to all other parties to the Dispute Resolution Request as soon as the transcript is available.
- E. Any party may appear and be represented with or without counsel at the hearing.
- F. If a Hearing Officer conducts the hearing, he or she shall make a written recommendation containing the Hearing Officer's ruling, in the form of a Proposed Decision, to the Chief Executive Officer, within thirty (30) calendar days after receiving an original transcript of the hearing pursuant to Section 1.1.8.D above. If a Proposed Decision is received by the Chief Executive Officer, he or she must render a decision in writing and deliver the decision to the parties within thirty (30) calendar days after receiving the Proposed Decision from the Hearing Officer.

1. If the Chief Executive Officer receives a recommendation in a Proposed Decision from a Hearing Officer, he or she may:
    - a) Accept, modify or reject the Hearing Officer’s recommendation in whole or in part;
    - b) Return the matter to the Hearing Officer with instruction;
    - c) Make any other appropriate disposition; or
    - d) Issue a no action response.
  2. If the Chief Executive Officer issues a no action response, then the determination in the Proposed Decision of the Hearing Officer will be deemed to be accepted by the Chief Executive Officer.
- G. If the Chief Executive Officer conducts the hearing, he or she must render a decision in writing and deliver the decision to the Petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.
- H. The Chief Executive Officer’s decision and any Proposed Decision made by a Hearing Officer shall be sent to the Petitioner by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier.

### **1.1.9 PROCEDURE FOR FILING AN APPEAL TO THE BOARD**

- A. A Petitioner may appeal a decision of the Chief Executive Officer or Hearing Officer to the Board. Any appeal from a decision of the Chief Executive Officer or Hearing Officer must be filed with the Board within five (5) business days after receipt of such decision.
- B. Any appeal shall be filed by delivery by hand or courier, to the Chief Executive Officer with a copy to the General Counsel of the Corporation at the address listed below, or at such other address at which the headquarters of the Corporation may be located from time to time:

Chief Executive Officer  
Tennessee Education Lottery Corporation  
200 Athens Way, Suite 200  
Nashville, Tennessee 37228

General Counsel  
Tennessee Education Lottery Corporation  
200 Athens Way, Suite 200  
Nashville, Tennessee 37228

An appeal so delivered will be timely filed only if received by the Corporation at the above-stated address during its normal business hours on or before the fifth (5th) business day prescribed by Section 1.1.9.A above.

- C. An appeal must be in writing and shall contain the following:
  - 1. Copy of the decision of the Chief Executive Officer or Hearing Officer;
  - 2. A copy of the transcript of any hearing;
  - 3. The basis for the precise factual or legal error in the decision of the Chief Executive Officer or Hearing Officer from which the appeal is taken.
- D. The Board shall notify interested parties of the appeal (by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier) within five (5) calendar days after the appeal is filed.
- E. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

#### **1.1.10 BOARD'S DECISION**

- A. The Board, or a committee of the Board, may review the record without a hearing or oral argument and issue a written decision on behalf of the Board. The Board, or a committee of the Board, may, in its sole discretion: (1) conduct its own review or investigation; (2) conduct a de novo review in whole or in part; and/or (3) allow oral argument, in the manner and under procedures that the Board or its committee shall deem appropriate under the circumstances.
- B. A copy of the Board's written decision will be sent to the appellant by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier. The original written decision shall be retained by the Board. The written decision of the Board, or a committee of the Board, will be final, and no further appeal to the Board will be allowed.

#### **1.1.11 JUDICIAL REVIEW**

Any adverse final decision of the Board issued under this Section shall be subject to judicial review pursuant to T.C.A. § 4-51-127 by any person or entity who was a party to the appeal, and the complaint seeking review must be filed with the Chancery Court of Davidson County.

### **1.1.12 EXCLUSIVE REMEDY**

These Dispute Resolution Procedures provide the exclusive procedure for asserting a claim against the Corporation arising out of or relating to any matter which is within the scope of these Dispute Resolution Procedures as set forth in Section 1.1.2 hereof. Neither an Aggrieved Person, Petitioner nor any other interested party has a right to any remedy against the Corporation with respect to a matter within the scope of Section 1.1.2 hereof, except in accordance with the procedures set forth in these Dispute Resolution Procedures.