

Title 23. Public Utilities and Regulated Industries
Chapter IX. Office of the Arkansas Lottery
Subchapter A. Generally
Part 372. Procurement Contract and Vendor Rules

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"Preface: The Purpose of these rules is to establish the policies and procedures for vendors doing business with the Arkansas Lottery Commission (ALC). These rules are issued pursuant to the authority vested in the ALC under Arkansas Code Ann. §§23-115-207 and 23-115-701, and the Arkansas Administrative Procedures Act, §§25-15-201, et seq."

Subpart 1. Generally

23 CAR § 372-101. Definitions.

As used in this part:

(1) "Act" means the Arkansas Scholarship Lottery Act, Arkansas Code § 23-115-101 et seq.;

(2) "Addendum" or "addenda" means an addition or deletion to, a material change in, or general interest explanation of a solicitation document;

(3) "Advantageous" means, in the Office of the Arkansas Lottery's interests, as assessed according to the judgment of the Office of the Arkansas Lottery;

(4) "Award" means either the act or occurrence of the Office of the Arkansas Lottery's identification of the person with whom the Office of the Arkansas Lottery will enter into a contract;

(5) "Bid" means a response to an invitation to bid;

(6) "Bidder" means a person that submits a bid in response to an invitation to bid;

(7) "Closing" means the date and time announced in a solicitation document as the deadline for submitting offers;

(8) "Commission" or "commissioners" means the member or members of the Office of the Arkansas Lottery as appointed under Arkansas Code § 23-115-202 [repealed];

(9) "Contract" means all types of state agreements, regardless of what they may be called, for the purchase, lease, rental, or other acquisition of goods and services and for the disposal of surplus commodities and services not otherwise exempt;

(10) "Contract price" means as the context requires:

(A) The maximum payments that the Office of the Arkansas Lottery will make under a contract if the contractor fully performs under the contract;

(B) The maximum not-to-exceed amount of payments specified in the contract; or

(C) The unit prices for goods and services set forth in the contract;

(11) "Contractor" means the person with whom the Office of the Arkansas Lottery enters into a contract;

(12) "Director" means the Director of the Office of the Arkansas Lottery;

(13) "Emergency" means circumstances that:

(A) Could not have been reasonably foreseen;

(B) Require prompt execution of a contract to remedy the condition; and

(C) Meet one (1) of the following two (2) conditions:

(i) The circumstances create a substantial risk of loss of revenue, damage, or interruption of services or substantial threat to property, public health, welfare, or safety when the circumstances could not have been reasonably foreseen; or

(ii) The circumstances require immediate and decisive action to protect the security, credibility, or integrity of the lottery or a lottery game;

(14) "Goods and services" or "goods or services" means supplies, equipment, materials, and services including personal services and any personal property, including any tangible, intangible, and intellectual property and rights and licenses in relation thereto, that the Office of the Arkansas Lottery is authorized by law to procure;

(15) "Information technology contract" means a contract for the acquisition, disposal, repair, maintenance, or modification of hardware, software, or services for computers or telecommunications;

(16) "Invitation to bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting bids using a competitive bidding process in which specifications, price, and delivery (or project completion) will be the predominant award criteria;

(17) "Lottery" means any game of chance approved by the Office of the Arkansas Lottery pursuant to the Arkansas Scholarship Lottery Act;

(18)(A) "Major procurement" or "major procurement contract" means a contract for a gaming product or service costing more than seventy-five thousand dollars (\$75,000) including without limitation:

- (i) A major advertising contract;
- (ii) An annuity contract;
- (iii) A prize payment agreement;
- (iv) A consulting service;
- (v) Lottery equipment;
- (vi) Tickets; and
- (vii) Any other product and service unique to lotteries.

(B)(i) "Major procurement contract" does not include a material, supply, equipment, or service common to the ordinary operations of the Office of the Arkansas Lottery.

(ii) When the cost of a proposed contract for a gaming product or service is to be paid in whole or in part on a contingent basis, the Office of the Arkansas Lottery shall estimate the value of the proposed contract to determine whether it is a major procurement contract;

(19) "OAL" means the Office of the Arkansas Lottery;

(20) "Offer" means a response to a solicitation document;

(21) "Offeror" means a person who submits an offer;

(22) "Person" means:

- (A) An individual;
- (B) A corporation;
- (C) A business trust;
- (D) An estate;
- (E) A trust;
- (F) A partnership;
- (G) A limited liability company;
- (H) An association;
- (I) A joint venture;
- (J) A governmental agency;
- (K) A public corporation; or
- (L) Any other legal or commercial entity;

(23) "Personal services" means the services or type of services performed under a personal services contract;

(24) "Personal services contract" means a contract or member of a class of contracts whose primary purpose is to acquire specialized skills, knowledge, and resources in the application of technical or scientific expertise, or the exercise of professional, artistic, or management discretion or judgment, including, without limitation, a contract for the services of an accountant, educator, information technology or other consultant, broadcaster or artist, including a:

- (A) Photographer;
- (B) Filmmaker;
- (C) Painter; or
- (D) Sculptor;

(25) "Proposal" means a response to a request for proposal;

(26) "Proposer" means a person that submits a proposal in response to a request for proposal;

(27) "Request for proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals using a competitive proposal process in which price is not the sole determining factor for contract award;

(28) "Request for qualifications" or "RFQ" means a solicitation document requiring submittal of qualifications or specialized expertise in response to the scope of work or services required and does not require pricing;

(29) "Responsible bidder/proposer/offeror" means a vendor who submits a bid, offer, quote, or proposal in response to a solicitation and who, in the reasonable opinion of the Office of the Arkansas Lottery:

(A) Is able and is otherwise qualified in all respects to perform fully the contract requirements without delay; and

(B) Has the integrity and reliability which will assure good faith performance;

(30)(A) "Responsive bidder/proposer/offeror" (also "responsive bid", "responsive offer", or "responsive proposal", as applicable) means an offer that substantially complies in all material respects with applicable solicitation document requirements.

(B) When used alone, "responsive" means having the characteristics of substantially complying in all material respects with applicable solicitation document requirements;

(31) "Scope" means the range and attributes of the goods or services described in the applicable solicitation document, or if no solicitation document, in the contract;

(32) "Signed" or "signature" means any mark, word, or symbol attached to or logically associated with a document and executed or adopted by a person with the intent to be bound;

(33) "Solicitation" means all documents, whether attached or incorporated by reference, utilized for soliciting bids, offers, quotes, or proposals with respect to a particular major procurement;

(34) "Solicitation document" means an invitation to bid, request for proposal, or other document issued to invite offers from prospective contractors;

(35)(A) "Specification" means any description of the physical or functional characteristics, or of the nature of goods or services, including any requirement for

inspecting, testing, or preparing goods or services for delivery and the quantities of materials to be furnished under a contract.

(B) Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed;

(36)(A) "Vendor" means a person who provides or proposes to provide goods or services to the Office of the Arkansas Lottery under a major procurement contract.

(B) "Vendor" does not include:

(i) An employee of the Office of the Arkansas Lottery;

(ii) A retailer; or

(iii) A state agency or instrumentality.

(C) "Vendor" includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract;

(37) "Work" means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual requirement in a contract and successful completion of all duties and obligations imposed by the contract; and

(38)(A) "Written" or "writing" means conventional paper documents, whether handwritten, typewritten, or printed, in contrast to spoken words.

(B) It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-102. Objective.

It is the policy of the Office of the Arkansas Lottery, to the extent that is reasonable given the objectives of maximizing the net revenues of the office, to conduct its contracting affairs in an open, competitive manner in accordance with this part and the Arkansas Procurement Law, Arkansas Code § 19-11-201 et seq.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-103. Authority of the director.

(a) The Director of the Office of the Arkansas Lottery is authorized to initiate procurements and enter into all contracts and contract amendments for goods and services except when:

(1)(A) The goods and services are an expense over five thousand dollars (\$5,000) not approved in the Office of the Arkansas Lottery budget.

(B) The director must seek office approval;

(2) Lottery Oversight Subcommittee of the Legislative Council review is required under Arkansas Code § 23-115-1101, the director must seek review before the contract is executed; or

(3) As otherwise provided in this part.

(b) Price reduction.

(1) The director is authorized without further specific approval action by the office to execute any contract amendment that results in a reduction of the price paid by the office per item, unit, or other measure of the goods or services provided under the contract, and may exercise any option under a contract previously approved by the office, where the option terms of the approved contract establish a specific price for the goods or services to be acquired under the option.

(2) **Emergency procurements.** The director is authorized to make an emergency procurement as defined in 23 CAR § 372-101(13).

(3) **Delegation by director.** The director may delegate to any of the employees of the office the exercise or discharge of any of the powers, duties, or functions of the director in this part.

Authority. Arkansas Code § 23-115-701.

Subpart 2. Solicitations

23 CAR § 372-201. Generally.

(a)(1) The provisions of this section are applicable to all solicitations of

procurement contracts regardless of the procurement method used by the Office of the Arkansas Lottery.

(2) All solicitations shall detail:

(A) Terms and conditions clearly detailing the requirements for the response to the solicitation, including the schedule for submitting and evaluating responses to solicitations as well as contract language in the event of award;

(B) Where more than one (1) item is specified, whether the office will have the right to accept proposals on the basis of:

(i) Each individual item;

(ii) A group of items; or

(iii) The total of all items; and

(C) Any requirement for a performance bond.

(b) Unless the solicitation specifically permits offers of used or reconditioned items, all solicitations shall be deemed to require that all materials, supplies, and equipment offered and furnished must be new and not reconditioned.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-202. Limitations regarding submissions of solicitations.

(a)(1) The Office of the Arkansas Lottery is committed to a competitive procurement process that maintains the highest level of integrity.

(2) Therefore, no communication outside the procurement process initiated by vendors, their attorneys, representatives, or others promoting their position, other than normal business activities not associated with the procurement, will be allowed with any officer, employee, or member of, or consultant or advisor to, the office.

(3) Any attempt to influence any employees, officers, consultants, advisors, or office members of the office with respect to a procurement, whether such attempt is oral or written, formal or informal, is strictly prohibited and will result in disqualification.

(b)(1) All bids, offers, quotes, or proposals and the contracts resulting from solicitations are subject to the requirements of and must comply with the Arkansas

Scholarship Lottery Act, Arkansas Code § 23-115-101 et seq., regardless of whether or not specifically addressed in either the solicitations or the proposal.

(2) All potential vendors shall read and be familiar with the act, a copy of which may be obtained through a link on the office's website.

(c) The office shall not under any circumstance be responsible for any expenses incurred by a vendor in preparing and submitting a proposal.

(d) All materials submitted to the office by vendors shall upon submission become the property of the office and may be used as the office deems appropriate.

(e) From the time a solicitation is issued until either six (6) months after the award of a contract or the rejection of all bids, offers, quotes, or proposals received by the office, vendors are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any office employee, officer, or office member.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-203. Signature required.

(a) Each bid, offer, quote, or proposal must be signed by the vendor's authorized agent.

(b)(1) If a joint proposal that includes multiple vendors is submitted, it must define completely the responsibilities that each entity is proposing to undertake, as well as the proposed responsibilities of each subcontractor of each entity.

(2) The proposal must be signed by an authorized officer or agent of each entity.

(3) In addition, the Office of the Arkansas Lottery reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor, or each subcontractor that is expected to provide a specified amount of the procured product or service, to sign the proposal.

(4) Such requirement shall be clearly set forth in the solicitation.

(c) The proposal must designate a single authorized official from one (1) of the

entities to serve as the sole point of contact between the office and the responding:

- (1) Joint venture;
- (2) Strategic partnership; or
- (3) Prime contractor team.

(d)(1) Any contract resulting from a joint proposal must be signed by an authorized officer or agent of each entity.

(2) In addition, the office reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor, or each subcontractor that is expected to provide a specified amount of the procured product or service, to sign any such contract.

(3) Such requirement, or the possibility of such requirement, shall be clearly set forth in the solicitation.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-204. Addenda to solicitation documents.

(a) The Office of the Arkansas Lottery reserves the right to make changes to any solicitation by issuance of a written addendum or amendment.

(b) The office may issue any such addendum or amendment at any time prior to entering a contract regarding the applicable major procurement.

(c) Any addendum or amendment will be posted on the office's web page, and notice of the same shall be communicated, via facsimile, to all vendors who requested and were sent a copy of the applicable solicitation or who have submitted a bid, offer, quote, or proposal in respect of such solicitation.

(d) An offeror shall provide written acknowledgement of receipt of all issued addenda with its offer, unless the office otherwise specifies in the addenda.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-205. Cancellation, rejection, and delay of a solicitation.

(a) **Generally.**

(1) Any procurement described in a solicitation document may be cancelled, or any or all offers may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the Office of the Arkansas Lottery as determined by the office.

(2) The reasons for the cancellation or rejection must be made a part of the solicitation file.

(3) The office is not liable to any offeror for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation document, offer, or award.

(b) **Offer findings.** The office shall reject an offer upon the office's finding that the offer:

(1) Is contingent upon the office's acceptance of terms and conditions, including specifications, that differ from the solicitation document;

(2) Takes exceptions to terms and conditions, including specifications, set forth in the solicitation document;

(3) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the solicitation document or in contravention of applicable law;

(4) Offers goods or services that fail to meet the specifications of the solicitation document;

(5) Is late;

(6) Is not in substantial compliance with the solicitation document requirements; or

(7) Is not in substantial compliance with all prescribed public procurement procedures.

(c) **Offeror findings.** The office shall reject an offer upon the office's finding that the offeror:

(1) Has been debarred pursuant to 23 CAR § 372-209;

(2) Has not properly executed bid or proposal security as required by the solicitation document; or

(3) Is nonresponsible.

(d) **Disposition of offers.**

(1) **Prior to closing.**

(A) If the office cancels a solicitation prior to closing, the office shall return all offers it received to offerors unopened, provided the offeror submitted its offer in a hard copy format with a clearly visible return address.

(B) If there is no return address on the envelope, the office shall open the offer to determine the source and then return it to the offeror.

(2) **After closing.** If the office cancels a solicitation after closing, the office shall keep the offers in the procurement file.

(3) **Rejection of all offers.** If the office rejects all offers, the office shall keep all offers in the procurement file.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-206. Discovery.

(a) The Office of the Arkansas Lottery reserves the right to obtain any information from any lawful source as required by the Arkansas Scholarship Lottery Act, Arkansas Code § 23-115-101 et seq., and regarding the past business history, practices, and abilities of vendors, their:

- (1) Officers;
- (2) Directors;
- (3) Employees;
- (4) Owners;
- (5) Team members;
- (6) Partners; or
- (7) Subcontractors.

(b) Such information may be taken into consideration in evaluation of the proposals.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-207. Preclosing modifications or withdrawal of offers.

(a)(1) An offeror may modify its offer in writing prior to closing.

(2) An offeror shall prepare and submit any modifications to its offer to the Office of the Arkansas Lottery.

(3) The last offer received by the office prior to closing will supersede any previous offers received unless the offer is identified by the offeror as an alternate offer.

(b) **Change in circumstance.** Each offeror is under a continuing obligation to notify the office following the submission of a proposal of any changes to the information, data, or facts submitted in their response that could reasonably be expected to affect the office's consideration of the proposal.

(c) **Withdrawals.**

(1) An offeror may withdraw its offer by written notice submitted on the offeror's letterhead, signed by an authorized representative of the offeror, delivered to the office, and received by the office prior to closing.

(2) The offeror or authorized representative of the offeror may also withdraw its offer in person prior to closing upon presentation of appropriate identification and evidence of authority satisfactory to the office.

(3) After the solicitation deadline, a vendor may withdraw its bid, offer, quote, or proposal, or other response or a portion thereof only upon a written determination by the office that there is an obvious error in such response and where the enforcement of the response would impose an unconscionable hardship on the vendor.

(4) A reduction or diminution in profit margin shall not be deemed an unconscionable hardship under this subsection.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-208. Mistakes.

(a) **Generally.** To protect the integrity of the competitive procurement process and to assure fair treatment of offerors, the Office of the Arkansas Lottery shall

carefully consider whether to permit waiver or correction for mistakes.

(b) The office's treatment of mistakes.

(1) The office shall not allow an offeror to correct or withdraw an offer for an error of judgment.

(2) If the office discovers certain mistakes in an offer after closing, but before award of the contract, the office may take the following action:

(A) Minor informality.

(i) The office may waive or permit an offeror to correct a minor informality.

(ii) A minor informality is a matter of form rather than substance when it is evident on the face of the offer, or an insignificant mistake that can be waived or corrected without prejudice to other offerors.

(iii) Examples of minor informalities include, but are not limited to, an offeror's failure to:

(a) Return the correct number of signed offers or the correct number of other documents required by the solicitation document;

(b) Sign the offer in the designated block, provided a signature appears elsewhere in the offer, evidencing an intent to be bound; and

(c) Acknowledge receipt of an addendum to the solicitation document, provided that it is clear on the face of the offer that:

(1) The offeror received the addendum and intended to be bound by its terms; or

(2) The addendum involved did not affect:

(A) Price;

(B) Quality; or

(C) Delivery;

(B) Clerical error.

(i) The office may correct a clerical error if the error is evident on the face of the offer or other documents submitted with the offer, and the offeror confirms the office's correction in writing.

(ii) A clerical error is an offeror's error in transcribing its offer.

(iii) Examples include:

(a) Typographical mistakes;

(b) Errors in extending unit prices;

(c) Transposition errors;

(d) Arithmetical errors; and

(e) Instances in which the intended correct unit or amount is evident by simple arithmetic calculations.

(iv) In the event of a discrepancy, unit prices shall prevail over extended prices;

(C) **Burden of proof.** The office may permit an offeror to withdraw an offer based on one (1) or more clerical errors in the offer only if the offeror shows with objective proof and by clear and convincing evidence:

(i) The nature of the error;

(ii) That the error is not a minor informality under this subsection or an error of judgment;

(iii) That the error cannot be corrected or waived under this subsection;

(iv) That the offeror acted in good faith in submitting an offer that contained the claimed error and in claiming that alleged error in the offer exists;

(v) That the offeror acted without gross negligence in submitting an offer that contained a claimed error;

(vi) That the offeror will suffer substantial detriment if the office does not grant the offeror permission to withdraw the offer;

(vii) That the office's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the office; and

(viii) That the offeror promptly gave notice of the claimed error to the office; and

(D) **Withdrawing offers after closing.**

(i) The criteria in 23 CAR § 372-207(c) shall determine whether the

office will permit an offeror to withdraw its offer after closing.

(ii) This criteria also shall apply to the question of whether the office will permit an offeror to withdraw without forfeiture of its bid bond, or other bid or proposal security, or without liability to the office based on the difference between the amount of the offeror's offer and the amount of the contract actually awarded by the office, whether by award to the next lowest responsive and responsible offeror, the most advantageous and responsible offeror, or by resort to a new solicitation.

(c) **Rejection for mistakes.** The office shall reject an offer in which a mistake is evident on the face of the offer and the intended correct offer is not evident or cannot be substantiated from documents submitted with the offer.

(d) **Identification of mistakes after award.**

(1) The procedures and criteria set forth above are an offeror's only opportunity to correct mistakes or withdraw offers because of a mistake.

(2) Following award, an offeror is bound by its offer, and may only withdraw its offer or rescind a contract entered into pursuant to the extent permitted by this part and applicable law.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-209. Debarment of prospective offerors.

(a) **Generally.** The Office of the Arkansas Lottery may debar a prospective offeror from consideration for award of office contracts for the reasons listed in subsection (b) of this section after providing the prospective offeror with notice and a reasonable opportunity to be heard.

(b) **Factors for consideration.** A prospective offeror may be debarred from consideration for award of office contracts if:

(1)(A) The prospective offeror has committed a violation of a material contract provision.

(B) A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of

the contract.

(C) However, a failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment;

(2) The prospective offeror has been convicted of a criminal offense resulting from obtaining or attempting to obtain a public or private contract or subcontract or resulting from the performance of such contract or subcontract;

(3) The prospective offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty that currently, seriously, and directly affects the prospective offeror's responsibility as a contractor or that the office determines may affect the honesty, fairness, integrity, or security of the office or any lottery games;

(4) The prospective offeror has been convicted under state or federal antitrust statutes; or

(5) The prospective offeror does not carry workers' compensation or unemployment insurance as required by statute.

(c) **Period of debarment.** The office shall determine the period of debarment of a prospective offeror, however, the period shall not exceed three (3) years.

(d) **Responsibility.** Notwithstanding the limitation on the term for debarment in subsection (c) of this section, the office may determine that a previously debarred offeror is not responsible prior to contract award.

(e) **Imputed knowledge.** The office may attribute improper conduct of a person or its affiliate or affiliates having a contract with a prospective offeror to the prospective offeror for purposes of debarment where the impropriety occurred in connection with the person's duty for or on behalf of, or with the knowledge, approval, or acquiescence of, the prospective offeror.

(f) **Limited participation.**

(1) The office may allow a debarred person to participate in a competitive process and contracts on a limited basis during the debarment period upon written

determination by the Director of the Office of the Arkansas Lottery that participation is advantageous to the office.

(2) The determination shall specify the factors on which it is based and define the extent of the limits imposed.

(g) Decision.

(1)(A) The director shall issue a written decision to debar a prospective offeror under this part.

(B) The decision must:

(i) State the reasons for the debarment; and

(ii) Inform the debarred prospective offeror of the appeal rights of the prospective offeror under subsection (h) of this section.

(2) The office shall send a copy of the decision immediately to the debarred prospective offeror by certified mail, return receipt requested, or by personal service.

(h) Appeal.

(1) The procedure for appeal from the office's debarment of a prospective offeror under this part shall be in accordance with this subsection.

(2) Upon receipt of a notice from the office of a decision to debar under this part, a prospective offeror that wishes to appeal the decision shall, within three (3) business days after receipt of the decision, notify the director that the prospective offeror appeals the decision and requests a hearing as provided in this subsection.

(3)(A) Upon receipt of the prospective offeror's notice of appeal and request for hearing, the director shall promptly notify the prospective offeror appealing of the time and place of the hearing.

(B) The director shall conduct the hearing and decide the appeal within thirty (30) days after receiving the notice from the prospective offeror.

(C) The director shall set forth in writing the reasons for the hearing decision.

(4) At the hearing, the director shall consider de novo:

(A) The notice of debarment;

(B) The reasons listed in subsection (b) of this section on which the office

based the debarment; and

(C) Any evidence provided by the office and the prospective offeror.

(5) The decision of the director is final and may only be appealed pursuant to the procedures set forth in 23 CAR § 372-408.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-210. Inspection of solicitation records.

(a)(1) All data, materials, and documentation originated and prepared for the Office of the Arkansas Lottery pursuant to solicitations shall belong exclusively to the office and may be available to the public in accordance with this part and the provisions of Arkansas Code § 23-115-404.

(2) Under no circumstances will the office be liable to any vendor or to any other person or entity for any disclosure of any trade secret or confidential information.

(b)(1) Upon the office's issuance of a notice of intent to award a major procurement contract, the office's procurement files for such major procurement will be open for public inspection.

(2) Notwithstanding the foregoing, the office:

(A) Shall not be required to make available for public inspection information protected by or otherwise not required to be disclosed pursuant to applicable law or this part; and

(B) May delay making its procurement files available to the public for such reasonable period of time as the office determines is necessary for it to redact or otherwise secure that portion of its procurement files that will not be made available to the public.

(3) The office's procurement records that are made available to the public shall be available for inspection during the office's regular office hours.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-211. Presolicitation process.

(a) Whenever the Office of the Arkansas Lottery wants to evaluate the availability, durability, adaptability, or other specifications of goods or services in advance of seeking to procure such goods or services, the Director of the Office of the Arkansas Lottery may elect to utilize a presolicitation process to identify potential offerors or possible solutions to the need being addressed.

(b) The director may opt to use any or all of the following methods to acquire information:

- (1) Oral presentations;
- (2) Presolicitation notices;
- (3) Presolicitation conferences;
- (4) Requests for information;
- (5) Site visits; or
- (6) Any other method the director deems appropriate in his or her discretion.

Authority. Arkansas Code § 23-115-701.

Subpart 3. Source Selection

23 CAR § 372-301. Generally.

(a) The Office of the Arkansas Lottery will generally conduct a competitive process for goods or services by issuing a solicitation document.

(b) The office shall award contracts for goods or services by one (1) of the source selection methods in this section subject to the following exceptions:

(1) **Small procurements.**

(A) Any procurement of goods or services not exceeding five thousand dollars (\$5,000) may be awarded without a competitive process.

(B) All small procurements will be obtained according to Arkansas Code § 19-11-231; and

(2) **Intermediate procurements.**

(A) Any procurement of goods or services between five thousand dollars (\$5,000) and seventy-five thousand dollars (\$75,000) shall be governed by Arkansas Procurement Law, Arkansas Code § 19-11-201 et seq.

(B) Contracts in which the purchase price exceeds five thousand dollars (\$5,000) and is less than or equal to twenty-five thousand dollars (\$25,000) may be awarded by either competitive bidding procedures or competitively sealed bidding procedures.

(C) Any contract amount over twenty-five thousand dollars (\$25,000) will be awarded by competitively sealed bidding procedures unless specifically exempt in statute.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-302. Sole-source procurements.

(a)(1) For the purposes of this part, "sole-source procurements" means those procurements which, by virtue of the performance specification, are available from a single source.

(2) Brand name or design specifications shall not be sufficient explanation for sole source.

(3) Such procurements may include but shall not be limited to:

(A) Requirements of performance compatibility with existing commodities or services; or

(B) Repairs involving hidden damage.

(b) Procurements under this section shall be approved in advance by the Office of the Arkansas Lottery.

(c) Request for approval shall be made in writing and shall include in the justification:

(1) A copy of the purchase order or requisition;

(2) Why the service is needed;

(3) The methods used to determine that a lack of responsible/responsive

competition exists for the service;

(4) How it was determined that the provider possesses exclusive capabilities;

(5) Why the service is unique;

(6) Whether or not there are patent or proprietary rights which make the required service unavailable from other sources;

(7) What the agency would do if the provider/service were no longer available;

and

(8) Any program considerations which make the use of a "sole source" critical to the successful completion of the agency's task.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-303. Requests for proposals.

(a) The provisions of this section shall be applicable solely to solicitations of major procurement contracts by means of an RFP.

(b) Issuance of RFP.

(1) The Office of the Arkansas Lottery shall prepare and issue an RFP and evaluate proposals in accordance with this section.

(2) Failure by the Office of the Arkansas Lottery to comply with any technical requirement of this section shall not alone be deemed a defect requiring reissuance of the RFP or rejection of all bids, offers, quotes, or proposals, such decision remaining in the discretion of the Office of the Arkansas Lottery.

(c) RFP document. An RFP shall set forth provisions including:

(1)(A) A clear description of the scope of products and services.

(B) The technical requirements, scope, and other essential requirements shall be in sufficient detail to minimize the likelihood of requests by vendors for clarification;

(2) Complete directions about making proposals;

(3)(A) An RFP schedule of events that specifies all deadline requirements.

(B) Vendors must be given a reasonable time, as determined by the Office

of the Arkansas Lottery, to consider the required scope of products and services and the proposal evaluation factors before proposals must be submitted;

(4) RFP requirements and proposal restrictions;

(5)(A) A description of the factors that will be used to evaluate the proposals.

(B) Factors may include but are not limited to vendor qualifications, experience, technical approach, minority-owned business or female-owned business participation, and cost; and

(6) A declaration of certain contract terms and conditions which shall be required by the Office of the Arkansas Lottery.

(d) **RFP review and approval.** Each RFP must be reviewed and approved by the Director of the Office of the Arkansas Lottery prior to publication against the criteria of sound business principles, adequacy of the scope of products and services description, and adequacy of the RFP's assurance of:

(1) Fairness to potential vendors;

(2) Achievement of procurement objectives; and

(3) Protection of the Office of the Arkansas Lottery's interests.

(e) **RFP publication.**

(1) The Office of the Arkansas Lottery shall publish each RFP solicitation on the Office of the Arkansas Lottery's web page and, if desired by the Office of the Arkansas Lottery, the Office of State Procurement website established for such solicitations.

(2) Notice of the solicitation may also be published in any newspaper or other relevant trade publication.

(3) The Office of the Arkansas Lottery shall further solicit interest in each RFP by sending a formal notice of such or notice that the specific RFP has been released to a documented list of potential vendors, and if the list of potential vendors are comprised mainly of Arkansas businesses, such notice must be published in a newspaper with statewide circulation.

(4) The Office of the Arkansas Lottery shall compile the list of potential vendors from those known to the Office of the Arkansas Lottery's staff.

(5) The Office of the Arkansas Lottery shall determine the number of vendors

to include on the list by considering the:

- (A) Nature of the procurement;
- (B) Anticipated amount of the resulting contract; and
- (C) Number of known vendors.

(6) To the extent practicable, the Office of the Arkansas Lottery will strive to compile lists of potential offerors which are minority-owned businesses and female-owned businesses.

(7) The Office of the Arkansas Lottery will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts.

(8) The Office of the Arkansas Lottery is not required to send a solicitation notice to more than a total of three (3) vendors, provided, however, that the Office of the Arkansas Lottery may send a solicitation notice to fewer than three (3) vendors if, in the opinion of the director, fewer than three (3) vendors are qualified.

(9) A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the Office of the Arkansas Lottery.

(f)(1)(A) The Office of the Arkansas Lottery shall require each proposer to submit the cost proposal component of the proposal in a sealed and labeled envelope separate from the technical proposal component.

(B) The purpose is to allow the cost component to be evaluated separately from the technical component.

(2)(A) The cost proposals shall not be opened until after the evaluation of the technical component is completed.

(B) After the technical proposal evaluation is completed, the cost proposals shall be opened and evaluated, and the total evaluation of the proposals will then be based on the criteria established in the applicable RFP.

(3) Any proposal which fails to adequately separate the cost proposal components from the technical proposal may be considered nonresponsive and rejected by the Office of the Arkansas Lottery.

(g)(1) The Office of the Arkansas Lottery shall communicate, clarify, and negotiate in the best interests of the Office of the Arkansas Lottery, provided that all communication is conducted in a manner so as not to disclose any information that would give one (1) or more vendors unfair advantage or unfairly enable one (1) or more vendors to improve their proposal.

(2) Specifically, negotiations will only be permitted with the vendor whose bid, offer, quote, or proposal is the highest-rated:

- (A) Bid;
- (B) Offer;
- (C) Quote; or
- (D) Proposal.

(3) In the event that negotiations with the highest-rated vendor fail to result in a contract, or if for any other reason a contract with such vendor is not executed, the Office of the Arkansas Lottery may conduct negotiations with the second highest vendor and so forth until a contract is successfully executed.

(h) The Office of the Arkansas Lottery shall have the right, at its sole discretion, to amend an RFP in writing at any time.

(i)(1) The Office of the Arkansas Lottery shall have the right, at its sole discretion, to reject any and all proposals.

(2) Any proposal that does not meet the requirements of an RFP may be considered to be nonresponsive and the proposal may be rejected.

(3) Any proposal that restricts the rights of the Office of the Arkansas Lottery or otherwise qualifies the proposal may be considered to be nonresponsive and the proposal may be rejected.

(j) The Office of the Arkansas Lottery has the right, at its sole discretion, to cancel an RFP in its entirety and to reissue or not reissue an RFP.

(k) **Evaluation and award.**

(1) Proposals shall be evaluated in accordance with the solicitation and in such a manner as to reasonably ensure that all proposals are impartially considered and Office of the Arkansas Lottery requirements are adequately met.

(2) Proposals shall be evaluated by a committee established by the director.

(3)(A) Prior to reviewing proposals, each proposal evaluation committee member shall review a list of vendors making proposals, determine if a conflict of interest exists with a potential vendor, and sign a statement of whether or not the member has a potential conflict of interest.

(B) The statement shall be retained as procurement file documentation.

(4) Proposals shall be evaluated in accordance with the evaluation criteria set forth in the solicitation.

(5)(A) Neither the technical proposal nor the cost or any other single criterion shall be the only criterion for a major procurement contract award recommendation.

(B) Rather, evaluations shall be conducted and criteria shall be established to select proposals that provide the:

- (i) Greatest overall value;
- (ii) Greatest long-term benefit to the State of Arkansas;
- (iii) Greatest integrity for the Office of the Arkansas Lottery; and
- (iv) Best services and products for the public.

(C) However, specific factors may be set forth in the applicable solicitation as criteria for determining whether a vendor who submits a bid, offer, quote, or proposal in response to that solicitation is a responsible bidder/proposer and which proposals shall be considered responsive to the RFP.

(6) Pricing discounts for payment within certain time periods or in cash shall not be considered in evaluating bids.

(7) Only signed, sealed bids delivered prior to the date and time of bid opening shall be accepted.

(8)(A) The past performance of a bidder/proposer/offeror on a state contract may be used by the Office of the Arkansas Lottery to determine whether the bidder/proposer/offeror is responsible.

(B) Past performance must be supported by written documentation not greater than three (3) years old.

(C) Reports, memos, and files may be in electronic form.

(D) Past performance may be positive or negative.

(E) Past performance on contracts from other Arkansas state agencies may also be used for evaluation.

(F) Supporting documentation should be provided.

(G) Past performance evaluation should not take the place of suspension or debarment procedures.

(9)(A) In the event of a tie bid, the person responsible for awarding a major procurement contract must ensure that all offers meet specifications.

(B) An award will be made by flip of a coin.

(C) The coin flip will be done in the presence of a witness by the person responsible for awarding the contract.

(D) The witness must be an employee of the State of Arkansas.

(E) A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties and the witness.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-304. Requests for qualifications.

(a) The provisions of this section will be applicable solely to solicitations of major procurement contracts by means of an RFQ.

(b) The request for qualifications procurement method is used when the qualifications or specialized expertise of the vendor is the most important factor in selection.

(c) RFQ publication.

(1) The Office of the Arkansas Lottery shall publish each RFQ solicitation on the Office of the Arkansas Lottery's web page and, if desired by the Office of the Arkansas Lottery, the Office of State Procurement website established for such solicitations.

(2) Notice of the solicitation may also be published in any newspaper or other relevant trade publication.

(3) The Office of the Arkansas Lottery shall further solicit interest in each RFQ by sending a formal notice of such or notice that the specific RFQ has been released to a documented list of qualified vendors, and if the list of potential vendors are comprised mainly of Arkansas businesses, such notice must be published in a newspaper with statewide circulation.

(4) The Office of the Arkansas Lottery shall compile the list of vendors from those known to the Office of the Arkansas Lottery's staff.

(5) The Office of the Arkansas Lottery shall determine the number of vendors to include on the list by considering the:

- (A) Nature of the procurement;
- (B) Anticipated amount of the resulting contract; and
- (C) Number of known vendors.

(6) To the extent practicable, the Office of the Arkansas Lottery will strive to compile lists of potential offerors which are minority-owned businesses and female-owned businesses, and the Office of the Arkansas Lottery will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts.

(7) The Office of the Arkansas Lottery is not required to send a solicitation notice to more than a total of three (3) vendors, provided, however, that the Office of the Arkansas Lottery may send a solicitation notice to fewer than three (3) vendors.

(8) A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the Office of the Arkansas Lottery.

(d) The Office of the Arkansas Lottery shall communicate, clarify, and negotiate in the best interests of the Office of the Arkansas Lottery, provided that all communication is conducted in a manner so as not to disclose any information that would give one (1) or more vendors unfair advantage or unfairly enable one (1) or more vendors to improve their proposal.

(e) The Office of the Arkansas Lottery shall have the right, at its sole discretion, to amend an RFQ in writing at any time.

(f) The Office of the Arkansas Lottery shall have the right, at its sole discretion, to cancel an RFQ in its entirety and to reissue or not reissue an RFQ.

(g) Evaluation and award.

(1)(A) The Office of the Arkansas Lottery will make its initial selection based upon the respondents' qualifications.

(B) Only after the most qualified respondent is identified does cost become a factor in determining the award.

(C) Discussion may be conducted with qualified vendors who, based upon qualifications submitted, are determined to reasonably be susceptible of being selected for the purpose of clarification to ensure full understanding of and responsiveness to the solicitation requirements, and to obtain best and final offers.

(2) Proposals shall be evaluated by a committee established by the Director of the Office of the Arkansas Lottery.

(3)(A) Prior to reviewing proposals, each proposal evaluation committee member shall review a list of vendors making proposals, determine if a conflict of interest exists with a potential vendor, and sign a statement of whether or not the member has a potential conflict of interest.

(B) Said statement shall be retained as procurement file documentation.

(4) Proposals shall be evaluated in accordance with the evaluation criteria set forth in the solicitation.

(5) Evaluations shall be conducted and criteria shall be established to select proposals that provide the:

(A) Greatest overall value;

(B) Greatest long-term benefit to the State of Arkansas;

(C) Greatest integrity for the Office of the Arkansas Lottery; and

(D) Best services and products for the public.

(6) Time discounts or cash discounts shall not be considered.

(7) Only signed, sealed responses delivered prior to the date and time of bid opening shall be accepted.

(8)(A) The past performance of a bidder/proposer/offeror on a state contract

may be used by the Office of the Arkansas Lottery to determine whether the bidder/proposer/offeror is responsible.

(B) Past performance must be supported by written documentation not greater than three (3) years old.

(C) Reports, memos, and files may be in electronic form.

(D) Past performance may be positive or negative.

(E) Past performance on contracts from other Arkansas state agencies may also be used for evaluation.

(F) Supporting documentation should be provided.

(G) Past performance evaluation should not take the place of suspension or debarment procedures.

(h) **Compliance with this section.** Failure by the Office of the Arkansas Lottery to comply with any technical requirement of this section shall not alone be deemed a defect requiring rejection of all bids, offers, quotes, or proposals, such decision remaining in the discretion of the Office of the Arkansas Lottery.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-305. Alternative methods.

(a) The Office of the Arkansas Lottery reserves the right to use an alternative procurement method if that method will be more likely to:

(1) Maximize the office's net revenue;

(2) Achieve the specific business objective or business objectives of the procurement; or

(3) Aid the Director of the Office of the Arkansas Lottery in fulfilling the statutory mandate to operate and administer the office.

(b)(1) Alternative procurement methods may include, but are not limited to:

(A) Specialized vendor prequalifications;

(B) Multistep bids or proposals;

(C) Single proposer negotiations;

- (D) Competitive negotiations between two (2) or more proposers;
- (E) Brand name solicitations; and
- (F) Cooperative procurements.

(2) The office shall conduct the alternative procurement method in accordance with the process set forth in the applicable solicitation document.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-306. Emergency procurements.

The Director of the Office of the Arkansas Lottery may make emergency procurements in accordance with Arkansas Code § 19-11-233.

Authority. Arkansas Code § 23-115-701.

Subpart 4. Disputes

23 CAR § 372-401. Applicability.

- (a) This subpart shall only be applicable to major procurement contracts.
- (b) Arkansas Code § 19-11-244 shall govern all grievances with either the solicitation or the award of small and intermediate procurements.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-402. Filing of a protest.

(a)(1) Any actual or prospective bidder, proposer, offeror, or contractor who is aggrieved in connection with the solicitation or award of a major procurement contract may file a protest seeking a determination with respect to any matter related to the solicitation or award of a major procurement contract except as otherwise provided herein.

(2) An aggrieved person who files a protest is hereinafter referred to as a

petitioner.

(3) Other than as expressly set forth in this part, nothing contained herein shall confer any rights or remedies upon any aggrieved person or petitioner, or impose any duties or obligations upon the Office of the Arkansas Lottery, which are not otherwise so conferred or imposed by the Arkansas Scholarship Lottery Act, Arkansas Code § 23-115-101 et seq.

(b) The protest shall be in writing and shall be filed by delivery by hand or courier to the Director of the Office of the Arkansas Lottery with a copy to the procurement director of the office at the headquarters of the office.

(c) The protest 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) A statement of the relief requested whether legal, equitable, or otherwise.

(B) If a monetary award is requested, the amount shall be stated.

(d)(1) For a protest to be timely filed, the original protest manually signed by the petitioner must be physically received by the office within the time period prescribed in 23 CAR § 372-403.

(2) Facsimile or other electronically transmitted copies of the protest will not be accepted.

(e)(1) The petitioner shall be required to provide a suitable bond to the office in certified funds at the time the protest is filed.

(2) The purpose of this bond is to:

(A) Discourage frivolous petitions and litigation;

(B) Ensure payment by the petitioner of the costs incurred as a result of the protest, including reasonable attorney's fees of the office, employees, or members of the commission, in the event the petitioner appeals and such costs are adjudged against the petitioner pursuant to Arkansas Code § 23-115-209; and

(C) Ensure payment of all other amounts for which the petitioner may be found liable, including without limitation any loss of income to the office resulting from the institution of a frivolous appeal.

(f)(1) Failure to provide such bond with any protest will result in the dismissal of such protest.

(2) A petitioner shall not have met the requirement in 23 CAR § 372-403 to timely file a protest unless the applicable bond accompanies the protest when it is timely filed.

(3) This requirement does not apply to any petitioner who has already provided a bond in the proper bond amount as part of a solicitation process.

(g)(1) The amount of the bond shall be the amount established in the applicable solicitation.

(2) In the event that no amount is specified in the applicable solicitation, the bond shall be seventy-five thousand dollars (\$75,000) or fifty percent (50%) of the value of the major procurement contract amount in controversy, whichever is less.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-403. Time for filing a protest.

(a) Protests concerning a solicitation.

(1)(A) A protest in regard to a major procurement contract solicitation for which the basis for the protest is reasonably 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.

(B) A protest in regard to any other solicitation for which the basis for the protest is reasonably apparent before the closing date for receipt of initial proposals

shall be filed before the closing date for receipt of initial proposals.

(C) A protest based upon a solicitation that is reasonably apparent before the bid opening shall be filed before bid opening.

(2) Protests based upon an amendment to any solicitation, or upon any additional information requested or accepted by the Office of the Arkansas Lottery with respect to any solicitation or response thereto, that is reasonably apparent before the closing date for receipt of proposals or any supplemental information requested by the office 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) If a protest is timely filed with the Director of the Office of the Arkansas Lottery and the procurement director of the office before the award of a contract, the award of such contract may be made before a decision is rendered on the protest.

(b) Protest concerning an award of contract.

(1)(A) Any aggrieved person may protest the office's decision to award a major procurement contract.

(B) Only persons or entities that submit a bid, offer, quote, or proposal with respect to a major procurement solicitation for a competitively bid major procurement contract may be considered an aggrieved person with standing to file a protest with respect to the award of such contract or the issuance of a notice of intent to award such contract.

(2) Any written protest shall be filed:

(A) In the case of a major procurement contract that has not been competitively bid by the office, within five (5) business days after either the office's issuance of a notice of intent to award such major procurement contract or the office's award of such major procurement contract is posted, published, or otherwise made publicly available, whichever occurs first; and

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

(3) If a protest seeking equitable relief regarding the award of any major procurement contract is timely filed with the Director of the Office of the Arkansas Lottery and the procurement director of the office, the office may award and enter into such major procurement contract only if:

(A) Such protest has been resolved in accordance with this part; or

(B) The office has made a written determination that the award of such major procurement contract without delay is necessary to protect substantial interests of the office.

(c) In all other cases pertaining to a solicitation or award of an agreement or a contract other than those covered in subsections (a) and (b) of this section, a protest must be filed within five (5) business days after the announcement of the office's decision to award is posted, published, or otherwise made publicly available, whichever occurs first.

(d) In any other case not covered by subsections (a) – (c) of this section, the protest 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.

(e) Failure to timely file a written protest shall bar any further administrative, legal, or equitable action.

(f) Failure to timely provide the applicable bond in the amount required shall result in an untimely filing and bar any further administrative, legal, or equitable action.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-404. Notice to others.

In the event a protest is filed, the Director of the Office of the Arkansas Lottery shall immediately provide a copy of the protest to the Office of the Arkansas Lottery 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.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-405. Confidential information.

(a) If the petitioner believes the protest contains material that should be withheld, a statement advising the procurement director of the Office of the Arkansas Lottery of this fact shall accompany the protest submission.

(b) Material submitted by a petitioner shall not be withheld from any interested party except to the extent required by law.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-406. Decision by the director.

(a) The Director of the Office of the Arkansas Lottery, or a hearing officer designated by him or her, shall have the exclusive authority to decide all protests.

(b) After submittal of a timely protest and prior to issuance of a written decision to that protest, the petitioner shall be afforded an opportunity to discuss with the director the issues giving rise to the protest.

(c)(1) Before agreeing to settle any protest by the award of costs, the director shall consult the Attorney General and the Office of the Arkansas Lottery staff attorney.

(2) The award of costs shall be allowed only to compensate a petitioner for reasonable expenses incurred in preparation and submission of a bid or proposal for which the petitioner was wrongfully denied a contract award.

(3) The costs which are allowable shall be those which the petitioner is able to prove that are incurred in preparation and submission of the bid or proposal in question, but exclude travel and production costs that may result from participation in:

(A) Prebid conferences;

(B) Attending on-site inspections; and

(C) Demonstrations or presentations made in responding to formal solicitations issued by the state.

(4) A petitioner may not recover profit which it anticipates would have been made if the petitioner had been awarded the major procurement contract.

(5) Attorney's fees associated with the filing and prosecution of the protest are not recoverable.

(d)(1) If the protest is not resolved by mutual agreement, the director or hearing officer shall issue a written decision within thirty (30) calendar days after a protest has been filed.

(2) The decision shall include a:

- (A) Brief description of the claim;
- (B) Reference to the pertinent contract provision;
- (C) Brief statement of the factual and legal issues; and
- (D) Statement of the director's or hearing officer's decision, with

supporting rationale and the remedial action or award, if any.

(e) The director 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:

- (1) Courier;
- (2) Express mail; or
- (3) Overnight express courier.

(f)(1) The time limit for decisions set forth in subsection (d) of this section may be extended by the director or hearing office for good cause for a reasonable time not to exceed thirty (30) additional calendar days.

(2) The director 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.

(g) If the director or hearing officer fails to issue a decision within the time limits set forth in subsection (d) or subsection (f) of this section, the petitioner may proceed as if the director or hearing officer had issued an adverse decision.

(h)(1) In lieu of a written decision, the director may, in his or her sole discretion, within thirty (30) calendar days after a protest is filed, give written notice to the petitioner that the protest shall be resolved by a hearing conducted by the director or hearing officer pursuant to the procedures for hearing set forth in 23 CAR § 372-407.

(2) Notwithstanding the foregoing, the office may at any time on its own motion direct that a protest be resolved by a hearing conducted by the director or hearing officer pursuant to the procedures for hearing set forth in 23 CAR § 372-407.

(i) Nothing in this subpart shall prohibit a contractor who is also an aggrieved person or petitioner from submitting an invoice to the office for final payment after the work is completed and accepted.

(j) Pending claims shall not delay payment for undisputed amounts from the office to a contractor who is also an aggrieved person or petitioner.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-407. Hearing procedures.

(a)(1) All hearings conducted under this part shall be conducted by the Director of the Office of the Arkansas Lottery or by a hearing officer designated by the director.

(2) The decision as to whether the director or a hearing officer will conduct the hearing shall be in the sole discretion of the director.

(3) The hearing officer's actions, decisions, and orders shall be deemed to be on behalf of the director and effective as though taken by the director, subject to the appeals procedures as hereinafter provided.

(b)(1) If the director determines under 23 CAR § 372-406(h) that a hearing will be used to resolve a protest, the hearing shall be held within thirty (30) calendar days following the director's determination.

(2) 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 director or hearing officer may:

(1) Conduct the hearing in an informal manner without formal rules of evidence or procedure;

(2) Require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;

(3) Require each party to produce for examination those relevant witnesses and documents under its control;

(4) 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;

(5) Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;

(6) Establish time limits for submission of motions or memoranda;

(7) 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;

(8) Administer oaths or affirmations;

(9) Issue subpoenas; and

(10) Join any necessary parties to the hearing.

(d)(1) The hearing shall be conducted before a court reporter.

(2) 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.

(3) The original transcript of any such proceedings shall be submitted to the director 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.

(4) The petitioner shall also submit a copy of the transcript to all other parties to the protest as soon as the transcript is available.

(e) Any party may appear and be represented with or without counsel at the hearing.

(f)(1)(A) 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 director, within thirty (30) calendar days after receiving an original transcript of the hearing.

(B) If a proposed decision is received by the director, 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.

(2) If the director 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.

(3) If the director issues a no action response, then the determination in the proposed decision of the hearing officer will be deemed to be accepted by the director.

(g) If the director 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 director'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:

(1) Courier;

(2) Express mail; or

(3) Overnight express courier.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-408. Procedure for filing an appeal to the office.

(a)(1) A petitioner may appeal a decision of the Director of the Office of the Arkansas Lottery or hearing officer to the Office of the Arkansas Lottery.

(2) Any appeal from a decision of the director or hearing officer must be filed with the Chair of the Commission at the office headquarters within five (5) business days after the receipt of such decision to be considered timely.

(b) Notice of any appeal shall also be filed with the director and the staff attorney of the office by delivery by hand or courier to the headquarters of the office.

(c) An appeal must be in writing and shall contain the following:

- (1) Copy of the decision of the director or hearing officer; and
- (2) The basis for the precise factual or legal error in the decision of the director or hearing officer from which the appeal is taken.

(d) The office 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.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-409. Office's decision.

(a)(1) The Office of the Arkansas Lottery may review the record without a hearing or oral argument and issue a written decision on behalf of the office.

(2) The Commissioners, pursuant to the power granted to them in Arkansas Code § 23-115-205, may authorize its legal committee to hear and dispose of administrative appeals from the Director of the Office of the Arkansas Lottery as the office deems appropriate, including, but not limited to, designating one (1) of its members to consider an act on an appeal on behalf of the office.

(3) Therefore, references herein to "Commissioners" or "Commission" shall be read to take this delegation of authority into account.

(b) The office may in its sole discretion:

- (1) Conduct its own review or investigation;
- (2) Conduct a de novo review in whole or in part; or
- (3) Allow oral argument in the manner and under procedures that the office deems appropriate under the circumstances.

(c)(1) A copy of the office'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:

- (A) Courier;
- (B) Express mail; or
- (C) Overnight express courier.

(2) The original written decision shall be retained by the office.

(3) The written decision of the office will be final, and no further appeal to the office will be allowed.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-410. Judicial review.

Any adverse final decision of the Office of the Arkansas Lottery issued under this subpart shall be subject to judicial review pursuant to Arkansas Code § 23-115-209 by any person or entity who was a party to the appeal, and the complaint seeking review must be filed with the Pulaski County Circuit Court.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-411. Exclusive remedy.

(a) This part provides the exclusive procedure for asserting a claim against the Office of the Arkansas Lottery arising out of or relating to any matter related to the procurement process for any major procurement contract.

(b) Neither an aggrieved person nor petitioner nor any other interested party has a right to any remedy against the office with respect to any matter related to the procurement process for any major procurement contract except in accordance with the procedures set forth in this part.

Authority. Arkansas Code § 23-115-701.

Subpart 5. Contracts

23 CAR § 372-501. Approval required.

(a) The Director of the Office of the Arkansas Lottery or his or her designee must approve and sign each Office of the Arkansas Lottery purchase order or contract.

(b) Only the director or his or her designee is authorized to bind the office in contractual agreements.

(c) A purchase order, notice of contract award, or contract signed by other office personnel is null and void and shall not obligate the office to payment for products and services.

Authority. Arkansas Code § 23-115-701.

23 CAR § 372-502. Contractual award and agreement — General.

(a) The Office of the Arkansas Lottery shall award the contract to the responsible offeror submitting solicitation whose bid, offer, quote, or proposal represents the best value to the office and offers what the office believes will result in the greatest long-term benefit to the State of Arkansas, the greatest integrity for the office, and the best services and products for the public unless otherwise stated in the solicitation document.

(b) The office may award by item, groups of items, or the entire offer provided such award is consistent with the solicitation document and in the best interest of the office as determined by the office.

Authority. Arkansas Code § 23-115-701.