

## POLICY MANUAL

### CHAPTER 1 - PROCUREMENT POLICIES

#### 1.1 — DISPUTE RESOLUTION PROCEDURES

##### 1.1.1 DEFINITIONS

- A. "Act" means the Alyce G. Clark Mississippi Lottery Law as may be amended from time to time.  
  
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- B. "Aggrieved Person" means, subject to the provisions of Section 1.1.4.B.3, any person or entity including a Vendor, but excluding a Lottery Retailer, who complains of a matter within the scope of these Dispute Resolution Procedures set forth in Section 1.1.2.
- C. "Corporation" means the Mississippi Lottery Corporation
- D. "Board" means the Board of Directors of the Corporation.
- E. "President" means the President of the Corporation.
- F. "Dispute Resolution Request" means a written request by which an Aggrieved Person seeks a determination with respect to any matter which is within the scope of these Dispute Resolution Procedures as set forth in Section 1.1.2 hereof.
- G. "Hearing Officer" means the Board's designee who shall serve as a Hearing Officer within the scope of these Dispute Resolution Procedures.
- H. "Lottery Retailer" means a person or entity that sells or proposes to sell lottery tickets on behalf of the Corporation pursuant to a contract.
- I. "Procurement Contract" means a contract with a Vendor for any gaming product or service, including, but not limited to, advertising contracts, annuity contracts, prize payment agreements, consulting service contracts, and contracts for equipment, tickets, and other products and services unique to the Mississippi lottery, but not including materials, supplies, leases, equipment and services common to the ordinary operations of a corporation.
- J. "Vendor" means a person or entity that provides or proposes to provide goods or services to the Corporation pursuant to a Procurement Contract, but does not include an employee thereof.

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**1.1.2 SCOPE AND APPLICABILITY OF THESE POLICIES**

Subject to the provisions of the Act, these Dispute Resolution Procedures apply to Procurement Contracts 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, regulation or policy, 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 or these Dispute Resolution Procedures.
  
- B. The Dispute Resolution Request shall be in writing, shall be filed by delivery by hand or courier to the President 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:

President	General Counsel
Mississippi Lottery Corporation	Mississippi Lottery Corporation
(Address)	188 East Capitol Street, Suite 1400
	Jackson, MS 39201

- 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 at the time the Dispute Resolution Request is filed. The bond requirement may be satisfied by depositing with the Corporation certified funds. 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 by the Corporation as a result of the Dispute Resolution Request, an appeal of the decision of the Board or Hearing Officer to the Chancery Court of Rankin County pursuant to Section 1.1.9 below, and any appeal of the decision thereof, including but not limited to Hearing Officer fees, cost of court reporting and development of hearing transcripts, court costs, bond and reasonable attorney's fees of the Corporation, its employees or the Board. All such costs incurred by the Corporation, its employees and the Board shall be charged to and paid by the Petitioner, unless Petitioner should prevail in its Dispute Resolution Request by final, non-appealable order.
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 the Dispute Resolution Request and appeals thereof.

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 if required 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, if any. In the event that no amount is specified in the applicable solicitation, the Dispute Resolution Request/Litigation Bond shall be \$100,000 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. Dispute Resolution Requests based upon a solicitation for which the basis is known or should have been known before the bid opening shall be filed before bid opening. Dispute Resolution Requests based upon a solicitation for which the basis is known or should have been known before the closing date for receipt of initial proposals (including, but not limited to the procurement process or an RFP's format, scope, content or evaluation criteria) shall be filed before the closing date for receipt of initial proposals.
  - 2. Dispute Resolution Requests based upon an amendment by the Corporation to any solicitation for which the basis is known or should have been known before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals or within five (5) days after the date of the amendment, whichever date is later. Dispute Resolution Requests based upon any additional information requested or accepted by the Corporation with respect to any solicitation or response thereto for which the basis is known or should have been known before the receipt of any supplemental information requested or accepted by the Corporation shall be filed within five (5) business days after the date of the Corporation's receipt of supplemental information.
  - 3. Subject to the provisions of Section 1.1.4.B.2, if a Dispute Resolution Request is filed with the President 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. Dispute Resolution Requests concerning an award of a vendor contract.
  - 1. Subject to 1.1.4.B.3 below, any Aggrieved Person may protest the Corporation's decision to award a vendor contract. Any such written Dispute Resolution Request shall be filed 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.
  - 2. If a Dispute Resolution Request seeking relief regarding the award of any vendor contract is filed in accordance with Section 1.1.4.B.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 vendor

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.

- C. 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 and B., 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.

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- D. In all cases other than those covered in Sections 1.1.4.A through C, 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.
- E. Failure to file a written Dispute Resolution Request in accord with Section 1.1.2 within the applicable time limit provided in Section 1.1.4 shall bar any further administrative, legal, or equitable action.
- F. 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 President shall immediately give notice of the Dispute Resolution Request to the Board and, if the Dispute Resolution Request relates to a Procurement Contract, 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**

Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.

If the Petitioner believes the Dispute Resolution Request contains material that should be withheld, a statement advising the General Counsel of this fact and identifying such specific material in particular shall accompany the Dispute Resolution Request submission.

#### **1.1.7 DECISION BY THE BOARD**

- A. The Board, or a Hearing Officer designated by it, shall have the exclusive authority to decide all Dispute Resolution Requests.

- B. The Board 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 Board's or Hearing Officer's decision, with supporting rationale and the remedial action and/or award, if any.
- C. The Board 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 Board or Hearing Officer for a period not to exceed thirty (30) additional calendar days. The Board 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 Board 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 Board or Hearing Officer had issued an adverse decision.
- F. In lieu of a written decision, the Board may, 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 Board or Hearing Officer pursuant to the procedures for hearing set forth in Section 1.1.8.

#### **1.1.8 HEARING PROCEDURES**

- A. All hearings conducted under this section shall be conducted by the Board or by a Hearing Officer designated by the Board. The Hearing Officer's actions, decisions and orders shall be deemed to be on behalf of the Board and effective as though taken by the Board.
- B. If the Board 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 Board's determination under Section 1.1.7.F to resolve a Dispute Resolution Request by this procedure for a hearing. A notice setting 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 Board 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; or
    - c) Rule on any party's request for injunctive, equitable or other 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 the tribunal, 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; and
  9. Administer oaths or affirmations.
- D. The hearing shall be conducted before a court reporter designated by the Board or Hearing Officer. The Petitioner shall pay for 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 Board 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 Board or Hearing Officer 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 with standing may appear and be represented with or without counsel at the hearing.
- F. The Board or Hearing Officer's decision 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.

- G. If the Petitioner does not prevail by final, non-appealable order in its Dispute Resolution Request, any appeal of the decision of the Board or Hearing Officer to the Chancery Court of Rankin County pursuant to Section 1.1.9 below, and any appeal of the decision thereof, all costs incurred by the Corporation, its employees and the Board relating to the Dispute Resolution Request and any appeals thereof shall be charged to and paid by the Petitioner, including but not limited to Hearing Officer fees, cost of court reporting and development of hearing transcripts, court costs, bond and reasonable attorney's fees of the Corporation, its employees or the Board.

#### **1.1.9 JUDICIAL REVIEW**

Any adverse final decision of the Board or Hearing Officer issued under this Section shall be subject to judicial review pursuant to Mississippi Code Annotated § 27-115-33 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 Rankin County within ten (10) days of the date of issuance of the final decision from which appeal is taken.

#### **1.1.10 EXCLUSIVE REMEDY**

Subject to the provisions of the Act, 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.