

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

ADMINISTRATION REGULATIONS

11 VAC 5-20-10. Definitions.

The words and terms, when used in any of the department's regulations, shall have the following meaning, unless the context clearly indicates otherwise:

"Appeal" means a ~~request presented~~ proceeding initiated by a retailer, ~~vendor~~ bidder or offeror (for a contract negotiated on a sole source basis), contractor or individual for an informal conference or formal hearing contesting the director's decision (i) to refuse to issue or renew, to suspend or to revoke a lottery license for the appellant; or award a contract to another vendor (ii) regarding a procurement action.

"Award" means a decision to contract with a specific vendor for a specific contract.

"Bank" means ~~and includes~~ any commercial bank, savings bank, savings and loan association, credit union, trust company, and any other type or form of banking institution organized under the authority of the Commonwealth of Virginia or of the United States of America ~~whose principal place of business is within the Commonwealth of Virginia and~~ which is designated by the State Treasurer to perform functions, activities or services in connection with the operations of the lottery for the deposit ~~and~~, handling and safekeeping of lottery funds, ~~the accounting of~~ for those funds and the safekeeping of records.

"Bid" means a competitively priced offer made by an intended seller, usually in reply to an invitation for bids .

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

"Bid bond" means an insurance agreement in which a third party agrees to be liable to pay a certain amount of money in the event a specific bidder fails to accept the contract as bid.

"Board" means the State Lottery Board established by the ~~state lottery law~~ State Lottery Law.

"Competitive bidding" means the offer of firm bids by individuals or firms competing for a contract, privilege, or right to supply specified services or goods.

"Competitive negotiation" means a method for purchasing goods and services, usually of a highly complex and technical nature where qualified individuals or firms are solicited by using a Request for Proposals. Discussions are held with selected vendors and the best offer, as judged against criteria contained in the Request for Proposals, is accepted.

"Conference" or "consultation" means ~~the~~ a type of appeal in the nature of an informational or factual ~~inquiries proceeding~~ of an informal nature provided for in § ~~9-6.14:11~~ 2.2-4019 of the Administrative Process Act.

"Conference officer" ~~or "hearing officer"~~ means the director, or a person appointed by the director, who is empowered to preside at informal conferences or consultations and to provide a recommendation ~~or~~ conclusion in a case or decision in such matter.

"Consideration" means something of value given for a promise to make the promise binding. It is one of the essentials of a legal contract.

"Contract" means ~~an~~ a binding agreement, enforceable by law, ~~between two or more competent parties. It includes any type of agreement or order for the procurement of goods or services~~ between two or more parties for the supply of goods or services.

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

"Contract administration" means the management of all facets of a contract to assure that the contractor's total performance is in accordance with the contractual commitments and that the obligations of the purchase are fulfilled.

"Contracting officer" means the person(s) authorized to sign contractual documents which obligate the State Lottery Department and to make a commitment against State Lottery Department funds.

"Contractor" means an individual or firm which has entered into an agreement to provide goods or services to the State Lottery Department.

"Department" means the State Lottery Department created by the ~~state lottery law~~ State Lottery Law.

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or any state agency, which performs any or all of the following activities or services for the lottery:

1. The safekeeping and distribution of tickets to retailers,
2. The handling of lottery funds,
3. The deposit of lottery funds, or
4. The accounting for lottery funds.

"Director" means the Director of the State Lottery Department or his designee.

"Electronic funds transfer (EFT)" means a computerized transaction that withdraws or deposits money ~~against~~ from or to a bank account.

## 11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

"Goods" means ~~any~~ all material, equipment, supplies, printing, and automated data processing hardware and software.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007 and 2.2-4019 and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.

"Household" means members of a group who ~~live together as a family unit. It includes, but is not limited to, members who may be claimed as dependents for income tax purposes~~ reside at the same address.

"Informalities" means defects or variations of a bid from the exact requirements of the Invitation for Bids which do not affect the price, quality, quantity, or delivery schedule for the goods or services being purchased.

"Immediate family" means (i) a spouse and (ii) any other person residing in the same household as the officer or employee, who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Inspection" means the close and critical examination of goods and services delivered to determine compliance with applicable contract requirements or specifications. It is the basis for acceptance or rejection.

~~"Instant ticket vending machine" or "ITVM" means a remote machine allowing players to~~

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

~~purchase lottery instant game tickets.~~

"Invitation for Bids (IFB)" means a document used to solicit bids for buying goods or services. It contains or references the specifications or scope of work and all contractual terms and conditions.

"Kickbacks" means gifts, favors or payments to improperly influence procurement decisions.

"Legal entity" means an entity, other than a natural person, which has sufficient existence in legal contemplation that it can function legally, sue or be sued and make decisions through agents, as in the case of a corporation.

"Letter contract" means a written preliminary contractual instrument that authorizes a contractor to begin immediately to produce goods or perform services.

"Lottery" or "state lottery" means the lottery or lotteries established and operated ~~in response pursuant to the provisions of the state lottery law~~ § 58.1-4000 et seq. of the Code of Virginia.

"Negotiation" means a bargaining process between two or more parties, each with its own viewpoints and objectives, seeking to reach a mutually satisfactory agreement on, or settlement of, a matter of common concern.

"Noncompetitive negotiations" means the process of arriving at an agreement through discussion and compromise when only one procurement source is practicably available or competitive procurement procedures are otherwise not applicable.

"Nonprofessional services" means personal services not defined as "professional services."

"Notice of Award" means a written notification to a vendor stating that the vendor has received a contract with the department.

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

"Notice of Intent to Award" means a written notice which is publicly displayed, prior to signing of a contract, that shows the selection of a vendor for a contract.

"Performance bond" means a contract of guarantee executed in the full sum of the contract amount subsequent to award by a successful bidder to protect the department from loss due to his inability to complete the contract in accordance with its terms and conditions.

"Person" means a natural person and may extend and be applied to groups of persons, ~~as well as corporations, companies, partnerships, and associations~~ a corporation, company, partnership, association, club, trust, estate, society, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals, unless the context indicates otherwise. In the context of the licensing of lottery sales agents, "person" also means all departments, commissions, agencies and instrumentalities of the Commonwealth, including counties, cities, municipalities, agencies and instrumentalities.

~~"Personal interest," "personal interest in a contract," or "personal interest in a transaction" means financial benefit or liability accruing to an officer or employee or to a member of his immediate family in any matter considered by the department.~~

"Personal services contract" means a contract in which the department has the right to direct and supervise the employee(s) of outside business concerns as if the person(s) performing the work were employees of the department or a contract for personal services from an independent contractor.

"Procurement" means the ~~procedures~~ process for obtaining goods or services. ~~It includes,~~

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

including all activities from ~~the~~ planning steps and preparation ~~and~~ to processing of a request through

the processing of a final invoice for payment.

"Professional services" means services within the practice of accounting, architecture, behavioral science, dentistry, insurance consulting, land surveying, landscape architecture, law, medicine, optometry, pharmacy, professional engineering, veterinary medicine and lottery on-line and instant ticket services.

"Protest" means a written complaint about ~~an administrative~~ a procurement action or decision brought by a ~~vendor~~ bidder or offeror to the department with the intention of receiving a remedial result.

"Purchase order" (signed by the procuring activity only) means the form which is used to procure goods or services when a bilateral contract document, signed by both parties, is unnecessary, particularly for small purchases. The form may be used for the following:

1. To award a contract resulting from an Invitation for Bids (IFB).
2. To establish a blanket purchase agreement.
3. As a delivery order to place orders under state contracts or other requirements-type contracts which were established for such purpose.

"Request for Information (RFI)" means a document used to get information from the general public or potential vendors on a good or service. The department may act upon the information received to enter into a contract without issuing an IFB or an RFP.

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

"Request for Proposals (RFP)" means a document used to solicit offers from vendors for buying

goods or services. It permits negotiation with vendors (to include prices) as compared to competitive

bidding used in the invitation for bids.

"Responsible vendor" means a person or firm who has the capability in all respects to fully satisfy the requirements of a contract as well as the business integrity and reliability to assure good faith performance. In determining a responsible vendor, a number of factors including but not limited to the following are considered. The vendor should:

1. Be a regular dealer or supplier of the goods or services offered;
2. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
3. Have a satisfactory record of performance; and
4. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the contract.

"Responsive vendor" means a person or firm who has submitted a bid, proposal, offer or information which conforms in all material respects to the solicitation.

"Retailer" means a person or business licensed by the department as an agent to sell lottery tickets or shares.

"Sales," "gross sales," "annual sales" and similar terms mean total ticket sales including any discount allowed to a retailer for his compensation ~~and any discount or adjustment allowed for the~~



11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

retailer's payment of prizes less than \$601.

~~"Self-service terminal" or "SST" means a remote electromechanical machine allowing players to purchase tickets for on-line lottery games available through clerk-activated terminals.~~

"Services" means any work performed by ~~a vendor~~ an independent contractor where the work ~~is service rendered does not consist primarily labor or duties and is other than providing of acquisition of equipment; or materials, or the rental of equipment, materials and supplies or printing.~~

"Sole source" means that only one source is practicably available to furnish a product or service.

"Solicitation" means an Invitation for Bids (IFB), a Request for Proposals (RFP), a Request for Information (RFI) or any other document issued by the department or telephone calls by the department to obtain bids or proposals or information for the purpose of entering into a contract.

"Surety bond" means an insurance agreement in which a third party agrees to be liable to pay a specified amount of money to the department in the event the retailer fails to meet his obligations to the department.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

"Vendor" means one who ~~can sell to, supply or install~~ provides goods or services ~~for~~ to the department.

11 VAC 5-20-60. Advertising.

A. Advertising may include, but is not limited to, print advertisements, radio and television

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

advertisements, billboards, point of purchase materials and point of sale display materials. ~~The department will not use funds for advertising which is for the primary purpose of inducing people to play the lottery.~~

B. Any lottery retailer may use his own advertising materials ~~if the department has approved its use in writing before it is shown to the public~~ unless the department objects thereto. The department shall develop written guidelines for ~~giving~~ such approval materials.

C. The department may provide information displays or other material to the retailer. ~~The retailer~~ who shall position the material so it can be seen easily by the general public.

D. The department may produce special posters, brochures or flyers describing various aspects of the lottery and provide these to lottery retailers to post or distribute.

~~E. The department may use interviews, pictures or statements from people who have won lottery prizes to show that prizes are won and awarded; however, in no case shall the use of interviews, pictures or statements be for the primary purpose of inducing persons to participate in the lottery.~~

~~F. The department may use other informational and advertising items which may include any materials deemed appropriate advertising, informational, and educational media which are not for the primary purpose of inducing people to play the lottery.~~

11 VAC 5-20-70. Operations of the department.

A. ~~The department will operate under the internal administrative, accounting and financial controls specifically developed for the State Lottery Department under the applicable policies~~

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

required by the Departments of Accounts, Planning and Budget, Treasury, State Internal Auditor and by the Auditor of Public Accounts.

1. Internal operations include, but are not limited to, ticket controls, money receipts and payouts, payroll and leave, budgeting, accounting, revenue forecasting, purchasing and leasing, petty cash, bank account reconciliation and fiscal report preparation.

2. Internal operations apply to automated and manual systems.

B. The department will conduct business with the public, lottery retailers, vendors and others with integrity and honesty.

C. Moneys Apportionment of moneys received from lottery sales will the sale of tickets or shares shall be divided approximately as follows:

~~50 %~~ 55% Prizes, as provided for in the rules of specific games

~~5 %~~ Lottery retailer compensation

~~45 %~~ 7% State Lottery Fund Account- Operating expenses

(~~On and after July 1, 1989, administrative~~ Administrative costs of the lottery shall not exceed 10% of total annual estimated gross revenues to be generated from lottery sales.)

~~5.0 %~~ Lottery retailer compensation

33% Net income

The percentages may vary from year to year based upon the amount of prize payouts.

D. The State Lottery Fund will be established as an account in the Commonwealth's

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

accounting system. The account will be established following usual procedures and will be under regulations and controls as other state accounts. Funding will be from gross sales.

1. Within the State Lottery Fund, there shall be a "Lottery Prize Special Reserve Fund" subaccount created in the State Lottery Fund account which will be used when lottery prize payouts exceed department cash on hand. ~~Five~~ Unless otherwise provided in the Appropriation Act, five percent of monthly gross sales shall be transferred to the Lottery Prize Special Reserve Fund until the amount of the Lottery Prize Special Reserve Fund reaches 5.0% of the gross lottery revenue from the previous year's annual sales or \$5 million dollars, whichever is less.

- a. The calculation of the 5.0% will be made for each instant or on-line game.
- b. The funding of this subaccount may be adjusted at any time by the board.

2. Other subaccounts may be established in the State Lottery Fund account as needed at the direction of the board upon the request of the director with concurrence of the State Comptroller and the Auditor of Public Accounts.

3. In accordance with the Appropriation Act, the State Comptroller provides an interest-free line of credit not to exceed \$25,000,000 to the department. This line of credit is in lieu of the Operations Special Reserve Fund required to be established by the Comptroller in accordance with § 58.1-4022 B of the Code of Virginia. Draw-downs against this line of credit are available immediately upon request of the department.

~~D. Lottery expenses include, but are not limited to, ticket costs, vendor fees, consultant fees,~~

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

~~advertising costs, salaries, rents, utilities, and telecommunications costs.~~

~~F. The cost of any audit shall be paid from the State Lottery Fund.~~

~~1. The Auditor of Public Accounts or his designee shall conduct a monthly post-audit of all accounts and transactions of the department. When, in the opinion of the Auditor of Public Accounts, monthly post-audits are no longer necessary to ensure the integrity of the lottery, the Auditor of Public Accounts shall notify the board in writing of his opinion and fix a schedule of less frequent post-audits. The schedule of post-audits may, in turn, be further adjusted by the same procedure to require either more or less frequent audits in the future.~~

~~2. Annually, the Auditor of Public Accounts shall conduct a fiscal and compliance audit of the department's accounts and transactions.~~

~~G D.~~ The board and director may address ~~other~~ matters not mentioned in Chapters 20 (11 VAC 5-20-10 et seq.), ~~30 (11 VAC 5-30-10)~~ 31 (11 VAC 5-31-10 et seq.), and ~~40 (11 VAC 5-40-10)~~ 41 (11 VAC 5-41-10 et seq.) which are needed or desired for the efficient and economical operation and administration of the lottery.

11 VAC 5-20-80. Approval of banks.

A. The State Treasurer, with the concurrence of the director, and in accordance with applicable Treasury directives, shall approve a bank or banks to provide services to the department.

B. A bank or banks shall serve as agent or agents for electronic funds transfers between the department and lottery retailers as required by Chapters 20 (11 VAC 5-20-10 et seq.), ~~30 (11 VAC 5-30-10)~~ 31 (11 VAC 5-31-10 et seq.), and ~~40 (11 VAC 5-40-10)~~ 41 (11 VAC 5-41-10 et seq.) and by

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

contracts between the department, the State Treasury, retailers, and the banks.

~~C. In selecting the bank or banks to provide these services, the State Treasurer and the director shall consider quality of services offered, the ability of the banks to guarantee the safekeeping of department accounts and related materials, the cost of services provided and the sophistication of bank systems and products.~~

~~D. There shall be no limit on the number of banks approved under this section.~~

11 VAC 5-20-90. ~~Approval of depositories.~~

~~The director may contract with depositories to distribute lottery tickets and materials from the department's central warehouse to the department's regional offices and from the department to retailers, and to collect funds, lottery tickets and lottery materials from retailers. Additionally, the director may contract for other financial services to process subscriptions and other deposit applications. [Repealed.]~~

11 VAC 5-20-100. ~~Compensation.~~

~~A. The contract between each bank or depository and the department shall fix the compensation for services rendered to the department.~~

~~B. Compensation of banks will be in the form of compensating balances, direct fees, or some combination of these methods, at the discretion of the department.~~

~~C. Depositories will be compensated based on vouchers for services rendered. [Repealed.]~~

11 VAC 5-20-110. ~~Depository for transfer of tickets.~~

~~A. The department may designate one or more depositories to transfer lottery tickets, lottery~~

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

~~materials, and related documents between the department and lottery retailers.~~

~~B. In determining whether to use depositories for transferring tickets, materials and documents~~

~~between the department and lottery retailers, the department may consider any relevant factor including, but not limited to, cost, security, timeliness of delivery, marketing concerns, sales objectives and privatization of governmental services. [Repealed.]~~

11 VAC 5-20-120. Officers of the board.

A. The board shall have a chairman and a vice chairman who shall be elected by the board members.

B. The board will elect its officers annually at its January meeting, or as soon thereafter as reasonably possible, to serve for the calendar year.

11 VAC 5-20-130. Board meetings.

A. The board will hold regular public meetings to receive information and recommendations from the director on the operation and administration of the lottery and to take official action. The board may also request information or comment from the public.

B. The board may hold ~~additional~~ special meetings as may be necessary to carry out its work. The chairman may call a special meeting at any time and shall call a special meeting when requested to do so by at least two board members or at the request of the director. ~~Notice~~ Public notice of special meetings shall be given contemporaneously with the notice provided to all board members ~~at least two calendar days before the meeting~~. Written notice is preferred but telephonic notice may be accepted by any board member in lieu of written notice.

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

~~C. Three or more A majority of board members shall constitute a quorum for the conduct of business at both regular and special meetings of the board. A simple majority vote at a regular meeting is sufficient to take official action but official action at a special meeting requires three affirmative votes. The chairman is eligible to vote at all meetings.~~

~~D. If any board member determines that he has a conflict of interest or potential conflict relating to a matter to be considered, that board member shall not take part in such deliberations.~~

11 VAC 5-20-140. Committees of the board.

A. The board chairman may, at his discretion, appoint such ~~ad hoc~~ committees as he deems necessary to assist the board in its work.

B. ~~An ad hoc~~ A committee may be established to advise the board on a matter referred to it ~~or to act on a matter on behalf of the board if so designated.~~

~~1. A committee established to act on a matter on behalf of the board shall be composed entirely of board members and shall have at least three members.~~

~~a. Three members shall constitute a quorum.~~

~~b. Official action of such a committee shall require not fewer than three affirmative votes with each member, including the chairman having one vote.~~

~~c. If a committee's vote results in an affirmative vote of only two members, the committee shall present a recommendation to the board and the board shall then take action on the matter.~~

~~2. A committee established to act in an advisory capacity to the board may include~~



**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

members of the general public. At least two members of the committee shall be board members

and the chairman shall be a board member appointed by the board chairman.

a 1. A majority of the members appointed to an advisory committee ~~constitutes~~ shall constitute a quorum.

b 2. Recommendations of an advisory committee may be adopted by a majority vote of those present and voting. The chairman of an advisory committee shall be eligible to vote on all recommendations.

e 3. All actions of advisory committees shall be presented to the board in the form of recommendations.

11 VAC 5-20-150. Conferences on denial, suspension or revocation of a retailer's license.

~~A. An instant lottery retailer applicant or an instant lottery retailer surveyed for an on-line license who is denied a license or a retailer whose license is denied for renewal or is suspended or revoked or any retailer that believes it is eligible for placement of an instant ticket vending machine (ITVM) or self-service terminal (SST) based on criteria established by the department but which has been denied such placement may appeal the licensing decision and request a conference on the licensing action.~~

~~B. The conduct of license appeal conferences will conform to the provisions of Article 3 (§ 9-6.14:11 et seq.) of Chapter 1.1:1 of Title 9 § 2.2-4018 of the Code of Virginia relating to case decisions.~~

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

1. An initial conference consisting of an informal fact finding process will be conducted by the ~~director or the appointed~~ conference officer ~~in private~~ to attempt to resolve the issue to the satisfaction of the parties involved.

2. If an appeal is not resolved through the informal fact finding process, at the request of the appellant, a formal hearing will be conducted by the board in public. The board will then issue its decision on the case.

3. Upon receipt of the board's decision on the case, the appellant may elect to pursue court action in accordance with the provisions of the Administrative Process Act (“APA”) relating to court review.

11 VAC 5-20-160. Procedure for appealing a licensing decision.

A. Upon receiving a notice that (i) an application for ~~an instant game~~ a license, ~~or the survey of an instant retailer for licensing as an on-line retailer~~, or the renewal of a license, has been denied by the director, or (ii) the director intends to or has already taken action to suspend or revoke a current license, ~~or (iii) any retailer that believes it is eligible for placement of an instant ticket vending machine (ITVM) or self-service terminal (SST) based on criteria established by the department~~, the applicant or licensed retailer may appeal ~~in writing for~~ by filing a written notice of appeal requesting a conference on the licensing action. The notice of appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

1. Receipt of a notice of the licensing action which is mailed in an envelope bearing a United States Postal Service postmark is presumed to have taken place not later than the third

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

day following the day of mailing of ~~the notice~~ to the last known address of the applicant or licensed retailer. If the third day falls upon a day on which mail is not delivered by the United

States Postal Service, the notice is presumed to have been received on the next business day.

The "last known address" means the address shown on the application of an applicant or licensed retailer unless a more current address has been provided to the department by the applicant or licensed retailer.

2. The notice of appeal will be timely if it bears a United States Postal Service postmark showing mailing on or before the 30th day prescribed in ~~11 VAC 5-20-160~~ subsection A of this section.

B. ~~An~~ A notice of appeal may be mailed or hand delivered to the director at the State Lottery Department headquarters office.

1. ~~An~~ A notice of appeal delivered by hand will be timely only if received at the headquarters of the State Lottery Department within the time allowed by subsection A of this section.

2. Delivery to a State Lottery Department regional ~~offices~~ office or to lottery sales personnel by hand or by mail is not ~~effective~~ sufficient.

3. The appellant assumes full responsibility for the method chosen to file the notice of appeal.

C. The notice of appeal shall state:

1. The decision of the director which is being appealed;

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

2. The legal and factual basis for the appeal;
3. The retailer's license number or the Retailer License Application Control Number; and
4. Any additional information the appellant may wish to include concerning the appeal.

11 VAC 5-20-170. Procedures for conducting informal fact finding licensing conferences.

A. The conference officer will conduct an informal fact finding conference with the appellant for the purpose of resolving the licensing action at issue.

B. The conference officer will hold the conference as soon as possible but not later than 30 days after the notice of appeal is filed, unless an alternate date is designated by the conference officer or his designee and accepted by the appellant. A notice setting out the conference date, time and location will be sent to the appellant, by certified mail, return receipt requested, at least 10 days before the day set for the conference, unless a shorter time is agreed to by the appellant.

C. ~~All informal conferences shall be held in Richmond, Virginia, unless the conference officer decides otherwise.~~ A conference may be conducted by telephone, at the option of the appellant.

D. The conferences shall be informal. ~~They shall not be open to the public.~~

1. The conferences will be electronically recorded. The recordings will be kept until ~~any~~ the time limits limit for any subsequent ~~appeals have~~ appeal has expired.

2. A court reporter may be used. The court reporter shall be paid by the person who requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.

3. The appellant may appear in person or may be represented by counsel to present his

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

facts, argument or proof in the matter to be heard and may request other parties to appear to present testimony.

4. The department will present its facts in the case and may request other parties to appear to present testimony.

5. Questions may be asked by any of the parties at any time during the presentation of information, subject to the conference officer's prerogative to regulate the order of presentation in a manner which, in his sole discretion, best serves the interest of fairly developing the ~~factual background of the appeal~~ facts.

6. The conference officer may exclude information at any time which he believes, in his sole discretion, is not germane or which repeats information already received.

7. The conference officer shall declare the conference completed when ~~both parties have finished presenting their information~~ the time established by the conference officer has expired.

E. Normally, the conference officer shall issue his decision within 15 days after the conclusion of an informal conference. However, for a conference with a court reporter, the conference officer shall issue his decision within 15 days after receipt of the transcript of the conference. In all cases the agency shall comply with the APA. The decision will be in the form of a letter to the appellant summarizing the case and setting out his decision on the matter. The decision will be sent to the appellant by certified mail, return receipt requested.

F. After receiving the conference officer's decision on the informal conference, the appellant may elect to appeal to the board for a formal hearing on the licensing action. The request for appeal

11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS

shall be:

1. ~~Submitted~~ Be submitted in writing within 15 days of receipt of the conference officer's decision on the informal conference;
2. ~~Mailed~~ Be mailed or hand delivered to the chairman of the board at the headquarters of the State Lottery Department.
3. ~~The~~ Be governed by the same procedures in 11 VAC 5-20-160 B for filing the original notice of appeal ~~govern the filing of the notice of appeal of the conference officer's decision to the board.~~
4. ~~The appeal shall state~~ State:
  - a. The decision of the conference officer which is being appealed;
  - b. The legal and factual basis for the appeal;
  - c. The retailer's license number or the Retailer License Application Control Number;and
  - d. Any additional information the appellant may wish to include concerning the appeal.

11 VAC 5-20-180. Procedures for conducting formal licensing hearings.

A. The board will conduct a formal hearing ~~within 45 days of~~ at its next regularly scheduled meeting following the receipt of a notice of appeal on a licensing action, if the date of the scheduled meeting permits the required ten days notice to the appellant, or at a date to be determined by the chairman of the board and accepted by the appellant.

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

B. ~~Three or more~~ A majority of members of the board ~~are sufficient~~ is required to hear an appeal. If the chairman and vice chairman of the board ~~is~~ are not present, the members present shall choose one from among them to preside over the hearing.

C. The board chairman, at his discretion, may designate ~~an ad hoc~~ a committee of the board to hear licensing appeals and act on its behalf. Such committee shall have at least three members who will hear the appeal on behalf of the board. If the chairman of the board is not present, the members of the ~~ad hoc~~ committee shall choose one from among them to preside over the hearing.

D. ~~If any board member determines that he has a conflict of interest or potential conflict, that board member shall not take part in the hearing. In the event of such a disqualification on a subcommittee, the board chairman shall appoint an ad hoc substitute for the hearing.~~

E. A notice setting the hearing date, time and location will be sent to the appellant by certified mail, return receipt requested, at least 10 days before the day set for the hearing, unless a shorter time is agreed to by the appellant. ~~All hearings will be held in Richmond, Virginia, unless the board decides otherwise.~~

~~F~~ E. The ~~hearings~~ hearing shall be conducted in accordance with the provisions of the ~~Virginia Administrative Process Act ("APA")~~ APA (§ ~~9-6.14:1~~ 2.2-4018 et seq.). ~~The hearings~~ and shall be open to the public.

1. The ~~hearings~~ hearing will be electronically recorded and the ~~recordings~~ recording will be kept until any time limits for any subsequent court appeals have expired.

2. A court reporter may be used. The court reporter shall be paid by the person who

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

requested him. If the appellant elects to have a court reporter, a transcript shall be provided to the department. The transcript shall become part of the department's records.

3. The provisions of §§ ~~9-6.14:12~~ 2.2-4020 through ~~9-6.14:14~~ 2.2-4023 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

~~G.F.~~ Normally, the board will issue its written decision within 21 days of the conclusion of the hearing. However, for a hearing with a court reporter, the board will issue its written decision within 21 days of receipt of the transcript of the hearing. In all cases the agency shall comply with the APA.

1. A copy of the board's written decision will be sent to the appellant by certified mail, return receipt requested. The original written decision shall be retained ~~in~~ by the department and become a part of the case file.

2. The written decision will contain:

- a. A statement of the facts to be called "Findings of Facts";
- b. A statement of conclusions to be called "Conclusions" and to include as much detail as the board feels is necessary to set out the reasons and basis for its decision; and
- c. A statement, to be called "Decision and Order," which sets out the board's decision and order in the case.

~~H.G.~~ After receiving the board's decision on the case, the appellant may elect to pursue court review as provided for in the ~~Administrative Process Act~~ APA.



**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

11 VAC 5-20-420. Ethics in contracting.

A. ~~Except for more stringent requirements set forth in this section, the~~ The department will follow the ethics in public contracting requirements of the Virginia Public Procurement Act, Article 4 ~~6~~ (~~§ 11-72 2.2-4300~~ et seq.) of Chapter 7-43 of Title ~~11 2.2~~ of the Code of Virginia, and will be subject to the provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

~~B. A department employee who has responsibility to buy from vendors may not:~~

- ~~1. Be employed by a vendor at the same time;~~
- ~~2. Have a business associate or a member of his household be an officer, director, trustee, partner or hold a similar position with a vendor or play a role in soliciting contracts for vendors;~~
- ~~3. Himself or his business associate or a member of his household own or control an interest in a vendor of at least 5.0%;~~
- ~~4. Himself or his business associate or a member of his household have a personal interest in a contract procured for the department; or~~
- ~~5. Himself or his business associate or a member of his household negotiate or have an arrangement about prospective employment with a vendor.~~

~~C. No vendor or employee of the department involved in purchasing will offer, request or accept, at the present or in the future, any payment, loan, advance, deposit of money, services or anything of more than nominal value for which nothing of comparable value is exchanged.~~

~~D. No vendor will demand or receive from any of his suppliers or subcontractors, as an~~

**11 VAC 5-20-10 et seq. - ADMINISTRATION REGULATIONS**

~~incentive for a contract, any kickback.~~

~~E. Each vendor must give the department a certified statement that the proposal, bid, or contract or any claim is not the result of, or affected by, collusion with another vendor. The statement will also state that no act of fraud has been involved in negotiating, signing and meeting the contract.~~

~~F. Any department employee or former employee who dealt in an official capacity with vendors on procurement actions who intends to accept employment from any such vendor within one year of terminating his employment with the department must give notice to the director of his intention prior to his first day of employment with the vendor.~~

~~G B. Any contract which violates the contracting ethics in the Code of Virginia and this chapter may be voided and rescinded immediately by the department.~~