

**ADMINISTRATION REGULATIONS**

**(11 VAC 5-20-10 et seq.)**

Proposed

**PART I.  
GENERAL PARAMETERS.**

**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 by a retailer, ~~vendor~~ potential 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 of lottery funds, the accounting of 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.~~

~~"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.

~~"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 methods" means obtaining goods or services through a procurement process where two or more valid sources of supply are solicited.

~~"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 informational or factual inquiries of an informal nature provided in § 9-6.14:11 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 decision 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.

~~"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.

"Depository" means any person, including a bonded courier service, armored car service, bank, central or regional offices of the department, or 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 Executive 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.

"Goods" means any 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.

"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 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.

~~"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.~~

~~"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, unless the context indicates otherwise.

"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.~~ Such interest shall exist if one or more of the conditions set out in the definition in § 2.1-639.2 of the Code of Virginia is present.

"Personal interest in a contract" means a personal interest which an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business which is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such interest shall exist if one or more of the conditions set out in the definition in § 2.1-639.2 of the Code of Virginia is present.

~~"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 for obtaining goods or services. It includes 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 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.~~

~~"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 retailer's payment of prizes less than \$604.~~

~~"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~~ contractor where the work is primarily labor or duties and is other than providing equipment, materials, 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 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~~ sells goods or services ~~for~~ to the department.

**11 VAC 5-20-20.** [Repealed.]

**11 VAC 5-20-30.** [Repealed.]

**11 VAC 5-20-40.** [Repealed.]

**11 VAC 5-20-50.** [Repealed.]

**11 VAC 5-20-60. Advertising.**

A. Advertising may include but is not limited to print advertisements, radio and television 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~~ shall have the right to require winners to participate in press conferences and may disclose a winner's name, prize amount and hometown or use interviews, pictures or statements from people who have won lottery prizes winners 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 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 received from lottery sales will be divide approximately as follows:

~~50 % ————— Prizes~~

~~45 % ————— State Lottery Fund Account  
(On and after July 1, 1989, 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~~

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

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



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 C. 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.

## **PART II. BANKS AND DEPOSITORIES.**

### **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 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 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 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.]~~

**PART III.  
LOTTERY BOARD PROCEDURES.**

**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 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 of special meetings shall be given 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.

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 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~~ two members, one of whom shall be elected committee chairman by the members of the board.

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

b. Official action of such a committee shall require not fewer than ~~three~~ two 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~~ one member, 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 members of the general public. At least two members shall be board members and the chairman shall be a board member appointed by the board chairman.

a. A majority of the members appointed to an advisory committee constitutes a quorum.

b. 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.

c. 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 of the Code of Virginia relating to case decisions.

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 a conference on the licensing action. The appeal shall be submitted within 30 days of receipt of the notice of the licensing action.

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

2. The 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 A.

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

1. An 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~~ deemed to be received by the department director.

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

C. The appeal shall state:

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

2. The 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 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.

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 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 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 serves the interest of fairly developing the factual background of the appeal.

6. The conference officer may exclude information at any time which he believes 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.

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. 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 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 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 an 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 conference officer and accepted by the appellant.

B. ~~Three or more~~ A majority of members of the board are ~~sufficient~~ 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 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~~ an ad hoc committee, 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. All hearings will be held in Richmond, Virginia, unless the board decides otherwise.

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

l. The hearings will be electronically recorded and the recordings 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 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 through 9-6.14:14 of the APA shall apply with respect to the rights and responsibilities of the appellant and of the department.

G. 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.

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. 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 5-20-190.** [Repealed.]

#### **PART IV. PROCUREMENT.**

**11 VAC 5-20-200. Procurement in general.**

A. ~~To promote the free enterprise system in Virginia, the~~ The State Lottery Department will purchase goods or services by using competitive methods whenever possible in accordance with procedures which are contained in the Virginia Lottery Purchasing Manual and the Virginia Lottery Vendors Manual. ~~In its operations and to ensure efficiency, effectiveness and economy, the department will consider using goods and services offered by private enterprise.~~



B. The department may purchase goods or services which are under state term contracts established by the Department of General Services, Division of Purchases and Supply, or other state agencies, when in the best interest of the State Lottery Department.

C. ~~When time permits, the~~ The department may ~~will~~ publish notice of procurement actions ~~in "Virginia Business Opportunities," published by the Department of General Services, Division of Purchases and Supply.~~

D. In the event that there is only one source practicably available for a good or service, the department may make a sole source procurement. When this occurs, the director, or his designee, will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods and services procured for, the factors leading to the determination of sole source and the date of the procurement.

E. When an unexpected, sudden, serious or urgent situation demands immediate action, an emergency procurement may be made. Competitive procedures are not required to make an emergency procurement. In the event of an emergency procurement, the director, or his designee, will state in writing the nature of the emergency, the vendor selected, the goods or services procured, the date of the procurement and factors leading to a determination of the emergency purchase.

F. The department may establish criteria for small purchases. For these purchases, price quotations may be obtained electronically or through oral quotations in person or by telephone.

**11 VAC 5-20-210. Exemption and restrictions.**

A. ~~Purchase of goods of \$2,000 or less shall be exempted from competitive procurement procedures. Purchase of services of \$5,000 or less shall be exempted from competitive procurement procedures. Specific purchases of goods of more than \$2,000 and services of more than \$5,000 may be exempted from the competitive procurement procedures when the director determines in writing that the best interests of the department will be served. An exemption may also be declared by the director when an immediate or emergency need exists for goods or services.~~

B. ~~All purchases shall be made in compliance with the standards of ethics in 11 VAC 5-20-420 of this chapter.~~

C. ~~The department shall not take any procurement action which discriminates on the basis of the race, religion, color, sex, or national origin of any vendor.~~

D. ~~It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation, and strengthening of small businesses and businesses owned by women and minorities and to encourage~~

~~their participation in state procurement activities. Towards that end, the State Lottery Department encourages these firms to compete and encourages nonminority firms to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities.~~

~~E.—Whenever a purchase is exempt from competitive procurement procedures under this chapter, except purchases of \$2,000 or less, the contracting officer is obliged to make a written determination that the cost of the goods or services is reasonable under the circumstances. In making this reasonableness determination, the contracting officer may use historical pricing data, and personal knowledge of product and marketplace conditions. [Repealed.]~~

#### **11 VAC 5-20-220. Requests for Information.**

~~A.—A Request for Information (RFI) may be used by the department to determine available sources for goods or services.~~

~~B.—The RFI shall set out a description of the good or service needed, its purpose and the date by which the department needs the information.~~

~~C.—The RFI may be mailed to interested parties or published by summary notice in general circulation newspapers or other publications.~~

~~1.—Additional RFI's may be published for a good or a service, as determined on a case-by-case basis.~~

~~2.—To help ensure competition, the department will ask for information from as many private sector vendors as it determines are necessary.~~

~~D.—All costs of developing and presenting the information furnished will be paid for by the vendor.~~

~~E.—The department shall have unlimited use of the information furnished in the reply to an RFI. The department accepts no responsibility for protection of the information furnished unless the vendor requests that proprietary information be protected in the manner prescribed by § 11-52 D of the Code of Virginia. The department shall have no further obligation to any vendor who furnishes information.~~

~~F.—The department may, at its option, use the responses to the RFI as a basis for entering directly into negotiation with one or more vendors for the purpose of entering into a contract. [Repealed.]~~

#### **11 VAC 5-20-230. Requests for Proposals.**

~~A.—A written Request for Proposals (RFP) may be used by the department to describe in general~~

~~terms the goods or services to be purchased. An RFP may result in a negotiated contract.~~

~~B.—The RFP will set forth the due date and list the requirements to be used by the vendors in writing the proposal. It may contain other terms and conditions and essential vendor characteristics.~~

~~C.—The department shall publish or post a public notice of the RFP.~~

~~1.—All solicitations shall be posted for not less than five working days on a bulletin board at the State Lottery Department. The notice may also be: mailed to vendors who responded to a Request for Information; published in general circulation newspapers in areas where the contract will be performed; if time permits and at the option of the department, reported to the "Virginia Business Opportunities" at the Department of General Services, Division of Purchases and Supply; and given to any other interested vendor.~~

~~2.—The department shall decide the method of giving public notice on a case by case basis. The decision will consider the means which will best serve the department's procurement needs and competition in the private sector.~~

~~D.—Public openings of the RFP's are not required. If the RFP's are opened in public, only the names of the vendors who submitted proposals will be available to the public.~~

~~E.—The department will evaluate each vendor proposal.~~

~~1.—The evaluation will consider the vendor's response to the factors in the RFP.~~

~~2.—The evaluation will consider whether the vendor is qualified, responsive and responsible for the contract.~~

~~F.—The department may conduct contract negotiations with one or more qualified vendors. The department may also determine, in its sole discretion, that only one vendor is fully qualified or that one vendor is clearly more highly qualified than the others and negotiate and award a contract to that vendor.~~

~~G.—Award of RFP contract.~~

~~1.—The vendor selected shall be qualified and best suited on the basis of the proposal and contract negotiations.~~

~~2.—Price will be considered but is not necessarily the determining factor.~~

~~3.—The award document shall be a contract. It shall include requirements, terms and conditions of the RFP and the final contract terms agreed upon. [Repealed.]~~

**11 VAC 5-20-240. Invitations for Bids.**

~~A.—A written Invitation for Bids (IFB) may be used by the department to describe in detail the specifications, contractual terms and conditions which apply to a purchase of goods or services.~~

~~B.—The IFB will list special qualifications needed by a vendor. It will describe the contract requirements and set the due date for bid responses.~~

~~1.—The IFB may contain inspection, testing, quality, and other terms essential to the contract.~~

~~2.—It may contain other optional data.~~

~~C.—Public notice of the IFB shall be given.~~

~~1.—The IFB may be mailed to potential bidders and to the Department of Minority Business Enterprise. In addition, it may be published in summary form stating where a full copy may be obtained in general circulation newspapers in areas where the contract will be performed. The IFB shall be posted for not less than five working days at the department's headquarters in a public area used to post purchase notices, and shall be given to any other interested vendor.~~

~~2.—The publication of the IFB notice will consider the means which will best serve the department's procurement needs and competition in the private sector.~~

~~D.—Bids shall be received until the date and time set forth in the IFB. Late bids shall not be considered.~~

~~E.—The IFB may provide that bids shall be publicly opened. If bids are publicly opened, the following items shall be read aloud:~~

~~1.—Name of bidder;~~

~~2.—Unit or lot price, as applicable; and~~

~~3.—Terms: discount terms offered, if applicable, and brand name and model number, if requested by attendees.~~

~~F.—The department shall evaluate each vendor bid.~~

~~1.—The evaluation shall consider whether the bid responds to the factors in the IFB.~~

~~2.—All bids which respond completely to the IFB shall be evaluated to determine which bid presents the lowest dollar price.~~

~~3.—The vendor presenting the lowest price bid shall be evaluated to determine whether he is a responsible bidder.~~

~~G.—The department shall award the contract to the lowest responsive and responsible bidder.~~  
[Repealed.]

**11 VAC 5-20-250. Sole source procurements.**

~~A. A sole source procurement shall be made when there is only one source practicably available for goods or services. Because there is only one source practicably available, a sole source contract may be made without the use of an RFI, RFP, IFB or other competitive procurement process.~~

~~B.—For a sole source procurement of goods of more than \$2,000 and services of \$5,000 but not more than \$15,000, the department will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods or services procured, the date of the procurement and factors leading to the determination of sole source.~~

~~C.—For a sole source procurement greater than \$15,000, on the day the director awards the procurement, he will post for not less than five working days a written statement in a public area used to post purchase notices at the department's headquarters. The director will state in writing for the file that only one source was determined to be practicably available, the vendor selected, the goods and services procured for, the factors leading to the determination of sole source and the date of the procurement.~~  
[Repealed.]

**11 VAC 5-20-260. Emergency purchase procurement.**

~~A.—An emergency purchase procurement shall be made when an unexpected, sudden, serious, or urgent situation demands immediate action. An emergency purchase may be used only to purchase goods or services necessary to meet the emergency; subsequent purchases must be obtained through normal purchasing procedures. Competitive procedures are not required to make an emergency purchase procurement.~~

~~B.—For an emergency purchase of goods of more than \$2,000 and services of \$5,000 but not more than \$15,000, the department will state in writing the nature of the emergency, the vendor selected, the goods or services procured, the date of the procurement and factors leading to a determination of the emergency purchase.~~

~~C.—For an emergency purchase greater than \$15,000, on the day the director awards the~~

~~procurement, a written statement shall be posted for not less than five working days in a public area used to post purchase notices at the department's headquarters. The director will state in writing for the file the nature of the emergency, the vendor selected, the goods and services procured, the date of the procurement and factors leading to a determination of the emergency purchase. [Repealed.]~~

**11 VAC 5-20-270. Procedures for small purchases.**

~~A.—Small purchases are those where the estimated one-time or annual contract for cost of goods or services does not exceed \$15,000.~~

~~B.—Price quotations may be obtained through oral quotations in person or by telephone without the use of an RFI, RFP or IFB.~~

~~C.—If the contract is \$2,000 or less, no written confirmation is needed. Written price confirmation from the vendor is needed for small purchases over \$2,000.~~

~~D.—Except in the case of an emergency under 11 VAC 5-20-260 or for purchases of goods of \$2,000 or less or services of \$5,000 or less, the department will attempt to obtain at least three quotations.~~

~~E.—In letting small purchase contracts, the department may consider factors in addition to price. [Repealed.]~~

**11 VAC 5-20-280. Procurement of nonprofessional services.**

~~A.—Generally, the procurement of nonprofessional services shall be in accordance with competitive procurement principles, unless otherwise exempted.~~

~~B.—Nonprofessional services may be procured through noncompetitive negotiations under the following conditions:~~

~~1.—Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of nonprofessional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.~~

~~2.—When a written determination is made and approved by the director that there is only one adequately qualified expert or source practicably available for the services to be procured. [Repealed.]~~

**11 VAC 5-20-290. Procurement of professional services.**

~~A.—Generally, the procurement of professional services shall be in accordance with competitive principles but is always exempt from competitive bidding requirements. Selection of professional services~~

should be made on the basis of qualifications, resources, experience and the cost involved.

B.—Professional services may be procured through noncompetitive negotiations under the following conditions:

1.—Where the estimated one-time cost is less than \$5,000. When there is more than one qualified source for a specific type of professional services, every effort shall be made to utilize all such qualified sources on a rotating basis when opportunities and circumstances allow.

2.—When a written determination is made and approved by the director that there is only one adequately qualified professional, expert or source practicably available for the services to be procured. Such services may include those of uniquely qualified lottery industry professionals, experts or sources.

C.—Professional services procurement by competitive negotiation shall be in accordance with 11 VAC 5-20-300. [Repealed.]

#### **11 VAC 5-20-300. Guidelines for competitive procurement of professional services.**

A.—In competitive negotiations for professional services, the department shall engage in one or more individual discussions with each of two or more offerors deemed fully qualified, responsible and suitable, with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. Such discussions may also include nonbinding estimates of total project costs and methods to be utilized in arriving at a price for the services.

B.—At the request of an offeror, properly marked, proprietary information shall not be disclosed to the public or to competitors.

C.—At the conclusion of the discussions, on the basis of predetermined evaluation factors and information developed in the selection process, the department shall select, in order of preference, two or more offerors whose professional qualifications and proposed services are deemed to meet best the department's procurement needs.

D.—Negotiations are then conducted with the first ranked offeror. If a satisfactory and advantageous contract can be negotiated at a fair and reasonable price, the award is made to that offeror. Otherwise, the negotiations with the first ranked offeror are terminated formally and are conducted with the offeror ranked second and so on until such a contract can be negotiated at a fair and reasonable price.

E.—If the department determines in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the other offerors under

consideration, a purchase may be negotiated and awarded to that offeror.

F.—The department must ensure that all points negotiated are properly documented and become a part of the procurement file.

G.—The department shall establish a limit for each procurement on the number of times a contract or open purchase term may be extended.

H.—A contract for professional services may be made subject to the notification and public posting requirement of the formal bid procedures. [Repealed.]

**11 VAC 5-20-310. ~~Time to submit and accept Requests for Information (RFI), Requests for Proposals (RFP) or Invitations for Bids (IFB).~~**

A.—All vendors shall submit requests for information, proposals or bids in time to reach the department before the set time and due date.

1.—All vendors shall take responsibility for their chosen method of delivery to the department.

2.—The department will date stamp the vendors' answers to RFI's, RFP's and IFB's when received. The department's stamped date shall be considered the official date received.

3.—Any information which the department did not request or is received after the due date may be disregarded or returned to the vendor.

4.—All vendors who received solicitations will be notified of any changes in the process times and dates or if a solicitation is cancelled.

B.—Any proposal or bid quotation submitted by a vendor to the department shall remain valid for at least 45 days after the submission due date and will remain in effect thereafter unless the bidder retracts his bid in writing at the end of that period. The vendor must agree to accept a contract if offered within the 45-day time period. The department may require a longer or shorter period for specific goods or services. [Repealed.]

**11 VAC 5-20-320. ~~Questions on bids.~~**

Questions on contents of other bidders' bids or offerors' proposals will not be answered until after decisions are made. [Repealed.]

**11 VAC 5-20-330. ~~How to modify or withdraw proposals or bids.~~**



A.—A vendor may modify or withdraw a proposal or bid before the due time and date set out in the request without any formalities except that the modification or withdrawal shall be in writing.

B.—A request to modify or withdraw a bid or proposal after the due date may be given special review by the director.

1.—A vendor shall put in writing and deliver to the department a statement which details how the proposal would be modified or why it should be permitted to be withdrawn.

2.—A proposal or bid may be withdrawn after opening if the department receives prompt notice and sufficient information to show that an honest error will cause undue financial loss.

C.—A vendor may not modify a proposal or bid after the purchase award is made. [Repealed.]

#### **11 VAC 5-20-340. Rejection of bids.**

~~The department reserves the right to reject any or all bids. The decision may be made that a vendor is ineligible, disqualified, not responsive or responsible, or involved in fraud, or that the best interest of the Commonwealth will not be served. Vendors so identified shall be notified in writing by the department. New bids may be requested at a time which meets the needs of the department. [Repealed.]~~

#### **11 VAC 5-20-350. Testing of product.**

~~Various items or services may require testing either before or after the final award of a contract. The vendor shall guarantee price and quality before and after testing. [Repealed.]~~

#### **11 VAC 5-20-360. Proposal bid or performance security.**

A.—~~The department may require performance security on proposals or bids. The security is to protect the interests of the Commonwealth.~~

1.—~~When required, security must be in the form of a certified check, certificate of deposit or letter of credit made payable to the State Lottery Department, or on a form issued by a surety company authorized to do business in Virginia.~~

2.—~~When required, security will not be waived, except upon action by the director.~~

B.—~~Security provided by vendors to whom a contract is awarded will be kept by the department until all provisions of the contract have been completed. [Repealed.]~~

#### **11 VAC 5-20-370.—Assignment of contracts.**

A vendor may not assign any contract to another party without permission of the director. [Repealed.]

**11 VAC 5-20-380. ~~Strikes, lockouts or acts of God.~~**

~~Whenever a vendor's place of business, mode of delivery or source of supply has been disrupted by a strike, lockout or act of God, the vendor will promptly advise the department by telephone and in writing. The department may cancel all orders on file with the vendor and place an order with another vendor. [Repealed.]~~

**11 VAC 5-20-390. ~~Remedies for the department on goods and services which do not meet the contract.~~**

~~A. In any case where the vendor fails to deliver, or has delivered goods or services which do not meet the contract standards, the department will send a written "Notice to Cure" to the vendor for correction of the problem.~~

~~B. If the vendor does not respond adequately to the "Notice to Cure," the department may cancel the contract and buy goods or services from another vendor. Any increase between the contract price and market price will be paid by the vendor who failed to follow the contract. This remedy shall be in addition to any other remedy provided by law. [Repealed.]~~

**11 VAC 5-20-400. ~~Administration of contracts.~~**

~~A. The department will follow procedures in administering its contracts that will ensure that the vendor is complying with all terms and conditions of the contract.~~

~~B. The department shall keep all records relating to a contract for three years after the end of a contract.~~

~~1. The records shall include the requirements, a list of the vendors bidding, methods of evaluation, a signed copy of the contract, comments on vendor performance, and any other information necessary.~~

~~2. Records shall be open to the public except for proprietary information for which protection has been properly requested.~~

~~C. Contracts may need to be adjusted for minor changes. The department may change the contract to correct errors, to add or delete small quantities of goods, or to make other minor changes.~~

~~1. The department shall send the changes in writing to the vendor. Vendors who deviate from the contract without receiving the written changes from the department do so at their own risk.~~

~~2. Modifications shall require the signature of the director or the signature of the designee granted authority to sign for the amount amended, except a contract may be modified for payment purposes by an amount not to exceed 10% of the total contract without a written change order or amendment. In no event shall a contract be modified for an amount of \$10,000 or 25%, whichever is greater, individually or cumulatively without approval and signature of the director. Modifications shall be effected by issuance of a letter in the form of a change order or amendment to the original agreement issued by the State Lottery Department and accepted by signature of the contractor. Such letter shall become part of the official contract.~~

~~D.—The department shall cancel orders in writing. Contracts may be cancelled if the vendor fails to fulfill his obligations as provided in 11 VAC 5-20-390 A and B.~~

~~E.—The department may refuse to accept goods which exceed the number ordered. The goods may be returned to the vendor at the vendor's expense.~~

~~F.—The department shall be responsible for inspecting, accepting or rejecting goods or services under contract.~~

~~1.—In rejecting goods or services, the department will notify the vendor as soon as possible.~~

~~2.—The department will state the reasons for rejecting the goods or services and request prompt replacement.~~

~~3.—Replacement goods or services shall be made available at a date acceptable to the department.~~

~~G.—The department will report complaints in writing to the vendor as they occur. The reports will be part of the department's purchase records.~~

~~H.—To maintain good vendor relations and a competitive environment, the department will process invoices promptly. The department shall follow the requirements for prompt payment found in Article 2.1 (§ 11-62.1 et seq.) of Chapter 7 of Title 11 of the Code of Virginia. The department will use rules and regulations issued by the Department of Accounts to process invoices.~~

~~I.—Before the department finds a vendor in default of a contract, it will consider the specific reasons the vendor failed and the time needed to get goods or services from other vendors.~~

~~J.—A purchase order or contract may be terminated for the convenience of the department by delivering to the vendor a notice of termination specifying the extent to which performance under the purchase order or contract is terminated, and the date of termination. After receipt of a notice of termination, the contractor must stop all work or deliveries under the purchase order or contract on the date and to the extent specified.~~

~~1.— If the purchase order or contract is for commercial items sold in substantial quantities to the general public and no specific identifiable inventories were maintained exclusively for the department's use, no claims will be accepted by the department. Payment will be made for items shipped prior to receipt of the termination notice.~~

~~2.— If the purchase order or contract is for items being produced exclusively for the use of the department, and raw materials or services must be secured by the vendor from other sources, the vendor shall order no additional materials or services except as may be necessary for completion of any portion of the work which was not terminated. The department may direct the delivery of the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of the work, or direct the vendor to sell the same, subject to the department's approval as to price. The vendor may, with the approval of the department retain the same, and apply a credit to the claim. The vendor must complete performance on any part of the purchase order or contract which was not terminated.~~

~~3.— Within 120 days after receipt of the notice of termination, or such longer period as the department for good cause may allow, the vendor must submit any termination claims. This claim will be in a form and with certifications prescribed by the purchasing office that issued the purchase order. The claim will be reviewed and forwarded with appropriate recommendations to the requisitioning agency or the appropriate assistant attorney general, or both, for disposition in accordance with § 2.1-127 of the Code of Virginia. [Repealed.]~~

**11 VAC 5-20-410. Vendor background.**

A. A vendor shall allow the department to check his background. The background check ~~may~~ shall extend to any on-line or instant ticket vendor employee working directly on a contract with the department, any parent or subsidiary corporation of the vendor and shareholders of ~~5.0%~~ 10% or more of the vendor, parent or subsidiary corporation. The check may include officers and directors of the vendor or parent or subsidiary corporation.

B. Before contracting with ~~the department~~ a vendor, the department may require a vendor to sign an agreement with the department to allow a criminal investigation of the entities and persons named in subsection A of this section.

~~C.~~ **11 VAC 5-20-411. Inspection of vendor premises; examination of records.**

The vendor shall allow the department during normal business hours to audit, inspect, examine or photocopy the vendor's records related to the State Lottery Department business ~~during normal business hours~~.

**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 (§ 11-72 et seq.) of Chapter 7 of Title 11 of the Code of Virginia, and will be subject to the provisions of the Virginia Conflict of Interests Act (§ 2.1-639.1 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 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.

**11 VAC 5-20-430. Preference for Virginia products and firms.**

~~A. In the case of a tie bid or proposal, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.~~

~~B. Whenever any bidder or offeror is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder or offeror who is a resident of Virginia.~~

[Repealed.]

**PART V.  
PROCUREMENT APPEALS AND DISPUTES.**

**11 VAC 5-20-440. Generally Procurement appeals and disputes.**

The State Lottery Department is not subject to the Virginia Public Procurement Act or its procedures, with the exception of prompt payment of bills as provided in § 11-62.2 of the Code of Virginia. In lieu thereof, this chapter applies to all vendors the procedures outlined in the Virginia Lottery Purchasing Manual and the Virginia Lottery Vendors Manual apply. In the event of a protest ~~on~~ or appeal of a procurement action, the vendor shall follow the remedies available in this chapter and in he Virginia Lottery Vendors Manual. The vendor assumes whatever risks are involved in the selected method of delivery to the director. The director will conduct a hearing on each appeal or he shall designate a hearing officer to preside over the hearing.

**11 VAC 5-20-450. Appeals, protests, time frames and remedies related to solicitation and award of contracts.**

A. If a vendor is considered ineligible or disqualified, the vendor may appeal the department's decision.

1. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief will be to consider the vendor eligible for the particular contract.

B. If a vendor is not allowed to withdraw a bid in certain circumstances, the vendor may appeal the department's decision.

1. The written appeal shall be filed within 10 days after the vendor receives the department's

decision.

2. If no bond has been posted by the vendor, then before appealing the department's decision the vendor shall provide to the department a certified check or cash bond for the amount of the difference between the bid sought to be withdrawn and the next lowest bid.

a. The certified check shall be payable to the State Lottery Department.

b. The cash bond shall name the State Lottery Department as obligor.

c. The security shall be released if the vendor is allowed to withdraw the bid or if the vendor withdraws the appeal and agrees to accept the bid or if the department's decision is reversed.

d. The security shall go to the State Lottery Department if the vendor loses all appeals and fails to accept the contract.

3. If appealed and the department's decision is reversed, the sole relief shall be to allow the vendor to withdraw the bid.

C. Any vendor, despite being the low bidder, may be determined not to be responsible for a particular contract.

1. The vendor may appeal the department's decision. The written appeal shall be filed within 10 days after the vendor receives the department's decision.

2. If appealed and the department's decision is reversed, the sole relief shall be that the vendor is a responsible vendor for the particular contract under appeal.

3. A vendor protesting the department's decision that he is not responsible, shall appeal under this section and shall not protest the award or proposed award under subsection D of this section.

4. Nothing contained in this subsection shall be construed to require the department to furnish a statement of the reasons why a particular proposal was not deemed acceptable.

D. Any vendor or potential vendor may protest the award or the department's decision to award a contract.

1. The written protest shall be filed within 10 days after the award on the announcement of the decision to award is posted or published, whichever occurs first.

2. If the protest depends upon information contained in public records pertaining to the purchase, then a 10-day time limit for a protest begins to run after the records are made available to the vendor for inspection, so long as the vendor's request to inspect the records is made within 10 days after the award or the announcement of the decision to award is posted or published, whichever occurs first.

3. No protest can be made that the selected vendor is not a responsible vendor. The only grounds for filing a protest are (i) that a procurement action was not based upon competitive principles, or (ii) that a procurement action violated the standards of ethics promulgated by the board.

4. If, prior to an award, it is determined by the director that the department's decision to award the contract is erroneous, the only relief will be that the director will cancel the proposed award or revise it.

5. No protest shall delay the award of a contract.

6. Where the award has been made, but the work has not begun, the director may stop the contract. Where the award has been made and the work begun, the director may decide that the contract is void if voiding the contract is in the best interest of the public. Where a contract is declared void, the performing vendor will be paid for the cost of work up to the time when the contract was voided. In no event shall the performing vendor be paid for lost profits.

**11 VAC 5-20-460. Appeals, time frames and remedies related to contract disputes and claims.**

A. In the event a vendor has a dispute with the department over a contract awarded to him, he may file a written claim with the director.

B. Claims for money or other relief, shall be submitted in writing to the director, and shall state the reasons for the action.

1. All vendor's claims shall be filed no later than 30 days after final payment is made by the department.

2. If a claim arises while a contract is still being fulfilled, a vendor shall give a written notice of the vendor's intention to file a claim. The notice shall be given to the director at the time the vendor begins the disputed work or within 10 days after the dispute occurs.

3. Nothing in this chapter shall keep a vendor from submitting an invoice to the department for final payment after the work is completed and accepted.



4. Pending claims shall not delay payment from the department to the vendor for undisputed amounts.

5. The director's decision will state the reasons for the action.

C. Relief from administrative procedures, liquidated damages, or informalities may be given by the director. The circumstances allowing relief usually result from acts of God, sabotage, and accidents, fire or explosion not caused by negligence.

**11 VAC 5-20-470. Form and content of appeal to the director.**

A. The vendor shall make the appeal to the director in writing. The appeal shall be mailed or hand delivered to the State Lottery Director at the headquarters of the State Lottery Department.

B. The appeal shall state the:

1. Decision of the department which is being appealed;
2. Basis for the appeal;
3. Contract number;
4. Other information which identifies the contract; and
5. Reasons for the action.

C. The director's decision on an appeal will be sent to the vendor by certified mail, return receipt requested.

1. The director shall follow the time limits in this chapter and shall not make exceptions to the filing periods for the vendor's appeal and rendering the director's decision.

2. The director's decision will state the reasons for the action.

**11 VAC 5-20-480. State Lottery Department appeal hearing procedures.**

A. The director or the appointed hearing officer will conduct a hearing on every appeal within 45 days after the appeal is filed with the director. The hearings before the State Lottery Department are not trials and shall not be conducted like a trial.

1. The Administrative Process Act does not apply to the hearings.

2. The hearings shall be informal. The vendor and the department will be given a reasonable time to present their position.

3. Legal counsel may represent the vendor or the department. Counsel is not required.

4. The director may exclude evidence which he determines is repetitive or not relevant to the dispute under consideration.

5. The director may limit the number of witnesses, testimony and oral presentation in order to hear the appeal in a reasonable amount of time.

6. Witnesses may be asked to testify. The director does not have subpoena power. No oath will be given.

7. The director may ask questions at any time. The director may not question the vendor in closed session.

B. Hearings shall be open to the public.

1. The director may adjourn the public hearing to discuss and reach his decision in private.

2. The hearings shall be electronically recorded. The department will keep the recordings for 60 days.

3. A court reporter may be used. The court reporter shall be paid by the person who requested him.

a. The court reporter's transcript shall be given to the director at no expense, unless the director requests the use of a court reporter.

b. The transcript shall become part of the department's records.

C. Unless the director determines otherwise, hearings will be in the following order:

1. The vendor will explain his reasons for appealing and the desired relief.

2. The vendor will present his witnesses and evidence. The director and the department will be able to ask questions of each witness.

3. The department will present its witnesses and evidence. The appellant may ask questions of each party and witness.

3. After all evidence has been presented, the director shall reach his decision in private.

**11 VAC 5-20-490. Notice, time and place of hearings.**

A. All people involved in the hearing will be given at least 10 days notice of the time and place of the appeal hearing.

1. Appeals may be heard sooner if everyone agrees.

2. In scheduling hearings, the director may consider the desires of the people involved in the hearing.

B. All hearings shall be held in Richmond, Virginia, unless the director decides otherwise.

**11 VAC 5-20-500. Who may take part in the appeal hearing.**

A. The director may request specific people to take part in the hearing.

B. The protesting vendor and the department shall participate in hearings on ineligibility, disqualification, responsibility, or denial of a request to withdraw a bid.

C. The protesting vendor and the department shall participate in hearings on claims or disputes.

**11 VAC 5-20-510. Director's decision.**

A. The director will issue a written decision within 30 days after the hearing date except for hearings with a court reporter.

B. For hearings with a court reporter, the director's decision will be issued within 30 days after a transcript of the hearing is received by the director if a transcript is prepared. There is no requirement that a transcript be made, even if services of a court reporter are used for the hearing.

C. Format of decision shall include:

1. The director's decision will include a brief statement of the facts. This will be called "Findings of Fact."

2. The director will give his decision. The decision will include as much detail as the director feels is necessary to set out reasons for his decision.

3. The decision will be signed by the director.

D. Copies will be mailed to the appealing vendor, all other vendors who participated in the appeal and the department. The director will give copies of the decision to other people who request it.

**11 VAC 5-20-520. Appeal to courts.**

A. The department is not subject to the Virginia Public Procurement Act. Thus, a vendor has no automatic right of appeal of a decision to award, an award, a contract dispute, or a claim with the department.

B. Nothing in this chapter shall prevent the director from taking legal action against a vendor.