

**Procurement Contract and Vendor Rules  
Arkansas Lottery Commission**

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

**Section 1. Definitions.**

- 1.1** "Act" means the Arkansas Scholarship Lottery Act.
- 1.2** "ALC" means the Arkansas Lottery Commission.
- 1.3** "Addendum" or "Addenda" means an addition or deletion to, a material change in or general interest explanation of a solicitation document.
- 1.4** "Advantageous" means in the ALC's interests, as assessed according to the judgment of the ALC.
- 1.5** "Award" means either the act or occurrence of the ALC's identification of the person with whom the ALC will enter into a contract.
- 1.6** "Bid" means a response to an Invitation to Bid.
- 1.7** "Bidder" means a person that submits a bid in response to an Invitation to Bid.
- 1.8** "Closing" means the date and time announced in a solicitation document as the deadline for submitting offers.
- 1.9** "Commission" or "Commissioners" means the member(s) of the ALC as appointed under Ark. Code Ann. § 23-115-202.
- 1.10** "Contract" means all types of state agreements, regardless of what they may be called, for the purchase, lease, rental or other acquisition of goods and services and for the disposal of surplus commodities and services not otherwise exempt.
- 1.11** "Contract Price" means as the context requires:
  - (a) The maximum payments that the ALC will make under a contract if the contractor fully performs under the contract;

- (b) The maximum not-to-exceed amount of payments specified in the contract; or
  - (c) The unit prices for goods and services set forth in the contract.
- 1.12** "Contractor" means the person with whom the ALC enters into a contract.
- 1.13** "Director" means the director of the ALC.
- 1.14** "Emergency" means circumstances that:
  - (a) Could not have been reasonably foreseen; and
  - (b) Require prompt execution of a contract to remedy the condition; and
  - (c) Meet one of the following two conditions:
    - (1) The circumstances create a substantial risk of loss or revenue, damage or interruption of services or substantial threat to property, public health, welfare or safety when the circumstances could not have been reasonably foreseen; or
    - (2) The circumstances require immediate and decisive action to protect the security, credibility, or integrity of the Lottery or a lottery game.
- 1.15** "Goods and Services" or "Goods or Services" means supplies, equipment, materials and services including personal services and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that the ALC is authorized by law to procure.
- 1.16** "Information Technology Contract" means a contract for the acquisition, disposal, repair, maintenance or modification of hardware, software or services for computers or telecommunications.
- 1.17** "Invitation to Bid" or "ITB" means all documents, whether attached or incorporated by reference, used for soliciting bids using a competitive bidding process in which specifications, price and delivery (or project completion) will be the predominant award criteria.
- 1.18** "Lottery" means any game of chance approved by the ALC pursuant to the Arkansas Scholarship Lottery Act.
- 1.19** "Major Procurement" or "Major Procurement Contract" means a contract for a gaming product or service costing more than seventy-five thousand dollars (\$75,000) including without limitation:

- (a) A major advertising contract;
  - (b) An annuity contract;
  - (c) A prize payment agreement;
  - (d) A consulting service;
  - (e) Lottery equipment;
  - (f) Tickets; and
  - (g) Any other product and service unique to lotteries.
- 1.20** "Major Procurement Contract" does not include a material, supply, equipment, or service common to the ordinary operations of the ALC. When the cost of a proposed contract for a gaming product or service is to be paid in whole or in part on a contingent basis, the ALC shall estimate the value of the proposed contract to determine whether it is a major procurement contract.
- 1.21** "Offer" means a response to a solicitation document.
- 1.22** "Offeror" means a person who submits an offer.
- 1.23** "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.
- 1.24** "Personal Services" means the services or type of services performed under a personal services contract.
- 1.25** "Personal Services Contract" means a contract or member of a class of contracts whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a contract for the services of an accountant, educator, information technology or other consultant, broadcaster or artist (including a photographer, filmmaker, painter, or sculptor.)
- 1.26** "Proposal" means a response to a Request for Proposal.
- 1.27** "Proposer" means a person that submits a proposal in response to a Request for Proposal.
- 1.28** "Request for Proposal" or "RFP" means all documents, whether attached or incorporated by reference, used for soliciting proposals using a competitive

proposal process in which price is not the sole determining factor for contract award.

- 1.29** "Request for Qualifications" or "RFQ" means a solicitation document requiring submittal of qualifications or specialized expertise in response to the scope of work or services required and does not require pricing.
- 1.30** "Responsible Bidder/Proposer/Offeror" means a vendor who submits a bid, offer, quote or proposal in response to a solicitation and who, in the reasonable opinion of the ALC:
- (a) Is able and is otherwise qualified in all respects to perform fully the contract requirements without delay; and
  - (b) Has the integrity and reliability which will assure good faith performance.
- 1.31** "Responsive Bidder/Proposer/Offeror" (also "Responsive Bid" "Responsive Offer" or "Responsive Proposal" as applicable) means an offer that substantially complies in all material respects with applicable solicitation document requirements. When used alone, "Responsive" means having the characteristics of substantially complying in all material respects with applicable solicitation document requirements.
- 1.32** "Scope" means the range and attributes of the goods or services described in the applicable solicitation document, or if no solicitation document, in the contract.
- 1.33** "Signed" or "Signature" means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a person, with the intent to be bound.
- 1.34** "Solicitation" means all documents, whether attached or incorporated by reference, utilized for soliciting bids, offers, quotes, or proposals with respect to a particular major procurement.
- 1.35** "Solicitation Document" means an Invitation to Bid, Request for Proposal or other document issued to invite offers from prospective contractors.
- 1.36** "Specification" means any description of the physical or functional characteristics or of the nature of goods or services, including any requirement for inspecting, testing or preparing goods or services for delivery and the quantities of materials to be furnished under a contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed.

- 1.37** "Vendor" means a person who provides or proposes to provide goods or services to the ALC under a major procurement contract. Vendor does not include:
- (a) An employee of the ALC;
  - (b) A retailer; or
  - (c) A state agency or instrumentality.
- 1.38** "Vendor" includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract.
- 1.39** "Work" means the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual requirement in a contract and successful completion of all duties and obligations imposed by the contract.
- 1.40** "Written" or "Writing" means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a solicitation document or contract.

## **Section 2. General Policies.**

- 2.1 Objective.** It is the policy of the ALC, to the extent that is reasonable given the objectives of maximizing the net revenues of the ALC, to conduct its contracting affairs in an open, competitive manner in accordance with these rules and the Arkansas Procurement Law, Arkansas Code Ann. §19-11-201 et seq.
- 2.2 Authority of the Director.**
- A. The Director is authorized to initiate procurements and enter into all contracts and contract amendments for goods and services except when:
    - 1. The Goods and Services are an expense over five thousand (\$5000) dollars not approved in the ALC budget, the Director must seek Commission approval;
    - 2. Arkansas Legislative Lottery Oversight Committee review is required under Arkansas Code Ann. §23-115-1101, the Director must seek review before the contract is executed; or
    - 3. As otherwise provided in these Rules.
  - B. Price Reduction. The Director is authorized without further specific approval action by the ALC, to execute any contract amendment that results in a reduction of the price paid by the ALC per item, unit or other

measure of the goods or services provided under the contract, and may exercise any option under a contract previously approved by the ALC, where the option terms of the approved contract establish a specific price for the goods or services to be acquired under the option.

- C. **Emergency Procurements.** The Director is authorized to make an emergency procurement as defined in Section 1.15.
- C. **Delegation by Director.** The Director may delegate to any of the employees of the ALC the exercise or discharge of any of the powers, duties or functions of the Director in these rules.

### **Section 3. Solicitations.**

#### **3.1 Generally.**

- A. The provisions of this section are applicable to all solicitations of procurement contracts regardless of the procurement method used by the ALC. All solicitations shall detail:
  - 1. Terms and conditions clearly detailing the requirements for the response to the solicitation, including the schedule for submitting and evaluating responses to solicitations as well as contract language in the event of award;
  - 2. Where more than one item is specified, whether the ALC will have the right to accept proposals either on the basis of each individual item, a group of items, or total of all items; and
  - 3. Any requirement for a performance bond.
- B. Unless the solicitation specifically permits offers of used or reconditioned items, all solicitations shall be deemed to require that all materials, supplies, and equipment offered and furnished must be new and not reconditioned.

#### **3.2 Limitations Regarding Submissions of Solicitations.**

- A. The ALC is committed to a competitive procurement process that maintains the highest level of integrity. Therefore, no communication outside the procurement process initiated by vendors, their attorneys, representatives, or others promoting their position, other than normal business activities not associated with the procurement, will be allowed with any officer, employee, or member of, or consultant or advisor to, the ALC. Any attempt to influence any employees, officers, consultants,

advisors or ALC members of the ALC with respect to a procurement, whether such attempt is oral or written, formal or informal, is strictly prohibited and will result in disqualification.

- B. All bids, offers, quotes or proposals and the contracts resulting from solicitations are subject to the requirements of and must comply with the Act, regardless of whether or not specifically addressed in either the solicitations or the proposal. All potential vendors shall read and be familiar with the Act, a copy of which may be obtained through a link on the ALC's web site.
- C. The ALC shall not under any circumstance be responsible for any expenses incurred by a vendor in preparing and submitting a proposal.
- D. All materials submitted to the ALC by vendors shall upon submission become the property of the ALC and may be used as the ALC deems appropriate.
- E. From the time a solicitation is issued until either (a) six (6) months after the award of a contract or (b) the rejection of all bids, offer, quotes, or proposals received by the ALC, vendors are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any ALC employee, officer, or ALC member.

**3.3 Signature Required.** Each bid, offer, quote, or proposal must be signed by the vendor's authorized agent. If a joint proposal that includes multiple vendors is submitted, it must define completely the responsibilities that each entity is proposing to undertake, as well as the proposed responsibilities of each subcontractor of each entity. The proposal must be signed by an authorized officer or agent of each entity. In addition, the ALC reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor, or each subcontractor that is expected to provide a specified amount of the procured product or service, to sign the proposal. Such requirement shall be clearly set forth in the solicitation. The proposal must designate a single authorized official from one of the entities to serve as the sole point of contact between the ALC and the responding joint venture, strategic partnership, or prime contractor team. Any contract resulting from a joint proposal must be signed by an authorized officer or agent of each entity. In addition, the ALC reserves the right, in its sole discretion, to require an authorized officer or agent of each subcontractor, or each subcontractor that is expected to provide a specified amount of the procured product or service, to sign any such contract.

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

- 3.4 Addenda to Solicitation Documents.** The ALC reserves the right to make changes to any solicitation by issuance of a written addendum or amendment. The ALC may issue any such addendum or amendment at any time prior to entering a contract regarding the applicable major procurement. Any addendum or amendment will be posted on the ALC's web page, and notice of the same shall be communicated, via facsimile, to all vendors who requested and were sent a copy of the applicable solicitation or who have submitted a bid, offer, quote, or proposal in respect of such solicitation. An offeror shall provide written acknowledgement of receipt of all issued addenda with its offer, unless the ALC otherwise specifies in the addenda.

**3.5 Cancellation, Rejection, and Delay of a Solicitation.**

- A. Generally. Any procurement described in a solicitation document may be cancelled, or any or all offers may be rejected in whole or in part, when the cancellation or rejection is in the best interest of the ALC as determined by the ALC. The reasons for the cancellation or rejection must be made a part of the solicitation file. The ALC is not liable to any offeror for any loss or expense caused by or resulting from the cancellation or rejection of a solicitation document, offer, or award.
- B. Offer Findings. The ALC shall reject an offer upon the ALC's finding that the offer:
1. Is contingent upon the ALC's acceptance of terms and conditions (including specifications) that differ from the solicitation document;
  2. Takes exceptions to terms and conditions (including specifications) set forth in the solicitation document;
  3. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the solicitation document or in contravention of applicable law;
  4. Offers goods or services that fail to meet the specifications of the solicitation document;
  5. Is late;
  6. Is not in substantial compliance with the solicitation document requirements; or

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

C. **Offeror Findings.** The ALC shall reject an offer upon the ALC's finding that the offeror:

1. Has been debarred pursuant to Section 3.9;
2. Has not properly executed bid or proposal security as required by the solicitation document; or
3. Is non-responsible.

D. **Disposition of Offers.**

1. **Prior to Closing:** If the ALC cancels a solicitation prior to closing, the ALC shall return all offers it received to offerors unopened, provided the offeror submitted its offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, the ALC shall open the offer to determine the source and then return it to the offeror.
2. **After Closing:** If the ALC cancels a solicitation after closing, the ALC shall keep the offers in the procurement file.
3. **Rejection of All Offers:** If the ALC rejects all offers, the ALC shall keep all offers in the procurement file.

**3.6 Discovery.** The ALC reserves the right to obtain any information from any lawful source as required by the Act and regarding the past business history, practices, and abilities of vendors, their officers, directors, employees, owners, team members, partners, or subcontractors. Such information may be taken into consideration in evaluation of the proposals.

**3.7 Pre-Closing Modifications or Withdrawal of Offers.**

- A. An offeror may modify its offer in writing prior to closing. An offeror shall prepare and submit any modifications to its offer to the ALC. The last offer received by the ALC prior to closing will supersede any previous offers received unless the offer is identified by the offeror as an alternate offer.
- B. **Change in Circumstance:** Each offeror is under a continuing obligation to notify the ALC following the submission of a proposal of any changes to the information, data, or facts submitted in their response that could reasonably be expected to affect the ALC's consideration of the proposal.

- C. **Withdrawals:** An offeror may withdraw its offer by written notice submitted on the offeror's letterhead, signed by an authorized representative of the offeror, delivered to the ALC and received by the ALC prior to closing. The offeror or authorized representative of the offeror may also withdraw its offer in person prior to closing, upon presentation of appropriate identification and evidence of authority satisfactory to the ALC. After the solicitation deadline, a vendor may withdraw its bid, offer, quote, or proposal, or other response or a portion thereof only upon a written determination by the ALC that there is an obvious error in such response and where the enforcement of the response would impose an unconscionable hardship on the vendor. A reduction or diminution in profit margin shall not be deemed an unconscionable hardship under this subsection.

### **3.8 Mistakes.**

- A. **Generally.** To protect the integrity of the competitive procurement process and to assure fair treatment of offerors, the ALC shall carefully consider whether to permit waiver or correction for mistakes.
- B. **ALC's Treatment of Mistakes.** The ALC shall not allow an offeror to correct or withdraw an offer for an error of judgment. If the ALC discovers certain mistakes in an offer after closing, but before award of the contract, the ALC may take the following action:
1. **Minor Informality:** The ALC may waive, or permit an offeror to correct a minor informality. A minor informality is a matter of form rather than substance when it is evident on the face of the offer, or an insignificant mistake that can be waived or corrected without prejudice to other offerors. Examples of minor informalities include, but are not limited to, an offeror's failure to:
    - a. Return the correct number of signed offers or the correct number of other documents required by the solicitation document;
    - b. Sign the offer in the designated block, provided a signature appears elsewhere in the offer, evidencing an intent to be bound; and
    - c. Acknowledge receipt of an addendum to the solicitation document, provided that it is clear on the face of the offer that the offeror received the addendum and intended to be

bound by its terms; or the addendum involved did not affect price, quality or delivery.

2. **Clerical Error:** The ALC may correct a clerical error if the error is evident on the face of the offer or other documents submitted with the offer, and the offeror confirms the ALC's correction in writing. A clerical error is an offeror's error in transcribing its offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, and instances in which the intended correct unit or amount is evident by simple arithmetic calculations. In the event of a discrepancy, unit prices shall prevail over extended prices.
3. **Burden of Proof:** The ALC may permit an offeror to withdraw an offer based on one or more clerical errors in the offer only if the offeror shows with objective proof and by clear and convincing evidence:
  - a. The nature of the error;
  - b. That the error is not a minor informality under this subsection or an error of judgment;
  - c. That the error cannot be corrected or waived under subsection B of this section;
  - d. That the offeror acted in good faith in submitting an offer that contained the claimed error and in claiming that alleged error in the offer exists;
  - e. That the offeror acted without gross negligence in submitting an offer that contained a claimed error;
  - f. That the offeror will suffer substantial detriment if the ALC does not grant the offeror permission to withdraw the offer;
  - g. That the ALC's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the ALC; and
  - h. That the offeror promptly gave notice of the claimed error to the ALC.
4. **Withdrawing Offers after Closing:** The criteria in subsection 3.7(C) of these rules shall determine whether the ALC will permit an

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

- C. **Rejection for Mistakes:** The ALC shall reject an offer in which a mistake is evident on the face of the offer and the intended correct offer is not evident or cannot be substantiated from documents submitted with the offer.
- D. **Identification of Mistakes after Award:** The procedures and criteria set forth above are offeror's only opportunity to correct mistakes or withdraw offers because of a mistake. Following award, an offeror is bound by its offer, and may only withdraw its offer or rescind a contract entered into pursuant to the extent permitted by these rules and applicable law.

### **3.9 Debarment of Prospective Offerors.**

- A. **Generally.** The Lottery may debar a prospective offeror from consideration for award of ALC contracts for the reasons listed in subsection B of these rules after providing the prospective offeror with notice and a reasonable opportunity to be heard.
- B. **Factors for Consideration.** A prospective offeror may be debarred from consideration for award of ALC contracts if:
  - 1. The prospective offeror has committed a violation of a material contract provision. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment.
  - 2. The prospective offeror has been convicted of a criminal offense resulting from obtaining or attempting to obtain a public or private contract or subcontract or resulting from the performance of such contract or subcontract.

3. The prospective offeror has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective offeror's responsibility as a contractor or that the ALC determines may affect the honesty, fairness, integrity or security of the ALC or any Lottery games.
  4. The prospective offeror has been convicted under state or federal antitrust statutes.
  5. The prospective offeror does not carry worker's compensation or unemployment insurance as required by statute.
- C. **Period of Debarment.** The ALC shall determine the period of debarment of a prospective offeror, however, the period shall not exceed three years.
- D. **Responsibility.** Notwithstanding the limitation on the term for debarment in subsection C of section 3.9, the ALC may determine that a previously debarred offeror is not responsible prior to contract award.
- E. **Imputed Knowledge.** The ALC may attribute improper conduct of a person or its affiliate or affiliates having a contract with a prospective offeror to the prospective offeror for purposes of debarment where the impropriety occurred in connection with the person's duty for on behalf of, or with the knowledge, approval, or acquiescence of, the prospective offeror.
- F. **Limited Participation.** The ALC may allow a debarred person to participate in a competitive process and contracts on a limited basis during the debarment period upon written determination by the Director that participation is advantageous to the ALC. The determination shall specify the factors on which it is based and define the extent of the limits imposed.
- G. **Decision.**
1. The Director shall issue a written decision to debar a prospective offeror under these rules. The decision must:
    - a. State the reasons for the debarment; and
    - b. Inform the debarred prospective offeror of the appeal rights of the prospective offeror under subsection H of Section 3.9.

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

H. Appeal.

1. The procedure for appeal from the ALC's debarment of a prospective offeror under these rules shall be in accordance with this section.
2. Upon receipt of a notice from the ALC of a decision to debar under these rules, a prospective offeror that wishes to appeal the decision shall, within three business days after receipt of the decision, notify the Director that the prospective offeror appeals the decision and requests a hearing as provided in this section.
3. Upon receipt of the prospective offeror's notice of appeal and request for hearing, the Director shall promptly notify the prospective offeror appealing of the time and place of the hearing. The Director shall conduct the hearing and decide the appeal within thirty Days after receiving the notice from the prospective offeror. The Director shall set forth in writing the reasons for the hearing decision.
4. At the hearing, the Director shall consider de novo the notice of debarment, the reasons listed in Section 3.9(B) of these rules on which the ALC based the debarment, and any evidence provided by the ALC and the prospective offeror.
5. The decision of the Director is final and may only be appealed pursuant to the procedures set forth in Section 5.8 of these Rules.

**3.11 Inspection of Solicitation Records.**

- A. All data, materials, and documentation originated and prepared for the ALC pursuant to solicitations shall belong exclusively to the ALC and may be available to the public in accordance with these rules and the provisions of Ark. Code Ann. § 23-115-404. Under no circumstances will the ALC be liable to any vendor or to any other person or entity, for any disclosure of any trade secret or confidential information.
- B. Upon the ALC's issuance of a notice of intent to award a major procurement contract, the ALC's procurement files for such major procurement will be open for public inspection. Notwithstanding the

foregoing, (a) the ALC shall not be required to make available for public inspection information protected by or otherwise not required to be disclosed pursuant to applicable law, or these rules; and (b) the ALC may delay making its procurement files available to the public for such reasonable period of time as the ALC determines is necessary for it to redact or otherwise secure that portion of its procurement files that will not be made available to the public. The ALC's procurement records that are made available to the public shall be available for inspection during the ALC's regular office hours.

**3.12 Pre-Solicitation Process.** Whenever the ALC wants to evaluate the availability, durability, adaptability, or other specifications of goods or services in advance of seeking to procure such goods or services, the Director may elect to utilize a pre-solicitation process to identify potential offerors or possible solutions to the need being addressed. The Director may opt to use any or all of the following methods to acquire information:

- (a) Oral presentations;
- (b) Pre-solicitation notices;
- (c) Pre-solicitation conferences;
- (d) Requests for information;
- (e) Site visits; or
- (f) Any other method the Director deems appropriate in his or her discretion.

#### **Section 4. Source Selection.**

**4.1 Generally.** The ALC will generally conduct a competitive process for goods or services by issuing a solicitation document. The ALC shall award contracts for goods or services by one of the source selection methods in this section subject to the following exceptions:

- (a) **Small Procurements.** Any procurement of goods or services not exceeding five thousand dollars (\$5,000) may be awarded without a competitive process. All small procurements will be obtained according to Ark. Code Ann. §19-11-231.
- (b) **Intermediate Procurements.** Any procurement of goods or services between five thousand dollars (\$5000) and seventy-five thousand dollars (\$75,000) shall be governed by Arkansas Code Ann. § 19-11-201 et seq. Contracts in which the purchase price exceeds five thousand (\$5,000)

dollars and is less than or equal to twenty-five thousand dollars (\$25,000) may be awarded by either competitive bidding procedures or competitively sealed bidding procedures. Any contract amount over twenty-five thousand dollars (\$25,000) will be awarded by competitively sealed bidding procedures unless specifically exempt in statute.

#### **4.2 Sole-Source Procurements.**

- A. For purposes of these rules, "sole-source procurements" means those procurements which, by virtue of the performance specification, are available from a single source. Brand name or design specifications shall not be sufficient explanation for sole source. Such procurements may include but shall not be limited to:
  - 1. Requirements of performance compatibility with existing commodities or services; or
  - 2. Repairs involving hidden damage.
- B. Procurements under this section shall be approved in advance by the Commission.
- C. Request for approval shall be made in writing and shall include in the justification:
  - 1. A copy of the purchase order or requisition;
  - 2. Why the service is needed;
  - 3. The methods used to determine that a lack of responsible/responsive competition exists for the service;
  - 4. How it was determined that the provider possesses exclusive capabilities;
  - 5. Why the service is unique;
  - 6. Whether or not there are patent or proprietary rights which make the required service unavailable from other sources;
  - 7. What the agency would do if the provider/service were no longer available, and
  - 8. Any program considerations which make the use of a "sole source" critical to the successful completion of the agency's task.

#### **4.3 Requests for Proposals.**

- A.** The provisions of this subsection shall be applicable solely to solicitations of major procurement contracts by means of an RFP.
- B.** Issuance of RFP. The ALC shall prepare and issue an RFP and evaluate proposals in accordance with this subsection. Failure by the ALC to comply with any technical requirement of this subsection shall not alone be deemed a defect requiring re-issuance of the RFP or rejection of all bids, offers, quotes, or proposals, such decision remaining in the discretion of the ALC.
- C.** RFP Document. An RFP shall set forth provisions including:
  - 1. A clear description of the scope of products and services. The technical requirements, scope, and other essential requirements shall be in sufficient detail to minimize the likelihood of requests by vendors for clarification;
  - 2. Complete directions about making proposals;
  - 3. An RFP schedule of events that specifies all deadline requirements. Vendors must be given a reasonable time, as determined by the ALC, to consider the required scope of products and services and the proposal evaluation factors before proposals must be submitted;
  - 4. RFP requirements and proposal restrictions;
  - 5. A description of the factors that will be used to evaluate the proposals. Factors may include but are not limited to vendor qualifications, experience, technical approach, minority-owned business or female-owned business participation, and cost; and
  - 6. A declaration of certain contract terms and conditions which shall be required by the ALC.
- D.** RFP Review and Approval. Each RFP must be reviewed and approved by the Director prior to publication against the criteria of sound business principles, adequacy of the scope of products and services description, and adequacy of the RFP's assurance of:
  - 1. Fairness to potential vendors;
  - 2. Achievement of procurement objectives; and

3. Protection of the ALC's interests.

E. RFP Publication. The ALC shall publish each RFP solicitation on the ALC's web page, and, if desired by the ALC, the Arkansas Office of State Procurement web site established for such solicitations. Notice of the solicitation may also be published in any newspaper or other relevant trade publication. The ALC shall further solicit interest in each RFP by sending a formal notice of such or notice that the specific RFP has been released to a documented list of potential vendors and if the list of potential vendors are comprised mainly of Arkansas businesses, such notice must be published in a newspaper with statewide circulation. The ALC shall compile the list of potential vendors from those known to the ALC's staff. The ALC shall determine the number of vendors to include on the list by considering the nature of the procurement, the anticipated amount of the resulting contract, and the number of known vendors. To the extent practicable, the ALC will strive to compile lists of potential offerors which are minority-owned businesses, and female-owned businesses; the ALC will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts. The ALC is not required to send a solicitation notice to more than a total of three (3) vendors; provided however, that the ALC may send a solicitation notice to fewer than three (3) vendors, if, in the opinion of the Director, fewer than three (3) vendors are qualified. A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the ALC.

F. The ALC shall require each proposer to submit the cost proposal component of the proposal in a sealed and labeled envelope separate from the technical proposal component. The purpose is to allow the cost component to be evaluated separately from the technical component.

1. The cost proposals shall not be opened until after the evaluation of the technical component is completed. After the technical proposal evaluation is completed, the cost proposals shall be opened and evaluated, and the total evaluation of the proposals will then be based on the criteria established in the applicable RFP.
2. Any proposal which fails to adequately separate the cost proposal components from the technical proposal may be considered non-responsive and rejected by the ALC.

- G. The ALC shall communicate, clarify, and negotiate in the best interests of the ALC, provided that all communication is conducted in a manner so as not to disclose any information that would give one or more vendors unfair advantage or unfairly enable one or more vendors to improve their proposal. Specifically, negotiations will only be permitted with the vendor whose bid, offer, quote, or proposal is the highest rated bid, offer, quote, or proposal. In the event that negotiations with the highest rated vendor fail to result in a contract, or if for any other reason a contract with such vendor is not executed, the ALC may conduct negotiations with the second highest vendor and so forth until a contract is successfully executed.
- H. The ALC shall have the right, at its sole discretion, to amend an RFP in writing at any time.
- I. The ALC shall have the right, at its sole discretion, to reject any and all proposals.
1. Any proposal that does not meet the requirements of an RFP may be considered to be non-responsive, and the proposal may be rejected.
  2. Any proposal that restricts the rights of the ALC or otherwise qualifies the proposal may be considered to be non-responsive, and the proposal may be rejected.
- J. The ALC has the right, at its sole discretion, to cancel an RFP in its entirety and to reissue or not reissue an RFP.
- K. Evaluation and Award. Proposals shall be evaluated in accordance with the solicitation and in such a manner as to reasonably assure that all proposals are impartially considered and ALC requirements are adequately met.
1. Proposals shall be evaluated by a committee established by the Director.
  2. Prior to reviewing proposals, each proposal evaluation committee member shall review a list of vendors making proposals, determine if a conflict of interest exists with a potential vendor, and sign a statement of whether or not the member has a potential conflict of interest. The statement shall be retained as procurement file documentation.

3. Proposals shall be evaluated in accordance with the evaluation criteria set forth in the solicitation.
4. Neither the technical proposal, nor the cost, or any other single criterion shall be the only criterion for a major procurement contract award recommendation. Rather, evaluations shall be conducted and criteria shall be established to select proposals that provide the greatest overall value, the greatest long-term benefit to the State of Arkansas, the greatest integrity for the ALC, and the best services and products for the public. However, specific factors may be set forth in the applicable solicitation as criteria for determining whether a vendor who submits a bid, offer, quote, or proposal in response to that solicitation is a responsible bidder/proposer and which proposals shall be considered responsive to the RFP.
5. Pricing discounts for payment within certain time periods or in cash shall not be considered in evaluating bids.
6. Only signed, sealed bids delivered prior to the date and time of bid opening shall be accepted.
7. The past performance of a bidder/proposer/offeror on a state contract may be used by the ALC to determine whether the bidder/proposer/offeror is "responsible". Past performance must be supported by written documentation not greater than three (3) years old. Reports, memos, and files may be in electronic form. Past performance may be positive or negative. Past performance on contracts from other Arkansas state agencies may also be used for evaluation. Supporting documentation should be provided. Past performance evaluation should not take the place of suspension or debarment procedures.
8. In the event of a tie bid, the person responsible for awarding a major procurement contract must ensure that all offers meet specifications. An award will be made by flip of a coin. The coin flip will be done in the presence of a witness by the person responsible for awarding the contract. The witness must be an employee of the State of Arkansas. A documentation of the coin flip must be included on the tabulation or bid history sheet and be signed by both parties and the witness.

#### **4.4 Requests for Qualifications.**

- A. The provisions of this subsection will be applicable solely to solicitations of major procurement contracts by means of an RFQ.
- B. The request for qualifications procurement method is used when the qualifications or specialized expertise of the vendor is the most important factor in selection.
- C. RFQ Publication. The ALC shall publish each RFQ solicitation on the ALC's web page and, if desired by the ALC, the Arkansas Office of State Procurement web site established for such solicitations. Notice of the solicitation may also be published in any newspaper or other relevant trade publication. The ALC shall further solicit interest in each RFQ by sending a formal notice of such or notice that the specific RFQ has been released to a documented list of qualified vendors and if the list of potential vendors are comprised mainly of Arkansas businesses, such notice must be published in a newspaper with statewide circulation. The ALC shall compile the list of vendors from those known to the ALC's staff. The ALC shall determine the number of vendors to include on the list by considering the nature of the procurement, the anticipated amount of the resulting contract, and the number of known vendors. To the extent practicable, the ALC will strive to compile lists of potential offerors which are minority-owned businesses, and female-owned businesses, and the ALC will actively solicit bids from such businesses or otherwise make such businesses aware of opportunities to bid for major procurement contracts. The ALC is not required to send a solicitation notice to more than a total of three (3) vendors; provided however, that the ALC may send a solicitation notice to fewer than three (3) vendors. A general or standing request for notice of all solicitations of a given type shall not suffice as a request for a specific solicitation and shall create no obligation on the ALC.
- D. The ALC shall communicate, clarify, and negotiate in the best interests of the ALC, provided that all communication is conducted in a manner so as not to disclose any information that would give one or more vendors unfair advantage or unfairly enable one or more vendors to improve their proposal.
- E. The ALC shall have the right, at its sole discretion, to amend an RFQ in writing at any time.
- F. The ALC shall have the right, at its sole discretion, to cancel an RFQ in its entirety and to reissue or not reissue an RFQ.

**G. Evaluation and Award.** The ALC will make its initial selection based upon the respondents' qualifications. Only after the most qualified respondent is identified does cost become a factor in determining the award. Discussion may be conducted with qualified vendors who, based upon qualifications submitted, are determined to reasonably be susceptible of being selected for the purpose of clarification to assure full understanding of, and responsiveness to the solicitation requirements, and to obtain best and final offers.

1. Proposals shall be evaluated by a committee established by the Director.
2. Prior to reviewing proposals, each proposal evaluation committee member shall review a list of vendors making proposals, determine if a conflict of interest exists with a potential vendor, and sign a statement of whether or not the member has a potential conflict of interest. Said statement shall be retained as procurement file documentation.
3. Proposals shall be evaluated in accordance with the evaluation criteria set forth in the solicitation.
4. Evaluations shall be conducted and criteria shall be established to select proposals that provide the greatest overall value, the greatest long-term benefit to the State of Arkansas, the greatest integrity for the ALC, and the best services and products for the public.
5. Time discounts or cash discounts shall not be considered.
6. Only signed, sealed responses delivered prior to the date and time of bid opening shall be accepted.
7. The past performance of a bidder/proposer/offeror on a state contract may be used by the ALC to determine whether the bidder/proposer/offeror is "responsible". Past performance must be supported by written documentation not greater than three (3) years old. Reports, memos, and files may be in electronic form. Past performance may be positive or negative. Past performance on contracts from other Arkansas state agencies may also be used for evaluation. Supporting documentation should be provided. Past performance evaluation should not take the place of suspension or debarment procedures.

- H. Compliance with this subsection. Failure by the ALC to comply with any technical requirement of this Section 4.3 shall not alone be deemed a defect requiring rejection of all bids, offers, quotes, or proposals, such decision remaining in the discretion of the ALC.

#### **4.5 Alternative Methods.**

- A. The ALC reserves the right to use an alternative procurement method if that method will be more likely to: (a) maximize the ALC's net revenue; (b) achieve the specific business objective or business objectives of the procurement; or (c) aid the Director in fulfilling the statutory mandate to operate and administer the ALC.
- B. Alternative procurement methods may include, but are not limited to, specialized vendor pre-qualifications, multistep bids or proposals, single proposer negotiations, competitive negotiations between two or more proposers, brand name solicitations, and cooperative procurements. The ALC shall conduct the alternative procurement method in accordance with the process set forth in the applicable solicitation document.

#### **4.6 Emergency Procurements.** The Director may make emergency procurements in accordance with Arkansas Code. Ann § 19-11-233.

### **Section 5. Disputes.**

#### **5.1 Applicability.** This section shall only be applicable to major procurement contracts. Arkansas Code Ann. §19-11-244 shall govern all grievances with either the solicitation or the award of small and intermediate procurements.

#### **5.2 Filing of a Protest.**

- A. Any actual or prospective bidder, proposer, offeror, or contractor who is aggrieved in connection with the solicitation or award of a major procurement contract may file a protest seeking a determination with respect to any matter related to the solicitation or award of a major procurement contract except as otherwise provided herein. An aggrieved person who files a protest is hereinafter referred to as a "Petitioner". Other than as expressly set forth in these rules, nothing contained herein shall confer any rights or remedies upon any aggrieved person or petitioner, or impose any duties or obligations upon the ALC, which are not otherwise so conferred or imposed by the Act.

- B.** The protest shall be in writing, shall be filed by delivery by hand or courier to the Director with a copy to the Procurement Director of the ALC at the headquarters of the ALC.
- C.** The protest shall include the following information:
1. The name, address, and telephone number of the petitioner;
  2. The signature of the petitioner;
  3. Identification of the solicitation or contract number that is the subject of the dispute;
  4. A statement of the legal and factual grounds supporting the position of the petitioner, including copies of relevant documents;
  5. Any other documentation the petitioner wishes to submit in support of petitioner's position; and
  6. A statement of the relief requested whether legal, equitable, or otherwise. If a monetary award is requested, the amount shall be stated.
- D.** For a protest to be timely filed, the original protest manually signed by the petitioner must be physically received by the ALC within the time period prescribed in Section 5.3. Facsimile or other electronically transmitted copies of the protest will not be accepted.
- E.** The petitioner shall be required to provide a suitable bond to the ALC in certified funds at the time the protest is filed. The purpose of this bond is to:
1. Discourage frivolous petitions and litigation; and
  2. Assure payment by the petitioner of the costs incurred as a result of the protest, including reasonable attorney's fees of the ALC, employees or members of the commission, in the event petitioner appeals and such costs are adjudged against the petitioner pursuant to Ark. Code Ann. § 23-115-209; and
  3. Assure payment of all other amounts for which the petitioner may be found liable, including without limitation any loss of income to the ALC resulting from the institution of a frivolous appeal.

- F.** Failure to provide such bond with any protest will result in the dismissal of such protest. A petitioner shall not have met the requirement in Section 5.3 to timely file a protest unless the applicable bond accompanies the protest when it is timely filed. This requirement does not apply to any petitioner who has already provided a bond in the proper bond amount as part of a solicitation process.
- G.** The amount of the bond shall be the amount established in the applicable solicitation. In the event that no amount is specified in the applicable solicitation, the bond shall be seventy-five thousand dollars (\$75,000) or fifty percent (50%) of the value of the major procurement contract amount in controversy, whichever is less.

### **5.3 Time for Filing a Protest.**

#### **A. Protests concerning a solicitation.**

- 1.** A protest in regard to a major procurement contract solicitation for which the basis for the protest is reasonably apparent before the closing date for receipt of initial proposals shall be filed within five (5) business days after the deadline for vendor questions established in the solicitation. A protest in regard to any other solicitation for which the basis for the protest is reasonably apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals. A protest based upon a solicitation that is reasonably apparent before the bid opening shall be filed before bid opening.
- 2.** Protests based upon an amendment to any solicitation, or upon any additional information requested or accepted by the ALC with respect to any solicitation or response thereto, that is reasonably apparent before the closing date for receipt of proposals or any supplemental information requested by the ALC shall be filed within five (5) business days after the deadline for vendor questions or the date of the amendment, whichever date is later.
- 3.** If a protest is timely filed with the Director and the Procurement Director of the ALC before the award of a contract, the award of such contract may be made before a decision is rendered on the protest.

#### **B. Protest concerning an award of contract.**

1. Any aggrieved person may protest the ALC's decision to award a major procurement contract. Only persons or entities that submit a bid, offer, quote, or proposal with respect to a major procurement solicitation for a competitively bid major procurement contract may be considered an "Aggrieved Person" with standing to file a protest with respect to the award of such contract or the issuance of a notice of intent to award such contract.
  2. Any written protest shall be filed:
    - a. In the case of a major procurement contract that has not been competitively bid by the ALC, within five (5) business days after either the ALC's issuance of a notice of intent to award such major procurement contract or the ALC's award of such major procurement contract is posted, published, or otherwise made publicly available, whichever occurs first; and
    - b. In the case of a major procurement contract that has been competitively bid by the ALC, within five (5) business days after the ALC's issuance of a notice of intent to award such major procurement contract is posted, published, or otherwise made publicly available.
  3. If a protest seeking equitable relief regarding the award of any major procurement contract is timely filed with the Director and the Procurement Director of the ALC, the ALC may award and enter into such major procurement contract only if (a) such protest has been resolved in accordance with these rules, or (b) the ALC has made a written determination that the award of such major procurement contract without delay is necessary to protect substantial interests of the ALC.
- C. In all other cases pertaining to a solicitation or award of an agreement or a contract other than those covered in subsections (A) and (B), a protest must be filed within five (5) business days after the announcement of the ALC's decision to award is posted, published, or otherwise made publicly available, whichever occurs first.
- D. In any other case not covered by subsections (A) through (C), the protest must be filed within five (5) business days after the aggrieved person knows or should have known of the facts giving rise to the action complained of.

- E. Failure to timely file a written protest shall bar any further administrative, legal, or equitable action.
- F. Failure to timely provide the applicable bond in the amount required shall result in an untimely filing and bar any further administrative, legal, or equitable action.

**5.4 Notice to Others.** In the event a protest is filed, the Director shall immediately provide a copy of the protest to the ALC and to the successful person or entity, if an award has been made, or, if no award has been made, to all persons or entities who have submitted bids or proposals.

**5.5 Confidential Information.**

- A. If the petitioner believes the protest contains material that should be withheld, a statement advising the Procurement Director of the ALC of this fact shall accompany the protest submission.
- B. Material submitted by a petitioner shall not be withheld from any interested party except to the extent required by law.

**5.6 Decision by the Director.**

- A. The Director, or a hearing officer designated by him or her, shall have the exclusive authority to decide all protests.
- B. After submittal of a timely protest and prior to issuance of a written decision to that protest, the petitioner shall be afforded an opportunity to discuss with the Director the issues giving rise to the protest.
- C. Before agreeing to settle any protest by the award of costs, the Director shall consult the Attorney General and the ALC Staff Attorney. The award of costs shall be allowed only to compensate a petitioner for reasonable expenses incurred in preparation and submission of a bid or proposal for which the petitioner was wrongfully denied a contract award. The costs which are allowable shall be those which the petitioner is able to prove that are incurred in preparation and submission of the bid or proposal in question, but exclude travel and production costs that may result from participation in pre-bid conferences; attending on-site inspections, and demonstrations or presentations made in responding to formal solicitations issued by the State. A petitioner may not recover profit which it anticipates would have been made if the petitioner had been awarded the major procurement contract. Attorney's fees associated with the filing and prosecution of the protest are not recoverable.

- D.** If the protest is not resolved by mutual agreement, the Director or hearing officer shall issue a written decision within thirty (30) calendar days after a protest has been filed. The decision shall include:
- 1.** A brief description of the claim;
  - 2.** A reference to the pertinent contract provision;
  - 3.** A brief statement of the factual and legal issues;
  - 4.** A statement of the Director's or hearing officer's decision, with supporting rationale and the remedial action or award, if any.
- E.** The Director or hearing officer shall furnish a copy of the decision to the petitioner by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, express mail or overnight express courier.
- F.** The time limit for decisions set forth in subsection (D) may be extended by the Director or Hearing Officer for good cause for a reasonable time not to exceed thirty (30) additional calendar days. The Director or hearing officer shall notify the petitioner in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- G.** If the Director or hearing officer fails to issue a decision within the time limits set forth in subsections (D) or (F), the petitioner may proceed as if the Director or hearing officer had issued an adverse decision.
- H.** In lieu of a written decision, the Director may, in his or her sole discretion, within thirty (30) calendar days after a protest is filed, give written notice to the petitioner that the protest shall be resolved by a hearing conducted by the Director or hearing officer pursuant to the procedures for hearing set forth in Section 5.7. Notwithstanding the foregoing, the Commission may at any time on its own motion direct that a protest be resolved by a hearing conducted by the Director or hearing officer pursuant to the procedures for hearing set forth in Section 5.7.
- I.** Nothing Section 5 shall prohibit a contractor who is also an aggrieved person or petitioner from submitting an invoice to the ALC for final payment after the work is completed and accepted.
- J.** Pending claims shall not delay payment for undisputed amounts from the ALC to a contractor who is also an aggrieved person or petitioner.

## **5.7 Hearing Procedures.**

- A. All hearings conducted under these rules shall be conducted by the Director or by a hearing officer designated by the Director. The decision as to whether the Director or a hearing officer will conduct the hearing shall be in the sole discretion of the Director. The hearing officer's actions, decisions, and orders shall be deemed to be on behalf of the Director and effective as though taken by the Director, subject to the appeals procedures as hereinafter provided.
- B. If the Director determines under Section 5.6(H) that a hearing will be used to resolve a protest, the hearing shall be held within thirty (30) calendar days following the Director's determination. A notice which will set forth the time, date, and location of the hearing will be sent to the party or parties at least seven (7) calendar days before the date set for such hearing.
- C. In connection with the hearing, the Director or hearing officer may:

  - 1. Conduct the hearing in an informal manner without formal rules of evidence or procedure;
  - 2. Require each party to state, either orally or in writing, its position concerning the factual and legal issues involved in the hearing;
  - 3. Require each party to produce for examination those relevant witnesses and documents under its control;
  - 4. Rule on motions and other procedural items pending before him or her, including without limitation the methods, scope and extent of discovery available to the parties;
  - 5. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
  - 6. Establish time limits for submission of motions or memoranda;
  - 7. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;
  - 8. Administer oaths or affirmations;
  - 9. Issue subpoenas; and

10. Join any necessary parties to the hearing.
- D. The hearing shall be conducted before a court reporter. The petitioner shall procure, at petitioner's own cost and on petitioner's own initiative, the court reporting services (including the preparation of the transcript) for such hearing. The original transcript of any such proceedings shall be submitted to the Director or hearing officer as soon as the transcript is available, and in no event later than five (5) calendar days following the conclusion of the hearing, and shall be made a part of the record. The petitioner shall also submit a copy of the transcript to all other parties to the protest as soon as the transcript is available.
- E. Any party may appear and be represented with or without counsel at the hearing.
- F. If a hearing officer conducts the hearing, he or she shall make a written recommendation containing the hearing officer's ruling, in the form of a proposed decision, to the Director, within thirty (30) calendar days after receiving an original transcript of the hearing. If a proposed decision is received by the Director, he or she must render a decision in writing and deliver the decision to the parties within thirty (30) calendar days after receiving the proposed decision from the hearing officer.
1. If the Director receives a recommendation in a proposed decision from a hearing officer, he or she may:
- a. Accept, modify, or reject the hearing officer's recommendation in whole or in part;
  - b. Return the matter to the hearing officer with instruction;
  - c. Make any other appropriate disposition; or
  - d. Issue a no action response.
2. If the Director issues a no action response, then the determination in the Proposed Decision of the hearing officer will be deemed to be accepted by the Director.
- G. If the Director conducts the hearing, he or she must render a decision in writing and deliver the decision to the petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.
- H. The Director's decision and any proposed decision made by a hearing officer shall be sent to the petitioner by certified mail, return receipt

requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier.

**5.8 Procedure for Filing an Appeal to the Commission.**

- A. A petitioner may appeal a decision of the Director or hearing officer to the Commission. Any appeal from a decision of the Director or hearing officer must be filed with the Chair of the Commission at the ALC headquarters within five (5) business days after the receipt of such decision to be considered timely.
- B. Notice of any appeal shall also be filed with Director and the Staff Attorney of the ALC by delivery by hand or courier to the headquarters of the ALC.
- C. An appeal must be in writing and shall contain the following:
  - 1. Copy of the decision of the Director or hearing officer; and
  - 2. the basis for the precise factual or legal error in the decision of the Director or hearing officer from which the appeal is taken.
- D. The Commission shall notify interested parties of the appeal by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail, or overnight express courier within five (5) calendar days after the appeal is filed.
- E. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

**5.9 Commission's Decision.**

- A. The Commission may review the record without a hearing or oral argument and issue a written decision on behalf of the ALC. The Commissioners, pursuant to the power granted to them in Arkansas Code Ann. §23-115-205, may authorize its legal committee to hear and dispose of administrative appeals from the Director as the Committee deems appropriate, including, but not limited to, designating one of its members to consider an act on an appeal on behalf of the Commission. Therefore, references herein to "Commissioners" or "Commission" shall be read to take this delegation of authority into account.
- B. The Commission may in its sole discretion: (1) conduct its own review or investigation; (2) conduct a de novo review in whole or in part; or (3) allow

oral argument, in the manner and under procedures that the Commission deems appropriate under the circumstances.

- C. A copy of the Commission's written decision will be sent to the appellant by certified mail, return receipt requested, or any other method by which a written business record of delivery is kept, such as hand delivery by courier, express mail or overnight express courier. The original written decision shall be retained by the ALC. The written decision of the Commission will be final, and no further appeal to the ALC will be allowed.

**5.10. Judicial Review.** Any adverse final decision of the Commission issued under this section shall be subject to judicial review pursuant to Ark. Code Ann. § 23-115-209 by any person or entity who was a party to the appeal, and the complaint seeking review must be filed with the Pulaski County Circuit Court.

**5.11 Exclusive Remedy.** These rules provide the exclusive procedure for asserting a claim against the ALC arising out of or relating to any matter related to the procurement process for any major procurement contract. Neither an aggrieved person, nor petitioner, nor any other interested party has a right to any remedy against the ALC with respect to any matter related to the procurement process for any major procurement contract except in accordance with the procedures set forth in these rules.

## **Section 6. Contracts.**

**6.1 Approval Required.** The Director or his or her designee must approve and sign each ALC purchase order or contract. Only the Director or his or her designee is authorized to bind the ALC in contractual agreements. A purchase order, notice of contract award, or contract signed by other ALC personnel is null and void and shall not obligate the ALC to payment for products and services.

### **6.2 Contractual Award and Agreement.**

- A. General: The ALC shall award the contract to the responsible offeror submitting solicitation whose bid, offer, quote or proposal represents the best value to the ALC and offers what the ALC believes will result in the greatest long-term benefit to the State of Arkansas, the greatest integrity for the ALC, and the best services and products for the public unless otherwise stated in the solicitation document. The ALC may award by item, groups of items or the entire offer provided such award is consistent with the solicitation document and in the best interest of the ALC as determined by the ALC.