

Approved by: North Carolina State Lottery Commission	Approved on: 12/6/05 Revised on: 9/27/06, 1/23/13, 6/15/21 Procedural Change: 6/13/17, 1/8/20, 5/20/22, 12/18/24	Page 1 of 11
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NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

SCOPE

This Contracting and Bidding Dispute Resolution Process Policy applies to and shall constitute the exclusive process for binding resolution of all claims, disputes, complaints, and Dispute Resolution Requests of any kind filed by an Aggrieved Person relating in any way to any agreement entered into by the North Carolina State Lottery Commission d/b/a the North Carolina Education Lottery (“NCEL”), whether in an administrative proceeding or litigation, at law or equity, including, but not limited to, those arising out of or relating to any aspect of a solicitation or bid or a failure to conduct a solicitation or bid, the performance of any party, the interpretation of any contractual provision, the applicability or interpretation of any law, rule, or regulation, or any decision to award, deny, suspend or cancel, terminate, or not award or renew any contract or agreement.

With respect to all matters governed by this Policy, an “Aggrieved Person” is any Person, as defined in the North Carolina State Lottery Act (the “Act”)¹, who (i) responded to an NCEL procurement solicitation, or who would have responded to such a solicitation had one been issued, and (ii) who complains of a matter within the scope of this Policy 6.02.

Policy 6.02 does not apply to any disputes arising under Article 9 or 10 of the Lottery Act. Nor does it apply to disputes asserted by Lottery Retailers or Lottery Retailer applicants (i.e., an “Aggrieved Retailer”); Policy 6.05 – Retailer Dispute Resolution applies to those disputes.

I. FILING OF A DISPUTE RESOLUTION REQUEST

- A. An Aggrieved Person may file a Dispute Resolution Request to seek a determination of a matter within the scope of this Dispute Resolution Process. An Aggrieved Person who files a Dispute Resolution Request is hereinafter referred to as an “Aggrieved Person” or “Petitioner,” which are used interchangeably. Except as expressly set forth herein, this Policy shall not confer any rights or remedies upon any Aggrieved Person or impose any duties or obligations upon the NCEL that are not otherwise conferred or imposed by the Act or any applicable judicial decision interpreting the Act.

- B. The Aggrieved Person’s Dispute Resolution Request shall be in writing and shall include the following information:
 1. The name², address, telephone number, and email address of Petitioner;

¹ See N.C. Gen. Stat. § 18C-103(7) (“‘Person’ means any natural person or corporation, limited liability company, trust, association, partnership, joint venture, subsidiary, or other business entity.”).

² ***If Petitioner is a non-natural person, such Petitioner’s “name” shall include both the entity name, and the position or office of the signatory signing the petition on behalf of the Petitioner.***

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

2. The signature of Petitioner;
3. Identification of the solicitation or contract number or other matter that is the subject of the dispute;
4. A statement of the legal and factual grounds setting forth the position of Petitioner, including copies of relevant documents;
5. Any other documentation Petitioner wishes to submit in support of Petitioner's position;
6. A statement of the relief requested whether legal, equitable, or otherwise. If a monetary award is requested, the amount shall be stated with particularity; and
7. Attach the required Dispute Bond, described below.

The Aggrieved Person's failure to provide complete information in their Dispute Resolution Request may constitute grounds for denial or rejection.

- C. For a Dispute Resolution Request to be timely filed, a complete Dispute Resolution Request that facially complies with the requirements in Section I(B) above must be physically received by the NCEL within the time period prescribed in the Time for Filing a Dispute Resolution Request Section below.
 1. The Aggrieved Party shall address and direct the Dispute Resolution Request to the attention of the NCEL Chief Executive Officer and Executive Director ("CEO"); contemporaneously, the Aggrieved Party shall direct a carbon copy of the Dispute Resolution Request to the NCEL Chief Legal Officer.
 2. Facsimile or any other electronically transmitted copies of the Dispute Resolution Request will not be accepted.
 3. The Dispute Resolution Request shall be delivered in person during regular business hours or delivered by a nationally recognized courier with delivery confirmation to the CEO with a copy to the Chief Legal Officer at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

North Carolina Education Lottery Contracting Dispute Resolution Request
2728 Capital Boulevard

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

Suite 144
Raleigh, NC 27604

D. Petitioner shall be required to provide a suitable Dispute Bond (as defined in Subsection E of this Section) to the NCEL in certified funds at the time the Dispute Resolution Request is filed. The purpose of this bond is to:

1. Discourage frivolous Dispute Resolution Requests and litigation;
2. Assure payment by Petitioner of the costs incurred as a result of the Dispute Resolution Request, including reasonable attorney's fees of the NCEL, in the event Petitioner appeals and such costs are adjudged against Petitioner; and
3. Assure payment of all other amounts for which Petitioner may be found liable, including, but not limited to, any loss of income to the NCEL resulting from the institution of a frivolous or unsuccessful appeal.

Petitioner's failure to provide the Dispute Bond contemporaneously with its Dispute Resolution Request will result in the dismissal of the Dispute Resolution Request. A Dispute Resolution Request shall not be considered timely filed unless the applicable Dispute Bond accompanies the Dispute Resolution Request.

E. The amount of the Dispute Bond shall be the greater of the Performance Bond or the Bid Bond established in the applicable solicitation; provided, however, in the event that no amount is specified in the applicable solicitation, the Dispute Bond shall be the lesser of One Million Dollars (\$1,000,000.00) or ten percent (10%) of the contract amount in controversy. Notwithstanding the foregoing, the minimum Dispute Bond shall be Five Thousand Dollars (\$5,000.00).

II. TIME FOR FILING A DISPUTE RESOLUTION REQUEST

Time is of the essence in the various procurements of the NCEL.

An Aggrieved Party's failure to file a Dispute Bond and written Dispute Resolution Request within the applicable time limits provided in this Section bars it from seeking any further administrative, legal, and/or equitable action of any kind or nature and in any body, court, or agency.

A. Dispute Resolution Requests concerning a solicitation.

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

1. A Dispute Resolution Request concerning a Request for Quotations or Request for Proposals posted for which the basis for the Dispute Resolution Request is apparent before the closing date for the NCEL's receipt of proposals or quotations shall be filed within five (5) business days after the deadline for Potential Contractor³ questions established in the solicitation.
2. Dispute Resolution Requests concerning an amendment to any solicitation, or upon any additional information requested or accepted by the NCEL with respect to any solicitation or response thereto, that are apparent before the closing date for the NCEL's receipt of proposals, quotations, or any supplemental information requested by the NCEL shall be filed within five (5) business days after the deadline for Potential Contractor questions or the date of the amendment, whichever date is later.
3. Subject to the provisions of Section II(C) below, if a Dispute Resolution Request is timely filed in accordance with this Dispute Resolution Process before the award of a contract, the award of such contract may be made before a decision is rendered on the Dispute Resolution Request.

B. Dispute Resolution concerning a decision not to engage in competitive bidding.

If the Commission or CEO announces their intent not to engage in competitive bidding processes for a procurement, then a Dispute Resolution Request concerning the lack of a competitive bidding must be filed within five (5) business days of the date such announcement is made, posted, published, or otherwise made available to the public.

C. Dispute Resolution concerning an award of contract.

1. Any Aggrieved Person may file a Dispute Resolution Request to protest the NCEL's decision to award a contract. Regardless of whether the NCEL engaged in competitive bidding, a Dispute Resolution Request challenging a contract award shall be filed within five (5) business days after the earlier occurrence of: (a) the NCEL's issuance of a notice of intent to award such contract; (b) the NCEL's award of such contract is posted, published, or otherwise made publicly available; or (c) the execution of any such contract.
2. An Aggrieved Party's filing of a timely, complete Dispute Resolution Request challenging a contract award does not automatically halt the NCEL's ability to

³ For purposes of this Policy 6.02, "Potential Contractor" refers to a Person that has submitted to the NCEL (or has the intention to submit to the NCEL) a quotation or proposal in response to an NCEL Request for Quotations or Request for Proposals.

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

proceed with the contract. The NCEL may nonetheless award and enter the challenged contract if either: (a) such Dispute Resolution Request shall have already been resolved in accordance with this Dispute Resolution Process prior to the award of the contract; or (b) the Commission shall have made a written determination that the award of such contract without delay is necessary to protect substantial interests of the NCEL.

D. In all cases other than those covered above, the Dispute Resolution Request must be filed within five (5) business days after the Aggrieved Person knew or should have known of the facts giving rise to the action at issue.

III. NOTICE OF FILING OF A DISPUTE RESOLUTION REQUEST

When a Dispute Resolution Request is filed, the CEO shall immediately give notice of the Dispute Resolution Request to the Commission. If the NCEL has made a contract award or entered a contract, the CEO shall also provide notice to the successful person or entity, If no award has yet been made, the CEO shall also provide notice to all persons or entities who have timely submitted responsive bids or proposals on that procurement.

IV. CONFIDENTIAL INFORMATION

- A. Material submitted by a Petitioner shall not be withheld from any interested party except to the extent required by law.
- B. If Petitioner believes its Dispute Resolution Request contains confidential information or trade secrets, Petitioner must comply with all relevant provisions of the North Carolina Public Records Act to attempt to secure confidential treatment of those materials. Petitioners acknowledge that the NCEL is subject to the Public Records Act and Open Meetings Laws of the State of North Carolina.

V. DECISION BY THE CEO OR DESIGNATED HEARING OFFICER

- A. The CEO (or their Designated Hearing Officer) shall have the exclusive authority to decide all Dispute Resolution Requests.
- B. The CEO (or their Designated Hearing Officer) shall issue a written decision within thirty (30) calendar days after a Dispute Resolution Request has been filed. The decision shall include:
 - 1. A brief description of the claim;

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

2. A reference to the pertinent contract provision;
 3. A brief statement of the factual and legal issues raised or implicated; and
 4. A statement of the CEO's decision, findings of facts, and conclusions of law, with supporting rationale and the remedial action and/or award, if any.
- C. The CEO (or their Designated Hearing Officer) shall furnish a copy of the decision to Petitioner by certified mail, return receipt requested, or by any other method that provides written evidence of delivery, such as hand delivery by courier, fax, or email.
- D. The time period for issuing a decision may be extended by the CEO (or their Designated Hearing Officer), in their discretion, for good cause for a reasonable time not to exceed thirty (30) additional calendar days. The CEO (or their Designated Hearing Officer) shall notify Petitioner in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.
- E. If the CEO (or their Designated Hearing Officer) fails to issue a decision within the applicable time period, Petitioner may proceed as if the CEO (or their Designated Hearing Officer) had issued an adverse decision to Petitioner.
- F. In lieu of a written decision, the CEO may, in their sole discretion, within thirty (30) calendar days after a Dispute Resolution Request is filed, give written notice to Petitioner that the Dispute Resolution Request shall be resolved by a hearing conducted by the CEO (or their Designated Hearing Officer) pursuant to the procedures for hearings set forth in Section VI of this Policy (Hearing Procedures). Notwithstanding the foregoing, the Commission may at any time on its own motion direct that a Dispute Resolution Request be resolved by a hearing conducted by the CEO (or their Designated Hearing Officer) pursuant to the procedures for hearings set forth in Section VI of this Policy (Hearing Procedures).

VI. HEARING PROCEDURES

- A. All hearings conducted under this Section shall be conducted by the CEO (or their Designated Hearing Officer). The decision as to whether the CEO or a Designated Hearing Officer will conduct the hearing shall be in the sole discretion of the CEO. In either case, any Hearing Officer's actions, decisions, and orders shall be deemed to be on behalf of the CEO and effective as though taken by the CEO, subject to the appeals procedures as hereinafter provided.

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

- B. If the CEO determines under the Decision by the CEO or Designated Hearing Officer Section that there will be a hearing on the Dispute Resolution Request, the hearing shall be held within thirty (30) calendar days following that determination. A notice which will set forth the date, time, and location of the hearing will be sent to the party or parties in writing at least seven (7) calendar days before the date set for such hearing.
- C. In connection with the hearing, the CEO or Designated Hearing Officer may:
1. Conduct the hearing in an informal manner without formal rules of evidence or procedure;
 2. Hold pre-hearing conferences to:
 - a. Settle, simplify, or identify the issues involved in the hearing;
 - b. Consider other matters that may aid in the expeditious disposition of the hearing; and/or
 - c. Address any housekeeping or logistical matters raised by the parties.
 3. Require each party to state in writing its position concerning the factual and legal issues involved in the hearing;
 4. Require each party to produce for examination those relevant witnesses and documents under its control;
 5. Rule on motions and other procedural items pending before them, including, without limitation, the methods, scope, and extent of discovery, if any, available to the parties;
 6. Regulate the course of the hearing and conduct of the participants, including the imposition of reasonable time limits;
 7. Establish time limits and scheduling requirements for submission of motions, memoranda, and other documents or materials;
 8. Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of which judicial notice can be taken;
 9. Administer oaths or affirmations;

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

10. Issue a request for information or production of documents;
 11. Join any necessary parties from the contracting or bidding process that request to participate in the hearing; and
 12. Consolidate the hearing with one or more hearings in similar or related proceedings in an effort to promote efficiencies and consistency in the resolution of issues.
- D. The hearing shall be conducted before a court reporter. 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. If Petitioner fails to do so, the Hearing Officer may suspend such hearing until Petitioner has provided the court reporter, or the Hearing Officer may supply a court reporter and assess the costs thereof against Petitioner. The original transcript of any such proceedings shall be submitted to the 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. Petitioner shall also submit a copy of the transcript (at Petitioner's expense) to all other parties to the Dispute Resolution Request as soon as the transcript is available.
- E. Subject to N.C. Gen. Stat. §84-5, any party may appear and be represented with or without counsel at the hearing.
- F. When a Designated Hearing Officer conducts the hearing, they shall make a written recommendation in the form of a Proposed Decision to be submitted to the CEO within thirty (30) calendar days after receiving an original transcript of the hearing pursuant to this Section of the Policy. Within thirty (30) calendar days after receiving the Proposed Decision from the Hearing Officer, the CEO shall deliver their final written decision to the parties.
1. If the CEO received a recommendation in a Proposed Decision from a Hearing Officer, the CEO may:
 - a. accept, modify, or reject the Hearing Officer's recommendation in whole or in part;
 - b. return the matter to that Hearing Officer with instructions for clarification or further proceedings;

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

- c. make any other appropriate disposition; or
 - d. take no action on the Proposed Decision.
2. If the CEO takes no action on the Proposed Decision within thirty (30) calendar days, then the determination in the Proposed Decision of the Hearing Officer will be deemed to be accepted and affirmed by the CEO.
- G. If the CEO conducts the hearing, they must render a decision in writing and deliver the decision to Petitioner within thirty (30) calendar days after receiving an original transcript of the hearing.
- H. The CEO's final and binding decision shall be sent to Petitioner by certified mail, return receipt requested, or by any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax, or email.

VII. PROCEDURE FOR FILING AN APPEAL TO THE COMMISSION

- A. A Petitioner may appeal a decision of the CEO solely to the Commission. Any appeal from a decision of the CEO must be filed with the Commission within five (5) business days after receipt of such decision.
- B. Any appeal shall be filed by hand delivery or by courier that provides delivery confirmation to the CEO with a copy to the Chief Legal Officer at the address listed below, or at such other address at which the headquarters of the NCEL may be located from time to time:

North Carolina Education Lottery Contracting Dispute Resolution Request
2728 Capital Boulevard
Suite 144
Raleigh, NC 27604

An appeal so delivered will be timely filed only if received by the NCEL at the above-stated address during its normal business hours on or before the fifth (5th) business day prescribed by this Section above.

- C. Every appeal must be in writing and shall contain the following:
- 1. A copy of the decision of the CEO;
 - 2. A copy of the transcript of any hearing; and

NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

3. The basis for the precise factual or legal error in the decision of the CEO from which the appeal is taken.
- D. The Commission may notify any other individuals or entities which it, in its sole discretion, determines it wishes to notify 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, fax, or email) 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 ten (10) business days after receipt of such notice or such longer timeframe as directed by the Commission.

VIII. COMMISSION'S DECISION

- A. The Commission, or a committee of the Commission designated by the Chair of the Commission for hearing appeals of the CEO, may review the record without a hearing or oral argument and issue a written decision on behalf of the Commission. The Commission, or a committee of the Commission designated by the Chair of the Commission for hearing appeals of the CEO, may, in the manner and under procedures that the Commission or its committee shall deem appropriate under the circumstances 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.
- B. A copy of the Commission's written decision will be sent to the appellant by certified mail, return receipt requested, or by any other method by which a written business record of delivery is kept, such as hand delivery by courier, fax, or email. The original written decision shall be retained by the Commission. The written decision of the Commission, or a committee of the Commission, will be final, and no further appeal to the Commission will be allowed.

IX. INJUNCTIVE RELIEF

By submitting a bid or proposal governed by this Dispute Resolution Process, each Potential Contractor or Contractor waives any right they might have had to seek injunctive relief or otherwise to enjoin an award or contract.

X. JUDICIAL REVIEW

Approved by: North Carolina State Lottery Commission	Approved on: 12/6/05 Revised on: 9/27/06, 1/23/13, 6/15/21 Procedural Change: 6/13/17, 1/8/20, 5/20/22, 12/18/24	Page 11 of 11
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NORTH CAROLINA EDUCATION LOTTERY POLICIES AND PROCEDURES MANUAL

CHAPTER 6 – LEGAL POLICIES

6.02 – CONTRACTING AND BIDDING DISPUTE RESOLUTION PROCESS

Any Petitioner, Aggrieved Person, or Potential Contractor or Contractor that submitted a bid within the purview of this Dispute Resolution Process, voluntarily, knowingly, and irrevocably waives, to the fullest extent permitted by law, any right which it has to appeal any final decisions of the Commission made pursuant to this Policy 6.02. To the extent that (i) a party has fully exhausted all remedies and procedures in this Dispute Resolution Process and (ii) applicable law explicitly authorizes any additional proceedings, any such additional proceeding must be brought solely in the Superior Court of Wake County, General Court of Justice, State of North Carolina, and such party irrevocably waives any objection which it may have to the venue of any additional proceeding being solely in the Superior Court of Wake County, North Carolina.

XI. EXCLUSIVE REMEDY

This Dispute Resolution Process provides the exclusive procedure for asserting a claim against the NCEL arising out of or relating to any matter which is within the scope of this Policy as set forth herein. No party has a right to any remedy against the NCEL with respect to a matter within the scope of these policies, except in accordance with the procedures set forth in this Dispute Resolution Process.