

ARKANSAS LOTTERY COMMISSION

MAJOR PROCUREMENT RULES

Section 1. Purpose.

The Purpose of these Rules is to proscribe the procurement process for all major procurement contracts entered into with the Arkansas Lottery Commission.

Section 2. Authority.

This Rule is issued pursuant to the authority vested in the Commission under Ark. Code Ann. §§ 23-115-207 and 23-115-701, and the Arkansas Administrative Procedures Act, §§ 25-15-201, *et seq.*

Section 3. Scope.

This Rule shall apply to the procurement process for all major procurement contracts entered into with the Commission. In any decision made under these rules, the Commission shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net lottery proceeds for the benefit of educational programs and purposes.

Section 4. Definitions.

A. “Act” means the Arkansas Scholarship Lottery Act.

B. “Commission” means the Arkansas Lottery Commission.

C. “Director” means the director of the Arkansas Lottery Commission.

D. “Major procurement” means the act or process of securing a major procurement contract or the obtaining of the products or services that are subject of a major procurement contract.

E. “Major procurement contract” means a contract for a gaming product or service costing more than seventy-five thousand dollars (\$75,000) including without limitation:

- i. A major advertising contract;
- ii. An annuity contract;
- iii. A prize payment agreement;
- iv. A consulting service;
- v. Lottery equipment;
- vi. Tickets; and
- vii. Any other product and service unique to lotteries.

Major procurement contract does not include a material, supply, equipment, or service common to the ordinary operations of the Commission. 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 Commission shall estimate the value of the proposed contract to determine whether it is a major procurement contract.

F. “Person” means any individual, corporation, partnership, unincorporated association, or other legal entity.

G. “Proposal,” “bid,” “quote,” and “offer” shall all denote that which a vendor provides for competitive consideration or comparison under any competitive procurement process.

H. “Request for Proposals” means all documents or electronic media, whether attached or incorporated by reference, utilized for soliciting proposals.

I. “Request for Qualifications” 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.

J. “Responsible Bidder/Proposer” means a vendor who submits a bid, offer, quote

or proposal in response to a solicitation and who, in the reasonable opinion of the Commission:

i. Is able and is otherwise qualified in all respects to perform fully the contract requirements without delay; and

ii. Has the integrity and reliability which will assure good faith performance.

K. “Responsive Bidder/Proposer” means a vendor who has submitted a bid, offer, quote, or proposal that conforms in all material respects to the Commission’s solicitation.

L. “Scope of Products and Services” means a description of the products or services or both that will be the subject of the applicable major procurement contract.

M. “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.

N. “Specification” means a description of the required physical, functional, or performance characteristics, or of the nature of, a product or service. A specification includes, as appropriate, requirements for inspecting, testing, or preparing a product or service.

O. “Vendor” means a person who provides or proposes to provide goods or services to the Commission under a major procurement contract. Vendor does not include:

i. An employee of the Commission;

ii. A retailer; or

iii. A state agency or instrumentality.

Vendor includes a corporation whose stock is publicly traded and that is the parent company of the contracting party in a major procurement contract.

Section 5. General Policies.

A. Collection and Maintenance of Vendor EEO Policies.

1 Equal Opportunity Policies are required from vendors who submit responses to the
2 Commission or the Office of State Procurement of the Department of Finance and
3 Administration for major procurements. The Office of State Procurement will maintain a file of
4 vendor Equal Opportunity Policies. When issuing solicitations, the Commission will be
5 responsible for confirming that vendors have a current Equal Opportunity Policy on file with the
6 Office of State Procurement either through requesting that it be supplied with the solicitation
7 response; maintaining an agency file of vendor supplied Equal Opportunity Policies; or by
8 accessing and checking the files maintained by the Office of State Procurement. A major
9 procurement contract may not be awarded prior to determining that a copy of the vendor's
10 current Equal Opportunity Policy is on file with the Office of State Procurement. Vendors will
11 be responsible for supplying the Office of State Procurement with updated versions of their
12 respective Equal Opportunity Policies as they are implemented and revised.

13 B. Employment of Illegal Immigrants - Prohibition - Certification by Vendor.

14 A vendor must certify on line at www.arkansas.gov/dfa/procurement prior to award of a
15 major procurement contract that the vendor does not employ or contract with any illegal
16 immigrant. If the vendor violates the certification or is found to not be in compliance during the
17 term of the major procurement contract, the Commission shall require the vendor to remedy the
18 violation within sixty (60) days of discovery of that violation. Failure to remedy the violation
19 within the sixty (60) day period will result in termination of the major procurement contract for
20 breach of contract, and the vendor shall be liable to the Commission for the Commission's actual
21 damages. If the vendor uses a subcontractor at the time of the certification, the subcontractor
22 shall certify that the subcontractor does not employ or contract with an illegal immigrant. The
23 subcontractor's certification shall be submitted within thirty (30) days after award of the major

1 procurement contract, and the vendor is required to maintain the certification on file for the
2 remainder of the term of the major procurement contract. In the event that the vendor learns that
3 the subcontractor's certification is in violation of the Act, and terminates the contract with the
4 subcontractor, the termination of the subcontract for a violation of this section will not be
5 considered a breach of the vendor's contract with the Commission. However, any subcontractor
6 subsequently hired by the vendor shall be required to provide like certification.

7 C. Approval Required; Execution of Contracts.

8 The Commission must approve each major procurement contract. The Director or his
9 or her designee must approve and sign each Commission purchase order or contract. Only the
10 Director or his or her designee is authorized to bind the Commission in contractual
11 agreements (a purchase order, notice of contract award, or contract signed by other Commission
12 personnel is null and void and shall not obligate the Commission to payment for products and
13 services).

14 D. Commodity Inspection and Testing.

15 All materials, equipment, supplies, products, and services are subject to inspection
16 and testing. Items that do not meet specifications will be rejected. Failure to reject upon
17 receipt, however, does not relieve any supplier of liability. When subsequent tests are
18 conducted after receipt and when such tests reveal damage or failure to meet specifications, the
19 Commission may seek damages regardless of whether a part or all of the merchandise
20 has been consumed.

21 E. Commodity Substitutions.

1 A vendor may manufacture or ship an item that materially conforms to or exceeds
2 specifications, but which may be technically different, however, all such substitutions shall
3 require the approval of the Commission prior to shipment.

4 F. Contract.

5 The purpose of a written contract is to embody, in writing, the complete
6 agreement between parties. No terms shall be left to an unwritten understanding. Further:

7 i. All Commission solicitations for and all major procurement contracts shall
8 state: “It shall be a breach of ethical standards for a person to be retained, or to retain a person,
9 to solicit or secure a state contract upon an agreement or understanding for a commission,
10 percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona
11 fide established commercial selling agencies maintained by the contractor for the purpose of
12 securing business.”

13 ii. All major procurement contracts shall specifically state: “The
14 Vendor hereby covenants and agrees that no person shall (A) be excluded from
15 participation in, or be denied benefits of, this Agreement, or (B) be excluded from
16 employment, denied any of the benefits of employment or otherwise be subjected to
17 discrimination on the grounds of handicap or disability, age, race, color, religion, sex, national
18 origin or ancestry, or any other classification protected by federal, Arkansas state constitutional,
19 or statutory law. The Vendor shall, upon request, show proof of such nondiscrimination and shall
20 post in conspicuous places, available to all employees and applicants, notices of
21 nondiscrimination.”

22 iii. All major procurement contracts shall specifically state: “The
23 Vendor shall maintain documentation for all charges against the Commission under this

1 Agreement or any modifications or amendments thereto. The books, documents, papers,
2 accounting records, and other evidence pertaining to products and/or services to be
3 provided or performed or money received under this Agreement (A) shall be
4 maintained for a period of five (5) full years from the date of the final payment and (B) shall be
5 subject to audit or inspection at any reasonable time and upon reasonable notice by the
6 Commission or its duly appointed representatives. Vendors shall make such materials
7 available at its offices, and copies thereof shall be furnished to the Commission or its duly
8 appointed representative by the Vendor, at no cost to the Commission or its duly appointed
9 representative, if requested by the Commission or its duly appointed representative. Such records
10 shall be maintained in accordance with any applicable provisions of generally accepted
11 accounting principles (or other applicable accounting principles or policies) and any other
12 applicable procedures established by the Commission from time to time.”

13 G. Contract Amendment.

14 A contract amendment is a written document that changes, adds, or deletes one
15 or more terms or conditions of an existing contract. During the course of the performance of a
16 contract, it may become necessary to change, add to, or delete from the terms and conditions of
17 the contract.

18 i. A contract amendment shall clearly detail the additions, deletions, and
19 modifications to the subject contract.

20 ii. The Commission may enter into a contract amendment with respect to a
21 major procurement contract if the Director determines any or all of the following: (A) the
22 contract amendment is within the original scope of work and within the intent and purpose of the
23 applicable major procurement contract, (B) the contract amendment is a logical extension to the

1 original scope of work of the applicable major procurement contract, or (C) if entered into as a
2 stand-alone contract, such contract would not constitute a major procurement contract.

3 H. Contract Termination.

4 The Director may, for good cause, suspend, revoke, or refuse to renew any
5 contract entered into in accordance with the provisions of the Act or the Commission's
6 regulations.

7 I. Minority-Owned Business and Female-Owned Business Participation.

8 It is the declared policy and intent of the Commission (i) to encourage participation
9 by minority-owned and female-owned businesses, and (ii) to strive to maximize participation of
10 minority-owned and female-owned businesses to achieve a minimum participation through
11 both prime and second tier business contracting opportunities. In furtherance of such policy
12 and intent, and in order to achieve to the greatest extent possible a level of participation by
13 minority-owned businesses and female-owned businesses taking into account the total number
14 of all retailers and vendors, including any subcontractors, the Commission shall adopt a
15 plan to encourage to the greatest extent possible a level of participation by minority-
16 owned businesses and female-owned businesses. Pending the adoption of the plan, the
17 Commission will include in its solicitation documents such provisions as the Commission deems
18 reasonable and appropriate regarding equal business opportunities for minority-owned
19 businesses and female-owned businesses. Such provisions will include, without limitation, (A)
20 requirements regarding the efforts that potential vendors must undertake to give minority-
21 owned businesses the opportunity to enter into a joint venture with, or serve as a
22 subcontractor for, such potential vendor; and (B) the required non-discrimination provisions
23 that must be included in the contract resulting from such solicitation.

1 J. Negotiation and Other Communication.

2 The Commissioners, the Director, and all Commission employees may conduct
3 negotiations and other communications with vendors and potential vendors with respect
4 to potential major procurement contracts and other contracts as they deem to be in the best
5 interests of the Commission; provided, that any communication or negotiation which may
6 take place regarding any major procurement or contract shall be conducted in a manner so as
7 not to disclose any information that would give one or more vendors unfair advantage or unfairly
8 enable one or more vendors to improve their bids, offers, quotes, or proposals as a result.
9 Specifically, in connection with a major procurement, the Commission will only be permitted
10 to negotiate with the vendor whose bid, offer, quote, or proposal is the highest rated bid, offer,
11 quote, or proposal. In the event that negotiations with the highest rated vendor fail to result
12 in a contract, or if for any other reason a contract with such vendor is not executed, the
13 Commission may conduct negotiations with the second highest rated vendor and so forth until a
14 major procurement contract is successfully executed.

15 K. Procurement Record.

16 The Commission shall retain a record of the procurement process regarding any major
17 procurement contract, any negotiations upon which a major procurement contract is based,
18 documentation of required approvals, and documentation that each major procurement contract is
19 awarded to a responsible and responsive bidder or proposer.

20 L. Purchase Order or Contract Required.

21 Any vendor or other person who manufactures or delivers a product or service without a
22 written purchase order or contract or who delivers a product or service not specifically
23 authorized by a purchase order or contract does so at the vendor's (or other person's) own risk.

Under no conditions shall the Commission be liable for payment of any type for any product or service provided by a vendor or other person, even such provided in good faith, which is not specifically authorized by a purchase order or contract.

Section 6. General Provisions.

A. Applicability.

The provisions of these rules are applicable to all major procurements by the Commission; provided, however, that the provisions of these rules shall not be applicable:

- i. To sole-source procurements pursuant to Section 6(B); or
- ii. To emergency purchases. For purposes of these Rules an emergency is a circumstance or set of circumstances caused by the occurrence of events beyond the control of the Commission and which could reasonably be believed to (A) threaten the security, integrity, or the financial status of the lottery, (B) threaten the public health, welfare, or safety or (C) lead to imminent injury or loss; an emergency purchase shall be made by obtaining pricing information from at least two (2) prospective vendors unless the Commission determines in writing that the time required to obtain pricing information will increase the immediate consequences of the emergency, in which case, the pricing requirement shall be excepted.

B. Sole-source Procurements.

- i. 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:

- a. Requirements of performance compatibility with existing

1 commodities or services; or

2 b. Repairs involving hidden damage.

3 ii. Procurements under this section shall be approved in advance by the
4 Commission.

5 iii. Request for approval shall be made in writing and shall include in the
6 justification:

7 a. a copy of the purchase order or requisition;

8 b. why the service is needed;

9 c. the methods used to determine that a lack of
10 responsible/responsive competition exists for the service;

11 d. how it was determined that the provider possesses exclusive
12 capabilities;

13 e. why the service is unique;

14 f. whether or not there are patent or proprietary rights which make
15 the required service unavailable from other sources;

16 g. what the agency would do if the provider/service were no longer
17 available, and

18 h. any program considerations which make the use of a "Sole Source"
19 critical to the successful completion of the agency's task.

20 C. Major Procurement Contracts to be Competitively Bid.

21 Except as provided at subsections (6)(A)(i) and (6)(A)(ii) of these Rules, all major
22 procurement contracts shall be competitively bid in accordance with the provisions of these
23 Rules.

1 D. Procedures Regarding Submissions.

2 i. The Commission is committed to a competitive procurement process
3 that maintains the highest level of integrity. Therefore, no communication outside the
4 procurement process initiated by vendors, their attorneys, representatives, or others
5 promoting their position, other than normal business activities not associated with the
6 procurement, will be allowed with any officer, employee, or member of, or consultant or
7 advisor to, the Commission. Any attempt to influence any employees, officers, consultants,
8 advisors or Commission members of the Commission with respect to a procurement, whether
9 such attempt is oral or written, formal or informal, is strictly prohibited and will result in
10 disqualification.

11 ii. All bids, offers, quotes or proposals and the contracts resulting from
12 solicitations are subject to the requirements of and must comply with the Act, regardless of
13 whether or not specifically addressed in either the solicitations or the proposal. All potential
14 vendors shall read and be familiar with the Act, a copy of which may be obtained through a
15 link on the Commission's web site.

16 iii. All data, materials, and documentation originated and prepared for the
17 Commission pursuant to solicitations shall belong exclusively to the Commission and, subject
18 to rules and the provisions of Ark. Code Ann. § 23-115-404, may be available to the
19 public in accordance with Arkansas law. Under no circumstances will the Commission be
20 liable to any vendor or to any other person or entity, for any disclosure of any trade secret or
21 confidential information.

22 iv. Issuance of any solicitation does not constitute a commitment on the
23 part of the Commission to award a contract. The Commission retains the right to reject any

1 or all proposals, in whole or in part, and to cancel any solicitation (before or after receipt
2 of proposals in response thereto) if the Commission considers it to be in the best interests of the
3 Commission.

4 v. The Commission shall not, under any circumstance, be responsible for any
5 expenses incurred by a vendor in preparing and submitting a proposal.

6 vi. All materials submitted to the Commission by vendors shall upon
7 submission become the property of the Commission and may be used as the Commission
8 deems appropriate.

9 vii. From the time a solicitation is issued until either (A) six (6) months
10 after the award of a contract or (B) the rejection of all bids, offer, quotes, or proposals received
11 by the Commission, vendors are prohibited from officially or unofficially making any
12 employment offer or proposing any business arrangement whatsoever to any Commission
13 employee, officer, or Commission member.

14 viii. Each bid, offer, quote, or proposal must be signed by the
15 vendor's authorized agent. If a joint proposal that includes multiple vendors is submitted, it
16 must define completely the responsibilities that each entity is proposing to undertake, as well as
17 the proposed responsibilities of each subcontractor of each entity. The proposal must be
18 signed by an authorized officer or agent of each entity. In addition, the Commission reserves
19 the right, in its sole discretion, to require an authorized officer or agent of each subcontractor,
20 or each subcontractor that is expected to provide a specified amount of the procured product
21 or service, to sign the proposal. Such requirement shall be clearly set forth in the solicitation.
22 The proposal must designate a single authorized official from one of the entities to serve as the
23 sole point of contact between the Commission and the responding joint venture, strategic

1 partnership, or prime contractor team. Any contract resulting from a joint proposal must be
2 signed by an authorized officer or agent of each entity. In addition, the Commission reserves the
3 right, in its sole discretion, to require an authorized officer or agent of each subcontractor, or
4 each subcontractor that is expected to provide a specified amount of the procured product or
5 service, to sign any such contract. Such requirement, or the possibility of such requirement,
6 shall be clearly set forth in the solicitation.

7 ix. The Commission reserves the right to make changes to any solicitation by
8 issuance of a written addendum or amendment. The Commission may issue any such
9 addendum or amendment at any time prior to entering a contract regarding the applicable
10 major procurement. Any addendum or amendment will be posted on the
11 Commission's web page, and notice of the same shall be communicated, via facsimile, to
12 all vendors who requested and were sent a copy of the applicable solicitation or who have
13 submitted a bid, offer, quote, or proposal in respect of such solicitation.

14 x. A submitted proposal may be modified or withdrawn by written notice
15 received by the Commission at any time prior to the submission deadline. Each proposer is
16 under a continuing obligation to notify the Commission following the submission of a proposal
17 of any changes to the information, data, or facts submitted in their response that could
18 reasonably be expected to affect the Commission's consideration of the proposal. Amendments
19 to the technical or cost portions of the proposal will not be accepted during the evaluation
20 process, although the Commission reserves the right to request additional information or
21 clarification on the contents of the proposal. After the solicitation deadline, a vendor may
22 withdraw its bid, offer, quote, or proposal, or other response or a portion thereof only upon a
23 written determination by the Commission that there is an obvious error in such response and

1 where the enforcement of the response would impose an unconscionable hardship on the vendor.
2 A reduction or diminution in profit margin shall not be deemed an unconscionable hardship
3 under this subsection.

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

9 **Section 7. Procurement Methods.**

10 A. Procurement Methods Available to the Commission.

11 The Commission may utilize either of the following methods, both of which are further
12 described herein, to competitively bid major procurement contracts: (i) a request for proposal, or
13 (ii) a request for qualifications. The Director shall determine, with the consent of the
14 Commission, the procurement method to be used in the case of any major procurement
15 contract. No vendor shall be permitted to challenge any decision of the Director or the
16 Commission with regard to the determination of the procurement method authorized hereby to be
17 utilized in connection with any procurement.

18 B. Pre-Solicitation Process.

19 Whenever the Commission wants to evaluate the availability, durability, adaptability, or
20 other specifications of goods or services in advance of seeking to procure such goods or services,
21 the Director may elect to utilize a pre-solicitation process to identify potential bidders or possible
22 solutions to the need being addressed. The Director may opt to use any or all of the following
23 methods to acquire information:

- i. Oral presentations;
- ii. Pre-solicitation notices;
- iii. Pre-solicitation conferences;
- iv. Requests for information;
- v. Site visits; or
- vi. Any other method the Director deems appropriate in his or her discretion.

C. Request For Proposals.

The provisions of this subsection (7)(C) shall be applicable solely to solicitations of major procurement contracts by means of a Request for Proposal (RFP).

i. Issuance of RFP. The Commission shall prepare and issue an RFP and evaluate proposals in accordance with this subsection. Failure by the Commission 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 Commission.

ii. RFP Document. An RFP shall set forth provisions including:

a. 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;

b. Complete directions about making proposals;

c. An RFP schedule of events that specifies all deadline requirements.

Vendors must be given a reasonable time, as determined by the Commission, to consider the required scope of products and services and the proposal evaluation factors before proposals must be submitted;

1 d. RFP requirements and proposal restrictions;

2 e. A description of the factors that will be used to evaluate the
3 proposals. Factors may include but are not limited to vendor qualifications, experience, technical
4 approach, minority-owned business or female-owned business participation, and cost; and

5 f. A declaration of certain contract terms and conditions which shall
6 be required by the Commission.

7 iii. RFP Review and Approval. Each RFP must be reviewed and approved by
8 the Director prior to publication against the criteria of sound business principles, adequacy of
9 the scope of products and services description, and adequacy of the RFP's assurance of:

10 a. Fairness to potential vendors;

11 b. Achievement of procurement objectives; and

12 c. Protection of the Commission's interests.

13 iv. RFP Publication. The Commission shall publish each RFP solicitation on
14 the Commission's web page, and, if desired by the Commission, the Arkansas Office of State
15 Procurement web site established for such solicitations. The Commission shall further solicit
16 interest in each RFP by sending a formal notice of such or notice that the specific RFP has been
17 released to a documented list of potential vendors. The Commission shall compile the list of
18 potential vendors from those known to the Commission's staff. The Commission
19 shall determine the number of vendors to include on the list by considering the
20 nature of the procurement, the anticipated amount of the resulting contract, and the
21 number of known vendors. To the extent practicable, the Commission will strive to compile lists
22 of potential bidders which are minority-owned businesses, and female-owned businesses; the
23 Commission will actively solicit bids from such businesses or otherwise make such businesses

1 aware of opportunities to bid for major procurement contracts. The Commission is not
2 required to send a solicitation notice to more than a total of three (3) vendors; provided
3 however, that the Commission may send a solicitation notice to fewer than three (3) vendors, if,
4 in the opinion of the Director, fewer than three (3) vendors are qualified. A general or
5 standing request for notice of all solicitations of a given type shall not suffice as a request for a
6 specific solicitation and shall create no obligation on the Commission.

7 v. The Commission shall require each proposer to submit the cost proposal
8 component of the proposal in a sealed and labeled envelope separate from the technical
9 proposal component. The purpose is to allow the cost component to be evaluated
10 separately from the technical component.

11 a. The cost proposals shall not be opened until after the evaluation of
12 the technical component is completed. After the technical proposal evaluation is completed, the
13 cost proposals shall be opened and evaluated, and the total evaluation of the proposals will
14 then be based on the criteria established in the applicable RFP.

15 b. Any proposal which fails to adequately separate the cost proposal
16 components from the technical proposal may be considered nonresponsive and rejected by the
17 Commission.

18 vi. The Commission shall communicate, clarify, and negotiate in the
19 best interests of the Commission, provided that all communication is conducted in a manner so
20 as not to disclose any information that would give one or more vendors unfair advantage or
21 unfairly enable one or more vendors to improve their proposal. Specifically, negotiations will
22 only be permitted with the vendor whose bid, offer, quote, or proposal is the highest rated
23 bid, offer, quote, or proposal. In the event that negotiations with the highest rated vendor

1 fail to result in a contract, or if for any other reason a contract with such vendor is not
2 executed, the Commission may conduct negotiations with the second highest vendor and
3 so forth until a contract is successfully executed.

4 vii. The Commission shall have the right, at its sole discretion, to amend an
5 RFP in writing at any time.

6 vii. The Commission shall have the right, at its sole discretion, to reject any and
7 all proposals.

8 a. Any proposal that does not meet the requirements of an RFP may
9 be considered to be non-responsive, and the proposal may be rejected.

10 b. Any proposal that restricts the rights of the Commission or
11 otherwise qualifies the proposal may be considered to be non-responsive, and the proposal may
12 be rejected.

13 ix. The Commission has the right, at its sole discretion, to cancel an
14 RFP in its entirety and to reissue or not reissue an RFP.

15 x. Evaluation and Award. Proposals shall be evaluated in accordance
16 with the solicitation and in such a manner as to reasonably assure that all proposals are
17 impartially considered and Commission requirements are adequately met.

18 a. Proposals shall be evaluated by a committee established by the
19 Commission.

20 b. Prior to reviewing proposals, each proposal evaluation committee
21 member shall review a list of vendors making proposals, determine if a conflict of interest exists
22 with a potential vendor, and sign a statement of whether or not the member has a potential
23 conflict of interest. The statement shall be retained as procurement file documentation.

1 c. Proposals shall be evaluated in accordance with the evaluation
2 criteria set forth in the solicitation.

3 d. Neither the technical proposal, the cost nor any other
4 single criterion shall be the only criterion for a major procurement contract
5 award recommendation. Rather, evaluations shall be conducted and criteria shall be
6 established to select proposals that provide the greatest overall value, the greatest long-term
7 benefit to the State of Arkansas, the greatest integrity for the Commission, and the best services
8 and products for the public. However, specific factors may be set forth in the applicable
9 solicitation as criteria for determining whether a vendor who submits a bid, offer, quote, or
10 proposal in response to that solicitation is a Responsible Bidder/Proposer and
11 which proposals shall be considered responsive to the RFP.

12 e. Pricing discounts for payment within certain time periods or in
13 cash shall not be considered in evaluating bids. f. Only signed, sealed bids delivered prior to
14 the date and time of bid opening shall be accepted.

15 g. The past performance of a bidder on a state contract may be used
16 by the Commission to determine whether the bidder is “responsible”. Past performance must be
17 supported by written documentation not greater than three (3) years old. Reports, memos, and
18 files may be in electronic form. Past performance may be positive or negative. Past performance
19 on contracts from other Arkansas state agencies may also be used for evaluation. Supporting
20 documentation should be provided. Past performance evaluation should not take the place of
21 suspension or debarment procedures.

22 h. In the event of a tie bid, the person responsible for awarding a
23 major procurement contract must ensure that all offers meet specifications. An award will be

1 made by flip of a coin. The coin flip will be done in the presence of a witness by the person
2 responsible for awarding the contract. The witness must be an employee of the State of
3 Arkansas. A documentation of the coin flip must be included on the tabulation or bid history
4 sheet and be signed by both parties.

5 D. Request for Qualifications.

6 The provisions of this subsection (7)(D) will be applicable solely to solicitations
7 of major procurement contracts by means of a request for qualifications (RFQ).

8 i. The request for qualifications procurement method is used when the
9 qualifications or specialized expertise of the vendor is the most important factor in selection.

10 ii. RFQ Publication. The Commission shall publish each RFQ solicitation on
11 the Commission's web page and, if desired by the Commission, the Arkansas Office of State
12 Procurement web site established for such solicitations. The Commission shall further solicit
13 interest in each RFQ by sending a formal notice of such or notice that the specific RFQ has
14 been released to a documented list of qualified vendors. The Commission shall compile the
15 list of vendors from those known to the Commission's staff. The Commission shall
16 determine the number of vendors to include on the list by considering the nature of the
17 procurement, the anticipated amount of the resulting contract, and the number of known
18 vendors. To the extent practicable, the Commission will strive to compile lists of potential
19 bidders which are minority-owned businesses, and female-owned businesses, and the
20 Commission will actively solicit bids from such businesses or otherwise make such businesses
21 aware of opportunities to bid for major procurement contracts. The Commission is not required
22 to send a solicitation notice to more than a total of three (3) vendors; provided however, that the
23 Commission may send a solicitation notice to fewer than three (3) vendors. A general or

1 standing request for notice of all solicitations of a given type shall not suffice as a request for a
2 specific solicitation and shall create no obligation on the Commission.

3 iii. The Commission shall communicate, clarify, and negotiate in the
4 best interests of the Commission, provided that all communication is conducted in a manner so
5 as not to disclose any information that would give one or more vendors unfair advantage or
6 unfairly enable one or more vendors to improve their proposal.

7 iv. The Commission shall have the right, at its sole discretion, to amend an
8 RFQ in writing at any time.

9 v. The Commission shall have the right, at its sole discretion, to
10 cancel an RFQ in its entirety and to reissue or not reissue an RFQ.

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

17 vii. Proposals shall be evaluated by a committee established by the
18 Commission.

19 a. Prior to reviewing proposals, each proposal evaluation committee
20 member shall review a list of vendors making proposals, determine if a conflict of interest exists
21 with a potential vendor, and sign a statement of whether or not the member has a potential
22 conflict of interest. Said statement shall be retained as procurement file documentation.

1 b. Proposals shall be evaluated in accordance with the evaluation
2 criteria set forth in the solicitation.

3 c. Evaluations shall be conducted and criteria shall be established
4 to select proposals that provide the greatest overall value, the greatest long-term benefit to the
5 State of Arkansas, the greatest integrity for the Commission, and the best services and products
6 for the public.

7 d. Time discounts or cash discounts shall not be considered.

8 e. Only signed, sealed responses delivered prior to the date and time
9 of bid opening shall be accepted.

10 f. The past performance of a bidder on a state contract may be used
11 by the Commission to determine whether the bidder is “responsible”. Past performance must be
12 supported by written documentation not greater than three (3) years old. Reports, memos, and
13 files may be in electronic form. Past performance may be positive or negative. Past
14 performance on contracts from other Arkansas state agencies may also be used for evaluation.
15 Supporting documentation should be provided. Past performance evaluation should not take the
16 place of suspension or debarment procedures.

17 viii. Compliance With This Subsection. Failure by the Commission to
18 comply with any technical requirement of this subsection (7)(D) shall not alone be deemed a
19 defect requiring rejection of all bids, offers, quotes, or proposals, such decision remaining
20 in the discretion of the Commission.

21 E. Solicitations.

1 The provisions of this subsection (7)(E) is applicable to all solicitations of
2 major procurement contracts, regardless of the procurement method used by the
3 Commission.

4 i. All solicitations shall detail:

5 a. Terms and conditions clearly detailing the requirements for the
6 response to the solicitation, including the schedule for submitting and evaluating responses to
7 solicitations as well as contract language in the event of award;

8 b. Where more than one item is specified, whether the Commission
9 will have the right to accept proposals either on the basis of each individual item, a group of
10 items, or total of all items; and

11 c. Any requirement for a performance bond.

12 ii. Unless the solicitation specifically permits offers of used or
13 reconditioned items, all solicitations shall be deemed to require that all materials, supplies, and
14 equipment offered and furnished must be new and not reconditioned.

15 F. Contractual Award and Agreement.

16 i. Each major procurement contract shall be awarded by the
17 Commission by prompt written notice to the responsible and responsive vendor pursuant to a
18 solicitation whose bid, offer, quote or proposal represents the best value to the
19 Commission and offers what the Commission believes will result in the greatest long-term
20 benefit to the State of Arkansas, the greatest integrity for the Commission, and the best services
21 and products for the public. The Commission shall also publish notice of the intent to award on
22 the Commission's website.

23 ii. The delivery of a Commission purchase order or a notice of major

1 procurement contract award for term contracts which require vendor signature with the
2 valid signature of the Director constitutes acceptance of the offer to sell and consummates the
3 binding contractual agreement. The Commission shall not execute a major procurement contract
4 prior to the expiration of five (5) business days from the date notice of the intent to award is
5 published on the Commission's website.

6 G. Inspection of Purchasing Records.

7 Upon the Commission's issuance of a notice of intent to award a major
8 procurement contract, the Commission's procurement files for such major
9 procurement will be open for public inspection. Notwithstanding the foregoing, (i) the
10 Commission shall not be required to make available for public inspection information protected
11 by or otherwise not required to be disclosed pursuant to applicable law, these Procurement
12 Regulations, or information that the Commission determines in accordance with Ark. Code
13 Ann. § 23-115-404 shall not be disclosed to the public; and (ii) the Commission may delay
14 making its procurement files available to the public for such reasonable period of time as the
15 Commission determines is necessary for it to redact or otherwise secure that portion of its
16 procurement files that will not be made available to the public. The Commission's
17 procurement records that are made available to the public shall be available for inspection
18 during the Commission's regular office hours.

19 **Section 8. Protest.**

20 A. Filing of a Protest.

21 i. Any actual or prospective bidder, offeror, or contractor who is aggrieved
22 in connection with the solicitation or award of a major procurement contract may file a
23 protest seeking a determination with respect to any matter related to the solicitation or

1 award of a major procurement contract except as otherwise provided herein. An Aggrieved
2 Person who files a protest is hereinafter referred to as a “Petitioner”. Other than as
3 expressly set forth in these Rules, nothing contained herein shall confer any rights or
4 remedies upon any Aggrieved Person or Petitioner, or impose any duties or obligations upon the
5 Commission, which are not otherwise so conferred or imposed by the Act.

6 ii. The protest shall be in writing, shall be filed by delivery by hand or
7 courier to the Director with a copy to the Chief Legal Counsel of the Commission at the
8 headquarters of the Commission.

9 iii. The protest shall include the following information:

10 a. The name, address, and telephone number of the Petitioner;

11 b. The signature of the Petitioner;

12 c. Identification of the solicitation or contract number that is the
13 subject of the dispute;

14 d. A statement of the legal and factual grounds supporting the
15 position of the Petitioner, including copies of relevant documents;

16 e. Any other documentation the Petitioner wishes to submit in
17 support of Petitioner’s position; and

18 f. A statement of the relief requested whether legal, equitable, or
19 otherwise. If a monetary award is requested, the amount shall be stated.

20 For a protest to be timely filed, the original protest manually signed by
21 the Petitioner must be physically received by the Commission within the time period
22 prescribed in Subsection (8)(B). Facsimile or other electronically transmitted copies of the
23 protest will not be accepted.

1 iv. The Petitioner shall be required to provide a suitable bond to
2 the Commission in certified funds at the time the Protest is filed. The purpose of this bond
3 is to:

4 a. Discourage frivolous petitions and litigation; and

5 b. Assure payment by the Petitioner of the costs incurred as a result
6 of the protest, including reasonable attorney's fees of the Commission, employees or members of
7 the Commission, in the event Petitioner appeals and such costs are adjudged against the
8 Petitioner pursuant to Ark. Code Ann. § 23-115-209; and

9 c. Assure payment of all other amounts for which the Petitioner may
10 be found liable, including without limitation any loss of income to the Commission resulting
11 from the institution of a frivolous appeal.

12 Failure to provide such bond with any protest will result in the dismissal of such
13 protest. A Petitioner shall not have met the requirement in Subsection (8)(B) to timely
14 file a protest unless the applicable bond accompanies the protest when it is timely filed. This
15 requirement does not apply to any Petitioner who has already provided a bond in the proper bond
16 amount as part of a bidding process.

17 v. The amount of the bond shall be the amount established in the applicable
18 solicitation. In the event that no amount is specified in the applicable solicitation, the bond shall
19 be Seventy-Five Thousand Dollars (\$75,000) or Fifty Percent (50%) of the major procurement
20 contract amount in controversy, whichever is less.

21 B. Time for Filing a Protest.

22 i. Protests concerning a solicitation.

23 a. A protest in regard to a major procurement contract solicitation

1 for which the basis for the protest is reasonably apparent before the closing date for receipt
2 of initial proposals shall be filed within five (5) business days after the deadline for
3 vendor questions established in the solicitation. A protest in regard to any other solicitation
4 for which the basis for the protest is reasonably apparent before the closing date for receipt of
5 initial proposals shall be filed before the closing date for receipt of initial proposals. A
6 protest based upon a solicitation that is reasonably apparent before the bid opening shall be filed
7 before bid opening.

8 b. Protests based upon an amendment to any solicitation, or upon
9 any additional information requested or accepted by the Commission with respect to
10 any solicitation or response thereto, that is reasonably apparent before the closing date for
11 receipt of proposals or any supplemental information requested by the Commission shall be
12 filed within five (5) business days after the deadline for vendor questions or the date of the
13 amendment, whichever date is later.

14 c. Subject to the provisions of subsection (8)(B)(ii), if a
15 protest is filed with the Director and the Chief Legal Counsel of the Commission before the
16 award of a contract, the award of such contract may be made before a decision is rendered on
17 the protest.

18 ii. Protest concerning an award of contract.

19 a. Subject to subsection (8)(B)(ii)(c), any aggrieved person
20 may protest the Commission's decision to award a major procurement contract. Any such
21 written protest shall be filed (1) in the case of a major procurement contract that has not been
22 competitively bid by the Commission, within five (5) business days after either the
23 Commission's issuance of a notice of intent to award such major procurement contract or the

1 Commission's award of such major procurement contract is posted, published, or otherwise
2 made publicly available, whichever occurs first; and (2) in the case of a major procurement
3 contract that has been competitively bid by the Commission, within five (5) business days after
4 the Commission's issuance of a notice of intent to award such major procurement contract is
5 posted, published, or otherwise made publicly available.

6 b. If a protest seeking equitable relief regarding the award of any
7 major procurement contract is filed with the Director and the Chief Legal Counsel of the
8 Commission in accordance with subsection (8)(B)(ii)(a), the Commission may award and enter
9 into such major procurement contract only if (a) such protest has been resolved in accordance
10 with these Rules, or (b) the Commission has made a written determination that the award of
11 such major procurement contract without delay is necessary to protect substantial interests of
12 the Commission.

13 c. Only persons or entities that submit a bid, offer, quote, or
14 proposal with respect to a major procurement solicitation for a competitively bid major
15 procurement contract may be considered an "Aggrieved Person" with standing to file a
16 protest with respect to the award of such contract or the issuance of a notice of intent to
17 award such contract.

18 iii. In all other cases pertaining to a solicitation or award of an agreement or a
19 contract other than those covered in subsections (8)(B)(i) through (8)(B)(ii), a protest must be
20 filed within five (5) business days after the announcement of the Commission's decision to
21 award is posted, published, or otherwise made publicly available, whichever occurs first.

22 iv. In all cases other than those covered in subsections (8)(B)(i) through
23 (8)(B)(iii), the protest must be filed within five (5) business days after the aggrieved person

1 knows or should have known of the facts giving rise to the action complained of.

2 v. Failure to file a written protest in accord with subsection (8)(A) within the
3 applicable time limit provided in subsection (8)(B) shall bar any further administrative, legal, or
4 equitable action.

5 vi. Failure to provide the applicable bond in the amount required and as
6 otherwise provided in subsections (8)(A)(iv) and (8)(A)(v) within the applicable time frame shall
7 result in an untimely filing and bar any further administrative, legal, or equitable action.

8 C. Notice of Filing of a Protest.

9 In the event a protest is filed, the Director shall immediately provide a copy of
10 the the protest to the Commission and to the successful person or entity, if an award has
11 been made, or, if no award has been made, to all persons or entities who have submitted bids or
12 proposals.

13 D. Confidential Information.

14 i. Material submitted by a petitioner shall not be withheld from any
15 interested party except to the extent required by law.

16 ii. If the petitioner believes the protest contains material that should be
17 withheld, a statement advising the Chief Legal Counsel of this fact shall accompany the protest
18 submission.

19 E. Decision by the Director.

20 i. The Director, or a Hearing Officer designated by him or her, shall
21 have the exclusive authority to decide all protests.

22 ii. After submittal of a timely protest and prior to issuance of a written
23 decision to that protest, the petitioner shall be afforded an opportunity to discuss with the

1 Director the issues giving rise to the protest.

2 iii. Before agreeing to settle any protest by the award of costs, the Director
3 shall consult the Attorney General or legal counsel. The award of costs shall be allowed only to
4 compensate a petitioner for reasonable expenses incurred in preparation and submission of a bid
5 or proposal for which the petitioner was wrongfully denied a contract award. The costs which
6 are allowable shall be those which the petitioner is able to prove that are incurred in preparation
7 and submission of the bid or proposal in question, but exclude travel and production costs that
8 may result from participation in pre-bid conferences; attending on-site inspections, and
9 demonstrations or presentations made in responding to formal solicitations issued by the State. A
10 petitioner may not recover profit which it anticipates would have been made if the petitioner had
11 been awarded the major procurement contract. Attorney's fees associated with the filing and
12 prosecution of the protest are not recoverable.

13 iv. If the protest is not resolved by mutual agreement, the Director or
14 Hearing Officer shall issue a written decision within thirty (30) calendar days after a
15 protest has been filed. The decision shall include:

16 a. A brief description of the claim;
17 b. A reference to the pertinent contract provision;
18 c. A brief statement of the factual and legal issues;
19 d. A statement of the Director's or Hearing Officer's decision, with
20 supporting rationale and the remedial action or award, if any.

21 v. The Director or Hearing Officer shall furnish a copy of the decision to
22 the petitioner by certified mail, return receipt requested, or by any other method that provides
23 written evidence of delivery, such as hand delivery by courier, express mail or overnight

1 express courier.

2 vi. The time limit for decisions set forth in subsection (8)(E)(ii) may be
3 extended by the Director or Hearing Officer for good cause for a reasonable time not to
4 exceed thirty (30) additional calendar days. The Director or Hearing Officer shall notify the
5 petitioner in writing that the time for the issuance of a decision has been extended and the date
6 by which a decision will be issued.

7 vii. If the Director or Hearing Officer fails to issue a decision within the
8 time limits set forth in subsection (8)(E)(ii) or subsection (8)(E)(iv), the petitioner may
9 proceed as if the Director or Hearing Officer had issued an adverse decision.

10 viii. In lieu of a written decision, the Director may, in his or her sole
11 discretion, within thirty (30) calendar days after a protest is filed, give written notice to the
12 petitioner that the protest shall be resolved by a hearing conducted by the Director or Hearing
13 Officer pursuant to the procedures for hearing set forth in subsection (8)(F).
14 Notwithstanding the foregoing, the Commission may at any time on its own motion direct that a
15 protest be resolved by a hearing conducted by the Director or Hearing Officer pursuant to the
16 procedures for hearing set forth in subsection (8)(F).

17 ix. Nothing in this subsection (8)(E) shall prohibit a contractor who is also
18 an aggrieved person or petitioner from submitting an invoice to the Commission for
19 final payment after the work is completed and accepted.

20 x. Pending claims shall not delay payment for undisputed amounts
21 from the Commission to a contractor who is also an aggrieved person or petitioner.

22 F. Hearing Procedures.

23 i. All hearings conducted under these Rules shall be conducted by

1 the Director or by a Hearing Officer designated by the Director. The decision as to
2 whether the Director or a Hearing Officer will conduct the hearing shall be in the sole
3 discretion of the Director. The Hearing Officer's actions, decisions, and orders shall be
4 deemed to be on behalf of the Director and effective as though taken by the Director,
5 subject to the appeals procedures as hereinafter provided.

6 ii. If the Director determines under subsection 8(E)(iii) that the protest will
7 be resolved after a hearing, the hearing shall be held within thirty (30) calendar days following
8 the Director's determination under subsection 8(E)(iii) to resolve a protest by this procedure for
9 a hearing. A notice which will set forth the time, date, and location of the hearing will be sent
10 to the party or parties at least seven (7) calendar days before the date set for such hearing.

11 iii. In connection with the hearing, the Director or Hearing Officer may:

12 a. Conduct the hearing in an informal manner without formal rules of
13 evidence or procedure;

14 b. Require each party to state, either orally or in writing, its
15 position concerning the factual and legal issues involved in the hearing;

16 c. Require each party to produce for examination those relevant
17 witnesses and documents under its control;

18 d. Rule on motions and other procedural items pending before him or
19 her, including without limitation the methods, scope and extent of discovery available to the
20 parties;

21 e. Regulate the course of the hearing and conduct of the participants,
22 including the imposition of reasonable time limits;

23 f. Establish time limits for submission of motions or memoranda;

1 g. Take official notice of any material fact not appearing in evidence
2 in the record, if the fact is among the traditional matters of which judicial notice can be taken;

3 h. Administer oaths or affirmations;

4 i. Issue subpoenas; and

5 j. Join any necessary parties to the hearing.

6 iv. The hearing shall be conducted before a court reporter. The
7 petitioner shall procure, at petitioner's own cost and on petitioner's own initiative, the
8 court reporting services (including the preparation of the transcript) for such hearing. The
9 original transcript of any such proceedings shall be submitted to the Director or
10 Hearing Officer as soon as the transcript is available, and in no event later than five (5)
11 calendar days following the conclusion of the hearing, and shall be made a part of the record.
12 The petitioner shall also submit a copy of the transcript to all other parties to the protest as soon
13 as the transcript is available.

14 v. Any party may appear and be represented with or without counsel at the
15 hearing.

16 vi. If a Hearing Officer conducts the hearing, he or she shall make a
17 written recommendation containing the Hearing Officer's ruling, in the form of a proposed
18 decision, to the Director, within thirty (30) calendar days after receiving an original transcript of
19 the hearing pursuant to subsection (8)(F)(iv). If a proposed decision is received by the
20 Director, he or she must render a decision in writing and deliver the decision to the parties
21 within thirty (30) calendar days after receiving the proposed decision from the Hearing Officer.

22 a. If the Director receives a recommendation in a proposed decision
23 from a Hearing Officer, he or she may:

1 1. Accept, modify, or reject the Hearing Officer's
2 recommendation in whole or in part;

3 2. Return the matter to the Hearing Officer with instruction;

4 3. Make any other appropriate disposition; or

5 4. Issue a no action response.

6 b. If the Director issues a no action response, then the
7 determination in the Proposed Decision of the Hearing Officer will be deemed to be
8 accepted by the Director.

9 vii. If the Director conducts the hearing, he or she must render a
10 decision in writing and deliver the decision to the petitioner within thirty (30) calendar
11 days after receiving an original transcript of the hearing.

12 viii. The Director's decision and any proposed decision made by a Hearing
13 Officer shall be sent to the petitioner by certified mail, return receipt requested, or any other
14 method by which a written business record of delivery is kept, such as hand delivery by
15 courier, express mail or overnight express courier.

16 G. Procedure for filing an appeal to the Commission.

17 i. A petitioner may appeal a decision of the Director or Hearing Officer
18 to the Commission. Any appeal from a decision of the Director or Hearing Officer must be filed
19 with the Commission within five (5) business days after receipt of such decision.

20 ii. Any appeal shall be filed by delivery by hand or courier, to the Director
21 with a copy to the Chief Legal Counsel of the Commission at the headquarters of the
22 Commission. An appeal so delivered will be timely filed only if received by the Commission
23 during its normal business hours on or before the fifth (5th) business day prescribed by

subsection (8)(G)(i).

iii. An appeal must be in writing and shall contain the following:

a. Copy of the decision of the Director or Hearing Officer;

b. A copy of the transcript of any hearing; and

c. The basis for the precise factual or legal error in the decision of the Director or Hearing Officer from which the appeal is taken.

iv. 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.

v. Any interested party may file a written brief stating its position on the appeal within five (5) business days after receipt of such notice.

H. Commission's Decision.

i. The Commission, or a committee of the Commission, 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, may, in its sole discretion: (a) conduct its own review or investigation; (b) conduct a de novo review in whole or in part; or (c) allow oral argument, in the manner and under procedures that the Commission or its committee shall deem appropriate under the circumstances.

ii. 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 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.

I. 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.

J. Exclusive Remedy.

These Rules provide the exclusive procedure for asserting a claim against the Commission arising out of or relating to any matter related to the procurement process for any major procurement contract. Neither an aggrieved person, petitioner, nor any other interested party has a right to any remedy against the Commission 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.