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**TITLE 65 STATE LOTTERY COMMISSION**

**Emergency Rule**  
LSA Document #11-82(E)

**DIGEST**

Amends [65 IAC 2-1-4](#), [65 IAC 2-1-5](#), [65 IAC 2-1-7](#), [65 IAC 2-1-9](#), and [65 IAC 2-1-12](#) and adds [65 IAC 2-1-21](#) regarding the commission's procurement processes and vendor contracts. Repeals [65 IAC 2-1-6](#), [65 IAC 2-1-14](#), [65 IAC 2-1-17](#), [65 IAC 2-1-19](#), [65 IAC 2-5](#), and [65 IAC 2.5](#). Effective February 11, 2011.

[65 IAC 2-1-4](#); [65 IAC 2-1-5](#); [65 IAC 2-1-6](#); [65 IAC 2-1-7](#); [65 IAC 2-1-9](#); [65 IAC 2-1-12](#); [65 IAC 2-1-14](#); [65 IAC 2-1-17](#); [65 IAC 2-1-19](#); [65 IAC 2-1-21](#); [65 IAC 2-5](#); [65 IAC 2.5](#)

SECTION 1. [65 IAC 2-1-4](#) IS AMENDED TO READ AS FOLLOWS:

**[65 IAC 2-1-4](#) Procurement methods**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 4. The director or the director's designee shall procure goods or services through use of one (1) of the following procurement methods or any combination thereof:

- (1) ~~Sealed Invitation to bid. (either one or two step process).~~
- (2) Request for proposals.
- (3) Special procurement.
- (4) Small purchase.
- (5) State procurement.
- (6) Sole source procurement.
- (7) Any other method or process which is approved by the director pursuant to [65 IAC 2-4-1](#).
- (8) Any other method or process which is approved by the commission for a specific contract, or series of contracts, for goods or services.

*(State Lottery Commission; [65 IAC 2-1-4](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2293; emergency rule filed Dec 9, 1996, 4:00 p.m.: 20 IR 962; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Feb 11, 2011, 2:41 p.m.: [20110216-IR-065110082ERA](#))*

SECTION 2. [65 IAC 2-1-5](#) IS AMENDED TO READ AS FOLLOWS:

**[65 IAC 2-1-5](#) Invitation to bid**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 5. (a) The procedure in this section shall be followed in awarding contracts by ~~sealed bids~~ **invitation to bid** as follows:

- (1) An invitation ~~for bids to bid~~ shall be issued and must include the following:
  - (A) ~~Purchase~~ **A description of the goods and services to be purchased, including the time and place for delivery of the goods and services.**
  - (B) All contractual terms and conditions applicable to the procurement.
  - (C) ~~A statement of the evaluation criteria to be used including criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.~~ **to determine the winning bid.**
  - (D) ~~The date and time and place for opening of by which bids must be submitted to the commission to be considered.~~
  - (E) ~~Statement concerning whether bid must be accompanied by certified check or other evidence of financial responsibility, which may be imposed in accordance with this title.~~
- (2) Public notice shall be given in the manner required by section 12 of this rule.
- (3) ~~Bids shall be opened publicly at the time and place designated in the invitation for bids or such other time~~

and place as may be announced no later than the originally designated time.

(4) Bids shall be:

(A) unconditionally accepted without alteration or correction, except as provided in subsections (e) through (g); and

(B) evaluated based on requirements set forth in the invitation for bids.

(5) A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids and offers the best value to the commission based upon the stated evaluation criteria as determined by the purchasing agent.

(b) The following information must be subject to public inspection after contract award:

(1) Name of the bidder.

(2) Amount of each bid.

(3) Other information required by this title.

(c) Those criteria that will affect the bid price and be considered in the evaluation for an award must be objectively measurable, such as discounts, transportation costs, and total or life cycle costs except that ten percent (10%) of the stated evaluation criteria may be subjective considerations of the type described in section 2 of this rule.

(d) The **(b) Bids shall be evaluated based only on the** criteria that may be used in bid evaluation are those specified **set forth** in the invitation for bids. **to bid.**

(e) **(c)** Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such mistakes, shall be permitted at the discretion of the director. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the commission or fair competition shall not be permitted.

(f) **(d)** If a bidder inserts contract terms or bids on items not specified in the invitation for bids, the director shall treat the additional material as a proposal for addition to the contract and may:

(1) find the bidder to be nonresponsive;

(2) permit the bidder to withdraw the proposed additions to the contract in order to meet the requirements and criteria set forth in the invitation for bids; or

(3) accept any of the proposed additions to the contract ~~subject to subsection (g).~~ ~~(g) The director may not accept proposed additions to the contract that are~~ **not** clearly prejudicial to fair competition.

**(e) A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids and offers the best value to the commission as determined by the director or the director's designee.**

**(f) The director may utilize a two (2) step bid process by requiring that bidders initially submit unpriced offers in response to an invitation to bid. Submission of priced bids may then be restricted to only those bidders whose offer qualified under the criteria set forth in the original invitation.**

*(State Lottery Commission; [65 IAC 2-1-5](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2293; emergency rule filed Nov 20, 1989, 10:05 a.m.: 13 IR 679; emergency rule filed Dec 9, 1996, 4:00 p.m.: 20 IR 962; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Feb 11, 2011, 2:41 p.m.: [20110216-IR-065110082ERA](#))*

SECTION 3. [65 IAC 2-1-7](#) IS AMENDED TO READ AS FOLLOWS:

### **[65 IAC 2-1-7](#) Request for proposals**

**Authority:** [IC 4-30-3-7](#); [IC 4-30-3-9](#)

**Affected:** [IC 4-30-3-16](#); [IC 4-30-8-2](#)

Sec. 7. (a) The director may award a contract using the procedure in this section.

(b) Proposals shall be solicited through a request for proposals, which must include the following:

~~(1) Factors or criteria that will be used in evaluating the proposals.~~

**(1) A description of the fundamental qualities of the goods and services being sought.**

~~(2) General~~ **A statement concerning the criteria that will be used to determine the winning proposal and relative importance of price and the other evaluation factors.**

~~(3) Statement concerning whether the proposal must be accompanied by certified check or other evidence of financial responsibility.~~

~~(4) Statement concerning whether discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.~~

**(3) The date and time by which proposals must be submitted to the commission to be considered.**

(c) Public notice shall be given in the manner required by section 12 of this rule.

~~(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.~~

~~(e) A register of proposals shall be prepared and must be open for public inspection after contract award. The register of proposals must contain the following:~~

~~(1) Copy of the request for proposals.~~

~~(2) Listing of all proposals received, which may include the following:~~

~~(A) Names and addresses of all offerors.~~

~~(B) Dollar amount of each offer.~~

~~(C) Name of successful offeror and dollar amount of offer.~~

~~(3) General basis on which award was made.~~

~~(4) Entire contents of the contract file except for proprietary information, which may have been included with an offer, such as trade secrets, manufacturing processes, and financial information which was not required to be made available for public inspection by terms of the request for proposal itself.~~

~~(f)~~ **(d)** If provided in the request for proposals or determined by the director to be desirable, discussions may be conducted with responsible offerors, who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements or correcting errors or omissions in the proposal.

~~(g)~~ **(e)** Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the state, taking into consideration price and other evaluation factors set forth in the request for proposals.

~~(h)~~ **(f)** Offerors determined to be reasonably susceptible of being selected for award must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals. ~~In conducting discussions, there must be no disclosure of any information derived from proposals submitted by competing offerors.~~

~~(i)~~ **(g)** The only factors or criteria that may be used in the evaluation of proposals are those specified in the request for proposals.

*(State Lottery Commission; [65 IAC 2-1-7](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2294; emergency rule filed Dec 9, 1996, 4:00 p.m.: 20 IR 963; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Feb 11, 2011, 2:41 p.m.: [20110216-IR-065110082ERA](#))*

SECTION 4. [65 IAC 2-1-9](#) IS AMENDED TO READ AS FOLLOWS:

#### **[65 IAC 2-1-9](#) Small purchases**

Authority: [IC 4-30-3-7](#); [IC 4-30-3-9](#)

Affected: [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 9. A contract in an amount which does not exceed ~~two three~~ hundred thousand dollars (~~\$200,000~~) (**\$300,000**) may be made under any practice or procedure as may be considered desirable by the director, provided that, when practicable, more than one (1) price quote is obtained for any procurement valued in excess of ~~fifty one hundred~~ thousand dollars (~~\$50,000~~) (**\$100,000**). If a series of contracts awarded under this section for a single classification of goods or services are awarded to one (1) vendor and such contracts are all awarded within a period of six (6) months or less and the total contract price on such series of contracts exceeds ~~two four~~ hundred ~~fifty~~ thousand dollars (~~\$250,000~~) (**\$400,000**), then any of the contracts in such series which would cause the total contract price to be in excess of ~~two four~~ hundred ~~fifty~~ thousand dollars (~~\$250,000~~) (**\$400,000**) shall not be deemed to be a small purchase qualifying under this section.

(State Lottery Commission; [65 IAC 2-1-9](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2295; emergency rule filed Sep 5, 1989, 3:20 p.m.: 13 IR 92; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 26, 2007, 11:03 a.m.: [20070808-IR-065070473ERA](#); readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Feb 11, 2011, 2:41 p.m.: [20110216-IR-065110082ERA](#))

SECTION 5. [65 IAC 2-1-12](#) IS AMENDED TO READ AS FOLLOWS:

**[65 IAC 2-1-12](#) Manner of giving notice**

Authority: [IC 4-30-3-7](#); [IC 4-30-3-9](#)

Affected: [IC 4-30-3-16](#); [IC 4-30-8](#)

Sec. 12. (a) Whenever public notice is required by this rule, the notice shall be given in the manner prescribed by this section.

(b) If the ultimate expenditure involved in a procurement is estimated by the director, or the director's designee, to exceed three hundred thousand dollars (\$300,000), a notice shall be published at least once.

(c) The director, or the director's designee, may provide for publication of additional notices, even if no publication is required by this subsection. Whenever publication of notice is required by this section, the notice shall be published at least in one (1) newspaper of general circulation in Marion County, Indiana. If any of the services or supplies being procured are for a specific use located outside Marion County, Indiana, the notice may also be published in one (1) or more newspapers of general circulation in the area in which the services or supplies are to be used. The director, or the director's designee, may designate additional newspapers for the publication of notice according to the nature of the procurement.

~~(d) In addition to the publication requirements of this section, the director, or the director's designee, shall give notice in the following manner whenever the ultimate expenditure involved in a procurement is estimated by the director to exceed twenty five thousand dollars (\$25,000):~~

~~(1) (d) The director, or the director's designee, may send notices, invitations to bid, requests to bid, requests for offers, or requests for proposals by mail to prospective bidders or offerors known to the director, or the director's designee, to be reasonably susceptible~~ **disposed to award of the contract. bid on a procurement.** However, failure to give notice to a particular bidder or offeror does not invalidate a procurement under this rule.

~~(2) The director, or the director's designee, may post notices on a public bulletin board in the director's office.~~

(State Lottery Commission; [65 IAC 2-1-12](#); emergency rule filed Jul 20, 1989, 4:10 p.m.: 12 IR 2295; emergency rule filed Dec 9, 1996, 4:00 p.m.: 20 IR 965; readopted filed Nov 30, 2001, 11:02 a.m.: 25 IR 1268; emergency rule filed Jul 26, 2007, 11:03 a.m.: [20070808-IR-065070473ERA](#); readopted filed Nov 14, 2007, 3:02 p.m.: [20071212-IR-065070656RFA](#); emergency rule filed Feb 11, 2011, 2:41 p.m.: [20110216-IR-065110082ERA](#))

SECTION 6. [65 IAC 2-1-21](#) IS ADDED TO READ AS FOLLOWS:

**[65 IAC 2-1-21](#) Penalty for late payments**

Authority: [IC 4-30-3-7](#); [IC 4-30-3-9](#)

Affected: [IC 4-30-3-16](#); [IC 4-30-8](#)

**Sec. 21. (a) Any contract to which the commission is a party shall not require a late payment penalty at a rate in excess of one percent (1%) per month whenever the commission fails to make timely payment.**

**(b) For the purposes of this section, payment is timely if a check or payment is mailed or delivered on the date specified for the amount specified in the applicable contract documents, or if no date is specified, within thirty-five (35) days receipt of a properly completed claim or invoice.**

*(State Lottery Commission; [65 IAC 2-1-21](#); emergency rule filed Feb 11, 2011, 2:41 p.m.:  
[20110216-IR-065110082ERA](#))*

SECTION 7. THE FOLLOWING ARE REPEALED: [65 IAC 2-1-6](#); [65 IAC 2-1-14](#); [65 IAC 2-1-17](#); [65 IAC 2-1-19](#); [65 IAC 2-5](#) [[65 IAC 2-5-1](#) through [65 IAC 2-5-12](#) and [65 IAC 2-5-13.1](#)]; [65 IAC 2.5](#).

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