

## Article 6.

### Lottery Potential Contractors and Lottery Contractors.

#### **§ 18C-150. Procurements.**

The Commission shall be exempt from Article 3 of Chapter 143 of the General Statutes but may use the services of the Department of Administration in procuring goods and services for the Commission. However, the Commission shall include in all contracts to be awarded by the Commission under this section a standard clause which provides that the State Auditor and internal auditors of the Commission may audit the records of the contractor during and after the term of the contract to verify accounts and data affecting fees and performance. The Commission shall not award a cost plus percentage of cost contract for any purpose. For purposes of this provision, "cost plus percentage of cost contract" is defined as a contract under which the contractor receives payment for indeterminate costs plus a stated percentage or amount of profit based upon such costs. This provision shall not apply to Commission contracts that require costs to be predetermined and approved by the Commission and a total not to exceed the amount specified in each contract to be paid to the contractor. (2005-344, s. 1; 2010-194, s. 1; 2011-326, s. 15(a).)

#### **§ 18C-151. Contracts.**

(a) Except as otherwise specifically provided in this subsection for contracts for the purchase of services, apparatus, supplies, materials, or equipment, Article 8 of Chapter 143 of the General Statutes, including the provisions relating to minority participation goals, shall apply to contracts entered into by the Commission. If this subsection and Article 8 of Chapter 143 are in conflict, the provisions of this subsection shall control. In recognition of the particularly sensitive nature of the Lottery and the competence, quality of product, experience, and timeliness, fairness, and integrity in the operation and administration of the Lottery and maximization of the objective of raising revenues, a contract for the purchase of services, apparatus, supplies, materials, or equipment requiring an estimated aggregate expenditure of three hundred thousand dollars (\$300,000) or more may be awarded by the Commission only after the following have occurred:

- (1) The Commission has invited proposals to be submitted by advertisement by electronic means or advertisement in a newspaper having general circulation in the State of North Carolina and containing the following information:
  - a. The time and place where a complete description of the services, apparatus, supplies, materials, or equipment may be had.
  - b. The time and place for opening of the proposals.
  - c. A statement reserving to the Commission the right to reject any or all proposals.
- (2) Proposals may be rejected for any reason determined by the Commission to be in the best interest of the Lottery.
- (3) All proposals shall be accompanied by a bond or letter of credit in an amount equal to not less than five percent (5%) of the proposal and the fee to cover the cost of the criminal record check conducted under G.S. 143B-935.
- (4) The Commission has complied with the minority participation goals of G.S. 143-128.2 and G.S. 143-128.3.
- (5) The Commission may not award a contract to a lottery potential contractor who has been convicted of a felony or any gambling offense in any state or federal court of the United States within 10 years of entering into the contract, or employs officers and directors who have been convicted of a felony or any

gambling offense in any state or federal court of the United States within 10 years of entering into the contract.

- (6) The Commission shall investigate and compare the overall business practices, ethical reputation, criminal record, civil litigation, competence, integrity, background, and regulatory compliance record of lottery potential contractors.
- (7) The Commission may engage an independent firm experienced in evaluating government procurement proposals to aid in evaluating proposals for a major procurement.
- (8) The Commission shall award the contract to the responsible lottery potential contractor or lottery supplier who submits the best proposal that maximizes the benefits to the State.

(b) Upon the completion of the bidding process, a contract may be awarded to a lottery contractor or lottery supplier with whom the Commission has previously contracted for the same purposes.

(c) Before a contract is awarded, the Director shall conduct a thorough background investigation of all of the following:

- (1) The potential contractor to whom the contract is to be awarded.
- (2) Any parent or subsidiary corporation of the potential contractor to whom the contract is to be awarded.
- (3) All shareholders with a five percent (5%) or more interest in the potential contractor or parent or subsidiary corporation of the potential contractor to whom the contract is to be awarded. For purposes of this subdivision, "shareholders" means any natural person or those individuals with capabilities to make operating decisions for the potential contractor or parent or subsidiary corporation of the potential contractor to whom the contract is to be awarded.
- (4) All officers and directors of the potential contractor or parent or subsidiary corporation of the potential contractor to whom the contract is to be awarded.

(d) The Commission may terminate the contract, without penalty, of a lottery contractor that fails to comply with the Commission's instruction to implement the recommendations of the State Auditor or an independent auditor in an audit conducted of Lottery security or operations.

(e) After entering into a contract with a lottery contractor, the Commission shall require the lottery contractor to periodically update the information required to be disclosed under G.S. 18C-152(c). Any contract with a lottery contractor who does not periodically update the required disclosures may be terminated by the Commission.

(f) No lottery contractor, potential contractor, or lottery supplier may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding one hundred dollars (\$100.00) in any calendar year, to the Director, any member or employee of the corporation, or a member of the immediate family residing in the same household as any of these individuals. (2005-344, s. 1; 2005-276, s. 31.1(p); 2006-259, s. 8(d); 2009-357, s. 3; 2009-570, s. 32(d); 2012-194, s. 64; 2013-360, s. 6.8; 2014-100, s. 17.1(ff).)

#### **§ 18C-152. Investigation of lottery potential contractors.**

(a) Lottery potential contractors shall cooperate with the Director in completing any investigation required under G.S. 18C-151(c), including any appropriate investigation authorizations needed to facilitate these investigations.

(b) The Commission shall adopt rules that provide for disclosures of information required to be disclosed under subsection (c) of this section by lottery potential contractors to ensure that the potential contractors provide all the information necessary to allow for a full and complete evaluation by the Director and Commission of the competence, integrity, background, and character of the lottery potential contractors. Information shall be disclosed for the following:

- (1) If the potential contractor is a corporation, the officers, directors, and each stockholder in that corporation; however, in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially five percent (5%) or more of the securities need be disclosed.
- (2) If the potential contractor is a trust, the trustee and all persons entitled to receive income or benefits from the trust.
- (3) If the potential contractor is an association, the members, officers, and directors.
- (4) If the potential contractor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.
- (5) For any potential contractor, any person who can exercise control or authority, or both, on behalf of the potential contractor. For any potential contractor, any person who can exercise control or authority, or both, on behalf of the potential contractor.

(c) For purposes of this subsection, the term "potential contractor" shall include the potential contractor and each of the persons applicable under subsection (b) of this section. At a minimum, the potential contractor required to disclose information for a thorough background investigation under G.S. 18C-151 shall do all of the following:

- (1) Disclose the potential contractor's name, phone number, and address.
- (2) Disclose all the states and jurisdictions in which the potential contractor does business and the nature of the business for each state or jurisdiction.
- (3) Disclose all the states and jurisdictions in which the potential contractor has contracts to supply gaming goods or services, including lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.
- (4) Disclose all the states and jurisdictions in which the potential contractor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license or permit of any kind or had fines or penalties assessed on a license, permit, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license, permit, or contract has been revoked or has not been renewed or any lottery or gaming license, permit, or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive that license shall be disclosed.
- (5) Disclose the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the potential contractor for any felony or any other criminal offense other than a minor traffic violation.
- (6) Disclose the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the potential contractor.

- (7) If at least twenty-five percent (25%) of the cost of a potential contractor's contract is subcontracted, the potential contractor shall disclose all of the information required by this section for the subcontractor as if the subcontractor were itself a potential contractor.
  - (8) Make any additional disclosures and information the Commission determines to be appropriate for the contract involved.
- (d) All documents compiled by the Director in conducting the investigation of the lottery potential contractors shall be held as confidential information under Chapter 132 of the General Statutes. (2005-344, s. 1; 2005-276, s. 31.1(q); 2009-357, s. 4.)

**§§ 18C-153 through 18C-159:** Reserved for future codification purposes.