Arkansas Lottery Commission
Rules for Claims in Contract or Tort

Preface: The purpose of these rules is to proscribe the process concerning the consideration of claims in contract or in tort against the Arkansas Lottery Commission (ALC). These rules apply to all contracts entered into with the ALC and are issued pursuant to the authority vested in the ALC under Ark. Code Ann. §§ 23-115-207 and 23-115-208.

Section 1. Definitions.

1.1 "Act" means the Arkansas Scholarship Lottery Act.

1.2 "Contract" means all types of state agreements, regardless of what they may be called, for the purchase of commodities and services and for the disposal of surplus commodities and services not otherwise exempt.

(a) "Contract" includes awards and notices of award, contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type, contracts providing for the issuance of job or task orders, leases, letter contracts, and purchase orders.

(b) "Contract" also includes supplemental agreements with respect to any of these items.

1.3 "Contractor" means any person having a contract with the ALC.

1.4 "Commissioners" means the members appointed to the Arkansas Lottery Commission by virtue of Arkansas Code Ann. § 23-115-202.

1.5 "Director" means the Director of the Arkansas Lottery Commission.

1.6 "Person" means any individual, corporation, partnership, unincorporated association, or other legal entity.

1.7 "Negotiation" means a consensual bargaining process in which the parties attempt to resolve a claim.

1.8 "Tort" means a claim arising in tort with respect to which:

(a) The claimant is an organization; or

(b) The claimant is an individual and the claim:

(1) Arose in the course of the claimant's business or profession; and

(2) Does not include damages arising out of personal injury to or the death of an individual.

Section 2. Policies.

A. These rules do not waive the ALC's sovereign immunity to suit or liability.

B. These rules apply to controversies between the ALC and a contractor which arise under or by virtue of a contract between them. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modifications or rescission.

Section 3. Pre-Hearing Negotiations.

3.1 Procedure.

A. A contractor (hereinafter "claimant") asserting a claim of breach of contract or an action in tort against the ALC must file notice of the claim as provided by this section.

B. The notice of claim shall:

1. Be in writing and signed by the aggrieved party or the aggrieved party's authorized representative;

2. Be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the Director of the ALC, and

3. State in detail:

a. The nature of the alleged breach of contract or tortuous conduct, including the date of the event that the aggrieved party asserts as the basis of the claim and if applicable, each contractual provision allegedly breached;

b. A description of damages that resulted from the breach or conduct, including the amount and method used to calculate those damages;

c. the legal theory of recovery, i.e., breach of contract, including the causal relationship between the alleged breach and the damages claimed.

d. If the claimant is represented by an attorney, each notice of claim, pleading or paper of such claimant shall be singed by such attorney whose address and phone number shall be stated. The signature of an attorney constitutes a certificate by the attorney that he or she has read the pleading, document or paper; that he or she is authorized to file it; and that to the best of his or her knowledge, information and belief there is good ground for it; and that, with respect to a notice of claim, he or she files it with the distinct knowledge and specific consent of the claimant.

e. A notice of claim, pleading or paper not signed by an attorney must be signed by the claimant with the address and phone number stated. Any pleading, notice of claim or claim filed on behalf of a corporation or other organization must be verified by an executive officer of such corporation or organization.

f. In any notice of claim when, upon inspection, the Director is of the opinion that the notice of claim, document or pleading tendered for filing does not comply with these rules, does not sufficiently set forth required information or is otherwise insufficient, the Director may decline to accept the notice of claim, document or paper and may return it unfiled, or the Director may accept it for filing and advise the person tendering it of the deficiency and require the deficiency be corrected. Simple "receipt" in the Commission office in no way implies an attempted claim has been "filed" with the Commission. The decision to accept or decline for filing an attempted, but deficient, claim is solely that of the Director.

C. In addition to the mandatory contents of the notice of claim as required by subsection (c) of this section, the aggrieved party may submit supporting documentation or other tangible evidence to facilitate the ALC's evaluation of the aggrieved party's claim.

D. If the claimant is an executor, administrator, guardian, or other representative acting under judicial appointment, a duly certified copy of the record of appointment shall be filed with the notice of claim.

E. The notice of claim shall be delivered no later than one hundred and eighty (180) days after the date of the event that the aggrieved party asserts as the basis of the claim.

G. Failure to assert a claim in a timely manner will result in a waiver of those issues.

3.2 Timetable.

A. Following receipt of a notice of claim, the Director shall review the claim(s) and initiate negotiations with the claimant to attempt to resolve the claim(s).

B. The parties shall begin negotiations within a reasonable period of time, not to exceed sixty (60) days following the later of:

1. The date of termination of the contract;

2. The completion date, or substantial completion date in the case of construction projects, in the original contract; or

3. The date the ALC receives the claimant's notice of claim.

C. The ALC may delay negotiations until after the 60th day after the date of the event giving rise to the claim of breach of contract by:

1. Delivering written notice to the Claimant that the commencement of negotiations will be delayed; and

2. Delivering written notice to the Claimant when the ALC is ready to begin negotiations.

D. The parties may conduct negotiations according to an agreed schedule as long as they begin negotiations no later than the deadlines set forth in subsections (B) or (C) of this section, whichever is applicable.

E. The parties shall complete the negotiations that are required by this Section as a prerequisite to a claimant's request for a dispute hearing no later than ninety (90) days after the ALC receives notice of a claim.

F. The parties may agree in writing to extend the time for negotiations on or before the 60th day after the ALC receives notice of the claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a date certain. The parties may enter into a series of written extension agreements that comply with the requirements of this section.

3.3 Conduct of Negotiation.

A. A negotiation under this Section may be conducted by any method, technique, or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by

telephone, by correspondence, by video conference, or by any other method that permits the parties to identify their respective positions, discuss their respective differences, confer with their respective advisers, exchange offers of settlement, and settle.

B. The parties may, if the ALC agrees, conduct negotiations with the assistance of one or more neutral third parties.

C. To facilitate the meaningful evaluation and negotiation of the claim(s) the parties may exchange relevant documents that support their respective claims, defenses, counterclaims or positions.

D. Unless the parties agree otherwise, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, the costs of attorney's fees, consultant's fees and expert's fees.

3.4 Settlement Agreement.

A. A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

B. To be enforceable, a settlement agreement must be in writing and signed by representatives of the aggrieved party and the ALC who have authority to bind each respective party.

C. A partial settlement does not waive a party's rights as to the parts of the claims or counterclaims that are not resolved.

D. The claimant and the Director must certify in writing if they do not reach a settlement. Such a certification will serve as an automatic request to the Director for a decision on the merits of the Claim.

3.5 Prerequisites to Any Other Remedy. The procedures contained in Section 3 are exclusive and required prerequisites any other remedy.

Section 4. Dispute Hearing.

A. If the Director receives an automatic request for a decision pursuant to Section 3 of these rules, the Director shall issue a written decision within ten (10) business days.

1. The decision shall state the reasons for the action taken.

2. A copy of the decision shall be mailed by overnight mail or otherwise furnished immediately to the aggrieved party.

B. A Claimant aggrieved by a decision of the Director may request a hearing before the Commissioners within fifteen (15) days after the written decision is issued by the Director. The Claimant must be granted a hearing before the Commissioners or their designee as soon as practicable but not later than sixty (60) days after the decision of the Director.

C. The Commissioners, pursuant to the power granted to them in Arkansas Code Ann. §23-115-205, may authorize its Legal Committee to hear and dispose of administrative appeals from the Director as the Committee deems appropriate, including, but not limited to, designating one of its members to consider an act on an appeal on behalf of the Commissioners. Therefore, references herein to "Commissioners" shall be read to take this delegation of authority into account.

D. All dispute hearings shall be open to the public and the press.

E. The hearing need not be conducted or controlled by either the Arkansas Rules of Evidence or the Arkansas Rules of Civil Procedure. The hearing will be conducted to the extent and fashion deemed appropriate by the Commissioners.

F. All hearings will be recorded by a certified court reporter. If a claimant desires the testimony be transcribed into a transcript or files an appeal, the claimant shall order directly from the reporter an original and one copy, both of which are the financial responsibility of the complainant ordering the transcript. The original transcript shall be filed by the reporter directly with the ALC.

G. Based upon the evidence presented at the dispute hearing, the Commissioners may reverse a decision of the Director if the appellant proves the decision to be:

1. In violation of Constitutional or statutory provisions;

2. In excess of the statutory authority of the Director;

3. In excess of the authority granted to the Director by the Commissioners;

4. Made upon unlawful procedure;

5. Affected by other error of law;

6. Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

7. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

H. The Commissioners may remand an appeal to the Director for further consideration or investigation. This decision of the Director shall be considered final and appealable only to the Arkansas Claims Commission.

I. The Commissioners' determination must be in writing and must:

1. Be sent by United States Postal Service certified mail, a commercial overnight delivery service or hand delivered to the appellant; and

2. Explain the basis for the Commissioners' determination.

Section 5. Appeals.

5.1 Generally. A claimant may appeal the decision of the Commissioners of the ALC to the Arkansas Claims Commission, pursuant to Arkansas Code. Ann. §§ 23-115-208 and 19-10-201. The claimant may:

(a) Within forty (40) days after the decision is rendered, file with the Arkansas State Claims Commission a notice of appeal of the decision of the ALC;

(b) Within forty (40) days after the decision is rendered, file with the ALC a motion for reconsideration requesting the ALC to reconsider its decision; and

(c) Within twenty (20) days after the ALC's reconsideration or denial of the motion for reconsideration, file with the Arkansas State Claims Commission a notice of appeal of the decision of the ALC.

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