

## **POLICIES MANUAL**

### **CHAPTER 1 – PROCUREMENT POLICIES**

#### **CHAPTER 1.3 EQUAL BUSINESS OPPORTUNITY PROGRAM**

##### **1.3.1 INTRODUCTION**

It is the policy and intent of the Tennessee Education Lottery Corporation (the “TEL”) to encourage participation by Minority-Owned Businesses. The Tennessee Education Lottery Implementation Law, Tenn. Code Ann. § 4-51-101 et. seq., which outlines the operations of the Tennessee Education Lottery Corporation, directs the Board of Directors of the TEL to adopt a plan that achieves to the greatest extent possible a level of participation by Minority-Owned Businesses taking into account the total number of all Retailers and Vendors, including any subcontractors. Pursuant to the statute, the TEL is authorized and directed to undertake training programs and other educational activities to enable Minority-Owned Businesses to compete for contracts on an equal basis. In order to achieve maximum minority participation, the TEL has established this Equal Business Opportunity Program ("EBO Program").

##### **1.3.2 DEFINITIONS**

The following terms, as utilized in this context, are defined as follows:

“Act” means the Tennessee Education Lottery Implementation Law.

“Bidder” or “Proposer” means any person, firm, partnership, corporation, association, or joint venture seeking to be awarded a contract or subcontract to provide goods, commodities or services.

“Board” means the board of directors of the Tennessee Education Lottery Corporation.

“Certification” or “Certified” means a Minority-Owned Businesses as defined in Tenn. Code Ann. § 4-51-102(13) that has received the designation of or is designated as certified by the United States Small Business Administration’s Program, or a recognized Uniform Certification Agency, or by any one of the following: an existing Regional Minority Purchasing Council, State, City, Municipality, Airport Authority, State or Federal Departments of Transportation, Transit Authorities or any agency or instrumentality of State or Federal government; or their minority owned status has been verified by the TEL or the Governor’s Office of Diversity Business Enterprises. This certification shall be and constitute the Minority-Owned Businesses certification for the purposes of the EBO Program, unless modified by the TEL.

“Commercially Useful Function” means being responsible for the management and performance of a distinct element of the total work.

“Control” means exercising the power to make policy decisions.

“Corporation” means the Tennessee Education Lottery Corporation.

“Disability” means a physical impairment that, in the written opinion of a person’s licensed physician, substantially limits one (1) or more of the major life activities of such person and is expected to continue to exist for more than five (5) years. As used in this subdivision, “major life activities” means caring for oneself and performing manual tasks, which includes writing, walking, seeing, hearing, speaking, and breathing. Tenn. Code Ann. § 4-26-102.

“Efforts to Achieve Minority-Owned Business Participation” means that the Vendor will solicit Minority-Owned Businesses Participation with respect to the procurement and will consider all sub-bids and quotations received from Minority-Owned Businesses.

“Joint Venture” means a business association of two or more parties, with each party possessing some business experience in the work to be performed, combining their labor and resources in a single defined procurement. The undertaking involves a common interest of purpose, designed to share risks and expertise, with each party required to perform a commercially useful function. The profits and losses are shared equally or in accordance with the terms of the contract between the parties.

“Lottery Vendor” or “Vendor” means a person who provides or proposes to provide goods or services to the corporation pursuant to a major procurement contract, but does not include an employee of the corporation, a retailer, or a state agency or instrumentality thereof. Such term does include a corporation whose shares are traded publicly and which is the parent company of the contracting party in a major procurement contract. Tenn. Code Ann. § 4-51-102(11).

“Major Procurement Contract” means any gaming product or service costing in excess of seventy-five thousand dollars (\$75,000) including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Tennessee lottery, but not including materials, supplies, equipment, and services, to the ordinary operation of a corporation. Tenn. Code Ann. § 4-51-102(12).

“Minority-Owned Business” means a business which is solely owned, or at least fifty-one percent (51%) of the assets or outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business and who is impeded from normal entry into the economic mainstream because of:

- A. Past practices of discrimination based on race, religion, ethnic background, or sex;
- B. A disability as defined in Tenn. Code Ann. § 4-26-102; or,
- C. Past practices of racial discrimination against African-Americans. Tenn. Code Ann. § 4-51-102 (13).

“Non-Major Procurement Contract” means: any gaming product or service contract costing less than seventy-five thousand dollars (\$75,000), including advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Tennessee lottery; and, materials, supplies, equipment and services common to the ordinary operations of a typical corporation without regard to the cost of the contract, including but not limited to consulting and personnel services, routine office products and supplies, real estate acquisitions and rentals, equipment and capital acquisitions and rentals and other non-gaming products and services not unique to the Tennessee lottery.

“Retailer” means a person or entity that sells lottery tickets or shares on behalf of the TEL pursuant to a contract.

“Unavailable” or Unavailability” means either that: (1) there are no Certified Minority-Owned Businesses providing the goods and/or services requested in the relevant market; or, (2) there are no Certified Minority-Owned Businesses in the relevant market.

### **1.3.3 PURPOSE AND SCOPE**

In accordance with the Act, the TEL will strive to maximize participation of Minority-Owned Businesses to achieve a minimum participation goal of fifteen percent (15%) through both prime and second tier business contracting opportunities. Tenn. Code Ann. §4-51-112(a). The overall objective of the TEL’s EBO Program is to ensure maximum minority involvement in the various business activities generated by the corporation. The TEL will vigorously encourage participation by Minority-Owned Businesses in all aspects of its business. The Minority Business Participation Committee of the Board shall monitor this EBO Program quarterly and in accordance with the Act, the Board shall report the results of the EBO Program to the General Assembly on an annual basis.

Through the EBO Program, the TEL will be involved in numerous outreach programs in the minority business community. In order to ensure the growth and viability of Minority-Owned Businesses over the long term, the TEL, as authorized and directed by the Act, will undertake training programs to assist Minority-Owned Businesses in acquiring the skills and training necessary to grow and compete for contracts on an equal basis. As part of this effort, the TEL will encourage joint ventures and mentorship programs. With its college internship program, to be sponsored in coordination with the TEL’s Major Procurement Vendors and aimed at students attending the historical black colleges and universities in Tennessee, the TEL will help train and facilitate the development of future business leaders in the minority community. The TEL will also place special emphasis on the recruitment, retention and growth of minority Retailers. The ultimate goal being to ensure that all Minority-Owned Businesses interested in contracting with or supplying goods and services to the TEL have the maximum opportunity to participate in all business activities which are paid for in whole or in part, with funds generated by the Corporation.

*Amended: 8/17/11*

### **1.3.4 IMPLEMENTATION AND ADMINISTRATION**

The Act authorizes and directs the TEL to adopt regulations, policies and procedures as necessary to carry out and implement its powers and duties. The Act expresses the intent that the TEL shall encourage participation by Minority-Owned Businesses and adopt rules and regulations which achieve to the greatest extent possible a level of participation by Minority-Owned Businesses taking into account the total number of all Retailers and Vendors. Therefore, the TEL will review each procurement request and seek opportunities for utilization of Minority-Owned Businesses.

**Major Procurement Process** The following procedures will be utilized during the Major Procurement Process:

**EBO language in all RFPs/ITBs** The TEL will insert language into each RFP/ITB describing the EBO Program to assure that all prospective Bidders/Proposers are aware of the requirement to make efforts to utilize Minority-Owned Businesses.

**Notification** The TEL will provide written notification to Vendors regarding: EBO Program procedures and required documentation; and upon request, provide a list of Minority-Owned Businesses who have expressed an interest in competing for the bid or in performing as a joint venture partner or subcontractor.

**Advertising** The TEL will publish all solicitations for Major Procurements on its web site, as well as the web site of the Governor's Office of Diversity Business Enterprises. The TEL may advertise these opportunities in both minority publications and non-minority-owned publications to the extent the TEL determine such advertisement is appropriate for the applicable procurement. The TEL will also provide e-mail notification to all businesses that have registered on its web site to receive automatic notification of all procurement opportunities. In addition to postings of RFPs/ITBs, as the need arises, the TEL may provide hard copies of the procurement opportunities to minority business organizations.

**Statutory Waiver of Bonding** Because of certain economic considerations, Minority-Owned Businesses may not be able financially to comply with the bonding, deposit of securities, or letter of credit requirements of the Act. In order to assure Minority-Owned Businesses participation in Major Procurement Contracts to the most feasible and practicable extent possible, the Chief Executive Officer of the TEL is authorized, when presented with information substantiating a financial hardship, to waive the bonding, deposit of securities, and letter of credit requirements of the Act for a period of five (5) years from the time that a Minority-Owned Business enters into a Major Procurement Contract. Tenn. Code Ann. § 4-51-114(a)(2). Any waiver request must be received and approved in advance of a bid award.

*Amended: 8/17/11*

### **Vendor's Responsibilities**

*Efforts to Achieve Minority-Owned Business Participation* All Vendors are required to make efforts to achieve maximum Minority-Owned Business participation when submitting a response to a RFP, bid, or negotiated proposal in response to a TEL Major Procurement opportunity. Such efforts should be documented on **EBO Form "A"**. Vendors are required to contact Minority-Owned Businesses and solicit quotes for goods and services. All responses to the Vendor's solicitation should be recorded and reported.

A Vendor is required to submit **EBO Form "B"** with its procurement package in order to identify all Minority-Owned Businesses they propose to utilize in providing the goods and services included in the Proposal. Vendors may only include a proposed provider of goods or services on **EBO Form "B"**, if the entity is a Certified Minority-Owned Business. Additionally, if such entity will provide services, Vendors may only list Minority-Owned Businesses on **EBO Form "B"** if the entity will perform a Commercially Useful Function. The successful Vendor will be required to **finalize** its list of Minority-Owned Businesses on **EBO Form "B1."** This will be incorporated into the contract and will become a contractual obligation of the successful Vendor. **EBO Form "B1"** shall not be changed or altered after contract execution without advance notice to the TEL for its approval. The successful Vendor is required to obtain the TEL's approval prior to changing any Minority-Owned Business listed on the form.

If a potential Vendor's efforts to obtain Minority-Owned Businesses participation are unsuccessful due to the unavailability of Minority-Owned Businesses, the Vendor will submit a statement of unavailability.

*Pre-Work Conference* Any Vendor who is the successful Bidder/Proposer shall be required to attend a conference with the TEL prior to beginning the work. The primary purpose of this conference is to review the project scope and review Minority-Owned Business participation as outlined in **EBO Form "B1"**. The TEL's Minority-Owned Business database will be made available by the compliance staff to assist Vendors in identifying Minority-Owned Businesses for subcontracting, joint ventures and partnering opportunities.

The Vendor must fully cooperate with the TEL in its post-contract award EBO Program compliance efforts. Any of the following reasons, individually or collectively, may result in the suspension from bidding, prohibition from contracting, or cancellation of contracts:

The failure to perform according to contract provisions relating to this EBO Program;  
and/or

Violation of, circumvention of or failure to comply with the EBO Program.

*Substitutions After Award* In order to make a substitution of a Minority-Owned Business after the award of contract, a Vendor must make a written request to the TEL. The TEL reserves the right to approve any substitution of a Minority-Owned Business. The Vendor must provide the TEL with a reasonable basis for the substitution in order for the substitution to be considered.

*Amended: 8/17/11*

### **Non-Major Procurement Contracts**

The TEL shall award Non-Major Procurement Contracts in accordance with the procedures established in Chapter 1.2, Non-Major Procurements, of the TEL's Policy Manual.

The TEL will strive to achieve a high level of participation by Tennessee based Minority-Owned Businesses in its Non-Major Procurement Contracts. The TEL will require each Bidder/Proposer to submit **EBO Form "C"** with its' procurement package.

EBO language in all RFPs/ITBs The TEL will insert language into each posted procurement document describing the EBO Program to assure that all prospective Bidders/Proposers are aware of the Corporation's efforts to utilize Minority-Owned Businesses.

## **1.3.5 TRAINING, EDUCATION AND SUPPORT**

*Amended: 8/17/11*

### **Internal Efforts**

- A. **Joint Ventures.** The Corporation will take active steps to encourage full participation of qualified and competitive Minority-Owned Businesses in all of its procurement activities. In the selection of any Vendor in the procurement of goods, commodities or services, significant Minority-Owned Business participation will be sought commensurate with the availability of such businesses in the relevant markets. Where there are no such businesses in the relevant markets, the TEL will encourage the establishment of joint ventures between and among Minority-Owned Businesses based in Tennessee with some limited experience in the areas being sought and businesses in other jurisdictions, that are currently providing or in the recent past provided goods and/or services to a lottery or Lottery Vendor that are similar in type, nature and scope to the services or products to be supplied to the TEL.
- B. **Internal Communication.** The TEL's policies and procedures will be subject to review and analysis at any time based on the experience of the staff, the needs of Minority-Owned Businesses, the opportunity to make the program more effective, or the success or failure of aspects of this EBO Program. Meetings will be held with all supervisory and management personnel so that the intent of this program and individual responsibilities are communicated. Care will be taken to ensure that the spirit and intent of the EBO Program will be understood and followed. The TEL will disseminate the EBO Program by its inclusion in its Policy Manual, discussions of minority participation at staff meetings, staff training on the EBO Program and implementation strategies.

In addition, the TEL will utilize the Diversity Business Enterprise Directory prepared by the Governor's Offices of Diversity Business Enterprises in helping

to ensure that all Certified Tennessee Minority-Owned Businesses are aware of the business opportunities available at the TEL.

*Amended: 8/17/11*

**External Efforts**

- A. **Partner with Governor’s Office of Diversity Business Enterprises and Other Organizations.** The TEL will work with the Governor’s Office of Diversity Business Enterprises as it develops joint venture, partnering and mentoring incubators and training workshops. In conjunction with minority business associations and supplier groups, as well as federal, local and state minority business assistance offices, the TEL will co-sponsor workshops to provide Minority-Owned Businesses with the opportunity to interact, build alliances and gain knowledge of new business opportunities. Furthermore, the TEL will utilize the services of these organizations to assist in the recruitment, training and certification of Minority-Owned Businesses.
  
- B. **Establish the Minority Advisory Council** Pursuant to Tenn. Code Ann. § 4-51-112(B)(1), the Chairman of the Board shall appoint an Advisory Council on Minority Business Participation (“Council”). The Council shall serve as an educational research and technical resource for the Board. The nine (9) citizens, to be named, should reflect a richness of diversity in professional and business experience, educational attainment, ethnicity, race, gender, and socio-economic heritage. Three (3) of the appointees shall be from and represent each grand division of the state. The council shall meet, at a minimum, quarterly.
  
- C. **Educational Outreach** In conjunction with the Corporation’s Major Procurement Vendors, the TEL has developed an internship program with the historical black colleges and universities (“HBCUs”) in Tennessee. The primary objective of this program is to provide an exposure to and understanding of the lottery industry to future business leaders, while providing meaningful and substantive entry-level professional employment experience, as well as income to students from the HBCUs throughout the state. More importantly, the students will gain not only lottery specific experience, but also general business experience that can be utilized in any corporate or small business environment.

*Amended: 8/17/11*

- D. **Recruitment and Community Outreach** It is the goal of the TEL that all segments of the community play a role in and participate in the Corporation’s activities. The Retailer has an extremely important role in the success of the TEL. The TEL recruits and will continue to recruit Minority-Owned Businesses as Retailers and contractors. Pursuant to the statute, the TEL, in partnership with community organizations, will sponsor seminars and workshops to help ensure the success of minority Retailers and contractors.

*Amended: 8/17/11*

- E. Minority Business Database** The TEL has developed a Minority-Owned Business Database ("Database"). The Database will be made available to assist Bidders and Proposers in identifying Minority-Owned Businesses for subcontracting, joint ventures and partnering opportunities. The Database will be updated quarterly and maintained by the Contract Compliance Coordinator. The Contract Compliance Coordinator will also provide an updated list to the Procurement, Facilities & Risk Services Manager to assist in identifying Minority-Owned Businesses for the TEL's competitive solicitations.

The TEL recognizes that Minority-Owned Businesses providing professional services (including, but not limited to, lawyers, accountants, engineers, and architects) have historically not sought Certification. Therefore, the TEL will verify the status of a Minority-Owned Business providing a professional service.

To ensure that the ownership and control over decision-making and day-to-day operations of a Certified Minority-Owned Business is legitimate, the TEL reserves the right to review the ownership and control of each Minority-Owned Business utilized.

*Amended: 8/17/11*

### **1.3.6 MONITORING AND REPORTING**

The timely and accurate reporting of contract activity is crucial to the quality and effectiveness of any Equal Business Opportunity Program. The TEL will develop and implement a system for tracking minority participation in all retailer, contracting, educational outreach and procurement activities.

Pursuant to PR1.3.2, the Compliance Review may be performed by TEL personnel for any contractor, subcontractor, and/or joint venture partner of a Major Procurement Vendor identified as a Minority-Owned Business on the **EBO Form "B1"** as well as businesses that contract directly with the TEL that have identified themselves as minority-owned. The Compliance Review shall consist of notice, legal verification, and physical inspection.

In reporting its minority participation levels, the TEL will make note of and take into consideration the very rare and unique instances where participation by Minority-Owned Businesses is not possible in the State of Tennessee. The TEL will be responsible for reviewing all EBO activities and will present a quarterly report to the Minority Business Participation Committee of the Board quarterly. The Board will be responsible for monitoring all EBO activities and will present an annual report on the status of EBO activities to the General Assembly as required by the Act. The VP of Legal Services for Compliance will be responsible for managing all the administrative functions in accordance therewith.

*Amended: 8/17/11*

### **1.3.7 QUESTIONS AND INFORMATION**

Questions regarding this EBO Program and requests for information should be directed to:

Cynthia Webb Fitzgerald, Esquire  
VP, Legal Services for Compliance  
Tennessee Education Lottery Corporation  
P.O. Box 23470  
Nashville, Tennessee 37202

**TENNESSEE EDUCATION LOTTERY CORPORATION  
 EQUAL BUSINESS OPPORTUNITY PROGRAM**

**EBO FORM A**

**CERTIFICATION OF EFFORTS TO ACHIEVE MINORITY-OWNED BUSINESS PARTICIPATION  
 (TO BE SUMITTED WITH THE BID/PROPOSAL)**

**Company Name:** \_\_\_\_\_  
**RFP/ITB:** \_\_\_\_\_

I certify that the following efforts where made to achieve Minority-Owned Business participation:

- a) Provided written notices to Minority-Owned Businesses who have the capability to perform the work of the contract or provide the service **Yes\_\_No\_\_**
- b) Direct mailing, electronic mailing, facsimile or telephone requests **Yes\_\_No\_\_**
- c) Provided interested Minority-Owned Businesses with adequate information about plans, requirements and specifications of the contract in a timely manner to assist them in responding to a solicitation **Yes\_\_No\_\_**
- d) Allowed Minority-Owned Businesses the opportunity to review bid specifications, blue prints and all other RFB/ITB related items at no charge, and allowed sufficient time for review prior to the bid deadline **Yes\_\_No\_\_**
- e) Acted in good faith with interested Minority-Owned Businesses, and did not reject Minority-Owned Businesses as unqualified or unacceptable without sound reasons based on a thorough investigation of their capabilities **Yes\_\_No\_\_**
- f) Did not impose unrealistic conditions of performance on Minority-Owned Businesses seeking subcontracting opportunities **Yes\_\_No\_\_**
- g) Additionally, I contacted the referenced Minority-Owned Businesses and requested a bid/proposal. The responses I received were as follows:

<b>Name and Address of Minority-Owned Business</b>	<b>Type of Work And Contract Items, Supplies or Services to be Performed</b>	<b>Response</b>	<b>Reason for Not Accepting Bid/Proposal</b>

*(If additional space is required this form maybe duplicated)*

**If applicable, please complete the following:**

I hereby certify that Minority-Owned Businesses were “Unavailable” as defined in the EBO Program to submit bids/proposals to provide goods and services for this RFP/ITB’s purpose. I further certify that efforts have been made to establish “Joint Ventures”, as defined in the EBO Program, and said entities were also unavailable at this time.

Reasons for the “Unavailability”:

\_\_\_\_\_

\_\_\_\_\_

Submitted by:

\_\_\_\_\_  
 Authorized Representative Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**TENNESSEE EDUCATION LOTTERY CORPORATION  
 EQUAL BUSINESS OPPORTUNITY PROGRAM**

**EBO FORM B**

**PROPOSED MINORITY-OWNED BUSINESS UTILIZATION PLAN  
 (TO BE SUBMITTED WITH THE PROPOSAL)**

**Company:** \_\_\_\_\_

**RFP/ITB:** \_\_\_\_\_

\_\_\_\_\_, does certify that on the above noted procurement opportunity,  
 (Firm)  
 the following minority-owned businesses may be utilized as subcontractors, joint-venturers, suppliers, or provide professional services:

<b>Name</b>	<b>Description of Work</b>	<b>% of Contract Value</b>	<b>Joint Venture (Yes/No)</b>	<b>% of Minority Ownership</b>	<b>Certified (Yes/No)</b>	<b>Certification Agency</b>

*(If additional space is needed this form may be duplicated)*

ESTIMATED TOTAL % OF MINORITY BUSINESS PARTICIPATION: \_\_\_\_\_

Submitted by:

\_\_\_\_\_  
 Authorized Representative Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**TENNESSEE EDUCATION LOTTERY CORPORATION  
 EQUAL BUSINESS OPPORTUNITY PROGRAM**

**EBO FORM B1**

**MINORITY-OWNED BUSINESS UTILIZATION PLAN  
 (TO BE SUBMITTED WITH THE CONTRACT)**

**Company:** \_\_\_\_\_

**RFP/ITB:** \_\_\_\_\_

\_\_\_\_\_, does certify that on the above noted procurement opportunity,  
 (Firm)  
 the following minority-owned businesses will be utilized as subcontractors, joint-venturers, suppliers, or provide professional services:

Name	Description of Work	% of Contract Value	Joint Venture (Yes/No)	% of Minority Ownership	Certified (Yes/No)	Certification Agency

*(If additional space is needed this form may be duplicated)*

Are you a minority-owned business? Yes/No \_\_\_\_\_

If yes, what is the percentage of ownership? \_\_\_\_\_

TOTAL COMMITMENT VALUE: \_\_\_\_\_

TOTAL % OF MINORITY BUSINESS PARTICIPATION: \_\_\_\_\_

ESTIMATED TOTAL % OF MINORITY BUSINESS PARTICIPATION: \_\_\_\_\_

*The successful bidder/ proposer is required to complete this form prior to execution of a contract. Joint Venture Agreements, partnering agreements and all pertinent information must be presented upon request by the TEL. This information will be incorporated into the contract and will become a contractual obligation of the successful bidder/proposer. EBO Form B1 shall not be changed or altered after contract execution without approval from the TEL. The company is required to notify the TEL and to obtain approval prior to changing the minority-owned businesses listed above.*

Submitted by:

\_\_\_\_\_  
 Authorized Representative Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

**TENNESSEE EDUCATION LOTTERY CORPORATION  
 EQUAL BUSINESS OPPORTUNITY PROGRAM**

**EBO FORM C**

**MINORITY-OWNED BUSINESS UTILIZATION PLAN  
 (TO BE SUBMITTED WITH THE PROPOSAL)**

**Company:** \_\_\_\_\_

**RFP/ITB:** \_\_\_\_\_

\_\_\_\_\_, does certify that on the above noted procurement opportunity,  
 (Firm)  
 the following minority-owned businesses may be utilized as subcontractors, joint-venturers, suppliers, or provide professional services:

<b>Name</b>	<b>Description of Work</b>	<b>% of Contract Value</b>	<b>Joint Venture (Yes/No)</b>	<b>% of Minority Ownership</b>	<b>Certified (Yes/No)</b>	<b>Certification Agency</b>

*(If additional space is needed this form may be duplicated)*

TOTAL % OF MINORITY BUSINESS PARTICIPATION: \_\_\_\_\_

Submitted by:

\_\_\_\_\_  
 Authorized Representative Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date