

APPLICATION AND REVIEW PROCEDURES
FOR LOTTERY GAMING FACILITY MANAGER CONTRACTS
PURSUANT TO THE KANSAS EXPANDED LOTTERY ACT
(REVISED April 28, 2010)

Introduction.

SPECIAL NOTE: The application and application procedure have changed (as compared to the versions issued in December, 2009). Please take special note of new Paragraph 5, as well as all other items highlighted in yellow.

Senate Bill 66, otherwise known as the Kansas Expanded Lottery Act (KELA), was enacted by the 2007 Kansas Legislature. The KELA became effective on April 19, 2007, and has been codified at KSA 74-8733, *et seq.* The KELA may be viewed on the official Website of the Kansas Lottery at www.kslottery.com. Applicants desiring to become a “Lottery Gaming Facility Manager” (Manager) within any “Gaming Zone” in the State of Kansas, as those terms are defined in the KELA, are advised to familiarize themselves with the provisions of the KELA and any amendments thereto.

The Kansas Lottery (Lottery) shall own and operate, and the Kansas Racing and Gaming Commission (KRGC) shall regulate, all gaming conducted at the Gaming Facilities authorized by the KELA. The KELA places with the Lottery full, complete and ultimate ownership and operational control of all such gaming operations. The Lottery’s ownership and operational control include, but are not limited to, the following rights and authorities:

1. To designate what table games and electronic gaming machines will be played at each facility;
2. To require the manager to lease or purchase gaming machines on behalf of the Lottery;
3. The ability to deactivate any or all machines from play at any time;
4. The right to choose the central computer system operating the games;
5. The power to audit all aspects of the gaming operations;
6. To determine qualifications of employees at the gaming facilities; and,
7. The ability to overrule any action of the Manager affecting the gaming operation without prior notice.

Nothing contained in the following application and review procedure is in any way intended to limit or otherwise affect the Lottery’s rights of ownership and operational control.

Application and Review Procedure.

1. **Duty to Monitor Website.** These procedures and other matters pertaining thereto will be posted on the official Website of the Kansas Lottery as referenced above,

and are subject to amendment at any time. All prospective Managers shall be responsible for monitoring said Website for any changes or additions to this procedure or matters pertaining thereto. See the Lottery's Website for a copy of the revised application.

2. Definitions. All definitions set forth in the K.S.A. 74-8702, and amendments thereto, shall apply to the procedures set forth herein, unless the context of the word or term clearly indicates a contrary meaning.

3. Application Procedure for Lottery Gaming Facility Manager Applicant.

(a) All persons or other entities applying to become a Lottery Gaming Facility Manager pursuant to the KELA shall meet the minimum requirements as provided in the KSA 74-8734(g). In order to have an application to become a Lottery Gaming Facility Manager considered by the Kansas Lottery Commission (Commission), an applicant shall provide information to the Commission and otherwise prove to the satisfaction of the Commission that it:

- (1) has sufficient access to financial resources to support the activities required of a Lottery Gaming Facility Manager under the KELA;
- (2) has no less than three (3) consecutive years' experience in the management of gaming which would be class III gaming, as defined in K.S.A. 46-2301, and amendments thereto, operated pursuant to state or federal law; and,
- (3) is current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the State of Kansas and any taxing subdivision where such prospective manager is located in the State of Kansas, excluding items under formal appeal pursuant to applicable statutes, *except that* the requirements set forth in this subsection 3 shall not apply to any resident Kansas American Indian tribe.

(b) Each applicant shall complete all information upon the written application form provided by the Commission, and shall include the following as an appendage thereto:

- (1) all documents and other attachments as may be required in the application;
- (2) such additional documents and other information as the Commission may at any time require; and,
- (3) a table of contents for the application and all appendages thereto, with all sections and appendages clearly tab indexed.

- (c) Responses to all application questions, and all documents supporting the application, shall be typed or printed on 8.5 by 11-inch white paper in 12-point font or larger, with margins on each page of no less than one inch in width. All pages shall be numbered in continuous numerical sequence. Each and every question on the application shall be answered with no question left blank. In the event a question does not apply to applicant the words “Not applicable” or “N/A” shall be inserted.
- (d) Each applicant shall disclose, and as applicable provide supporting documentation for, the following:
 - (1) A detailed rendering and other descriptions of the proposed “Lottery Gaming Enterprise,” including but not necessarily limited to the size of the gaming facility itself, the site, buildings, parking, amenities, and all other improvements proposed for the Lottery Gaming Enterprise. It is not necessary that applicants submit detailed final blueprint drawings of the proposed gaming enterprise. The Lottery merely requires preliminary plans and renderings sufficient in detail to adequately convey the general appearance and composition of the proposed enterprise. The Lottery does not expect or require an applicant to cause detailed architectural blueprints to be prepared until a contract has actually been awarded;
 - (2) the geographic area in the State of Kansas in which the Lottery Gaming Enterprise is to be located, including the name of the governing municipality;
 - (3) an analysis of the proposed Lottery Gaming Enterprise’s location as a tourist and entertainment destination designed to attract consumers residing outside the immediate area of the enterprise;
 - (4) an estimate of the number of patrons that would be attracted to the proposed Lottery Gaming **Enterprise** each year, including an estimate of the number of tourist patrons that reside outside the State of Kansas;
 - (5) an estimate of the number of patrons that would be attracted to the proposed Lottery Gaming **Facility** each year, including an estimate of the number of tourist patrons that reside outside the State of Kansas;
 - (6) the number and type of Lottery Facility Games proposed to be operated at the gaming facility at start-up, including all proposed temporary facilities, if any;
 - (7) proposals and agreements related to all Ancillary Lottery Gaming Facility Operations;

- (8) utilizing the date of final execution of a binding contract to operate a Lottery Gaming Enterprise as the point of beginning, an estimated timeline for all major events related to the project, including but not necessarily limited to:
 - (a) approval of zoning and planning requirements by the city and/or county in which the Lottery Gaming Enterprise is to be located;
 - (b) commencement of construction on the Lottery Gaming Facility;
 - (c) commencement of construction on the Ancillary Gaming Facility Operations;
 - (d) completion of construction on the Lottery Gaming Facility;
 - (e) completion of construction on the Ancillary Gaming Facility Operations;
 - (f) commencement of actual gaming in the proposed temporary Lottery Gaming Facility, if any
 - (g) commencement of actual gaming in the permanent Lottery Gaming Facility, and if the facility will not be completely operational on that date, the expected percentage of gaming that will be in operation;
 - (h) commencement of activities in each of the Ancillary Gaming Facility Operations; and,
 - (i) such other key dates or milestones the applicant deems relevant.

- (9) information sufficient to demonstrate that:
 - (a) the proposed Lottery Gaming Enterprise, will consist of an investment in infrastructure of no less than \$225,000,000;
 - (b) none of the minimum amount of said investment in infrastructure will be derived from or financed by state or local retailers' sales tax revenues, and no part of the financing for the Lottery Gaming Facility will be derived from revenue bonds, tax increment financing, or similar financing;
 - (c) the power of eminent domain has not been used, and will not be used, to acquire any interest in real property for use in the lottery gaming enterprise;
 - (d) applicant owns the real property upon which the Lottery Gaming Enterprise is to be located, has a binding option to purchase said real property, or otherwise has the right to occupy said real property for said purposes;
 - (e) applicant has received, or a disclosure of when applicant is expected to receive, any necessary approval under planning and zoning requirements of the municipality and/or county in which the Lottery Gaming Facility is to be located; and,

(f) applicant has received, or a disclosure of when applicant is expected to receive, a resolution of endorsement from the city governing body, if the proposed Lottery Gaming Enterprise is within the corporate limits of a city, or from the county commission, if the proposed Lottery Gaming Enterprise is located in the unincorporated area of the county (see KSA 74-8734(h)(10) and 74-8736(a)). All resolutions of endorsement must be obtained no later than execution of a contract between the Manager and the Lottery.

(10) a description of:

(a) the equipment and plans proposed by applicant to directly link all gaming machines in the Lottery Gaming Facility to a central computer system to provide monitoring, auditing and other available program information to the Lottery;

(b) the equipment and plans proposed by applicant to require all gaming machines to be on-line and in constant communication with a central computer situated at a location determined by the Executive Director of the Lottery; and,

(c) the ability of each machine to be individually deactivated by order of the Executive Director of the Lottery.

(11) the name, address, telephone number, and other identifying information regarding each “affiliated person” and “state or local official,” as those terms are defined in KSA 74-8762, who holds, directly or indirectly, an interest in, is to be employed by, or will represent or appear for the lottery gaming facility, or for the Lottery Gaming Facility Manager, or any holding or intermediary company with respect thereto, in connection with any cause, application or matter; and,

(12) the name, address, telephone number, and other identifying information regarding any “person,” as defined by KSA 74-8702(x), in any way affiliated with the applicant who is, or who is proposed to be, the manager of a racetrack gaming facility located in the same gaming zone as the Lottery Gaming Facility proposed by the application.

(e) Each application and all documents appended thereto shall be submitted as a single package. An original and **five (5)** copies of the application and documents shall be filed with the Executive Director as provided in section (f), along with at least two (2) legible electronic copies of those items scanned or otherwise transferred onto one or more compact discs (CD’s). Items applicant believes to be “confidential” shall be placed onto one or more separate CD’s. The Lottery may use those electronic copies, among other

things, as a means to more easily disseminate the information in response to open records requests after the deadline for applications has passed and the applicable documents are otherwise deemed open records under laws of the State of Kansas.

- (f) Each application shall be verified under oath by the authorized officer or officers of the applicant, shall be dated, and shall be manually signed in ink.
- (g) In order for an application to be considered, and unless otherwise extended by the Commission or Governor of the State of Kansas, the application along with all documents and other items supporting the application shall be delivered by applicant or common carrier to the Executive Director of the Kansas Lottery, 108 N. Kansas Avenue, Topeka, Kansas 66603 (previously 128 N. Kansas Avenue). The application and all documents and other items supporting the application must be actually received by the Kansas Lottery at said address not later than:

(1) Southeast Gaming Zone: 2:00 p.m. (Central Time Zone) on Friday July 16, 2010;

(2) South Central Gaming Zone: 2:00 p.m. (Central Time Zone) on Thursday July 22, 2010; and,

(3) Applications have closed in all other Gaming Zones.

- (h) All applications and supporting documents shall also be subject to the following:
 - (1) They shall be delivered in sturdy boxes or other containers clearly marked with the name of the applicant and which boxes or containers comprise the original and each set of copies;
 - (2) If the initial application submission consists of more than fourteen (14) standard bank-size boxes (including the original), for ease of unloading and moving all such boxes shall be delivered on, and secured to (whether by clear wrap or otherwise), a standard warehouse pallet, with a total height of no more than approximately five (5) feet. In the event items are delivered at a later date (such as supplements or amendments to applications), Applicants need not palletize the boxes unless twelve (12) or more standard bank-size boxes are delivered at one time.
 - (3) If delivered by common carrier, applicant shall cause written proof of delivery to be included in the delivery thereof and produce a copy of said proof of delivery if so requested by the Commission;
 - (4) If delivered other than by common carrier, the applicant will be provided a written receipt of delivery by the Lottery; and,

- (5) Applications and supporting documents may also be delivered on any Kansas Lottery business day prior to the deadline set forth above, but if delivery will be prior to said date it is requested the applicant notify the Executive Director of the Lottery at least one business day prior to delivery if other than by common carrier, or the estimated day of delivery if by common carrier.
- (i) The Commission or the Executive Director may in their sole discretion require any or all applicants to produce or provide by a date certain such additional documents, information, testimony, or other items as they deem appropriate under the circumstances.
- (j) Each exhibit, statement, report, paper or other document submitted in support of the application shall be current, accurate and complete, and any change in any of said items shall be reported immediately to the Executive Director.

4. Review of Applications and Execution of a Contract.

- (a) Upon expiration of the deadline established by the Commission for the receipt of applications for Lottery Gaming Facility Managers, the Commission shall review all applications and related documents submitted as provided by the procedures herein. The Kansas Lottery and/or the Kansas Racing and Gaming Commission may require clarification of the items requested in the Application and may require additional documents or disclosures.
- (b) The Commission may conduct hearings, solicit testimony, consult with experts, request additional information, seek clarification, or take such other action as may be deemed appropriate by the Commission in order to determine if a contract and related documents submitted as provided by these rules meet the minimum requirements set forth in the KELA and these procedures.
- (c) Not later than ninety (90) days after the deadline for submission of proposals as provided in these rules, or as otherwise extended by the Governor of the State of Kansas as provided in KSA 74-8736(f), the Executive Director and each qualifying prospective Lottery Gaming Facility Manager shall execute a contract (see paragraph 5, below, for additional important information).
- (d) Not later than thirty (30) days after approval of a contract by the Commission, the prospective Lottery Gaming Facility Manager shall pay to the Treasurer of the State of Kansas for deposit into the Lottery Gaming Facility Manager fund the statutory privilege fee of \$25,000,000. In the event any privilege fee is not paid within thirty (30) days of approval of the underlying contract, that contract shall be deemed null and void.

- (e) Pursuant to the KSA 74-8736(b), all contracts executed as provided in subsection (c) of the procedures herein (above) shall be transmitted to the Lottery Gaming Facility Review Board (Board) for further review and consideration.
- (f) In the event the Board returns any proposed contract to the Executive Director for further negotiations, the Executive Director shall take such other and further action on the application as is deemed appropriate by the Executive Director.
- (g) In the event the Board refers a prospective Manager to the KRGC for the background investigation required by KSA 74-8736(e), but the KRGC does not approve the background of the prospective Lottery Gaming Facility Manager, or the directors, officers and other persons having an interest in such prospective Manager, the Executive Director shall recommence the process for selection of said Lottery Gaming Facility Manager.
- (h) If no manager or prospective manager applicant remains in a gaming zone for any reason (including applicant withdrawal), the Executive Director may recommence the process for selection of a Lottery Gaming Facility Manager in that gaming zone.

5. Template Contract and Contract Negotiation Schedule

Once the deadline for filing applications has expired in each Gaming Zone, in order to expedite the approval process it is the desire and intent of the Lottery to establish an aggressive schedule to negotiate contracts. It is also the intent of the Lottery to offer a contract in which most provisions are standard to all applicants, with only those provisions deemed by the Lottery to be of a competitive nature being subject to negotiation. In that regard, applicants should take special note of the following:

- (a) Applicants shall include a description of their proposed construction timing and sequence, which description will be incorporated into their contract as “Exhibit C, Expected Construction Sequence” (see paragraph III(i) of the Revised Application).
- (b) Applicants are encouraged but not required to offer legally permissible incentives and other inducements intended to differentiate their proposal from those of other applicants’ in order to maximize revenue to the State of Kansas, encourage tourism, and otherwise serve the best interest of the people of the State of Kansas, including but not necessarily limited to allocating more than 22% of net gaming revenues to the State of Kansas.

Questions and Other Inquiries.

In the event you have questions or would like to make further inquiry about the application and review process for Lottery Gaming Facility Managers under the KELA, you are urged to first review the information provided on the Kansas Lottery's official Website (www.kslottery.com, then see the link for the "Kansas Expanded Lottery Act" on the left-hand side of the Lottery's home page), which information may be amended or otherwise revised from time to time (see "Duty to Monitor Website," above). If further inquiry is required, you may contact:

Keith Kocher
Director of Gaming Facilities
Kansas Lottery
108 N. Kansas Avenue
Topeka, KS 66603-3638
785-296-5706 (phone)
keith.kocher@kslottery.net