



**RFP: Creative & Marketing Communications Services
Media Planning & Buying Services**

VENDOR ACKNOWLEDGEMENT OF ADDENDUM

Amendment Number: One (includes Question & Answer Summary)

Date Issued: May 29, 2014

Summary of Additional Amended Provisions:

Appendix B – Contract Forms: Contract Form Contract # C140008 (Lot 1) and Contract # C140009 (Lot 2) are part of this Amendment and are revised as noted below. These amended forms replace the forms released with the RFP. These versions must accompany the Proposal as provided in RFP, Section 1.12.

- Paragraph 6.a incorporates a 30-day notification requirement of the Commission if terminating for convenience.

RFP, Section 2.11 TAX LAW SECTION 5-A: All references to Appendix I in this section are replaced with reference to Appendix H.

By signing below, the bidder attests to receiving and responding to the amendment number indicated above.

FIRM NAME: _____

REPRESENTATIVE SIGNATURE: _____



REQUEST FOR PROPOSALS
FOR CREATIVE & MARKETING COMMUNICATIONS SERVICES
AND MEDIA PLANNING & BUYING SERVICES

Round 1 – Questions and Answers

May 29, 2014

PART ONE

Reference: Section 1.1

Q.1: Will the NY State Commission disclose the finalists?

A.1: Yes. At the completion of Phase One the finalists will be publicly announced.

Q.2: Is there a limit to the number of finalist agencies selected to participate in Phase Two?

A.2: No. As provided in Section 5.5 of the RFP, those Proposals meeting the minimum qualifying score will proceed to Phase Two.

Reference: Sections 1.1 and 1.12:

Q.3: Like most agencies, we normally operate as an “agent for a disclosed principal”, which means that as the NY Lottery’s agency, we are authorized to act on the Lottery’s behalf. Consequently, the Lottery is liable for any pre-authorized media purchase that Initiative makes under the principle of Sequential Liability. However, the contractual provisions refer to the agency as a “contractor”, in which case Initiative is jointly and severally liable for the media purchases. Would the Lottery consider a contract amendment that redefines the relationship as “agents” instead of “contractors”?

A.3: No. The agency will be a contractor of the Commission within the meaning of the N.Y. State Finance Law and will be paid and reimbursed for costs and expenses incurred pursuant to the procedures of the N.Y. State Finance Law.

Q.4: Appendix B – Contract Form:

- (a) Paragraph 1. Can standard media buying language be added such as “Contractor is authorized to act on the Commission’s behalf as the Commission’s agent in order to perform the services outlined herein. In contracting for advertising space and time in any of the media, the Commission hereby authorizes and agrees that Contractor may contract with media and other third parties on the Commission’s behalf on the basis of sequential liability, whereby Contractor will be solely liable for payment to the extent that amounts have cleared from the Commission to Contractor and the Commission will be solely liable to such third parties with respect to payments due such third parties to the extent that such amounts have not cleared to Contractor. Company understands that Contractor works on a “match pay” system meaning that Contractor will not advance funds to vendors, but rather will pay vendors only after funds have been received from Company for all payments due to vendor.”?
- (b) Paragraph 3. Can media language be added as follows, “Media billing, based on estimated expenditures, and the timing of the Commission’s payments shall be in such a way as to ensure that the Commission’s payments will be received prior to the earlier of Contractor’s release of funds or Contractor’s guaranteed financial commitment to the media. Original media billing will be based on the cost of the media time or space ordered by Contractor on the Commission’s behalf and will be adjusted to actual amounts once the media invoices have been received and processed?”
- (c) Paragraph 6. Why is there no termination with cause by the Contractor? If there is malfeasance or breach by the Commission, the Contractor should have a right to terminate.
- (d) (i) Paragraph 14(d) and (e). What does “responsible” mean? Please provide examples.
- (ii) Paragraph 6(d). What does “non-responsible” mean? Can you provide some examples?
- (e) Paragraph 7. Why isn’t the confidentiality provision mutual since the Contractor will be providing confidential information as recognized in Section 1.16 of the RFP, including without limitation media rates.
- (f) Paragraph 7(c). What is the purpose of requiring that the Commission’s express written permission be obtained before making copies of any written Confidential Information when the nature of the work being done by the Contractor would require copies to be made? Can this be limited to cases other than to effectuate the purpose of the Agreement or other than in the normal course of business?

- (g) Paragraph 10. Why is there no indemnity of the Contractor by the Commission for (1) breach of the Agreement, (2) use by Contractor of materials or information provided to the Contractor by or on behalf of the Commission, (3) Contractor taking or refraining from taking certain actions at the Commission's direction, (4) claims arising as a result of or relating to Contractor's placement of the Commission's advertising or marketing material in media space and time on behalf of the Commission and/or the broadcast or other use of the material placed by Initiative, including but not limited to claims relating false advertising, infringement of trademark, copyright or rights of publicity or other intellectual property rights, product liability, or sweepstakes and promotions.
- (h) Paragraph 10. The Contractor's indemnity needs to be tied to the "negligent" acts or omissions in the performance of services under this Agreement.

A.4: (a): No.

(b): No.

(c): State policy prohibits such a clause.

(d): (i) A responsible vendor is one that has the financial and organizational capacity to fully perform its contractual obligations, the legal authority to do business with the State, the integrity to justify the award of public dollars, and a good record of past performance.

(ii) See definition of responsible.

(iii) It does not appear necessary to provide examples.

(e): Confidential material provided to the Commission is subject to disclosure pursuant to the N.Y. Freedom of Information Law ("FOIL") (Public Officers Law Art. 6) and Personal Privacy Protection Law (Public Officers Law Art. 6-A). The Commission is not authorized to waive the requirements of those laws. If you believe your firm's Proposal contains trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise or other confidential information that may be exempted from disclosure under FOIL, you must submit a request with your Proposal to exempt such information from disclosure as specified in Section 1.19 of the RFP.

(f). (i) The Commission wishes to ensure that its Confidential Information is used only in an authorized manner.

(ii) No.

(g). State policy prohibits the Commission from indemnifying any person or party.

(h). No, the Commission disagrees. The Contractor must indemnify for its acts and omissions, whether intentional, grossly negligent, negligent or otherwise.

Q.5: With regard to the proposed Creative and Marketing Communications Services Contract, to follow are proposed modifications.

(a) Add the following as the last sentence of **Section 5** of the Agreement:

“Each party agrees that it will comply with all state and federal laws applicable to its business.”

(b) Add the following language to the end of **Section 6(b)** of the Agreement:

“The Commission may only invoke its right to terminate for convenience (i) on [January 15, 2016], and on each subsequent anniversary date of the Agreement (except for the Agreement expiration date), provided that the Commission has given written notice to the Contractor no later than thirty (30) days or more prior to the date of termination (if the Agreement is not so terminated, the terms and conditions hereof shall be effective and binding) or (ii) upon ninety days written notice.

(c) Add a new **Section 6(e)**:

“The Contractor may terminate this Agreement upon giving ninety (90) days written notice.”

(d) Add the following language to the end of **Section 10** of the Agreement:

“The Contractor’s indemnity obligation shall not apply to: (i) claims relating to personal injury and damage to real and personal property due to the negligent act or failure to act by the Commission; and (ii) claims relating to third party intellectual property rights to the extent such claims arise from the gross negligence or willful misconduct of the Commission, including but not limited to, the Commission’s use of materials beyond the authorized scope or territory of this Agreement and trademark infringement where the Contractor has advised the Commission in writing of commercially reasonable and specifically identified risks and the need to conduct a trademark search to determine the availability of the mark and the Commission has nonetheless directed the Contractor to utilize the trademark without having conducted such trademark search. For purposes of this Agreement, the term “Subcontractor” (i) shall include any individual or entity that the Contractor engages to provide core advertising and marketing services to the Commission such as account management and creative services, direct marketing services and/or multicultural marketing services, and (ii) shall not include any vendors, such as any

production companies, photographers, music suppliers, stock houses, printers, shipping companies, and other suppliers (including vendors providing media time or space) engaged by Contractor to assist Contractor in the completion of or provision of services incidental, ancillary or supplemental to the creative, media planning and account management services to be provided by the Contractor. The Contractor will however endeavor to the best of the Contractor's ability to guard against any loss to the Commission through failure of a vendor to execute properly its commitments."

(e) **Section 11**, third line from the bottom

Insert "employer-related" in front of "taxes".

A.5: (a) We do not agree to this change.

(b) See Answer to Question 99.

(c) See Answer to Question 4(c).

(d) See Answer to Question 4(g).

(e) We do not agree to this change.

Q.6: A. Will the Commission consider (1) amending the following provisions contained in Appendices A and B of the Contract to address the requests as noted below; and if so, noting which of the following provisions it will revise pursuant to a good faith negotiation with Contractor:

1. Appendix A: Section 10 Audit: Excluding sensitive information from audit such as individuals' salaries.

2. Appendix B – Contract Form:

(i) Section 6 Termination:

(1) Providing a notice period for termination for convenience of 90 days

(2) Subsection (d): Removing termination for breach for Contractor deemed "non-responsible" due to vagueness of term

(ii) Section 7 Confidentiality: Providing a reciprocal provision protecting Contractor/Commission confidential material.

(iii) Section 10 Indemnification: Revising the indemnity to reflect claims specific to services/materials provided by each party (e.g. intellectual property/deceptive advertising claims/right of publicity/privacy)

- (iv) Adding additional standard Contractor/Commission protections covering ownership of materials, approval process for materials created, talent obligations, cancellation force majeure, limitation of liability clause.

B. To the extent the Commission will agree to amend the Appendices to the Master Services Agreement to address the above concerns, will it consider replacing or supplementing those provisions in the Appendices to include language in substantially the following form (subject to good faith negotiations), and if such language is not agreeable, providing alternative language to Contractor prior to Proposal submission deadline?

1. OWNERSHIP AND USE OF MATERIALS

(a) Subject to subsection (f) below, all advertising materials prepared on Commission's behalf or purchased, licensed or otherwise obtained for Commission's account (hereinafter "Materials") shall, upon full payment by Commission of all sums due to Contractor, be considered a "work made for hire" as that term is defined in the Copyright Revision Act of 1976, 17 U.S.C. §101 et seq. and the copyright therein shall be owned by Commission, worldwide, for all purposes. Notwithstanding the foregoing, all materials, rights, and intellectual property owned by third parties (such as talent rights, photography, artwork, props and music) shall remain the sole and exclusive property of such third parties, and Commission agrees to use such third party materials consistent with the restrictions for such third party materials communicated to Commission in writing. Commission agrees that Contractor shall have the right, without prior approval, to use any and all non-confidential Materials following their publication to promote Contractor and to market Contractor's services to third parties, including submitting such Materials to industry award shows and posting them on Contractor's website.

(b) Notwithstanding the foregoing, all software applications, databases, computer programs (including source code and object code for any such programming), and executable code (collectively "Code") as well as other creative content, methodologies and materials in existence prior to this Agreement (or created outside the scope of this Agreement) and all Code or portions thereof developed or provided by Contractor hereunder, excluding any materials provided by Commission ("Contractor Property"), shall remain the sole and exclusive property of Contractor. Contractor hereby grants a fully paid-up, perpetual, non-exclusive, non-transferable license to Commission to use the Contractor Property to the extent integrated into the Materials and without modification, and solely for the benefit of Commission, within the Territory. For clarity, it is understood that (i) Contractor shall own all modifications, improvements or enhancements to the Contractor Property and (ii) any and all Code utilized by Contractor, or made available by

Contractor for use by Commission, that is not integrated within the Materials, may not be used by Commission after the term of this Agreement (or applicable Scope of Work) except pursuant to a separately negotiated license agreement.

(c) Notwithstanding the foregoing, any Materials prepared or proposed by Contractor but not produced and published or broadcast within the term of the applicable Scope of Work, and any Materials prepared or proposed by Contractor and rejected by Commission, shall remain the property of Contractor (the "Preliminary Materials"). Contractor shall have the right to use the Preliminary Materials without limitation; provided, however, that, such uses shall not involve the release of any of Commission's confidential information.

(d) If Commission should desire to use outside the Territory any Materials created and or produced by Contractor hereunder, Commission will inform Contractor prior to such use and in good faith negotiate compensation for such use. Contractor shall not be required to secure any rights in the Materials for use outside the Territory unless specifically agreed to in writing. Commission agrees and acknowledges that Materials used, published or distributed outside the Territory, including by means of the Internet, may violate one or more applicable laws, rules or regulations or third party rights, and that Commission shall bear the sole risk and have the sole responsibility for all such violations, except to the extent that Contractor has specifically agreed in writing to assume any such risk or responsibility.

(e) For clarification purposes, Contractor shall acquire no rights of ownership in intellectual property rights subsisting in any material provided by Commission to Contractor in connection with this Agreement.

(f) Notwithstanding any of the provisions of this Agreement, it is understood and agreed that in addition to the services it provides directly to its Commissions as part of the Scope of Work, Contractor through its employees (including those assigned to Commission's business) and various business units of Contractor (or affiliated companies) creates various content, ideas or programs, such as television shows, books, theatrical productions, marketing platforms, etc. without initial reference to a Commission or brand and without any initial Commission funding (collectively "Content") and that, with respect to such Content, Contractor is and will remain the owner of all intellectual property rights therein ("Contractor-Owned Properties"). When appropriate, Contractor may present opportunities to Commission to participate in/with these Contractor-Owned Properties and the parties will agree to negotiate in good faith the terms of such participation. It is further understood and agreed that in the event that a Contractor-Owned Property is appropriate for a category of products assigned by Commission to Contractor, Contractor will provide Commission with the right of first negotiation to participate in/with the

given Contractor-Owned Property but that, in the event Commission declines participation in such property, the disposition of such Contractor-Owned Properties may be freely made by Contractor.

2. TALENT

Commission understands and agrees that Contractor is party to various talent and performing rights agreements in various parts of the world. For example, in the United States, agreements with the Screen Actors Guild ("SAG"), the American Federation of Television and Radio Artists ("AFTRA") and the American Federation of Musicians ("AFM") make the use of talent by Contractor on Commission's behalf subject to the terms of such agreements and provide for Contractor to be ultimately liable to performers for payments that may become due because of use of commercials by Commission or any party to whom Commission provides any of the commercials. Therefore, Commission will indemnify Contractor against any loss, including reasonable attorneys' fees, Contractor may sustain resulting from any claim, suit or proceeding ("Claim") made or brought against Contractor by SAG, AFTRA, AFM and/or other applicable entity arising out of or in connection with the use of any Contractor-produced Materials, as authorized by Commission hereunder, by Commission, Commission's employees, authorized agents or by anyone else who obtained the Materials from Commission, regardless of whether such Claim is asserted during or after the Term.

3. INDEMNITY

(a) It will be the responsibility of Contractor to make certain that the necessary contracts or releases have been obtained with or from those whose names, likenesses, testimonials, scripts, musical compositions, or similar materials or rights are used in Commission advertising or other materials prepared under this agreement, and Contractor agrees to indemnify Commission against any liabilities and expenses (including reasonable attorneys' fees) Commission may incur as a result of claims resulting therefrom and/or proceedings relating to libel, slander, defamation, invasion of privacy, piracy, plagiarism, idea misappropriation, and infringement of copyright, property right (other than patent, trademark and trademark related causes of action), title or slogan.

(b) It will be the responsibility of Commission to review all materials prepared under this agreement to confirm the accuracy and legality of the descriptions and depictions of Commission's products, as well as any competitive products described or depicted, and Commission agrees to indemnify Contractor against any liabilities and expenses (including reasonable attorneys' fees) Contractor may incur as a result of claims resulting therefrom and/or proceedings relating to false, deceptive, or misleading description, depiction, or comparison of Commission and/or competitive products, provided the

materials were approved by Commission prior to their use, and any personal injury or product liability claims associated with the Commission's product(s) or use thereof. In addition, (i) when Commission has indicated to Contractor that it has obtained or will obtain any necessary contracts, releases and clearances, or (ii) Commission's use of materials not permitted under the terms of licenses which had been communicated to Commission by Contractor has a given rise to a claim, Commission will indemnify Contractor with respect to any names, materials and the like supplied by Commission.

(c) Except as otherwise set forth in this paragraph, with regard to clearing all copy and other deliverables provided by Contractor with respect to trademarks, service marks, trade names, logos and slogans (the "Marks") of third parties, the final decision as to whether a Mark is clear for use in any territory, shall be the responsibility of Commission. Accordingly, Commission shall also be responsible for (i) obtaining and reviewing comprehensive searches and for final clearance of any Marks in any copy or materials provided hereunder and (ii) any and all registration of the Marks, if Commission so chooses to register same. Contractor makes no representation or warranties with respect to and assumes no obligation for Marks, provided that if requested by Commission, Contractor will obtain, at Commission's expense, preliminary and/or comprehensive searches and internal and/or external Contractor counsel opinions, in the territories specified by Commission, for evaluation by Commission and its trademark counsel.

(d) Upon the assertion of any claim or the commencement of any suit or proceeding against an indemnitee by a third party that may give rise to liability of an indemnitor hereunder, the indemnitee promptly shall notify the indemnitor of the existence of such claim, suit or proceeding and the indemnitor shall defend and/or settle the claim at indemnitor's own expense and with counsel of indemnitor's own selection. At its own expense, an indemnitee shall at all times have the right to: (i) hire counsel of its own selection to provide its defense and (ii) fully participate in any settlement that it reasonably believes would have an adverse effect on its business. An indemnitee shall make available to an indemnitor all books and records relating to a claim, suit or proceeding, and the parties agree to render to each other such assistance as reasonably may be requested to ensure a proper and adequate defense.

4. LIMITATION OF LIABILITY

Neither commission nor contractor, nor their respective parents, affiliated companies, directors, officers, employees, shareholders, licensees or agents shall be held liable to the other for indirect, incidental, consequential, special, punitive or exemplary damages arising in any manner from the activities contemplated by this agreement, whether under contract, tort, or other cause of action, even if such party has been advised of the possibility of such damages. Except as expressly provided herein, neither party makes any warranty,

express or implied, regarding the products or services to be provided hereunder or that any software or other electronic devices provided or website created or hosted by contractor will be error free or operate without interruption, and the warranties of title, merchantability and fitness for a particular purpose are expressly excluded. Contractor's total, aggregate liability for any claims hereunder shall not exceed an amount greater than one and one half the amount of payments received and retained by contractor as its contractor fee during the twelve months prior to the date the claim or claims are made up to a maximum of four and one half million dollars.

5. RECORDS AND ACCOUNTS

Commission and its duly authorized representatives shall have the right, upon reasonable notice of no less than fifteen (15) business days, at all reasonable hours of the day, but no more frequently than once during each of year of the Term, to audit Contractor's books of account and records, and all other documents and material in the possession or under the control of Contractor with respect to the subject matter and the terms of this Agreement for the two-year period prior to the requested audit, and to make copies and extracts thereof. It is understood and agreed that the foregoing shall not include individual payroll and personnel records, profit and loss reports, general Contractor overhead, Contractor internal time such as administration, new business or training or records that relate to assignments for different Commissions.

6. FAILURE OF SUPPLIERS/FORCE MAJEURE

Neither party shall be deemed in default of this Agreement to the extent that performance of its obligations (other than Commission's payment obligations) or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, riots, acts of government, acts of war or terrorism, shortage of materials or supplies, failure of transportation or communications or of suppliers of goods or services, or any other cause beyond the reasonable control of such party. In addition, although Contractor shall endeavor to guard against any loss to Commission as the result of the failure of media or suppliers to properly execute their commitments, Contractor will not be responsible for their failure or their other acts or omissions. Commission acknowledges that Contractor has no control over information and Materials once they have been published, released or posted in the public domain as requested or approved by Commission, including, without limitation, via seeding materials on social networking and video sharing websites or via the use of internet-based "widgets." As such, Contractor shall not be responsible for ensuring the accuracy of what any third party publishes or any other resulting third party actions.

7. CANCELLATIONS, AMENDMENTS & MODIFICATIONS

(a) Commission reserves the right to amend, modify, reject, cancel or stop the execution and implementation of any and all advertising concepts, ideas, plans and/or campaigns, including without limitation preparation of Materials, and Contractor shall use reasonable best efforts to carry out any instructions by Commission in connection therewith, provided that in no event may Commission reduce the scope of Services or cancel any services on less than ninety (90) days prior written notice if such reduction or cancellation will result in more than a ten percent (10%) reduction in total compensation under an applicable Scope of Work. During any such ninety (90) day period, the parties agree to negotiate in good faith a revised compensation based on such reduction or cancellation (such revised compensation to take effect following such period or thereafter). However, in any event, Commission agrees that it shall:

- (i) remain obligated to pay Contractor any and all charges for services rendered by Contractor and for expenditures incurred by Contractor, pursuant to this Agreement;
- (ii) remain liable for all reservations, contracts and other arrangements it previously authorized in connection with the preparation, publication and reproduction of any and all Advertisements, including all media contracts and commitments that Contractor is unable to cancel;
- (iii) remain obligated to indemnify Contractor pursuant to this Agreement.
- (iv) be obligated to pay Contractor for any cancellation penalties imposed by any third party.

A.6: A.1: Appendix A – Standard Clauses for New York State Contracts is not negotiable.

- A.2:**
- (i)(1): See Answer to Question 99.**
 - (2): No. This clause will remain unchanged.**
 - (ii): See Answer to Question 4(e)**
 - (iii): See Answer to Question 4(g)**
 - (iv): This request is too vague.**

B.1: The Commission will consider these language proposals and, if it determines that any are acceptable, will post appropriate amendments to the RFP, if any, on the Commission's website.

B.2: See Answer to Question this response B.1.

- B.3 See Answer to Question 4(g)**
B.4: See Answer to Question this response B.1.
B.5: We do not accept this change as it conflicts with Appendix A – Standard Clauses for New York State Contracts.
B.6: See Answer to Question this response B.1.
B.7: See Answer to Question this response B.1.

Q.7: If we have pre-existing contractual terms that we work under with the Lottery, will we be able to continue operating under these terms if accepted as the winning bidder?

A.7: The successful vendors awarded a contract under this RFP process will be required to operate under the terms of the contract form incorporated in the RFP.

Q.8: Appendix A: Clause 9:

(a) How is notification made of a set-off?

(b) Has this happened in the past?

A.8: (a) When the Office of State Comptroller diverts to the State a portion of a payment otherwise to be paid from the Commission to the Contractor, OSC will send written notification to the contractor.

(b) If the Office of State Comptroller invokes a set-off process the contracting agency is not made aware of it.

Q.9: If we are submitting a joint proposal, does the participant designated as the primary bidder sign both contracts, or does the participant responsible for media services sign C140009?

A.9: A separate Proposal must be submitted for each Lot under this procurement and the corresponding contract for the particular lot will be signed by the primary bidder, whether solely or as a joint venture.

Reference: Section 1.3

Q.10: I assume the minimum qualifications are not negotiable on Lot 1?

A.10: That is correct. The minimum qualifications outlined in the RFP for each Lot are not negotiable.

Reference: Section 1.10

Q.11: Bidder On-site Visits and Credentials Oral Presentations – Please clarify if the presentations at the Bidder's offices must exactly match the written Technical proposal.

A.11: The substantive content of the oral presentation cannot be altered from the written Technical proposal. The order and style of that substantive oral presentation is up to the individual bidder.

Reference: Section 1.16

Q.12: While final, aggregate pricing information may not be designated as proprietary or confidential, we request clarification that (consistent with NYS Freedom of Information Law) individual elements of the final aggregate price (as set forth in Section 4.8) and the corresponding staffing plan (including proposed vendors) may be designated as proprietary or confidential.

A.12: A prospective vendor may, pursuant to Public Officers Law Section 89(5)(a), request in writing that such information be excepted from disclosure pursuant to Public Officers Law Section 87(2)(d), stating the reasons why the information should be excepted from disclosure. The Commission would then follow the process set forth in Section 89(5)(a) for determining whether such information should be maintained as confidential.

Q.13: Why can't pricing information be designated as proprietary or confidential under the NY FOIL when it constitutes a trade secret of the bidder and there doesn't seem to be any exclusion of pricing information in the FOIL itself or in Section 10 of Appendix A?

A.13: See Answer to Question 12.

Q.14: Section 1.16 of the RFP, we note our position (consistent with NYS Freedom of Information Law and past positions of the New York Lottery and New York Department of Health) that individual elements of the final aggregate price (as set forth in Section 4.8) and the corresponding staffing plan (including proposed vendors) may be designated as proprietary or confidential. Competitive advantage in the advertising industry is significantly derived from an agency's ability to efficiently create and price its work product. Providing this information to the marketplace for free, when Contractor has had to expend substantial sums to develop it, would cause substantial injury to and competitive harm.

A.14 See Answer to Question 12.

Reference: Section 1.17

Q.15: On page 13 of the RFP, it states that the proposal must be "in the order presented in the RFP". However, in the checklist (attachment 4), it says technical proposal and pricing proposal should be separate from the

attachments. Can you please clarify the order of the Technical Proposal for the Phase One submission?

A.15: The Submittal Checklist states: “Technical and Pricing Proposals – Submittal Requirements: Separately as defined in the RFP”. The reference to “separately” means the technical proposal and the pricing proposal shall be submitted separate from one another, in sealed packaging. Any attachments to the technical proposal or pricing proposal should be submitted with the respective proposal package. Do not include pricing information with your technical proposal, or it will be disqualified.

Q.16: Section 1.17 – What does the following sentence mean: “Responses to *complex RFP requirements* that are stated in a form semantically equivalent to “bidder agrees to comply” may be rejected for non-responsiveness at the discretion of the Commission.”? Can you give examples of “complex RFP requirements”?

A.16: The intent of this language is to make clear the need to respond completely and succinctly to all requirements under the RFP. For example, where the RFP asks for “Thorough description of the organization...” a non-responsive response would be: “our organization can handle the requirements under this RFP.” Or, for example, refer to page 50 of the RFP, paragraph 4.1(11): a response equivalent to “bidder agrees to comply” is not a sufficient response to the requirement for “Describe why the agency is uniquely suited to address the challenges and opportunities of the Lottery account.”

Q.17: Can an agency team – creative paired with media – bid together for Lot 1 and Lot 2? If so, must they deliver their Phase One Oral Presentations separately, in their respective offices, in order to satisfy the requirement to visit physical sites? And, if two agencies bid together for Lot 1 and Lot 2 and are permitted to present together, can the resulting Oral Presentation be 180 minutes?

A.17: An agency that provides both creative and media services may bid on both Lots; however, Proposals for each Lot must be submitted separately. Therefore, all factors of each Proposal will also be addressed separately, including oral presentations.

Q.18: (a) Will the Lottery evaluate a “joint proposal” differently from separate proposals?

(b) And how would a low-scoring proposal for either Lot 1 or 2 affect a high-scoring proposal and the determination for a contract award?

A.18: (a) No. A “joint” proposal is simply a Proposal submitted by two parties who are combining efforts to carry out the requirements under the RFP and contract. One of those parties will be the primary.

(b) The award under each Lot will be as provided under Part 5 of the RFP. Each Proposal will be scored based on the criteria developed for each Lot and independently of each other.

Q.19: (a) How will the Oral Presentations be handled when Agencies are jointly responding to Lot 1 and 2?

(b) What is the process for scheduling the Oral Presentations for both Phases?

A.19: (a) Separate oral presentations are required for each Lot.

(b) Oral presentations will be scheduled as outlined in Section 4.6 of the RFP. Bidders will be contacted by the Lottery on June 9 or 10 to schedule 90 minute Phase One oral presentations. Phase One presentations will be held at the Bidders' New York office during regular business hours between June 11 – July 15, 2014. Two-hour oral presentations for those Finalists qualifying for Phase Two will be held during regular business hours between August 14 – September 12, 2014. Qualifying finalists will be contacted by the Lottery to arrange the Phase Two oral presentation to be held at the Bidders' New York office between July 16 – July 20. All Bidders must be available for their Oral Presentations during the prescribed time frames or they will not be considered a viable Bidder.

Q.20: We note that the Commission is giving “wide latitude in the degree of detail they offer or the extent to which they reveal plan, designs, systems, processes, and procedures.” Please clarify if the Commission expects to see any plans, designs, systems, processes, and procedures (e.g., strategic or creative thinking) that specifically addresses the Phase Two assignments (“Growing Lotto” and “Maximizing Share of Discretionary Income”) described on pages 52-55, as part of the Phase One response.

A.20: All responses for the Phase Two assignments are to be prepared and presented only by the Finalists during Phase Two of the RFP process. Bidders should not submit any responses to the Phase Two assignments during Phase One. Phase One submission requirements appear in detail in Sections 4.1 – 4.6 of the RFP.

Q.21: Digital Redacted version – If providing this, is the Commission expecting the file to be included on the six USB memory sticks mentioned directly above this requirement? Or, is another delivery method required, and if so, what is it?

A.21: The six USB memory sticks should include the full technical proposal. One additional memory stick should be provided that includes the redacted version of the technical proposal. These should be submitted with the hard copies of the technical proposal. Two additional memory sticks should

provide the pricing proposal and should be sealed with the pricing proposal. All memory sticks should be clearly labeled as to their content.

Q.22: The Evaluation Committee consists of how many people? Will all members of the Committee be present during the Oral Presentations? Will the subject matter experts be present?

A.22: It is anticipated that five members will make up the scoring team and that all will be present during the oral presentations. Four additional members will serve as subject matter experts, but will not be scoring Proposals and may or may not be present at oral presentations.

Reference: Section 1.20

Q.23: If a bidder is bidding both Lots, will two Litigation Bonds be required?

A.23: Yes.

Q.24: If we are submitting a joint proposal, do we need to provide Litigation Bonds for both participants or only for the participant designated as the primary bidder?

A.24: The Primary will be the responsible party for providing the Litigation Bond. Also, See Answer to Question 17.

Reference: Section 1.21

Q.25: The Fidelity Bond is listed as one of the items required to be submitted in the Technical Proposal Submittal Checklist (Attachment 4) for Phase 1. Section 1.21 says that the bond must be obtained "upon notification of award and prior to contract approval". Which is correct?

A.25: There is a period of time between the notification of award to the contractor and the time in which the State Attorney General and Office of the State Comptroller approve the contract. The contractor shall obtain the fidelity bond during this time. Generally this is about a 60 – 90 day time-frame.

Q.26: Our fidelity bond (or crime insurance bond as it's now known) covers our officers, and employees but not agents or subcontractors. Will this bond be sufficient?

A.26: No. Agents or sub-contractors utilized by the Contractor must be bonded through the Contractor or themselves.

PART TWO

Reference: Section 2.8

Q.27: Can you provide more detail about how the pre-established sales goals are determined?

A.27: Those pre-established goals will be made in concert with the contractors before the launches of new marketed games and at the beginning of each contract year. These goals are not limited to sales goals.

Q.28: How does your process for establishing sales goals work? Will you be willing to share those goals with your selected agency?

A.28: As stated above the Performance Based Bonus in section 2.8 is not just a sales based evaluation. The performance based goals that a selected agency will be evaluated against will be shared with the agency.

Q.29: If an employee is working on Lottery business while traveling, is the hourly rate still only 50% of the usual hourly rate?

A.29: Salaries and hourly wages during travel status on Lottery business will not be reimbursed as part of the contract. Only out-of-pocket travel expenses will be reimbursed if they are outside of the specified travel defined in the Scope of Work (Section 3). Proper New York State travel guidelines must be followed. Refer to Section 2.8C for details. Through this response, Section 2.8 C is amended to delete the last sentence of this section, which states:

“The hourly rate to be paid for the bidder while in travel status will be 50% of the hourly rate provided in the Pricing Proposal.”

Q.30: Payments to third party vendors are only made after receipt of reimbursement from a client. How can payments be made in a timely manner if Contractor doesn't receive payment from the Commission in a timely manner?

A.30. If payments to third party vendors are only made after receipt of reimbursement from a client then it does not seem to be a reimbursement. Contractors could, if they so choose, pay third parties from its own cash or line of credit in anticipation of payment from the Commission.

Q.31: Section 2.8 C States that travel and out-of-pocket expenses that are required as a regular course of business will not be reimbursed. Since it appears that the travel costs included in the scope of work may be material, can you please clarify if those should be included in the indirect costs?

A.31: Travel costs that are not reimbursed should be included in indirect costs to the Bidder. See Answer to Question 29 for further clarification of travel expenses.

Q.32: It is advertising industry practice that payment for certain services, such as TV production and talent payments, be paid in part or in total prior to completion of

services. Will the Lottery follow this industry standard and provide the required payments for these services?

A.32: The response to this question will be provided under separate cover by close of business on Monday, June 2, 2014.

Q.33: How will the Lottery handle a joint proposal performance-based Bonus?

A.33: Even if a single company is awarded the contracts for Lots 1 & 2, two separate contracts will be issued. As such, the Agency's performance evaluation and bonus award will be determined and distributed separately for each contract. If two parties join together to submit a bid for a Lot, the performance bonus would be paid to the primary vendor. Payment of any part of that to non-primary vendor is a subject left to the agreement between those joint proposers. The Commission will only be paying performance bonus awards to one party for each Lot.

Reference: Section 2.12

Q.34: Does the Lottery have any more information on the Performance Bond requirements referenced in Section 2.12 of the RFP?

A.34: A performance bond is not required for this service. Through this response, the Section 2.12 is amended to delete the reference to "performance bond" in the last paragraph as follows:

The bond/irrevocable letter of credit must be for the entire contract period. The bond/letter of credit must provide that in the event of non-renewal, the Commission be notified in writing by the issuer.

Q.35: How can the Contractor obtain the format for the irrevocable letter of credit in lieu of a bond?

A.35: Such a letter of credit must be in the form set forth in 11 NYCRR Section 79.9(a).

Reference: Section 2.13

Q.36: Is a Certificate of Insurance acceptable as evidence of Contractor's insurance coverage? Is it considered a form acceptable to the Commission?

A.36: For General Liability, Professional Liability and Comprehensive Advertising Liability, an ACORD 25 Certificate of Insurance, or an equivalent form must be provided, and be accompanied by the Supplemental Insurance Certificate (for original and renewal policies).

Workers' Compensation and Disability coverage must be provided on one of the following forms:

Workers' Compensation
Private Insurer: C-105.2
NY State Insurance Fund: U-26.3
Self Insured: SI-12
Group Self Insurance: GSI-105.2
Certificate of Exemption: CE-200**

Disability
Private Insurer: DB-120.1
Self Insured: DB-155
Certificate of Exemption: CE-200**

Q.37: If the presence of a deductible doesn't materially change the coverage provided (e.g., the Contractor self-insures for the deductible) does the deductible have to be included on the Certificate of Insurance?

A.37: Must disclose any deductible, self-insured retention, aggregate limit or any exclusions to the policy that materially changes the coverage.

The Contractor shall be responsible for all claim expenses and loss payments within the deductible or self-insured retention.

Q.38: If we provide evidence of renewal or replacement policies upon the expiration of any policy is this sufficient since we may not have such evidence 2 weeks before expiration?

A.38: Yes.

Q.39: (a) We have the limits listed for the various types of insurance but not if they're considered to be a minimum and not the required amount.

(b) Also, we don't have \$5000 coverage for medical expense under the CGL. Is this an issue if it's covered somewhere else? For instance, bullet points 4 and 5 under Comprehensive Advertising Liability, is actually covered by our CGL.

(c) We also don't have insurance for "explosion, collapse and underground hazards, contractor means and methods". Is this an issue?

A.39: (a) The limits under such policies shall not be less than the amounts stated in the RFP.

(b) The coverage requirements may be satisfied by a combination of policies.

(c) Yes. Any insurance that is not covered under your existing policy could be added to the policy by use of a rider.

Q.40: Section 2.12 B states “The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Commission.”

Our E&O policy will not comply with the primary and non-contributory clause.

A.40: Policies must state or be endorsed to provide that the coverage afforded under the policies shall apply on a primary and not on an excess or contributing basis with any policies, which may be available to the Commission. Any other insurance maintained by the Commission shall be excess of and shall not contribute with the Contractor’s or Subcontractor’s insurance regardless of the “other insurance clause” contained in the Commission’s own policy of insurance. A copy of the endorsement reflecting this requirement may be requested by the Commission.

Q.41: Our professional liability covers wrongful, not negligent, acts. Is this an issue?

A.41: The policy must include coverage for negligent acts, errors, or omissions.

Q.42: Our Advertising Liability coverage is included in our Professional Liability policy. Is this an issue?

A.42: The Comprehensive Advertising Liability may be substituted with added coverage under your Professional Liability policy, as long as includes all of the following:

A limit of not less than \$5,000,000 to cover claims arising from, but not limited to, occurrences committed by contractor such as:

- **defamation, libel, slander, product disparagement or trade libel;**
- **invasion of or interference with the right to privacy or publicity, including intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of name or likeness;**
- **negligent or intentional infliction of emotional distress, outrage or outrageous conduct;**
- **false arrest, detention or imprisonment, or malicious prosecution;**
- **trespass, wrongful entry or eviction;**
- **infringement of copyright, piracy, plagiarism and misappropriation of ideas under implied contract;**

- **infringement or dilution of title or slogan, trademark, trade name, trade dress, service mark or service name.**

Q.43: Instead of copies of insurance certificates, will the Lottery accept certificates of insurance evidencing the appropriate coverage?

A.43: See Answer to Question 36.

Q.44: Will the Lottery accept 30 days' notice of insurance policy cancellation from contractor instead of including a provision that the policy will not be canceled, materially changed, or not renewed without at least 30 days' prior written notice?

A.44: RFP, Section 2.12 – SURETY AND INSURER QUALIFICATIONS is hereby amended to remove the 30-day notification requirement. Therefore, this section is deleted in its entirety and replaced with the following:

All required bonds and insurance must be written by company rating of “A-” or better rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Commission. Required coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the Commission. The successful bidder must submit proof of required insurance coverage, and any renewals thereof, to the Commission upon the Commission’s request. The Contractor shall notify the Commission of any material changes to the policy, or any cancellations prior to the expiration date. The carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

In lieu of a bond, the contractor may provide an irrevocable letter of credit naming the Commission as beneficiary. The irrevocable letter of credit must be in the amount specified for the bond and in the format required by the Commission. Bond/irrevocable letter of credit must be furnished by a company licensed to do business in the State of New York.

The bond/irrevocable letter of credit must be for the entire contract period. The bond/letter of credit must provide that in the event of non-renewal, the Commission be notified in writing by the issuer.

RFP, Section 2.13 - INSURANCE REQUIREMENTS - Paragraph A.3 is hereby amended to delete the 30-day notification requirement. Therefore, the following language is deleted from that paragraph:

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not

renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the Commission.

Q.45: What is the Lottery's approved insurance certificate form that suppliers are to use?

A.45: See Answer to Question 36.

Q.46: Will the Lottery accept a change to the notice time for policy renewals?

A.46: See Answer to Question 38.

Q.47: (a) Will the Lottery accept a blanket additional insured endorsement form instead of the CG [20 10 11 85](#) ISO form?

(b) Section 2.13 A states "Certificates of Insurance shall be in the form approved by the Commission". What does this mean?

(c) Section 2.13 B states "The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts. Can we disregard this language?"

(d) Forms CG 00 01 01 96 and CG 20 10 11 85 are out of date, may we use a current version?

A.47: (a) Form B CG 20 10 11 85, or an equivalent, must be provided. Blanket coverage is acceptable.

(b) Section 2.13 goes on to provide further detail as to the acceptable forms for each type of coverage.

(c) This response amends RFP, Section 2.13.B.1, paragraph four to read:

Limits may be provided through a combination of primary and umbrella/excess liability policies.

(d) Yes, a form with equivalent coverage terms will be acceptable.

Q.48: Will the Lottery accept "including" its additional insureds on insurance policies as opposed to "naming" those additional insureds given that a blanket additional insured endorsement form would be used?

A.48: Yes.

Q.49: Will the Lottery accept a blanket additional insured endorsement form for the primary and non-contributory CGL insurance requirements which would then be followed by the Umbrella/Excess policy?

A.49: See Answer to Question 47.

Q.50: Will the Lottery discuss further customization of insurance requirements to the assignment?

A.50: See the numerous clarifications to the insurance requirements throughout this Summary.

Q.51: It is anticipated that various sub-contractors will be utilized to meet the needs of this contract. These sub-contractors can be of varying financial size, especially MWBES and may not be capable of affording all the required insurance. How is the sub-contractor expected to address this and for the Contractor to work towards meeting the MWBE goal?

A.51: Should the Contractor engage a Subcontractor, the Contractor shall endeavor to impose the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to the Commission.

Q.52: (a) How is trademark review and approval handled by the Commission?
(b) If the Contractor proposes a new tag line and conducts a preliminary and/or full trademark search at the Commission's request, is this dealt with as a pass-through cost paid by the Commission?

A.52: (a) Trademark review is handled by the Agency and submitted to the Lottery for review and approval.

(b) Yes.

Reference: Section 2.14

Q.53: In regards to Appendix I of the RFP, since selection of media and related vendors is determined by the Lottery, are we correct in assuming that such vendors should be excluded from our MWBE participation obligations?

A.53: Media and related vendors are to be acquired by the Media Planning & Buying Services contractor, with the prior written approval obtained from the Lottery. Any exclusion from the MWBE participation obligations will need to be requested through the waiver process, after the contract is awarded, on the form included as Appendix I-7.

Q.54: The Vendor/Contractor's Minority and Women-Owned Business Utilization Form (provided as Appendix I-4) provides for separate reporting of both sub-contractor and supplier expenditures. Please clarify the difference between the two.

A.54: For the purpose of MWBE reporting, the subcontractor is someone contracted by your company to help carry out the work required by this contract, such as a production company, printing company, etc. A supplier is someone you buy materials and equipment from where either the total spend amount (the purchase is used exclusively for this account) or proportionate spend amount (the purchase is distributed for wide use among several accounts), such as poster board, pens, paper, waste removal, fuel oil, etc. may be attributed toward this contract.

Q.55: If we use a sub-contractor or supplier that is certified as both WBE and MBE, can we include the dollars spent in both categories?

A.55: Dollars spent can only be counted once.

Reference: Section 2.17

Q.56: How does the Lottery view the product quality/value of NYS's Media Services Center? Is it a requirement to place them on all bids?

A.56: It is the responsibility of the Agency to evaluate and determine whether the Media Services Center can successfully deliver what is needed, utilizing the same evaluation criteria implemented for all service providers. While it is not a requirement that the MSC be included in all production bids, it should be included in bids for which their services would be appropriate.

Reference: Section 2.18

Q.57: Section 2.18 states that sub-contractors are subject to background checks. What is the process and time frame for this? What determines if this is necessary?

A.57: The use of and extent of background checks are at the discretion of The Gaming Commission. These checks may include such areas as a review of financial stability, a vendor responsibility questionnaire or such other areas as deemed appropriate.

Reference: Section 2.22

Q.58: Please clarify if creative materials prepared and submitted in response to this RFP become the property of the New York Lottery? If so, it would be expected that the agency would be compensated for these materials.

A.58: A response will be provided in a subsequent document to be posted to the Commission's website by Monday, June 2.

Reference: Section 2.24

Q.59: Will the Lottery accept any changes to section 2.20 and 2.24 of the RFP to reflect a contractor's current security policies?

A.59: No.

Q.60: Outside of what is listed in 2.24, is there a separate "security policy" to share with bidders?

A.60.: No.

Q.61: Once someone receives security clearance for onsite visits, the process does not need to be repeated for each subsequent visit, is that correct? Clearances sometimes have an expiry date. Is this the case for the Lottery?

A.61: Frequency of security clearance depends on the frequency of visits. Staff who are routinely on-site would be provided badge based access to particular areas of the building. Staff without badge based access would need to be escorted by a Gaming Commission staff member.

PART THREE

LOT 1 – Creative & Marketing Communications Services

Reference: Section 3.2

Q.62: The provided Scope of Work is relatively specific; however, what provisions will be made if there is a business need that falls out of Scope?

A.62: The Scope of Work defined under the RFP for each Lot is believed to be sufficiently broad to encompass all needs of the Lottery.

Q.63: Does the Lottery have a preference for which industry conference and training session Agency Staff attends? Is WLA attendance mandatory?

A.63: Bidders should plan and budget for staff to attend WLA meetings that are held in North America and annual NASPL meetings.

Q.64: It is indicated that on-site meetings will be held as required, and at a minimum of twice a month. For travel planning/cost purposes, can you indicate how many times your current Agency has had on-site meetings during the past two years?

A.64: This is not relevant to the future contracts, since the scope of work varies from the current scope of work and the business will be divided between two separate agencies for Lots 1 and 2.

Q.65: Please elaborate on what is exactly meant by “Account Group will be assigned *exclusively* to the Lottery business,” and does this apply to all levels of Lottery Account Management?

A.65: Based on the expansive Scope of Work for the Lottery business, particularly on Lot 1, it is imperative that the Account Management team be dedicated exclusively to the Lottery account to effectively manage the business. This excludes Executive Level management (as defined in the Rate Card (Attachment 3). The same is required for Lot 2. Such staffing should be reflected in the Agency Fee calculation as part of the Cost Proposal. If it is determined by the Lottery and the Agency following the Year 1 Annual Agency Review that a change in staffing allocations is advisable, it will be adjusted at that time.

Q.66: What do you mean by, “the Agency shall develop advertising and marketing creative that represents the Lottery brand in a positive light and in a manner consistent with the brand identity, and where there is a relevant existing campaign platform (e.g., Powerball’s “Yeah, That Kind of Rich”) consistent with that campaign platform?”

A.66: The Lottery’s advertising and marketing communications must always maintain a level of integrity and reflect a positive voice. (See the NOTE at the end of Section 4.7A for further clarification.)

If the Lottery and the winning Agency determine that an existing campaign or tagline should be continued (such as “Yeah, That Kind of Rich” or “Hey, You Never Know”), the Agency would be expected to develop new creative work that would fit within the context of the existing creative and strategic platform.

Q.67: (a) Can you elaborate on or further describe what is meant by “overarching 360° big idea platforms”?

(c) What storyboard detail is required?

A.67: (a) The Lottery is seeking advertising and marketing communications that showcase creative and strategic thinking unified in a complete package. Campaign concepts should be presented as a cohesive platform, showing synergy among all creative elements that reach the target audience across all consumer touch points.

(b) Once a television commercial concept is approved by the Lottery, the Agency must develop a storyboard to showcase how the concept and approved script would be brought to life in production. The storyboard must be prepared and approved by the Lottery before the commercial is sent out to directors to bid. Any substantive changes to the storyboard

following the bid award and Agency discussion with the Director must be approved by the Lottery prior to the pre-production meeting.

Q.68: If Agency is a signatory to the SAG-AFTRA Commercials Contract, does the Commission agree that all casting will comply with that Contract whenever the Contract is applicable to a production?

A.68: Yes.

Q.69: Does the Commission use a third-party vendor for development and administration of any sweepstakes or contests? If not, is this something that the Contractor may sub-contract to a vendor specializing in these types of events?

A.69: The Lottery typically uses an outside vendor to develop and administer instant game sweepstakes. Often the Advertising Agency will work with the Lottery to develop and administer Social Media contests. The Advertising Agency may on occasion be called upon to develop and execute special events, but this is not an on-going need of the Lottery account. Such activities may be subcontracted, if necessary, but the Bidder must define the need for sub-contracting in its response to Phase One of the RFP.

Q.70: Is qualitative testing expected to be done for every Creative concept? For all concept executions, for example, TV, Print, POS? Why just Qualitative Research?

A.70: Research is not expected to be done for every creative concept, but should be factored into new campaign development schedules on major initiatives. If testing is expected, it would be discussed up front before the Lottery briefs the Agency on the assignment. Qualitative or quantitative research could be used depending upon the specifics of the creative/strategic work being tested.

Q.71: (a) How many experiential marketing programs have you developed and implemented in the past two years?

(b) How many do you anticipate in the coming year?

A.71: (a) Other than local promotional events with on-site lottery sales and “spin the wheel” activities, there have been little to no experiential marketing programs in recent years.

(b) Plans for 2014 are still in development.

Q.72: Regarding the website, would the Commission require the successful bidder to provide consultation and technology resources? Would the successful bidder be involved with Quality Assurance?

A.72: The Agency would be expected to provide creative development for the front-end design and content of the New York Lottery website. The Agency would be required to provide digital assets in the proper format to manage the site. The back-end would be developed and managed by the central New York State Information Technology Services Unit. The two groups would be required to collaborate, so a working knowledge of web development would be essential. A total redesign of the Lottery website is planned for 2015. This will be part of a statewide initiative, however, parameters have not yet been determined. At this time, the successful bidder would not be responsible with Quality Assurance of the website.

Q.73: (a) Regarding the social channels outlined, what does the current process look like?

(b) What flexibility will the successful bidder handling community management have?

(c) Please delineate what has to be routed through the client/legal currently.

A.73: (a) As part of an effort to expand Social Marketing, the Lottery contracted the current advertising agency to manage its social media strategy and content beginning in May 2014.

(b) It will be the responsibility of the successful bidder to manage and implement the social media communications program for the Lottery based on direction provided by the Lottery's Director of Advertising.

(c) Current process is immaterial. The future process will be determined by the successful bidder and the Lottery's Marketing Unit.

Q.74: The Lottery requires the Agency to develop many ongoing promotional projects, media-driven promotions, sweepstakes, etc. How many of these are conducted per year?

A.74: This fiscal year, for example, there are 5 Instant Scratch-off Game Sweepstakes conducted, various social media contests/promotions, 15 State and Local Marketing Programs (SLMP's) with on-site activation events and promotional tie-ins, as well as approximately 300 local promotions across the state. These local promotions are managed and executed by the Lottery's Promotions Manager and regional Marketing Specialists.

Q.75: Please confirm if compensation is based on firm fixed price or actual reconciled labor hours. Page 46 refers to reporting of hours. Is this for informational purposes only Firm Fixed Price (FFP) or for the purpose of reconciling actual billable hours?

A.75: The compensation is based on a firm fixed price. Reporting of hours is for informational purposes only. Hours will not be reconciled against the fee, however, the information will be considered during the Annual Agency Review process when Agency staffing is discussed with the Lottery.

Q.76: (a) Please clarify and/or further define your use of the terms “dedicated” vs. “exclusive” when referring to staffing?

(b) Similarly, when discussing a multi-cultural division, what does “dedicated” mean?

(c) Also, if we are using an MWBE sub-contractor to provide this function, how would that apply?

A.76: (a) See Answer to Question 65.

(b) A team must be assigned to handle the multi-cultural aspect of the Lottery business. It doesn't have to be full-time. If this function will be sub-contracted, it must be identified as such in the response to Phase One of the RFP.

(c) Any use of an MWBE sub-contractor would apply to the MWBE requirements set forth in the RFP.

LOT 2 – Media Planning & Buying Services

Reference: Section 3.2

Q.77: How do you define ROI effectiveness as outlined in Section F of the Scope of Work? Is it ticket sales, audits, etc.?

A.77: The Lottery is looking to analyze the effectiveness of the advertising investment typically as a measure of gross spend against sales or aid to education (revenues). All initiatives will be examined on an ROI basis. The specific ROI goals will be discussed with the Agency in advance of embarking on any plan/strategy development.

Q.78: How would you best anticipate the Quarterly Research & Strategy (Section 3, Q2C) update to be presented? Would this be a formal combined agency presentation or a smaller scale quarterly report of findings and learnings?

A.78: Specific format can be discussed with the successful bidder. The Quarterly Update would be a media-specific presentation by the Media agency to the Lottery using any proprietary research tools at the agency's disposal, as well as syndicated research or any primary research that would inform future media strategy and planning decisions. This presentation should

also include updates on the latest media industry trends that could apply to the Lottery business.

Q.79: You mention that “the Agency will be evaluated on their ability to drive consumer attitudes and behaviors that can be attributed to marketing.” How is that connection being determined for a Media Agency, distinct from the messaging that a Creative Agency would be accountable for?

A.79: Media-specific metrics would be geared more towards cost and quality of the media buys, as opposed to attitude and awareness, which relate more to the outputs of the Creative Agency. Media KPIs would include such metrics as click-through rates, website traffic data, CPM delivery goals, improvement of pod positioning, or achieving GRP delivery goals. KPIs are developed once campaign objectives are agreed upon and are discussed when the Agency is briefed on the specific campaign or initiative.

Q.80: Would you anticipate that the referenced Quarterly Econometric Modeling report be synthesized within the section 3 – 3.2C Quarterly Research & Strategy update, or kept distinctly separate?

A.80: Yes, the Quarterly Econometric Modeling Report could be incorporated into the broader Quarterly Update.

Q.81: You state that “initiatives will be evaluated against KPIs determined in advance by the Lottery.” Can you provide more detail regarding what you anticipate those KPIs to be? How does the Lottery currently determine those KPIs (beyond sales, of course)?

A.81: See Answer to Question 79.

Q.82: Do the policies outlined in Part 3 – 5.G - State & Local Marketing apply to SLMP sponsorships with a TV component (i.e. YES Network, SNY, etc.) where 120 days for posting is needed?

A.82: 120 days would be appropriate for such programs. The full report (including those elements referenced in the answer to Q85) should be due 120 after conclusion of the SLMP. Through this response, Section 3.2 G is amended to state the following:

“The Agency shall provide analyses on all SLMP’s within 120 days of the conclusion of the program.”

Q.83: You request “analyses on all SLMP’s within 60 days of the conclusion of the program.” Can you provide more texture on what is required in those analyses, beyond standard quantification of measurable media elements (like TV or Radio GRPs)?

A.83: The analysis should include standard quantifiable measures described above, as well as confirmation that all elements of the sponsorship were provided as stipulated in the contract (e.g., web banners, in-stadium signage, activation night events, etc.).

Q.84: In the paragraph on Budget/Billing Management in Part 3 - section 3.2H, you mention that the billing staff at the agency “have the capability to track production costs of advertising and retail materials.” Given that this is usually a function of the Creative Agency developing and producing the creative assets, how do you intend for us to apply this to the functions of a Media Agency assignment?

A.84: The copy referenced above does not pertain to Lot 2. However, the same demands apply to the billing procedures and staffing requirements for the Lot 2 contract.

Q.85: The proposal states that the Account Team must work exclusively on the New York State Lottery. This means they can work on no other accounts outside of NYSL within the agency?

A.85: See Answer to Question 65.

Q.86: Can the NYSL provide us with more background on the training sessions (WLA)?

A.86: It is suggested that the WLA and NASPL websites be reviewed as to the training sessions available from those organizations.

Q.87: (a) Could the NYSL share relative importance of multi-cultural segments as % of advertising/media investment?

(b) Is there the same level of favorability of NYS Lottery among different constituent groups beyond the general market (e.g. Hispanic, Asian, African American)?

(c) What is the volume contribution of Lotto’s business for Caucasian, Hispanic, African American and Asian audiences? How has this shifted in the past 5-10 years? What is the demographic profile of these consumers?

(d) Can you please share the “diversity business objectives” for the Lottery as referenced on page 67 of the RFP (in LOT 2: Media Planning & Buying Services)

(e) What is the demographic profile (e.g. age, ethnicity, income) of multicultural consumer of Mega Millions and Powerball? Why have these games been successful? And have they been more successful in the Hispanic community?

- (f) As we think about the Hispanic (and AA for that matter) market, their optimistic view of life and celebratory nature, are their certain holiday/seasons that Lotto sale peak e.g., Christmas, Thanksgiving, etc.? Is there an overall seasonality skew?
- (g) Given that the multicultural groups in the New York State lack sufficient educational resources and access to quality education, how has the awareness of the Lottery's Mission for Education (key objective for Lottery) been communicated in these communities?
- (h) What is Lotto's primary retail channel in Hispanic and multicultural communities and how has that retail-network strategy changed over the past 5 years? For example, is the primary channel bodegas and corner stores? What are expansion plans given the changes in the multicultural communities/gentrification, e.g., Walgreens in Spanish Harlem, etc.
- (i) Can you share the internet sales attributed to multicultural consumers? What is the ethnic breakdown?

A.87 (a) Current share of spend is not relevant to future activity.

(b) The Lottery favors all populations that are native to New York. How those populations are reached through marketing and advertising is determined based on budget, media availabilities and efficiencies, as well as communication goals and strategies particular to each population segment.

(c) Data supporting this question will be provided to the Finalists for development of the Phase Two responses, as stated in Section 4.7.

(d) The New York State population is diverse and it is the New York Lottery's marketing objective to communicate inclusively to all players and potential players. More specific objectives will be discussed with the successful bidders.

(e) Relevant demographic and sales data will be shared with Finalists when they are identified to assist with completion of Phase Two of the RFP, as stated in Section 4.7.

(f) Relevant demographic and sales data will be shared with Finalists when they are identified to assist with completion of Phase Two of the RFP, as stated in Section 4.7.

(g) The Lottery's most recent Mission for Education campaign ran from January through March. Included in the overall multi-media advertising program was a Spanish-language television and radio, as

well as a multi-cultural print effort that included African American, Chinese, Korean and Hispanic publications.

(h) Relevant demographic and sales data will be shared with Finalists when they are identified to assist with completion of Phase Two of the RFP, as stated in Section 4.7.

(i) At this time, Lottery products, other than subscriptions to the Mega Millions and Lotto games, are not available for purchase over the internet in New York State.

Q.88: Has NYS Lottery done media mix modeling in the past? Is there any data that can be shared as benchmarks to identify media priorities?

A.88: There is no data that can be shared at this time. Relevant sales data will be shared with Finalists prior to Phase Two of the RFP process to assist with analysis of the Lottery's business and development of assignment responses.

Q.89: Are there any multicultural brand tracking studies you can share? Have you conducted media mix modeling to understand what channels are more effective in reaching the Hispanic, AA and Asian communities?

A.89: Relevant demographic and sales data will be shared with Finalists when they are identified to assist with completion of Phase Two of the RFP, as stated in Section 4.7.

Q.90: Every organization has a different definition of innovation. Can NYS Lottery share what they consider to be innovative and the types of programs they've done in the past?

A.90: The Lottery's perspective on what is innovative is anything that is new and reflects the latest thoughts and best practices in the industry. It could mean applying strategies used in other industries to the Lottery for the first time. It could mean developing programs to drive Lottery sales by using fresh technologies from the digital marketing world. While a business's history should inform its future, it does not mean it should be beholden to it. The Lottery looks to its agency partner(s) for novel ideas and creative approaches that will effectively achieve its objectives.

Q.91: Does the Commission use a third party vendor for development and administration of any sweepstakes or contests? If not, is this something that the Contractor may sub-contract to a vendor specializing in these types of events?

A.91: See Answer to Question 69.

PART FOUR – LOT 1 and LOT 2

Reference: Section 4.6

Q.92: (a) Credentials Meeting: Is there any other content expectation for the oral presentation outside of what is cited?

(b) How many team members from the agency are allowed to partake?

A.92: (a) The only required content for the oral presentations are outlined in the RFP for the respective Lots and Phases.

(b) The Bidders can have as many team members working on the RFP responses as desired, but it is required that all participants be part of the actual team that would be working on the Lottery's business, should the agency win the account.

LOT 1 – Creative & Marketing Communications Services

Reference: Section 4.1

Q.93: For the creative reel, should we put a link of where to view the reel in the hard copy and a .mov on the USB memory sticks? Can we also submit video components for the case studies this way?

A.93: Yes.

Reference: Section 4.3

Q.94: Can you share the current Agency staffing by functional title and discipline? Do you find this staffing model acceptable?

A.94: This current staffing is not relevant to the future structure of the business as the account will be divided between two Agencies under the new contract structure.

Q.95: It is likely some bidders' current agency staff levels are aligned to account scope of work for optimal effectiveness and efficiencies, resulting in a bidder having little or no un-allocated staff. Therefore, with the Lottery requiring an extensive staffing plan, can a bidder address this as they would any other new account by providing a staffing plan for how the Lottery team will be built?

A.95: Yes, a bidder can provide a staffing plan for how a Lottery team would be built if they do not have the staff on hand. The response must include the qualifications that would be used for hiring the new staff members.

Q.96: (a) The Lottery is asking for both brief biographies and resumes for key staff. Please clarify if this requirement is for every key staff member identified (assuming those are E- or S-level) or ALL staffing identified at all levels (E, S, M, and J).

(b) Does the Lottery want names on staff plans for everyone, no one or just key personnel?

A.96: (a) Bios and Resumes are required for all staff to be assigned to the Lottery account at the E, S and M levels.

(b) It is expected that the names would be provided for key personnel referenced above (E, S and M levels).

Q.97: (a) Can we add titles to Attachment 2 or Attachment 3 if needed?

(b) The agency uses various titles and functions to service our clients. Can we map various functions to titles included in Attachment 3?

A.97: (a) Yes.

(b) Yes, as long as the format for response is consistent with the requirements set forth in Part 4 and Attachment 3.

Reference: Section 4.7

Q.98: Would the Lottery consider issuing data for Phase Two before the finalists are announced?

A.98: No.

Reference: Section 4.8

Q.99: Pricing proposal states that the components that go into the annual fee are fixed for the five-year term of the contract. Is there an option for a Cost of Living adjustment for labor rates to allow the agency to retain top talent?

A.99: RFP, Section 2.6 – TERM OF CONTRACT AND CONTRACT EXTENSIONS is amended by this response to provide for a Cost of Living adjustment in years four and five of the contracts. Therefore, current RFP, Section 2.6 is deleted and replaced with:

The term of the contract will begin on January 15, 2015 and end on March 31, 2020.

The State shall have the right to terminate this contract early for convenience. The State may only invoke its right to terminate for convenience on March 31, 2016 and on each subsequent anniversary date of the contract (except for the contract expiration date), provided that the State has given written notice to the contractor no later than 30 days prior to the anniversary date.

If the contract is not terminated, prices may be adjusted effective April 1, 2018 and April 1, 2019 in accordance with the following formula:

If the contract is not terminated, prices will be adjusted as of April 1, 2018 and April 1, 2019 in accordance with the change in the National Consumer Price Index for Wages (CPI-W, unadjusted, US city average, all items index), published by the United States Bureau of Labor Statistics for the immediate preceding twelve (12) month period ended January, or a three (3%) percent maximum escalation rate, whichever is less. In the event that such index should be discontinued or materially altered in method of compilation, the figure to be used on each renewal anniversary shall be the applicable figure taken from the Index in general use, which is most closely comparable to such Consumer Price Index for Wages. The contractor has the sole responsibility to submit invoices at the approved adjusted rate, after the approved rates are issued by the Commission.

Q.100: The pricing instructions do not mention Fringe Benefits. Please clarify if these costs should be included in the direct costs or in the indirect overhead allocation?

A.100: Indirect costs.

LOT 2 – Media Planning & Buying Services

Reference: Section 4.1

Q.101: (a) It is noted that “Account Team Changes are at the discretion of the NY Lottery.” What is meant by this?

(b) What criteria will the Lottery utilize to evaluate Agency staff for disapproval of an employee?

A.101: (a) When the contractor wishes to change members of the account team, such change is subject to approval of the NY Lottery.

(b) Level of experience, relevant expertise and professionalism.

Reference: Section 4.5

Q.102: Can you elaborate on who qualifies as a “sub-contractor” in the context of Part 3 - section 4.5? Does this include the media that we invest in on your behalf (Newspapers, Digital sites, Television & Radio Stations, for example), as well as the agents of those vendors? Would it include experiential marketing vendors, for example, who might be used for grass- roots, local event, added-value campaigns?

A.102: Media suppliers would not qualify as a sub-contractor under this contract. However, if an outside firm was hired to provide experiential marketing, for instance, to the Lottery for a fee, they would be considered a sub-contractor. Any project that would require the hiring of a third-party vendor must be triple bid in accordance with the New York State finance laws.

Q.103: For bidders planning to utilize sub-contractors to deliver against the scope of work, can you elaborate on the Lottery approval process of such sub-contractors?

A.103: The intent of bidding is to require the Advertising Agency to maintain competition for advertising acquisitions. Advertising acquisitions include printing, television commercial production, promotional merchandise, point-of-sale materials, etc. Excluded are items such as media and talent services. Also excluded are any goods or services with costs under \$50,000. A minimum of 3 vendors must be solicited for all qualifying acquisitions. Subject to Lottery approval, award will be made to the bidder deemed the Best Value through the Invitation for Bids (IFB) or (RFP) process. In the event the award is made to a proposal other than that deemed Best Value or as a sole or single source, written justification must be documented and such award will be subject to the Lottery approval. Complete details of the Lottery's bidding practices will be provided to the successful bidders.

Reference: Section 4.7

Q.104: Who/what is considered competition for NYS Lottery?

A.104: Any discretionary income purchases of consumers and certainly includes entertainment and gaming purchases.

Q.105: The NYS Lottery has set a 15% sales growth KPI with in Year I for Lotto. How much of that goal needs to come from acquiring new players vs. increasing frequency of play of existing customers?

A.105: Increasing both is a sales generation strategy, however, frequency of play is a sales growth strategy that cannot be done to an extent that promotes irresponsible gaming.

Q.106: Please clarify the omni-channel strategy.

A.106: This statement refers to the Lottery's desire to use all relevant media channels and consumer touch-points to achieve stated objectives.

PART FIVE

LOT 1 – Creative & Marketing Communications Services

Q.107: How would “subject matter experts” be utilized and how will this affect scoring?

A.107: Subject Matter Experts will be used to provide guidance and information relative to areas of their expertise, but will not be part of the proposal scoring process.

MISCELLANEOUS

LOT 1 and LOT 2

Q.108: We noted the NY State Gaming Commission conducted an RFP search for partner(s) to address “Market Research Regarding Alternative Approaches For the Future of Lottery in New York State” (C130005) in September of 2013. Are there results from that RFP yet – in particular, research findings as well as “comprehensive business plan” – and if so, may we see the report, or at minimum, the executive summary?

A.108: The “Comprehensive Business Plan” is not in a final stage.

Q.109: Can you supply the NY Lottery’s Organizational chart?

A.109: The organization is in a changing state partly as a result of the business plan advice referred to in Q 111.

MISCELLANEOUS

LOT 2 – Media Planning & Buying Services:

Q.110: Are there current partnerships/sponsorships NY Lottery already has directly with different vendors/associations we should be aware of? Could you identify any annual commitments that are in place with media partners (e.g., OOH venues, sports sponsorships)?

A.110: There are two long-term commitments for OOH advertising supporting Powerball and Mega Millions, which are renewed on an annual basis: permanent digital billboards around the state and a permanent phone kiosk program in New York City. SLMP sponsorships are renewed on an annual basis and include the following in 2014: Yankees/YES, MSG, Buffalo Bills, Barclay Center, Mets, Times Union Center, Watkins Glen, Tri-City Valley Cats, Hudson Valley Renegades, Brooklyn Cyclones, Syracuse Chiefs, Buffalo Bisons, Rochester Redwings, Darien Lake Performing Arts Center, Saratoga Performing Arts Center.

Q.111: Could you provide 2012-2013 spending by media type and market?

**A.111: Spot TV - \$31.5MM
Radio - \$10.7MM
OOH - \$14.8MM
Print - \$5.3MM
Digital - \$2.2MM
SLMP - \$3.3MM**

Market mix in 2012-2013 is not necessarily indicative of future budget allocations. As such information is not material to this RFP, spend by market is not included in this response.

Q.112: Are there any new launches of specific lottery games or new initiatives we should be aware of (re-design of website, new mobile app, etc.)?

A.112: There will be the following initiatives in 2014-2015: Website Relaunch; Mobile App upgrades; Cash4Life Draw Game launch; Various Instant Scratch-off Game launches (3-4 per month); Ongoing Second Chance Sweepstakes for Instant Games; Email Marketing program and a possible additional multi-state game.

Q.113: Can NYSL share sales seasonality across products?

A.113: Sales data will be provided to Finalists once they are announced following Phase One scoring. See Section 4.7 for reference.

Q.114: (a) What are the current distribution channels?

(b) Are there priority channels?

A.114: (a) Lottery games are currently sold through a retailer network of over 18,000 locations throughout New York State. Additionally, subscriptions are available for Mega Millions and Lotto via nylottery.ny.gov. In the future, there may be the opportunity to sell Lottery games online, but at this time that is not done beyond the subscriptions channel.

(b) The retailer network is the priority channel.

Q.115: How does the subscriptions business perform for NYS Lottery? What % of sales?

A.115: Sales data will be provided to Finalists once they are announced following Phase One scoring. See Section 4.7 for reference.

Q.116: While sales have declined year-over-year, have we seen corresponding declines in key attributes such as awareness and likelihood to play lotto?

A.116: Relevant attitude & awareness figures and sales data will be provided to Finalists once they are announced following Phase One scoring. See Section 4.7 for reference.

Q.117: There are nine Designated Market Areas in New York State. Have all nine markets carried media in the past?

A.117.: No.

Q.118: Do the current communications plans target New York State only and not corresponding tri-state area (commuters to NYC)?

A.118: Yes.

Q.119: Has the NYS Lottery utilized Programmatic buying (trading desk for online media) as part of their communications platforms in the past?

A.119: No.

Q.120: Has the NYS Lottery utilized Addressable TV as part of their communications platforms in the past?

A.120: No.

Q.121: Are there any advertising restrictions/brand compliance guidelines we should be aware of when developing our communications plans?

A.121: The note in 4.7 at the end of the “Growing Lotto” assignment speaks to the guidelines that should be followed for the Lottery’s advertising program. There are no legal restrictions for Lottery advertising.

Q.122: Regarding the media audits requirement, is there any clarifying language that can help us better understand what is required?

A.122: Lot 2, Section 3.2 D3 refers to the media placement companies (e.g., Out-of-Home, Print, Digital, etc.) with whom the Media Agency will be doing business on behalf of the Lottery. It is the responsibility of the successful bidder to verify that the media company is financially sound and will fulfill their obligations to run the Lottery’s advertising as contracted.

Q.123: Are there specific savings goals that must be achieved on an annual basis? If so, are they specified by channel?

A.123: No.

Q.124: Is there a specific authorization process that enables NYSL to approve last minute incremental plans and investment approaches to get advertising in market quickly and efficiently?

A.124: All advertising plans and investment approaches are approved by the Director of Advertising, Director of Sales & Marketing, and the Acting Director of the Lottery. Recognizing the need to get to the market quickly in certain circumstances (such as Jackpot advertising), the approval process is quick.

Q.125: Is there a specific performance criterion that must be met when evaluating SLMPs? If so, what are those key metrics?

A.125: Not at this time. We are in the process of developing such metrics to ensure efficient use of SLMP dollars.

Q.126: Is there detailed authorization and billing process that has been already established with NYSL that could be shared?

A.126: The Lottery requires that all expenses incurred by the contracted agencies be authorized in writing by the Lottery Director of Advertising, or designee, before commitments are made on behalf of the Lottery for goods and services. Any production-related expenses projected to exceed \$50,000 must be triple bid prior to the award of the job to a sub-contractor. (Explanation of the specific bid process will be provided to the successful bidders.) All billing must be submitted with complete supporting documentation, including all sub-contractor and media invoices, necessary receipts, and copies of the Lottery's approval of the expenditures. Billing is reviewed by the Lottery Marketing Unit and Financial Management Unit for accuracy, contract compliance and payment authorization. It is then submitted for payment by the New York State OSC.

Q.127: What are your sales goals for 14/15?

A.127: Total projected sales for FY 14/15 are \$7,285.2B, flat versus FY 13/14.

Q.128: (a) How often will you be able to share sales data with your AOR?
(b) Will you be able to provide sales by county or zip code? By demographic?

**A.128: (a) Sales data will be shared on a weekly basis.
(b) It is available by county, zip code, and by game. Demographic data is attainable through the IPSOS tracking study only. That report is issued quarterly.**

Q.129: Do you anticipate any new games or game components in 14/15?

A.129: See Answer to Question 112.

Q.130: Are SEM/SEO and Paid Search included in the scope of this assignment?

A.130: Yes.

Q.131: What type of research are you currently doing or pursuing for consumer insights?

A.131: Some of the research planned for 14/15 is as follows: On-going attitude and usage study; consumer focus groups on Instant Scratch-off Games and Jackpot Games; Consumer Segmentation Study; Consumer Retail Experience Qualitative study; Various Copy Testing.

Q.132: Can you please provide some examples of programs you've run that you would consider successful and those that you would consider unsuccessful?

A.132: While there are programs that have been successful, as well as some that have been less so, they are not considered relevant to this procurement process as we are looking for innovative thinking from all Bidders.

Q.133: Do you have any long-term contracts or negotiations we should be aware of (e.g. OOH placements, multi-year sponsorships, etc.)?

A.133: See Answer to Question 110.

Q.134: Are you currently doing any type of market mix modeling or channel attribution?

A.134: No.

Q.135: Do you currently employ dynamic creative that is customized by geographic location, individual users, etc.? Or do you typically have one greater gaming message in market?

A.135: Such information is not considered relevant to this procurement process as we are looking for fresh, innovative thinking from all Bidders. We do not want to color the Bidders' RFP response development by sharing too much detail on current processes.

CREATIVE & MARKETING COMMUNICATIONS SERVICES
CONTRACT # C140008

THIS AGREEMENT made this ____ day of _____, 2014 by and between the NEW YORK STATE GAMING COMMISSION, DIVISION OF LOTTERY, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 (the "Commission"), and [name of company] having an office at [address of company] (the "Contractor").

WHEREAS the Commission issued a Request for Proposals on May 12, 2014 soliciting proposals from qualified firms to provide Advertising and Media services, and clarified the requirements of the Request for Proposals with a list of Questions and Answers dated May 29, 2014 and July 31, 2014 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____] (collectively, the "Proposal"), which received the highest total combined score from among competing proposals by the Commission's evaluation team;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services. The Contractor agrees to provide the Commission with Creative & Marketing Communications Services, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.

2. Term. This Agreement shall be for a term of five years commencing as of January 15, 2015.

3. Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor. The contract value is not to exceed _____.

4. Approvals Required. This Agreement, and any extension of the term of this Agreement or any amendment of the provisions of this Agreement, shall not be effective and binding upon the Commission, the State of New York, or the Contractor unless and until approved by the Attorney General and the State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

5. Mutual Cooperation. The objective of this Agreement is to obtain Creative & Marketing Communications Services. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.

6. Termination.

(a) The Commission shall have the right to terminate this Agreement for convenience, upon 30 days written notice, or for any of the following causes:

(i) a material breach by the Contractor of any of the provisions of this Agreement;

- (ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- (iii) a good faith determination by the Commission that continuation of the contract could place the integrity of the Commission in jeopardy; or
- (iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the Lottery or the Commission.

(b) In the event that the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give the Contractor advance written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Commission in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) The Commission reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Agreement.

(d) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Executive Director or his or her designee at the Contractor's expense where the Contractor is determined by the Executive Director or his or her designee to be non-responsible. In such event, the Executive Director or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

7. Confidentiality and Non-Disclosure.

(a) For the purposes of this section, "Confidential Information" means any information not generally known to the public, whether oral or written, that the Commission identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Commission pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Commission deems confidential. The Commission will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor.

(b) Confidential Information does not include information that, at the time of Commission disclosure to the Contractor:

(i) is already in the public domain or becomes publicly known through no act of the Contractor;

(ii) is already known by the Contractor free of any confidentially obligations;

(iii) is information that the Commission has approved in writing for disclosure; or
(iv) is required to be disclosed by the Contractor pursuant to law so long as the Contractor provides the Commission with notice of such disclosure requirement and opportunity to defend prior to any such disclosure.

(c) The Contractor may use Confidential Information solely for the purposes of providing services to the Commission pursuant to this Agreement. The Contractor shall not make copies of any written Confidential Information without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right to or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

(d) The Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The Contractor shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Contractor uses to maintain its own confidential information.

(e) Upon written request by the Commission, the Contractor shall return all written Confidential Information to the Commission.

8. Records Retention. Records required by this Agreement to be retained by the Contractor shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

9. Notices. All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if

communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Commission:

Executive Director of the New York State Gaming Commission
One Broadway Center
Post Office Box 7500
Schenectady NY 12301-7500

(b) As to the Contractor:

[Name and Address]

10. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, as well as the subcontractors (if any), agents or employees of the Contractor in connection with performance of services under this agreement. The Contractor shall indemnify, defend, and save harmless the New York Lottery, the Commission, the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

(a) The Contractor, its officers, employees, agents, successors and assigns,
and/or

(b) A Subcontractor, its officers, employees, agents, successors and assigns.

11. Relationship. The relationship of the Contractor to the Commission arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the

Commission or the State by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Commission or the State, on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

12. Documents Incorporated. Appendix A, "Standard Clauses for New York State Contracts," the RFP, and the Proposal are hereby incorporated herein to the same force and effect as if set forth at length hereat.

13. Order of Precedence. Any conflict between the provisions of this Agreement and the documents incorporated herein shall be resolved according to the following order of precedence, from the highest to the lowest:

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;

- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

14. Miscellaneous Provisions.

(a) A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.

(b) This instrument and the documents incorporated herein represent the entire agreement between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

(c) The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

(d) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Executive Director of the Commission or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(e) The Executive Director of the Commission or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director of the Commission or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[CONTRACTOR]

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTORNEY GENERAL

COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of _____, 2014, before me personally came _____, to me known, who being duly sworn, did depose and say that he or she resides in _____ (if the place of residence is in a city, include the house and street number), that he or she is the _____ of [company name], the corporation which executed this contract, and that he or she was authorized to execute this contract on behalf of said corporation.

Notary Public

MEDIA PLANNING & BUYING SERVICES
CONTRACT # C140009

THIS AGREEMENT made this ____ day of _____, 2014 by and between the NEW YORK STATE GAMING COMMISSION, DIVISION OF LOTTERY, an executive agency of the State of New York having an office at One Broadway Center, Post Office Box 7500, Schenectady, New York 12301-7500 (the "Commission"), and [name of company] having an office at [address of company] (the "Contractor").

WHEREAS the Commission issued a Request for Proposals on May 12, 2014 soliciting proposals from qualified firms to provide Advertising and Media services, and clarified the requirements of the Request for Proposals with a list of Questions and Answers dated May 29, 2014 and July 31, 2014 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [_____] (collectively, the "Proposal"), which received the highest total combined score from among competing proposals by the Commission's evaluation team;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the parties hereto agree as follows:

1. Scope of Services. The Contractor agrees to provide the Commission with Media Planning & Buying Services, as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Agreement with the same force and effect as if they were fully set forth herein.

2. Term. This Agreement shall be for a term of five years commencing as of January 15, 2015.

3. Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal. No minimum amount is guaranteed by this Agreement and the Contractor shall not have any right to make a claim therefor. The contract value is not to exceed _____.

4. Approvals Required. This Agreement, and any extension of the term of this Agreement or any amendment of the provisions of this Agreement, shall not be effective and binding upon the Commission, the State of New York, or the Contractor unless and until approved by the Attorney General and the State Comptroller. The Commission agrees to exercise its best efforts to obtain such approval.

5. Mutual Cooperation. The objective of this Agreement is to obtain Media Planning & Buying Services. The parties agree to cooperate fully in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish that objective.

6. Termination.

(a) The Commission shall have the right to terminate this Agreement for convenience, upon 30 days written notice, or for any of the following causes:

(i) a material breach by the Contractor of any of the provisions of this Agreement;

- (ii) a determination by a court of competent jurisdiction that the Contractor is bankrupt or insolvent;
- (iii) a good faith determination by the Commission that continuation of the contract could place the integrity of the Commission in jeopardy; or
- (iv) a conviction of the Contractor or any of its directors, officers, or employees of any criminal offense connected to the Contractor's business which, in the sole reasonable opinion of the Executive Director of the Commission, would be prejudicial to public confidence in the Lottery or the Commission.

(b) In the event that the Commission decides to exercise the right to terminate this Agreement for cause, the Commission shall give the Contractor advance written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specifically the cause for which termination is sought, and the Contractor shall be entitled to a period of thirty (30) days from receipt of such Notice to correct or cure the cause so described to the reasonable satisfaction of the Commission in which case such Notice shall be deemed withdrawn and a nullity. If termination is sought because of a criminal conviction as described in subparagraph (iv) of Paragraph (a) of this section 6, the cause for termination shall be deemed to be cured if the Contractor causes or obtains the dismissal, resignation, retirement, or other removal of the person convicted of such offense during such thirty (30) day period.

(c) The Commission reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such finding, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Agreement.

(d) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Commission officials or staff, the Contract may be terminated by the Executive Director or his or her designee at the Contractor's expense where the Contractor is determined by the Executive Director or his or her designee to be non-responsible. In such event, the Executive Director or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

7. Confidentiality and Non-Disclosure.

(a) For the purposes of this section, "Confidential Information" means any information not generally known to the public, whether oral or written, that the Commission identifies as confidential and discloses to the Contractor so that the Contractor can provide services to the Commission pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Commission deems confidential. The Commission will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to the Contractor.

(b) Confidential Information does not include information that, at the time of Commission disclosure to the Contractor:

(i) is already in the public domain or becomes publicly known through no act of the Contractor;

(ii) is already known by the Contractor free of any confidentially obligations;

(iii) is information that the Commission has approved in writing for disclosure; or
(iv) is required to be disclosed by the Contractor pursuant to law so long as the Contractor provides the Commission with notice of such disclosure requirement and opportunity to defend prior to any such disclosure.

(c) The Contractor may use Confidential Information solely for the purposes of providing services to the Commission pursuant to this Agreement. The Contractor shall not make copies of any written Confidential Information without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right to or interest in such Confidential Information and the Commission shall retain all right and title to such Confidential Information at all times.

(d) The Contractor shall hold Confidential Information confidential to the maximum extent permitted by law. The Contractor shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that the Contractor uses to maintain its own confidential information.

(e) Upon written request by the Commission, the Contractor shall return all written Confidential Information to the Commission.

8. Records Retention. Records required by this Agreement to be retained by the Contractor shall be retained for the periods specified in Appendix A, attached hereto. Such records may be retained in their original form or in any other reliable and readily retrievable format, at the option of the Contractor.

9. Notices. All notices required by this Agreement shall be sufficient if in writing and sent by certified mail return receipt requested and all other communications shall be sufficient if

communicated in writing to the following addresses or to such other addresses as may be designated from time to time by the parties in writing:

(a) As to the Commission:

Executive Director of the New York State Gaming Commission
One Broadway Center
Post Office Box 7500
Schenectady NY 12301-7500

(b) As to the Contractor:

[Name and Address]

10. Liability and Indemnification. The Contractor shall be responsible for all damages to life and property due to activities of the Contractor, as well as the subcontractors (if any), agents or employees of the Contractor in connection with performance of services under this agreement. The Contractor shall indemnify, defend, and save harmless the New York Lottery, the Commission, the State of New York, and their officers, employees, agents, assigns and retailers from and against any and all third party claims, liabilities, losses, damages, costs, or expenses, including reasonable attorneys' fees, which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of:

(a) The Contractor, its officers, employees, agents, successors and assigns,
and/or

(b) A Subcontractor, its officers, employees, agents, successors and assigns.

11. Relationship. The relationship of the Contractor to the Commission arising out of this Agreement shall be that of an independent contractor. The Contractor, in accordance with its status as an independent contractor, agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the

Commission or the State by reason hereof, and that it will not by reason hereof, make any claim, demand or application for any right or privilege applicable to an officer or employee of the Commission or the State, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, or retirement membership or credit. All personnel of the Contractor shall be within the employ of the Contractor only or shall be duly contracted subcontractors of the Contractor, which alone shall be responsible for their work, the direction thereof, and their compensation. Nothing in this Agreement shall impose any liability or duty on the Commission or the State, on account of any acts, omissions, liabilities or obligations of the Contractor or any person, firm, company, agency, association, corporation, or organization engaged by the Contractor as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, for taxes of any nature, including, but not limited to, unemployment insurance and workers' compensation, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities.

12. Documents Incorporated. Appendix A, "Standard Clauses for New York State Contracts," the RFP, and the Proposal are hereby incorporated herein to the same force and effect as if set forth at length hereat.

13. Order of Precedence. Any conflict between the provisions of this Agreement and the documents incorporated herein shall be resolved according to the following order of precedence, from the highest to the lowest:

- (a) Appendix A – Standard Clauses for New York State Contracts;
- (b) Any amendments to the Agreement;
- (c) Agreement;

- (d) Request for Proposal and any clarifying responses by the Commission;
- (e) Vendor Proposal and any clarifying responses by the vendor.

14. Miscellaneous Provisions.

(a) A waiver of enforcement of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement nor shall it preclude the affected party from subsequently enforcing such provision.

(b) This instrument and the documents incorporated herein represent the entire agreement between the Commission and the Contractor, and no modification thereof shall be binding unless the same is in writing and signed by the respective parties.

(c) The headings contained in this Agreement are intended for ease of reference only and shall not be interpreted to limit or modify any of the provisions of this Agreement.

(d) The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Executive Director of the Commission or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

(e) The Executive Director of the Commission or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director of the Commission or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

[CONTRACTOR]

NEW YORK STATE
GAMING COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTORNEY GENERAL

COMPTROLLER
Thomas P. DiNapoli

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF _____)
) ss.:
COUNTY OF _____)

On this ____ day of _____, 2014, before me personally came _____, to me known, who being duly sworn, did depose and say that he or she resides in _____ (if the place of residence is in a city, include the house and street number), that he or she is the _____ of [company name], the corporation which executed this contract, and that he or she was authorized to execute this contract on behalf of said corporation.

Notary Public