



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

**VENDOR ACKNOWLEDGEMENT OF ADDENDUM**

Amendment Number: Four  
Date Issued: June 13, 2014

**Includes:**

- Question & Answer Summary Including:**
  - Revision of Answer to Question # 6 (B) (7)**
  - Answer to Question #32**
- Revised Appendix B - Contract Form – LOT 1**
- Revised Appendix B – Contract Form – LOT 2**
- Revised Appendix I – MWBE Compliance**
- Revised Attachment 2 – Pricing Proposal Form – LOT 1**
- Revised Attachment 2 – Pricing Proposal Form – LOT 2**
- Revised Attachment 4 – Document Submittal Checklist**

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

Questions and Answers

June 13, 2014

**PART ONE**

**A.6 (B) (7): The Commission hereby revises the answer published on June 5, 2014 to the following question as follows:**

**The Commission makes no guarantee as to minimum amount of work available under the resulting contract. Any changes to the staffing needs will be agreed upon by both parties at each annual review and monthly labor fee will be adjusted accordingly. Any significant changes in scope would require a contract amendment or new procurement. See also §11 of the revised contracts C140008 and C140009 included with this response.**

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: See amended Paragraph 3. Compensation, of contract form C140008 and C140009.**

Q.137: The Lottery's revised schedule in Amendment Two reduced the time for completing Phase Two – dramatically, from 28 calendar days to 22 – thus, there is inadequate time for a bidder to properly address the Lottery's assignments. For the Lottery's best benefit, can this be reverted back to the original time allotment?

**A.137: Through this response, RFP Section 1.4 Timeline is revised as follows:**

RFP Issued	May 12, 2014
First Vendors' Questions Due by 3:00 pm	May 23, 2014
Lottery Responses to First Questions	May 29, 2014
Second Vendors' Questions Due by 3:00 pm	June 10, 2014
Lottery Responses to Second Questions	June 13, 2014
Phase One Vendor Proposals Due by 3:00 pm	June 24, 2014

Scheduling of Phase One Oral Presentations	June 27, 2014 – June 30, 2014
Phase One Oral Presentations	July 9, 2014 – July 25, 2014
Finalists Notified	July 30, 2014
Third Vendors' Questions Due by 3:00 p.m.	August 7, 2014
Lottery Responses to Third Questions	August 12, 2014
<b>Phase Two Vendor Proposals Due by 3:00pm</b>	<b>September 3, 2014</b>
<b>Phase Two Oral Presentations</b>	<b>September 10, 2014 – Sept. 30, 2014</b>
<b>Apparent Winning Proposal Designated</b>	<b>October 15, 2014</b>

Q.138: In Part 1, Section 1.2, it is outlined that \$5.5 million is the projected annual expenditure for creating and distributing unique POS materials, including signage, ticket dispensers and other merchandising components to ensure an effective retail presence. Please confirm whether or not that \$5.5 million is part of the \$22.5 million in Creative and Marketing related services.

**A.138: Confirmed. The \$5.5 million for POS materials is included in the total \$22.5 million production budget for Creative and Marketing-related Services.**

Q.139: Section 1.17B – Proposal Format provides outlines for the structure on both Volume 1 – Technical (non-price) Proposal – Credentials and Volume II – Pricing Proposal. Both Volumes require the submission of a transmittal letter. Can it be the same transmittal letter for each submission or do they need to be differentiated?

**A.139: Separate letters must be submitted but it is up to the individual bidder to determine content.**

Q.140: In Section 1.17B – Proposal Format states “each section of the Proposal must be clearly identified with appropriate headings and responses should be separated by tabs and in the order presented in this RFP.” Please clarify if the tabs can be page dividers or if you would like physical tabs in the document? If so, can the submission be bound in a binder?

**A.140: The Commission has no preference as to the type of divider. Any type of divider may be used as long as separate sections are identifiable.**

Q.141: Is there a specific place within the Phase One RFP Written Response where we should include Appendix C – Bidder Disclosure/Certification Form per the directions outlined in Section 1.9?

**A.141: There is not a specific place required. You may incorporate a Required Documents section in your response.**

Q.142: As stated in the outline for the Technical Proposal under section 1.17B – Lot 2, bullet 9 refers to “certifications and representations as required by this RFP and addressed throughout.” Can you please clarify which parts of the submission are to be included here? Is it appendices C-J?

- A.142: The intent of this statement is to include documents and information required throughout the RFP, such as insurance, references, resumes, qualifications, etc.**
- Q.143: Attachment 4 – Document Submittal Checklist details the documents required for submission as well as when they are due. Throughout the RFP, the due dates for many of the appendices are not listed. Please confirm that the submittal requirements and due dates listed on the checklist are accurate.
- A.143: See revised Attachment 4 – Document Submittal Checklist.**
- Q.144: Technical Proposal under section 1.17B – Lot 2 Media Planning & Buying Services outlines the order for which documents should be included in the proposal and references the checklist. The checklist includes Appendix C, Appendix D, Appendix E, Appendix F, Insurance Documentation, EEO and MBWE information and lists them as due with the Phase One Proposal, but they are not listed in the outline. Please clarify where they should be included within the proposal based on the outline provided in Section 1.17B
- A.144: See revised Attachment 4 – Document Submittal Checklist.**
- Q.145: Attachment 4 (Document Submittal Checklist) indicates that a completed Substitute Form W-9, applying for a NYS taxpayer ID number, must be submitted with Phase 1. However, Appendix E, the NYS Vendor Responsibility Questionnaire, also required with Phase 1 submission, asks for the bidder's NYS Vendor ID Number and gives instructions on obtaining the number. Is the bidder expected to get the ID number before Phase 1 submission to complete Appendix E or may the bidder leave the Vendor ID number question on Appendix E blank for the Phase 1 submission, while the number is being obtained?
- A.145: You will need to obtain a Vendor ID number in order to complete the online Vendor Questionnaire. The Vendor ID number may be left blank on the Hard Copy of the Vendor Questionnaire if your company does not already have one. Also, see revised Attachment 4 – Document Submittal Checklist.**
- Q.146: Section 1.20, Page 18 – Will the Lottery return the litigation bonds to unsuccessful bidders?
- A.146: The bond or alternate form must remain in effect for one year following approval of the Agreement by the Office of State Comptroller. After six (6) months, each Proposer may request, and the Commission anticipates granting, a release of the litigation bond. However, the Proposer will be required to provide a release (signed and notarized in a form that is acceptable to the State) prior to release of the bond which states that the Proposer will not sue.**
- Q.147: In regard to Amendment 1, response to Question 25: we understand that the Fidelity Bond will not be obtained until after the notification of the award; however, the Fidelity Bond is listed in the Document Submittal Checklist (Attachment 4) to be submitted in Phase One. Please clarify how this requirement is to be fulfilled by the agency.

**A.147: The Fidelity Bond is to be submitted upon notification of award. Also, see the revised Attachment 4 – Document Submittal Checklist.**

Q.148: Clarification on what the NY Lottery considers a Joint Proposal is requested. As we understand it, because there are two contracts – Lot 1 and Lot 2 – bidders who would like to be considered by the Lottery as a team should submit their responses separately, hold separate Oral presentations and, if they proceed to Phase Two assignments, also hold separate Oral presentations (even if their work is conceived together and connected, in order to present the best possible proposal for the Lottery’s consideration). Therefore, do both firms acknowledge in their submissions that they want to be considered by the Lottery as a team? Will a “team” consideration damage the chances either separate bidder has of winning a contract?

**A.148: A Joint Proposal under this procurement would be one in which two parties join together in response to either Lot 1 or Lot 2.**

**While there is no restriction against affiliates of a parent company bidding separately on either Lot, a “team” approach, as addressed in this question is not relevant to the evaluation or award process. A “team” approach option does not exist under this procurement. As an example, if Affiliate A of a Parent Company chooses to bid on Lot 1 and Affiliate B of the same Parent Company chooses to bid on Lot 2, they may; however, this situation does not create a “Joint Proposal” and the Affiliates will not be treated as a “team.” Further, it is possible that Affiliate A could be the successful bidder under Lot 1 and Affiliate B could be the successful bidder under Lot 2, but under that scenario there will still be two separate contracts with each Affiliate responsible under the terms of their corresponding contract.**

**In summary, two separate awards will be made under this procurement – one under Lot 1 and one under Lot 2. Evaluation leading to this award will be based on the merit of each Proposal submitted under the RFP.**

**As part of this response, Section 1.17.F of the RFP is replaced with the following:**

**F. Joint Proposals:**

**Two or more firms may join together to submit a Proposal in response to either Lot in this RFP. If a joint Proposal is submitted, the Proposal shall define the responsibilities that each firm is proposing to undertake. Of the firms submitting a joint Proposal, one must be designated as the primary bidder. Any Contract award issued as a result of such a submission will be made exclusively to the primary bidder. A joint Proposal must designate a single authorized official from one of the firms participating in such joint Proposal to serve as the sole point of contact between the Commission and the firms that are responding together.**

Q.149: For the physical submission, would the Lottery prefer that the Technical proposal packages be intact as a whole – in other words, hard copies coupled with a USB memory stick for each reader?

**A.149: There is no preference.**

Q.150: Also for the physical submission, will the Lottery allow the agency reel and other creative support materials to be included on the USB memory stick, or would the Lottery prefer those materials submitted in another format? If so, what do you prefer that format be?

**A.150: Yes, submit on USB.**

## **PART TWO**

Q.151: Appendix H - Sales & Use Tax is not listed within the RFP. Is it meant to pertain to Section 2.11 – Tax Law where Appendix I - Contract Certification Forms is listed instead?

**A.151: Yes. Appendix H contains Sales & Use Tax documents. Appendix I contains MWBE Documents.**

Q.152: Appendix H – Sales & Use tax is not listed on the document submittal checklist, please confirm its due date.

**A.152: See revised Attachment 4 – Document Submittal Checklist.**

Q.153: The checklist attributes Sales & Use tax to Appendix I – is it a mistake and supposed to reference Appendix H as that is the title of Appendix H?

**A.153: Yes. Appendix H contains Sales & Use Tax documents. Appendix I contains MWBE Documents.**

Q.154: Please confirm when the forms pertaining to Section 2.11 – Tax Law Section 5-A are to be submitted – with Volume I: Technical Proposal or after the bidder is awarded the Contract.

**A.154: See revised Attachment 4 – Document Submittal Checklist.**

Q.155: On Attachment 4 “Document Submittal Checklist” the EEO requirements mention the “Policy Statement.” Is this Policy Statement the “Encouraging Use of New York State Businesses in Contract Performance”?

**A.155: No, this is a separate requirement. Through this response, RFP Section 2.14 is revised as follows:**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES.**

By submission of a Proposal in response to this solicitation, the bidder agrees with all of the terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women. In addition, each respondent must submit a copy of the respondent’s Equal Employment Opportunity (“EEO”) Policy.

In accordance with Article 15-a of the New York State Executive Law and in conformance with the Regulations promulgated by the Minority and Women’s Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the bidder/contractor agrees to be bound by provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.

The EEO and M/WBE requirements are set forth in Appendix I of this RFP.

The M/WBE goal established under this RFP is 20%.

- Q.156: Bidders are required to submit a MWBE Utilization form I-4 with their bid proposal :
- a) Please confirm if the I-4- Utilization Plan form is due with Phase 1 of RFP or within 14 days as stated on Attachment 4 pg. 159.
  - b) Can the utilization total percentage of the contract contain a combined figure for both MWBE?
  - c) Are the tax id’s of the subcontractors necessary for the form?
- A.156:       a) **See revised Attachment 4 – Document Submittal Checklist.**  
              b) **Yes.**  
              c) **The tax IDs are not necessary for the planned utilization, but will be required for actual utilization so usage can be captured in the MWBE Contract System.**
- Q:157: The RFP says the commission may disqualify a Bidder as being non-responsive under the following circumstances: fails to submit MWBE Utilization plan, fail to submit a written remedy to a notice of deficiency, fails to submit a request for waiver, or demonstrated good faith efforts. Some clarifying questions:
- a) Does the good faith efforts documentation replace the use of a waiver(Appendix I-7) or in addition to the waiver if needed?
  - b) Is the waiver amount requested considered at full contract value or annual?
- A.157:       a) **No the good faith efforts documentation does not replace the waiver. The good faith efforts are documented by your agency to support the research of available MWBE companies, and their utilization of qualified MWBEs when appropriate. The waiver is used when the Contractor is unable to identify available MWBEs and has determined that they will not be able to meet the stated goal.**

**b) The waiver amount requested would be relative to the full contract value.**

Q.158: Regarding form J-4, the utilization form mentioned on Attachment 4; is this the same as the I-4 Utilization Plan form? Please provide an example so we make sure we're submitted properly.

**A.158: The MWBE documents are incorporated as Appendix I. See revised Appendix I.**

Q.159: Regarding report J-5 Quarterly Activity report: Is the same as the I-5? Please provide an example.

**A.159: The MWBE documents are incorporated as Appendix I. See revised Appendix I.**

Q.160: Regarding form #I-6 Contractor's Quarterly MWBE contractor compliance & payment report. Is this different then the I-5? Please provide an example.

**A.160: Yes, these are different forms. I-5 is used to report contracts and purchases awarded to MWBEs for the quarter that may or may not have had payments made. I-6 is used to report payments made to MWBE firms for the quarter.**

Q.161: The EEO requirements in the Document Submittal Checklist mention a "Staffing Plan (J-2)" and a "Utilization Report (J-3)," and Appendix I mentions a "Form #I-2" for an EEO staffing plan, but no such forms exist in the RFP. Where can we obtain these forms?

**A.161: See revised Appendix I – MWBE Documents.**

Q.162: On Attachment 4 "Document Submittal Checklist" the MWBE submissions include the Proposed Utilization Plan as form I-4, but there is also mention of a Utilization Plan form I-5, which is not included in the RFP. Will the Lottery supply this form after notification of the awarded contract?

**A.162: See revised Appendix I – MWBE Documents.**

Q.163: The checklist attributes Appendix J to EEO and MBWE – is this a mistake and meant to reference Appendix I? The actual Appendix J references Subcontractors and Suppliers. Please clarify.

**A.163: See revised Attachment 4 – Document Submittal Checklist.**

Q.164: Is Appendix I-1 in the RFP only the instructions for the "Utilization Report (J-3) or is it the complete form? There are references to columns, but no template.

**A.164: See revised Appendix I – MWBE Documents.**

Q.165: Appendix I in the RFP mentions a "Form #I-6" for quarterly reporting for MWBE. Will the Lottery supply this form after notification of the awarded contract?

**A.165: See revised Appendix I – MWBE Documents.**

Q.166: Appendix I-4 in the RFP does not have designated fields for suppliers. How should we describe media suppliers on this form, since they are subject to agreement with the Lottery on a media plan?

**A.166: There is a field to check either “SUB” for subcontractors, or “SUP” for suppliers. The form is intended for planned use. If your overall recommendations to the Lottery would involve utilization of specific MWBE media suppliers, then they may be listed.**

Q.167: The “Encouraging Use of New York State Businesses in Contract Performance” form requests that we attach identifying information. What information is the Lottery seeking for this form? Is it the same information as provided in section 4.5 of the RFP?

**A.167: It would be any subcontractors pertaining to section 4.5 of the RFP that are New York State subcontractors.**

Q.168: As stated in Section 2.10 – Electronic Payment (EPAY) Program, “upon execution of the contract, the contractor will need to submit an Electronic Payment Authorization Form.” Please confirm if Appendix G needs be submitted as part of the Volume I: Technical Proposal or if it is not to be submitted to the New York Lottery until the bidder is awarded the Contract.

**A.168: See revised Attachment 4 – Document Submittal Checklist.**

Q.169: In regard to section 2.13 the RFP states that the contractor shall procure the proper insurance prior to the start of work. If that is the case what is required to fulfill the insurance requirement in the Document Submittal Checklist (Attachment 4)? Are certificates of insurance required in our Phase One Submission? If not, what form of proof should we provide to fulfill this requirement in the checklist?

**A.169: Proof of insurance coverage is required with Phase One. The certificate naming the Commission as additional insured may be submitted after notification of award.**

Q.170: As we cannot name the Lottery as an additional insured on our insurance policies until awarded the contract, will the Lottery accept evidence of coverage certificates to satisfy the submission of Insurance Documentation for the Phase One Proposal? This question excludes the Litigation Bond requirement which will be provided with the Phase One Proposal.

**A.170: See Answer to Question 169.**

Q.171: The contract establishes January 15, 2015 as the start date. Given that a new agency(ies) will potentially require a transitional ramp-up, and that the Lottery may want to take advantage of fresh thinking for the Lottery’s 2014 fourth quarter and development for FY ’15-

'16, is it intended to have the winning bidder(s) begin the partnership with you sooner than 1.15.15?

**A.171: No. The transition period is January 15, 2015 through March 31, 2015. It is the intention of the Lottery that the transition period would be used to for the successful bidder to review all available research and sales data; gain thorough understanding of game/product development; debrief on existing marketing and advertising plans; learn Lottery-specific processes and procedures in detail; and develop plans for implementation in FY 15/16.**

Q.172: Regarding the new intellectual property language, can we clarify that content and materials in existence prior to this Agreement (or created outside the scope of this Agreement) remain agency property?

**A.172: Yes, content and materials in existence prior to this Agreement (or created outside the scope of this Agreement) remain agency property.**

Q.173: The Lottery's response to A.6 - B.1 indicates that all materials submitted will be maintained as part of the procurement record, and it is not the intent of the Lottery to use proposals for anything other than supporting documentation. It is further stated, the Lottery reserves the authority to use any and all information contained in the proposal to the extent permitted or required by law. Does this basically mean that the Lottery cannot use submitted work from a non-winning bidder for ANY other purpose other than procurement supporting documentation?

**A.173: Through this response, Section 2.22 of the RFP is deleted and replaced with the language below. This response also replaces the Answer A.6 – B.1 of Amendment Three, dated June 5, 2014.**

**OWNERSHIP OF PROPOSAL CONTENTS, MATERIALS AND INTELLECTUAL PROPERTY; USE OF TALENT**

**(a) Any and all materials submitted with a Proposal shall not be returned and will be maintained by the Commission as part of the procurement record. It is not the intent of the Commission to use materials submitted with a Proposal for anything other than supporting documentation. However, the Commission will not be held liable for the unintentional use of such materials, including any payment for such materials.**

**(b) Ownership of all data, documentary material and operating reports originated and prepared exclusively for the Lottery pursuant to any Contract resulting from this RFP shall belong to the Lottery. Contractor agrees that, except where noted by the Lottery, all materials, documents, products, reports, data and other information, whether finished, unfinished, or draft developed, gathered or compiled under this agreement by vendor are the sole exclusive property of the Lottery and that they shall not be used by the vendor or any other person or**

**destroyed without express written permission of the Lottery. Any work product created pursuant to this Agreement and any subcontract shall be “works made for hire” and shall become the property of the Lottery, which shall have all rights of ownership and authorship in such work product. Additionally, the Contractor hereby assigns to the New York Lottery any and all intellectual property rights to any such work product.**

**(c) Contractor or its representative shall take commercially reasonable steps to obtain copyright and or trademark registration on behalf of the Lottery for advertising material as requested by the Lottery.**

**(d) 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.**

Q.174: Section 2.8 Compensation, Page 24 – How is the Commission planning on evaluating the annual fee recognizing that the bidders will calculate their fee based on various assumptions? In order for there to be a direct comparison from one fee to the other, shouldn't there be an established, specific scope of work that bidders utilize?

**A.174: Section 3.2 specifically provides the detailed scope of work that is covered under the contracts resulting from this RFP. All bidders are supposed to base their staffing plans and annual fees on this specific scope of work.**

Q.175: Section 3.2, Page 40 – Depending upon how the compensation question above is answered, we request clarification on various aspects of the presented scope of work. Specifically:

- a. Please confirm that the annual or Year 1 SOW is to be based on the creation of 13 multi-media campaigns (360°) – including research of each of these campaigns. Should each of these campaigns also address the Hispanic target audience? Will the Lottery also require three options for each Hispanic campaign? Same for any Asian needs, should the Lottery decide to utilize Asian communications. Any information on potential languages, number of languages, etc. would be helpful.
- b. The Lottery states that it is up to the agency to recommend multi-cultural efforts with rationale. This makes sense; however, without the knowledge of the Lottery business, how can the Lottery expect a bidder to allocate Staff or a partner for the cost proposal?
- c. During Year 1, the agency is to expect to simultaneously manage 50 projects?
- d. During Year 1, the agency is expected to create and produce 100 individual POS, promotional items and branded merchandise? What percent of these items currently exist? Can the Lottery indicate how many of these items will be original concepts?

- e. Other than communications research, how many other research projects should the agency expect to design and manage in year 1? Will the existing advertising tracking research become the responsibility of the new agency, or will the awarded agency need to assess, design, and bid for a new research contractor?
- f. Section 3.2 B, Page 41 – The lottery is requesting five days’ review time at all stages for approvals. Is that approval timeframe expedited at any time? For example, five days for initial concept approval makes sense, yet resizes and animations for high-volume banner work would be more efficient with faster approvals.
- g. Section 3.2D, Page 42 – Are 13 digital marketing campaigns to be created each year?
- h. Section 3.2F, Page 44 – The RFP mentions “translation services must be available upon request.” Does the Lottery rely solely on the agency for all translation needs? If so, what is the annual volume, and does it extend beyond materials produced in the scope of work? (e.g., written non-marketing materials that the Lottery generates).
- i. Section 3.2G1, Page 45 – Is it expected that the on-site Digital Marketing Manager will handle the social programming (community management?) for the Lottery?
- j. Section 3.2K, Page 46 - Regarding direct marketing, as the stated scope is to “...develop and implement a comprehensive strategy for building and maintaining a solid customer base that is loyal to the Lottery brand...” can the Lottery provide more specific information on the timing of the program and the Year 1 expectations? Is the expectation to begin email marketing, customer loyalty program, couponing, database management, and other tactics following development at month 3, month 6, Year 2, etc.?
  - i. Can you share details on what you are currently doing from a DM/CRM standpoint?
  - ii. Please share more details on your database: How many records have been captured? How does the number in the database compare to the number of people playing the lottery on a regular basis? How is player information collected?
  - iii. Currently, is there a follow-up communication strategy for individuals within the database?
  - iv. Can you share specific goals/ROI for your DM/CRM (Year 1 vs. Year 2)
  - v. Do you currently use any CRM systems/tools? If yes, which ones?
- k. Section 3.2L, Page 46 – Please provide more detail about Lottery websites scope: Is it expected for the agency to consult on creative design and content management, or to provide full concept and build services, or something in between?

**A.175: The following clarifications are offered:**

- a. **“13 multi-media campaigns” were identified for illustrative purposes only as that is what was produced in FY 13/14. The Lottery Marketing Unit will work the winning Bidder to finalize initiatives to be executed in FY 15/16 (Year 1 of the contract), including development of a comprehensive research plan for those initiatives. The resulting marketing and advertising plan for FY 15/16 could reflect more or fewer**

**campaigns than what was produced in FY 13/14, depending upon marketing objectives and game development plans for that fiscal year.**

**Currently, Hispanic adaptations of General Market advertising components are produced for all initiatives. On occasion, original work has been developed. Working with the winning Bidder, this adaptive strategy may change depending upon an updated analysis of the Hispanic marketplace in New York State. If the Hispanic work continues to be adaptations of the General Market creative, there would be no need to provide three options for each campaign. Currently, only Chinese and Korean print has been produced. Working with the winning Bidder, a new approach to the Asian market and the broader diverse populations of New York State may be developed.**

- b. It is at the Bidder's discretion how they choose to allocate staff based on the defined scope of work for multi-cultural efforts (Section 3.2F for Lot 1; Section 3.2E for Lot 2). The response above (175a) outlines the current strategy for multi-cultural advertising. The successful bidder would work with the Lottery to optimize the strategy for diversity marketing through a thorough analysis of the New York State population and sales data. If the Bidder wishes to execute the current strategy throughout Contract Year 1 and then recommend staffing changes/additions in Year 2 to add Diversity staff, it would be at their discretion. Staffing changes and any resulting fee changes must be authorized by the Lottery at the Annual Agency Review at the close of each contract year.**
- c. All projects identified in the RFP for FY 13/14 were provided for illustrative purposes. The Lottery Marketing Unit will work with the winner Bidder to finalize initiatives to be executed in FY 15/16 (Year 1 of the Contract). The resulting marketing and advertising plan for FY 15/16 could reflect more or fewer campaigns than what was produced in FY 13/14, depending upon marketing objectives and game development plans for that fiscal year.**
- d. See response above (175c). Many of the POS projects are reprints of the current signage, however, monthly POS kits are produced to support instant games and new collateral materials are produced for game launches and other initiatives. The Lottery seeks to produce unique promotional items each season.**
- e. See response above (175a). It is the intention of the Lottery to maintain consistency with the Tracking Study and the successful bidder would be expected to continue the existing relationship with the research vendor in Year 1 of the contract. Any recommendation for change by the successful bidder would be assessed by the Lottery.**

- f. Any changes in the approval timelines will be addressed on a project-by-project basis. Any variation from the 5-day approval process must be approved by the Lottery when the project timeline is presented. The Lottery acknowledges that on occasion situations arise that require faster turnaround, but those occasions should be the exception rather than the rule.**
- g. See response above (175c), which applies to Digital campaigns, as well.**
- h. Translation services are required by the Agency only for those areas covered in the Scope of Work under this RFP. The volume cannot be estimated at this time. Refer to response 1a for reference on the Lottery's current approach to multi-cultural marketing.**
- i. It is the intention of the Lottery that this individual would assist with Social Content Management, among the other responsibilities listed in Section 3.2K, but would not be the individual responsible for actual development of the social content calendar or the daily posts to social media.**
- j. At the time of this RFP, the Lottery's direct marketing efforts are minimal. It is the intention of the Lottery to develop and implement a more robust direct marketing program in FY 14/15 and beyond.**
  - i. There is no current direct mail or CRM program in place.**
  - ii. We currently have no centralized database, but rather data is being captured through various sources (e.g., sweepstakes entries, subscriptions, promotion events, etc.). It is the intention of the Lottery to create a single centralized database and begin direct marketing efforts in FY 14/15. At this time, specific strategies have not yet been developed.**
  - iii. See response above (1ji).**
  - iv. Specific ROI and communication goals have not yet been set. Such goals will be developed for second half of FY 14/15 and will be shared with the successful bidder. Any changes in the goals would for FY 15/16 and FY 16/17 would be determined by the Lottery based on business objectives for those fiscal years.**
  - v. See response to 1ji.**
- k. Due to the technological limitations of the Lottery's current website, it is the intention of the Lottery to create an entirely new website in 2015. There is a statewide initiative to develop a uniform platform for all state agency websites in 2015. It is the goal of the Lottery to be on the leading edge of this initiative. Current perspective is that the Lottery's website must remain a consumer-focused marketing website, and should be developed as such. As defined in the RFP Scope of Work (Section 3.2), the successful bidder would be required to work with New York's centralized IT unit (ITS), required ITS subcontractors, and the Lottery's Marketing**

**Unit to create the front-end user interface and design of the website and creation of its content. It is also the successful bidder's responsibility to manage the content and any design changes throughout the contract.**

### **PART THREE**

Q.176: What percentage of the multicultural work will be unique creative (i.e. different concepts than the general market creative) and how much will be adapted (i.e. Same concept but shot with multicultural talent and/or translated where applicable)? Please provide further breakdown of percentage of multicultural work allocated for the various ethnic groups.

**A.176: See Answer to Question 175 a, b & h.**

Q.177: a) Does the Lottery ever share any type of advertising materials with other Lotteries?  
b) If so, will the contracted Agency receive compensation for such work?

**A.177: a) Yes  
b) No, the agency would have been compensated for the creation of work under the contract.**

### **PART FOUR**

Q.178: Regarding Section 4.9, Additional Information and Comments, should we submit it as part of Phase One: Volume I – Technical Proposal or Volume II: Pricing Proposal?

**A.178: By this response, RFP Section 4.9 is deleted. Please refer to RFP Section 1.17.G which addresses the inclusion of alternatives and options. The intention of this language does not lend itself to alternative pricing proposals.**

Q.179: For the agency reel (Section 4.1, page 50), is there a preference for the Lottery to view the work by media type (e.g., radio, print, digital, events, sponsorships, Point of Sale (POS), etc.), or by client (360° examples)?

**A.179: Agency reel should be organized by client and campaign as opposed to media type.**

Q.180: The Lottery indicated two major research projects are planned for FY '14-'15, Consumer Segmentation Study and Retail Experience Qualitative Study. Recognizing the importance of these research projects to the success of both creative and media campaigns going forward, will the lottery consider waiting to implement these with the new Agency(ies)/Lottery Management Team?

**A.180: No.**

- Q.181: Please provide your definition of what a subcontractor and affiliate are and how they're different. For example would a sister agency, who is part of our agency network, be considered an affiliate? And would a subcontractor be an agency brought in to service a certain portion of the scope from outside of our agency network?
- A.181: A subcontractor is someone brought in to service a portion of the scope of work. An affiliate is a sister company under the same agency network. For the purposes of section 4.5 all subcontractors and affiliates that will be used to service the Lottery account should be listed.**
- Q.182: The Pricing Proposal is based upon Direct Labor Cost which is then marked up for overhead and profit. Can you offer more clarity as to what components of expense should be included in Direct Labor?
- a. For example, direct salary expense plus employee related taxes and benefits would seem to be of a type that should be included, but anything else?
- A.182: Direct Labor costs should include direct payroll costs, as well as payroll-related costs, such as FICA, life and health insurance, payroll taxes, and 401K contributions, as well as any other direct employee benefits.**
- Q.183: Attachment 3, the Agency Rate Card requests information related to hourly rates for Studio and Digital services of a type that are typically offered by in house units but that are often estimated and billed separate and apart from the agency fee (attachment 2). Are we to include the estimated annual cost of providing these services as part of the overall Pricing provided in Attachment 2?
- A.183: If the in-house studio services are estimated and billed separately as part of production rather than on a billable hourly basis, then those services would be considered a production charge and would become part of the estimating process for individual projects. The fees for these services would not be eligible for any mark up, but would be billed as direct costs. Such costs (mechanicals, layouts, duplicate materials, retouching, etc.) must be provided as a separate attachment. If studio services are never included in the agency fee based on this scenario, it should be so noted in that section of Attachment 3.**
- Q.184: Section 4.8 C of the Request for Proposal Document asks that we present an LOT 1 – Part 4 Margin as a % of gross income. However the Attachment 2 Pricing Proposal presents profit as a marked up % on cost (sum of Labor Based and Indirect Costs). These %'s are not the same thing. Should we present the percentage as the markup as specified on Attachment 2?
- A.184: Through this response, RFP section 4.8.C is revised as follows:**
- Profit Margin – Propose the profit margin that takes into account the two-tiered compensation plan (Section 2.8). Profit should be identified as a percentage over labor based fee plus indirect costs (pre-FIT). The Profit Margin will remain fixed for the length of the contract.**

**See also the revised Attachment 2 – Pricing Proposal Form for LOT 1 and LOT 2.**

Q.185: Part 4 of the RFP asks that we provide an approximate percentage breakdown of creative output by media type. Should this breakdown be based on units produced or cost of the units produced?

**A.185: This should be provided for units produced as opposed to cost of units produced.**

Q.186: Attachment 2, Page 2 of 2 – There appears to be an error in the wording of this attachment. It states that profit margin should be calculated as follows:

*“2. Indirect Costs (Percent Markup Over Labor-Based Fee): \_\_\_\_\_ % x Total Labor-Based Fee (Total from Column D)= (2) \$ \_\_\_\_\_*

*3. Profit Margin (Percent Markup Over Labor-Based Fee and Indirect Costs):  
\_\_\_\_\_ % x Total Labor-Based and Indirect Costs (Total from #2 above) = (3)  
\$ \_\_\_\_\_*

*4. Total Annual Amount (Sum of 1 through 3 above) \$ \_\_\_\_\_ “*

Line 3 indicates profit margin is calculated as a “Percent Markup Over Labor-Based Fee and Indirect Costs” yet it is requiring the calculation be performed from line #2, which does not include labor-based fee. We believe this to be an error. Please clarify.

**A.186: See Answer to Question 184 for clarification of profit margin calculation.**

Q.187: Attachment 3, Agency Rate Card – For agency studio services necessary for the creation and production of print, OOH, POS, collateral, etc., is a cost allocated to each approved job and billed accordingly (on a net basis) or is it expected that these services (such as retouching, mechanicals, etc.) are to be built into the fee? If the expectation is to be built into the fee, we believe it’s an almost impossible task to calculate accurate costs without having each project to evaluate.

**A.187: See Answer to Question 183.**

**PART FIVE**

Q.188: Section 5.3, Evaluation, Page 58 – In the event of a tie score, how will the Lottery determine the successful bidder?

**A.188: In the event of a tied score, the bidder with the lowest cost (highest cost score) will be deemed the successful bidder.**

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 Creative & Marketing Communications Services and Media Planning & Buying Services, and clarified the requirements of the Request for Proposals with Addendums, including Questions and Answers, dated May 29, 2014, June 2, 2014, June 5, 2014, June 13, 2014 and August 7, 2014 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal under Phase One of the RFP, dated [\_\_\_\_\_], a Pricing Proposal under Phase One of the RFP, dated [\_\_\_\_\_], and a Technical Proposal under Phase Two of the RFP, 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 begin on January 15, 2015 and end on March 31, 2020.

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 provisions of the RFP and 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

\_\_\_\_\_.

(a) Payments to third parties by Contractor can only be reimbursed to Contractor for work performed in connection with this Agreement and Contractor must pass through the third party's best available rate, including without limitation, any discounted rates, to the Commission for work performed by third parties and at no mark-up.

(b) The estimated cost of each project under this Agreement will be invoiced to the Commission prior to any obligation being incurred by Contractor for such project. Fifty percent (50%) of the total invoice is due upon the Commission's written approval of the applicable estimate and thereafter Contractor shall issue invoices for the remaining project costs at least thirty (30) days before payment is due to ensure that Contractor receives payment prior to such times as Contractor is required to pay providers of services. All such invoices are subject to adjustment (up or down) prior to final billing. Final billing for actual costs incurred shall not

exceed 105% of the estimated project cost unless approved by the Commission in advance of Contractor incurring such costs.

(c) The Commission will not be responsible for any expenses incurred by the Contractor for any obligation not approved in advance by the Commission.

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.

(a) 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:

- (i) The Contractor, its officers, employees, agents, successors and assigns, and/or
- (ii) A Subcontractor, its officers, employees, agents, successors and assigns.

(b) Notwithstanding the above, neither the Contractor nor the Commission shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Commission, the Contractor, or by others.

11. Cancellations and Modifications. The 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. The Commission agrees that it shall:

- (i) remain obligated to pay Contractor any and all charges for services rendered by Contractor and for expenditures or charges 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.

12. Force Majeure. A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means fire, explosion, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither the Contractor nor the Lottery shall be liable to the other for any delay in or failure of performance under the contract resulting from this RFP due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contracting Officer to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

13. 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.

14. 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.

15. 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.

16. 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 \_\_\_\_\_, 20 14, 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 ci ty, 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 Creative & Marketing Communications Services and Media Planning & Buying Services, and clarified the requirements of the Request for Proposals with Addendums, including Questions and Answers, dated May 29, 2014, June 2, 2014, June 5, 2014, June 13, 2014 and August 7, 2014 (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal under Phase One of the RFP, dated [\_\_\_\_\_], a Pricing Proposal under Phase One of the RFP, dated [\_\_\_\_\_], and a Technical Proposal under Phase Two of the RFP, 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 begin on January 15, 2015 and end on March 31, 2020.

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 provisions of the RFP and 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 \_\_\_\_\_.

(a) Payments to third parties by Contractor can only be reimbursed to Contractor for work performed in connection with this Agreement and Contractor must pass through the third party's best available rate, including without limitation, any discounted rates, to the Commission for work performed by third parties and at no mark-up.

(b) The estimated cost of each project under this Agreement will be invoiced to the Commission prior to any obligation being incurred by Contractor for such project. One hundred percent (100%) of the total invoice is due upon the Commission's written approval of the applicable estimate. Such invoice is subject to adjustment (up or down) prior to final billing. Final billing for actual costs incurred shall not exceed 105% of the estimated project cost unless approved by the Commission in advance of Contractor incurring such costs.

(c) The Commission will not be responsible for any expenses incurred by the Contractor for any obligation not approved in advance by the Commission.

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.

(a) 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:

- (i) The Contractor, its officers, employees, agents, successors and assigns, and/or
- (ii) A Subcontractor, its officers, employees, agents, successors and assigns.

(b) Notwithstanding the above, neither the Contractor nor the Commission shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Commission, the Contractor, or by others.

11. Cancellations and Modifications. The 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. The Commission agrees that it shall:

- (i) remain obligated to pay Contractor any and all charges for services rendered by Contractor and for expenditures or charges 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.

12. Force Majeure. A Force Majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled. As herein used, Force Majeure means fire, explosion, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, said party is unable to prevent.

Neither the Contractor nor the Lottery shall be liable to the other for any delay in or failure of performance under the contract resulting from this RFP due to a Force Majeure occurrence. Any such delay in or failure of performance shall not constitute a default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contracting Officer to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

13. 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.

14. 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.

15. 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.

16. 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: \_\_\_\_\_



**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED MINORITY-AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

**NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A, The New York State Gaming Commission (the "Commission") recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises and the employment of minority group members and women in the performance of Commission contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority-and women-owned business enterprises in state procurement contracting versus the number of minority-and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority- and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that the Commission establishes goals for maximum feasible participation of New York State Certified minority- and women – owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Commission hereby establishes an overall goal of 20% for MWBE participation, based on the current availability of qualified MBEs and WBEs. A contractor ("Contractor") on the subject contract ("Contract") must document good faith efforts to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract and Contractor agrees that the Commission may withhold payment pending receipt of the required MWBE documentation. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

For guidance on how the Commission will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.

In accordance with 5 NYCRR §142.13, Contractor acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such finding constitutes a breach of Contract and the Commission may withhold payment from the Contractor as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a bidder on the Contract ("Bidder") agrees to submit the following documents and information as evidence of compliance with the foregoing:

- A. Bidders are required to submit a MWBE Utilization Plan on **Form I-4** with their bid or proposal. Any modifications or changes to the MWBE Utilization Plan after the Contract award and during

the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the Commission.

- B. The Commission will review the submitted MWBE Utilization Plan and advise the Bidder of Commission acceptance or issue a notice of deficiency within 30 days of receipt.
- C. If a notice of deficiency is issued, Bidder agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the NYS Gaming Commission, Attn: Stacey Relation, One Broadway Center, Schenectady, NY 12305, email [stacey.relation@gaming.ny.gov](mailto:stacey.relation@gaming.ny.gov), or fax to (518) 388-3334, a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Commission to be inadequate, the Commission shall notify the Bidder and direct the Bidder to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on **Form #I-7**. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- D. The Commission may disqualify a Bidder as being non-responsive under the following circumstances:
  - a) If a Bidder fails to submit a MWBE Utilization Plan;
  - b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - c) If a Bidder fails to submit a request for waiver; or
  - d) If the Commission determines that the Bidder has failed to document good faith efforts.

Contractors shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to the Commission, but must be made no later than prior to the submission of a request for final payment on the Contract.

Contractors are required to submit a Contractor's Quarterly MWBE Contractor Compliance & Payment Report on **Form #I-6** to the NYS Gaming Commission, Attn: Finance Office, One Broadway Center, Schenectady, NY 12305, Phone: (518) 388-3404 and fax: (518) 388-3334, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Bidder/Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women.

Bidder further agrees, where applicable, to submit with the bid a staffing plan (**Form #I-2**) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Commission, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

**WORK FORCE EMPLOYMENT UTILIZATION REPORT  
SERVICE and/or CONSULTANT FIRMS  
INSTRUCTIONS FOR COMPLETION**

**PURPOSE:** The *Work Force Employment Utilization Report for Services and/or Consultant Firms* is prepared by all contractors, and subcontractors if any, providing services (skilled or non-skilled) or professional consulting services to a state agency to document their actual employment of minority group members and women during the period covered by the report. The report has a format similar to forms used by the Federal government for reporting equal employment opportunity data. When the *contract specific work force* can be identified, the report covers all employees (including apprentices or trainees) working on the project. If the contract specific work force *cannot* be separated out, the contractor's *total work force* is reported. The completed reports are used by the contracting state agency to monitor the contractor's and subcontractor's compliance with the contract's equal employment opportunity requirements.

**GENERAL INFORMATION:**

1. **Name of contracting state agency** and state agency code (five-digit code).
2. **Reporting period** covered by report (mm/dd/yy to mm/dd/yy); **check** to indicate **Quarterly** or **Semi-Annual Report**.
3. **Contractor firm name** (prime contractor on summary report submitted to agency) and **address** (including city name, state and zip code); **check** if the contractor is a NOT-FOR-PROFIT.
4. **Type of Report:** **check** to indicate whether report covers (i) the **Contract Specific Work Force** or (ii) the **Company's Total Work Force** (in the event the contract specific work force cannot be separated out).
5. Contractor **Federal Employer Identification number** or payee identification number (prime contractor i.d. on summary report); **check** to indicate prime or subcontractor report.
6. **Contract Amount** is dollar amount based on terms of the contract.
7. **Contract number** is the agency assigned number given to the contract (seven digits).
8. **Location of work** including county and zip code where work is performed.
9. Indicate **Product or Service provided** by contractor (brief description).
10. **Contract start date** is month/day/year work on contract actually began.
11. Contractor's **estimate of the percentage of work completed** at the end of this reporting period.

**FEDERAL OCCUPATIONAL CATEGORIES:** The contractor's work force is broken down and reported by the nine **Federal Occupational Categories (FOC's)** consistent with the Federal government's EEO-1 categories for the private sector labor force. These are: *Officials and Managers, Professionals, Technicians, Sales, Office & Clerical (Administrative Support), Craft Workers, Operatives, Laborers and Service Workers*. The categories are general in nature, and include all related occupational job titles. The contracting agency can provide assistance in categorizing specific jobs.

**TOTAL NUMBER OF EMPLOYEES:** Record the *total number of all persons employed* in each FOC during the reporting period, regardless of ethnicity (either working on the specific contract OR in the contractor's total work force, based on the type of report indicated above). Report the total number of male (M) employees in column (1) and the total number of female (F) employees in column (2) for each FOC. In columns (3) thru (10) report the numbers of male and female *minority group members* employed, based on the following defined groups:

- **Black (not of Hispanic origin):** all persons having origins in any of the Black African racial groups;
- **Hispanic:** all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American or either Indian or Hispanic origin, regardless of race;
- **Asian or Pacific Islander:** all persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands;
- **Native American or Alaskan Native:** all persons having origins in any of the original peoples in North America.

**TOTAL % MINORITY** = sum of all minority group members (male and female) employed in the FOC divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTAL % FEMALE** = total number of female employees in the FOC (column 2) divided by the total number of all employees in that FOC (column 1 + column 2).

**TOTALS:** column totals should be calculated (sum each column) for all FOC's combined. Total minority and female percentages should be calculated as shown above, based on the column totals.

**SUBMISSION:** The work force utilization report is to be completed by both prime and subcontractors and **signed and dated** by an *authorized representative* before submission. This **Company Official's name, official title and telephone number** should be printed or typed where indicated on the bottom of the form.

The **prime contractor** shall complete a report for its own work force, **collect** reports completed by each subcontractor, and **prepare a summary report for the entire combined contract work force**. The reports shall include the total number of employees in each occupational category for all payrolls completed in the monthly reporting period. The prime contractor shall submit the summary report to the contracting agency as required by *Part 542 of Title 9 Subtitle N of the NYCRR* pursuant to *Article 15-A of the Executive Law*

**WORK FORCE EMPLOYMENT STAFFING PLAN**

Project/RFP Title \_\_\_\_\_ Location of Contract \_\_\_\_\_  
 Contractor/Firm Name \_\_\_\_\_ Address \_\_\_\_\_  
 County \_\_\_\_\_ Zip \_\_\_\_\_  
 State \_\_\_\_\_ Zip \_\_\_\_\_

Check applicable categories (1) Staff Estimates include: Contract/Project Staff \_\_ Total Work Force \_\_ Subcontractors \_\_  
 (2) Type of Contract: Construction Consultants \_\_ Commodities \_\_ Services/Consultants \_\_

Total Anticipated Work Force											Total Percent Minority Employees	Total Percent Female Employees
Federal Occupational Category	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
<b>TOTALS</b>												

Company Official's Name \_\_\_\_\_ Title \_\_\_\_\_  
 Company Official's Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Telephone Number \_\_\_\_\_

**WORK FORCE EMPLOYMENT UTILIZATION PERIODIC REPORT  
SERVICES AND/OR CONSULTANT FIRMS**

Agency NYSGaming Commission /code 20050 Reporting Period \_\_\_\_\_  
 Check one  Quarterly  Semi-Annual Report

Contractor/Firm Name \_\_\_\_\_ Address: \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Type of Report  Contract Specific Work Force  Total Work Force  
 Check if NOT-FOR-PROFIT

Federal Id/Payee Id. No. \_\_\_\_\_ Contract No. \_\_\_\_\_

Check One  Prime Contractor  Subcontractor  
 Product/Service Provided \_\_\_\_\_

Contract Amount \_\_\_\_\_ Contract Start Date \_\_\_\_\_ Percent of Job Completed \_\_\_\_\_

Federal Occupational Category	Number of Employees										Total Percent Minority Employees	Total Percent Female Employees
	Total Number of Employees		Black (Not of Hispanic Origin)		Hispanic		Asian or Pacific Islander		Native American/ Alaskan Native			
	Male	Female	Male	Female	Male	Female	Male	Female	Male	Female		
Officials/Admin												
Professionals												
Technicians												
Sales Workers												
Office & Clerical												
Craft Workers												
Operatives												
Laborers												
Service Workers												
<b>TOTALS</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Company Official's Name \_\_\_\_\_ Title \_\_\_\_\_  
 Company Official's Signature \_\_\_\_\_ Date \_\_\_\_\_  
 Telephone Number \_\_\_\_\_

**INSTRUCTIONS FOR COMPLETING THE NEW YORK STATE LOTTERY'S  
MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM  
VENDOR/CONTRACTOR'S MWBE UTILIZATION PLAN FORM**

As mandated by Article 15-A of the Executive Law and the new subtitle N of 9 NYCRR 540 et seq, the Division of the Lottery has established a goal of 20% participation by New York State Certified Minority and Women owned Business Enterprise (MWBE) as subcontractors/suppliers in this contract. Contractors must submit the attached MWBE Utilization Plan Form indicating how they will intend to comply with the established goals.

For the directory of New York State certified MWBE's, please visit the New York State's Division of Minority and Women-owned Business Development website at:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

**Completion of the Form:**

The Lottery will complete all the un-shaded areas including: agency information, contract details, and summary of allocation of MWBE utilization and related value.

The contractor will complete the remaining, shaded, areas. It is important that the contractor provide detailed contact information including: name, phone number and email address.

Within the utilization section of the form, the contractor must list the names and addresses of all subcontractors or suppliers that will be utilized during this contract. The following items should be completed for each vendor listed:

- Subcontractor's Federal ID#;
- Subcontractor information as follows:
  - By checking the appropriate boxes, indicate whether the subcontractors are "SUB" or "SUP", minority-owned business enterprise "MBE" or women-owned business enterprise "WBE", and if they are NYS Certified.
- Brief description of the work the subcontractor's will provide.

Note: additional sheets may be used if necessary.

**Attestation and Form Acceptance**

The preparer must attest to the information provided by signing in the appropriate space; in addition, print the name of the contractor, provide telephone number, and date.

The last section, bottom right, will be completed by the Lottery upon its review of the form. The contractor will be notified of the acceptance or deficiency of the MWBE Utilization Plan Form.

If assistance is required in completing this form or locating a New York State certified vendor to utilize as subcontractors or suppliers, please contact the Lottery's Contracts Officer at (518) 388-3329.

**NEW YORK STATE GAMING COMMISSION  
VENDOR/CONTRACTOR'S MINORITY AND WOMEN-OWNED BUSINESS UTILIZATION PLAN FORM**

AGENCY NAME \_\_\_\_\_  
 AGENCY CONTACT \_\_\_\_\_  
 AGENCY PHONE \_\_\_\_\_

CONTRACTOR NAME AND ADDRESS	CHECK APPROPRIATE BOX		DATE SUBMITTED		TOTAL VALUE OF CONTRACT		
	<input type="checkbox"/> SUPPLIER <input type="checkbox"/> CONTRACTOR		CONTRACTOR'S FID#		CONTRACT EFFECTIVE DATES		
PROJECT DESCRIPTION	GOALS MBE WBE		JOB NUMBER (IF APPLICABLE)		CONTRACT NUMBER		
MWBE SUBCONTRACTOR/SUPPLIER NAME & ADDRESS	CHECK ONE	SUBCONTRACTOR/SUPPLIER TAXPAYER/FEDERAL ID #	MBE (CHECK)	WBE (CHECK)	NYS CERTIFIED (CHECK)	DESCRIPTION OF WORK	\$ VALUE OF CONTRACT
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		
	SUB _____ SUP _____		YES _____ NO _____	YES _____ NO _____	YES _____ NO _____		

	<u>\$ AMOUNT</u>	<u>% OF TOTAL</u>
(A) TOTAL CONTRACT BID AMOUNT:	_____	_____
(B) TOTAL SUBCONTRACTS FOR COMMODITIES AND SERVICES TO MBE'S:	_____	_____
(C) TOTAL SUBCONTRACTS FOR COMMODITIES AND SERVICES TO WBE'S:	_____	_____

CONTRACTOR'S ATTESTATION: MY FIRM PROPOSES TO USE THE MWBE'S LISTED ON THIS FORM.

PREPARED BY: (SIGNATURE OF CONTRACTOR)	PRINT NAME OF CONTRACTOR	TELEPHONE NUMBER	DATE
--	--------------------------	------------------	------

FOR OFFICE USE ONLY
REVIEWED BY:
DATE:
MWBE FIRMS CERTIFIED:
MWBE FIRMS NOT CERTIFIED:

NOTICE: this report is required pursuant to Executive Law; failure to report will result in noncompliance.

**NEW YORK STATE GAMING COMMISSION  
MWBE CONTRACT COMPLIANCE PROGRAM  
CONTRACTOR'S QUARTERLY SUBCONTRACTING/SUPPLIER ACTIVITY REPORT  
FOR THE PERIOD OF \_\_\_\_\_**

1. NAME AND ADDRESS:	2. PROJECT/CONTRACT GOALS:	3. DATE SUBMITTED	4. CONTRACT NO: _____
	MBE _____		JOB NO.: _____
	WBE _____		LOCATION/REGION: _____
FEDERAL ID/SOCIAL SECURITY NO.*	5. PROJECT WORK DESCRIPTION:*		6. CONTRACT EFFECTIVE DATES:*

**SUBCONTRACTING/SUPPLIER ACTIVITY REPORT**

7. REPORT SUBCONTRACTOR'S SUPPLIERS AWARDED/PURCHASED THIS QUARTER	# AWARDED THIS PERIOD	AMOUNT AWARDED THIS PERIOD	# AWARDED TO NYS CERTIFIED		TOTAL DOLLAR AMOUNT AWARDED THIS PERIOD TO NYS CERTIFIED		PERCENTAGE	
			MBE	WBE	MBE	WBE	MBE	WBE
DOLLAR RANGE: \$0-\$24,000								
\$25,000 +								
TOTAL								

PREPARED BY: (SIGNATURE OF CONTRACTOR)	PRINT NAME OF CONTRACTOR	TELEPHONE NO.	DATE
--	--------------------------	---------------	------

This report is required by contract specifications. Failure to report will result in noncompliance with contract specifications.

\*Delete information if reported on previous submittal.



**REQUEST FOR WAIVER FORM**

<b>INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.</b>	
<b>Offerer/Contractor Name:</b>	<b>Federal Identification No.:</b>
<b>Address:</b>	<b>Solicitation/Contract No.:</b>
<b>City, State, Zip Code:</b>	<b>M/WBE Goals: MBE      %      WBE      %</b>
By submitting this form and the required information, the offerer/contractor certifies that every Good Faith Effort has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.	
<b>Contractor is requesting a:</b>	
1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial	
2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial	
<b>PREPARED BY (Signature):</b>	<b>Date:</b>
SUBMISSION OF THIS FORM CONSTITUTES THE OFFERER/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.	
<b>Name and Title of Preparer (Printed or Typed):</b>	<b>Telephone Number:</b>
	<b>Email Address:</b>
<b>Submit with the bid or proposal or if submitting after award submit to:</b>  NYS Gaming Commission Attn: Stacey Relation One Broadway Center Schenectady, NY 12301	***** GAMING COMMISSION USE ONLY *****
	<b>REVIEWED BY:</b>
	<b>DATE:</b>
	Waiver Granted: <input type="checkbox"/> YES      MBE: <input type="checkbox"/> WBE: <input type="checkbox"/>  <input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver <input type="checkbox"/> *Conditional <input type="checkbox"/> Notice of Deficiency Issued _____ *Comments:

## REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

**When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 10, as listed below. Copies of the following information and all relevant supporting documentation must be submitted along with the request:**

1. A statement setting forth your basis for requesting a partial or total waiver.
2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.
3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.
4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.
5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.
6. Provide copies of responses made by certified M/WBEs to your solicitations.
7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.
8. Provide documentation of any negotiations between you, the Offerer/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.
9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.
10. Provide the name, title, address, telephone number, and email address of offerer/contractor's representative authorized to discuss and negotiate this waiver request.

**Note: Unless a Total Waiver has been granted, the offerer or contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract.**



**PRICING PROPOSAL FORM – LOT 1**

**1. Direct Labor Costs** - Labor rates and percentage of Full Time Equivalents (FTE) assigned to the first year of the Contract must be provided based on the chart below. Bidder must list every title that will be utilized for the services under this RFP for year one. Only titles provided in this Pricing Proposal Form will be utilized during the first year of the Contract resulting from this RFP. No alternative pricing structure is permitted. Any alternative pricing structure will be deemed non-responsive. The form may be expanded if additional room for more titles is needed. Rates stated below must match the rates indicated on the Agency Rate Card – Attachment 3.

Percentage of FTE is based on One FTE equivalent to 1800 annual hours. All hourly rates are to be expressed in whole dollars.

This portion of the Cost proposal will be ranked with a maximum of 15 points awarded to the lowest total annual rate, with the next lowest annual rate awarded proportionately less points based on their values relative to the lowest annual rate.

<b>(A) Job Title by Department (Specify job title within each department)</b>	<b>(B) Annualized Labor Rate (based on standard hourly rate for each position)</b>	<b>(C) % of FTE for Year 1 - Limited to whole Percentages (e.g., staff dedicating half of their time to the Lottery account = 50%)</b>	<b>(D) Total Annual Amount for Job Title (Multiply columns B x C)</b>
<b>Account Management:</b>			
<b>Account Planning:</b>			
<b>Creative:</b>			
<b>Production:</b>			
<b>Digital:</b>			
<b>Other (Specify department):</b>			
<b>Total Labor-Based Fee for Year One:</b>			<b>(1) \$ _____</b>

**Calculation:**

- 1. Total of Labor Based-Fee from Page 1 (Column D) (1) \$ \_\_\_\_\_
  
- 2. Indirect Costs (Percent Markup Over Labor-Based Fee):  
\_\_\_\_\_ % x Total Labor-Based Fee (1) = (2) \$ \_\_\_\_\_
  
- 3. Sum of Total Labor-Based Fee (1) plus Indirect Costs (2) = SUBTOTAL (3) \$ \_\_\_\_\_
  
- 4. Profit Margin (Percent Markup Over Total Labor-Based Fee and Indirect Costs):  
\_\_\_\_\_ % x Total Labor-Based and Indirect Costs (3) = (4) \$ \_\_\_\_\_
  
- 5. Total Annual Amount (Sum of 3 and 4 above) = \$ \_\_\_\_\_

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE NAME (PRINT): \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_



**PRICING PROPOSAL FORM – LOT 2**

**1. Direct Labor Costs** - Labor rates and percentage of Full Time Equivalents (FTE) assigned to the first year of the Contract must be provided based on the chart below. Bidder must list every title that will be utilized for the services under this RFP for year one. Only titles provided in this Pricing Proposal Form will be utilized during the first year of the Contract resulting from this RFP. No alternative pricing structure is permitted. Any alternative pricing structure will be deemed non-responsive. The form may be expanded if additional room for more titles is needed. Rates stated below must match the rates indicated on the Agency Rate Card – Attachment 3.

Percentage of FTE is based on One FTE equivalent to 1800 annual hours. All hourly rates are to be expressed in whole dollars.

This portion of the Cost proposal will be ranked with a maximum of 15 points awarded to the lowest total annual rate, with the next lowest annual rate awarded proportionately less points based on their values relative to the lowest annual rate.

<b>(A)</b> <b>Job Title by Department</b> (Specify job title within each department)	<b>(B)</b> <b>Annualized Labor Rate</b> (based on standard hourly rate for each position)	<b>(C)</b> <b>% of FTE for Year 1 - Limited to Whole Percentages</b> (e.g., staff dedicating half of their time to the Lottery account = 50%)	<b>(D)</b> <b>Total Annual Amount for Job Title</b> (Multiply columns B x C)
<b>Account Management / Media Planning:</b>			
<b>Broadcast:</b>			
<b>Print:</b>			
<b>Out-of-Home:</b>			
<b>Digital:</b>			
<b>Other (Specify Department):</b>			
<b>Total Labor-Based Fee for Year One:</b>			<b>(1) \$ _____</b>

**Calculation:**

- 1. Total of Labor Based-Fee from Page 1 (Column D) (1) \$ \_\_\_\_\_
  
- 2. Indirect Costs (Percent Markup Over Labor-Based Fee):  
\_\_\_\_\_ % x Total Labor-Based Fee (1) = (2) \$ \_\_\_\_\_
  
- 3. Sum of Total Labor-Based Fee (1) plus Indirect Costs (2) = SUBTOTAL (3) \$ \_\_\_\_\_
  
- 4. Profit Margin (Percent Markup Over Total Labor-Based Fee and Indirect Costs):  
\_\_\_\_\_ % x Total Labor-Based and Indirect Costs (3) = (4) \$ \_\_\_\_\_
  
- 5. Total Annual Amount (Sum of 3 and 4 above) = \$ \_\_\_\_\_

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE NAME (PRINT): \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_



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

**DOCUMENT SUBMITTAL CHECKLIST**

**Submissions Required with Phase One Proposals:**

<b>Description of Document</b>	<b>RFP</b>	<b>Submittal Requirements</b>	<b>Checklist</b>
Contract Form (Appendix B) (incorporates Appendix A)	§1.1 & §1.12	With Phase One Proposal (must be signed)	
Procurement Lobbying BODC Form (Appendix C)	§1.9	With Phase One Proposal	
Non-Collusive Bidding Certification (Appendix D)	§1.13	With Phase One Proposal	
NYS Vendor Responsibility Questionnaire (Appendix E)	§1.14	With Phase One Proposal	
Designation of Proprietary Information	§1.16	With Phase One Proposal and With Phase Two Proposal, as defined in RFP	
Phase One Technical & Pricing Proposals	§1.17	Phase One: Submit Technical and Pricing Proposals Separately as Defined in RFP	
Litigation Bond	§1.20	With Phase One Proposal	
Insurance Documentation	§2.13	Proof of coverage with Phase One Proposal	
Equal Employment Opportunity (EEO) (Appendix I) <ul style="list-style-type: none"> <li>• Policy Statement</li> <li>• Staffing Plan (I-2)</li> </ul>	§2.14.A	Policy Statement: with Phase One Proposal; I-2: proposed staffing plan – with Phase One Proposal	
Minority and Women-Owned Business Enterprise Program (Appendix I) <ul style="list-style-type: none"> <li>• Proposed Utilization Plan</li> </ul>	§2.14.B	Proposed Utilization Plan, including estimated value – with Phase One Proposal	

**Submissions Required with Phase Two Proposals:**

<b>Description of Document</b>	<b>RFP</b>	<b>Submittal Requirements</b>	<b>Checklist</b>
Designation of Proprietary Information	§1.16	With Phase One Proposal and With Phase Two Proposal, as defined in RFP	
Phase Two Technical Proposal	§1.17	Phase Two	

**Submissions Required Subsequent to Award:**

Description of Document	RFP	Submittal Requirements	Checklist
W-9 (Appendix F)	§1.15	Upon notification of award	
Fidelity Bond	§1.21	Upon notification of award	
E-pay (Appendix G)	§2.10	Upon notification of award	
Sales & Use Tax (Appendix H) <ul style="list-style-type: none"> <li>• ST220-CA (submit to Lottery)</li> <li>• ST220-TD (submit to DTF)</li> </ul>	§2.11	Within seven calendar days of notification of award	
Insurance Documentation	§2.13	Proof of Additional Insured.	
Equal Employment Opportunity (EEO) (Appendix I) <ul style="list-style-type: none"> <li>• Utilization Report (I-3)</li> </ul>	§2.14.A	I-3: quarterly if devoted staff; semi-annually if entire staff.	
Minority and Women-Owned Business Enterprise Program (Appendix I) <ul style="list-style-type: none"> <li>• Utilization Plan Form (I-4)</li> <li>• Quarterly Activity Report (I-5)</li> </ul>	§2.14.B	I-4: Utilization Plan - within 14 days after notification of award; I-5: 45 days following the end of the previous quarter.	

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_