



**Gaming  
Commission**

**NEW YORK STATE GAMING COMMISSION**

**REQUEST FOR PROPOSALS**

**FOR**

**LOTTERY SCRATCH-OFF TICKET PRINTING AND SERVICES**

**CONTRACT # C202305**

**September 8, 2023**

PROCUREMENT WEBSITE:

[https://www.gaming.ny.gov/about/procurement\\_opp.current.php](https://www.gaming.ny.gov/about/procurement_opp.current.php)

**DESIGNATED CONTACT FOR INQUIRIES AND SUBMISSIONS**

Consistent with the public policy established by the New York State Procurement Lobbying Law, the Contract Management Specialists designated below are the only points of contact regarding matters relating to this RFP, unless additional points of contact are designated by them.

**ALL BIDDERS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS PROCUREMENT MUST BE ADDRESSED IN WRITING TO EITHER OF THE CONTRACT MANAGEMENT SPECIALISTS NOTED BELOW:**

Stacey Relation, Contract Management Specialist 3  
Alysan Bowers, Contract Management Specialist 2

New York State Gaming Commission  
Contracts Office, 4<sup>th</sup> Floor  
One Broadway Center  
Schenectady, NY 12305  
[officer.contracting@gaming.ny.gov](mailto:officer.contracting@gaming.ny.gov)

RFP-related questions must be submitted via electronic mail to the email address above by the date specified in the Schedule of Events.

**NON-BID RESPONSE**

Bidders choosing not to submit a proposal in response to this RFP are requested to submit the **Non-Bid Response** form, included in this RFP as **Attachment 4**, as the information is useful to the Commission in the planning and development of future solicitations and bidders' lists.

**SCHEDULE OF EVENTS**

The following dates are established for informational and planning purposes. The Commission reserves the right to adjust this schedule, in its sole discretion.

<b>Event</b>	<b>Date</b>
RFP release date	September 8, 2023
Intent to Bid & Submission of Confidentiality and Non-Disclosure Agreement	September 18, 2023
Round one written questions due 3:00 pm EST	September 28, 2023
Round one Commission answers issued in amendment	October 16, 2023
Round two written questions due 3:00 pm EST	October 26, 2023
Round two Commission answers issued in amendment	November 10, 2023
Proposal due 2:00 pm EST	December 8, 2023
Contract start date	Upon Approval of the NYS Comptroller's Office

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## PART ONE – GENERAL INFORMATION

### 1.1 Introduction

The New York State Gaming Commission (the “Commission”), operator of the New York Lottery program (the “Lottery”), on behalf of the State of New York (the “State”), is issuing this Request for Proposals (“RFP”) to invite interested Contractors to submit Proposals for the award of contracts for Scratch-off ticket design, development, and production services.

The Commission intends to award up to three contracts to the three highest scoring Bidders pursuant to Part 4 of the RFP:

**Primary Scratch-off Ticket Printing & Management Services Provider:**

“The Commission’s Scratch-off business” is defined as total dollars authorized by the Commission for products or services related to the scratch-off tickets and games to be offered by the Commission during the contract term. The Successful Primary Bidder shall be awarded the management of the Commission’s Lottery Scratch-off account and shall be awarded seventy percent (70%) of the Commission’s Scratch-off business during the contract term if the Commission awards Secondary and Tertiary Scratch-off ticket printing contracts. The Successful Primary Bidder shall be awarded eighty percent (80%) of the Commission’s Scratch-off business during the contract term if the Commission awards only a Secondary Scratch-off ticket printing contract. The Successful Primary Bidder shall be awarded one hundred percent (100%) of the Commission’s Scratch-off business during the contract term if the Commission does not award either a Secondary or Tertiary Scratch-off ticket printing contract.

**Secondary and Tertiary Scratch-off Ticket Printing Provider(s):**

Secondary and Tertiary contracts may be awarded to the second and third highest scoring proposals, respectively. If Secondary and Tertiary Scratch-off ticket printing contracts are awarded, the Successful Secondary Bidder shall print twenty percent (20%) of the Commission’s Scratch-off business related to printing during the contract term and the Tertiary Bidder shall print ten percent (10%) of the Commission’s Scratch-off business related to printing during the contract term. If only a Secondary Scratch-off ticket printing contract is awarded, the Successful Secondary Bidder shall print twenty percent (20%) of Scratch-off business related to printing during the contract term.

Scope of Work is defined in Part Two.

The Commission’s annual budget for Scratch-off ticket design, development, and production services during the term of the Contract is estimated to be approximately \$50,000,000, inclusive of all costs outlined in this RFP among all awarded contracts. The Commission provides no guarantee that all of the estimated budget will be expended during the term of the Contract. Compensation is described in Sections 3.3 and 6.7 of this RFP.

The Commission is the only office authorized to clarify, modify, amend, alter, or withdraw the provisions of this RFP.

In the RFP, the Commission has defined a series of objectives, requirements, and a proposal evaluation approach that will represent the Commission's best interests in conformance with Commission policies and New York State statutes and regulations. A submitted Proposal must include all information and documentation required throughout this RFP.

The contents of this RFP, any modifications thereto, and the Proposal as submitted (consisting of a Technical Proposal and a Pricing Proposal) will become binding contractual obligations on both parties if a Contract ensues. Failure of the Successful Bidder to accept these obligations may result in cancellation of the award.

## **1.2 Intent to Bid and Confidentiality and Non-Disclosure**

The Commission has issued a redacted RFP and accompanying appendices, attachments, and exhibits for C202305 – Scratch-off Ticket Printing and Services. Redacted information in the RFP is confidential. Bidders must attest that they meet the Minimum Qualifications defined in Section 1.5 of the RFP and complete the **Attachment 5 – Intent to Bid and Confidentiality and Non-Disclosure Agreement**, prior to issuance of the full, unredacted RFP, which includes “Confidential Information” as defined within the Confidentiality and Non-Disclosure Agreement.

Attachment 5 – The Intent to Bid and the Confidentiality and Non-Disclosure Agreement must be signed, notarized and returned by the date and time specified in the RFP's “Schedule of Events” to: [officer.contracting@gaming.ny.gov](mailto:officer.contracting@gaming.ny.gov).

Submission of the completed Intent to Bid and the Confidentiality and Non-Disclosure Agreement does not obligate the submitter to submit a Proposal.

## **1.3 Background Information**

The New York Lottery (“the Lottery”) was established in 1967 as a result of constitutional amendment and is administered by the Commission. The Lottery is operated in accordance with provisions of the New York State Lottery for Education Law (Tax Article 34) and Article 1 of New York State Pari-Mutuel Wagering and Breeding Law. The Commission's mission for the Lottery is to raise revenue for education in the State of New York through the administration of lottery games. On February 1, 2013, the New York State Division of the Lottery merged with the New York State Racing and Wagering Board into a single oversight entity named the “New York State Gaming Commission.” The Commission has overall responsibility for regulation and enforcement of all legal gaming activity in New York State including horse racing and pari-mutuel wagering, Class III Indian Gaming, commercial gaming, the Lottery, video lottery gaming, and charitable gaming.

Fundamentally, the Lottery is run as an entertainment business. A dedicated team of Commission employees work with business partners and approximately 14,000 licensed

sales agents statewide to provide innovative, fun, and entertaining games for Lottery customers. Traditional games offered by the Lottery include six New York draw games (*New York Lotto*, *NUMBERS*, *WIN4*, *TAKE5*, *Quick Draw* and *Pick 10*), 3 multi-state games (*Powerball*, *Mega Millions* and *Cash4Life*), and approximately 60-80 Scratch-off games at any given time.

By selling its traditional Lottery games through an extensive statewide sales agent network and by subscriptions over the internet through its website ([nylottery.ny.gov](http://nylottery.ny.gov)), the Commission generated traditional Lottery sales of \$8.3 billion in fiscal year 2022-2023. The Lottery continues to be North America's largest and most profitable lottery program, earning more than \$82.38 billion in education support statewide since its founding more than 50 years ago. In the fiscal year 2022-2023, the Lottery's traditional games contributed \$2.67 billion to support education in New York State.

The Lottery's Scratch-off ticket sales for fiscal year ending March 31, 2023 were \$4.4 billion. Scratch-off tickets accounted for 53 percent of traditional Lottery sales. The Lottery maintains a base of approximately 14,000 licensed sales agents across the State. As part of the sales agent network, approximately 4,000 Scratch-off ticket Vending Machines ("ITVM") are installed statewide. These machines consist mostly of 24 to 28 facings for an estimated total of 108,000 facings statewide.

Currently, the Lottery introduces between 35 and 45 new Scratch-off games in a fiscal year with releases the first Tuesday of each month. A monthly game release includes 3-4 games of varying price points. In addition to new game launches the Lottery maintains a base of ten staple games that remain in-market at all times. The Lottery's Scratch-off ticket portfolio consists of \$1, \$2, \$3, \$5, \$10, \$20 and \$30 price points. By statute, the Scratch-off game payout is limited to 64.25 percent, however, up to five (5) new games may be offered during a fiscal year at 74.25 percent. The quantity of tickets in each game varies depending on the objective, but generally ranges from 8+ million to 22+ million. Occasionally, small print runs are required for limited distribution games. Staple games are ordered in quantities of 18+ million to 150+ million. Staple games currently represent 21 percent of total Lottery Scratch-off ticket sales. Select Fiscal Year Launches with Order Quantity are included in the RFP as Exhibit 1.

The Lottery employs a number of different Scratch-off ticket themes and play methods, including, but not limited to, key number match, tic-tac-toe, add-up, yours beats theirs, match 3, legend, crossword, bingo, and other extended play styles.

Commission Scratch-off ticket dimensions are scaled to reflect their price points. Current sizes are as follows:

- \$1 games measure 3 inches x 4 inches
- \$2 games measure 4 inches x 4 inches with exceptions including, but not limited to, extended play game designs for "Bingo" and "Cashword," which are 6 inches x 4 inches
- \$3 games measure 6 inches x 4 inches
- \$5 games measure 6 inches x 4 inches
- \$10 and \$20 games measure 8 inches x 4 inches

- \$30 or higher games measure 9 inches x 4 inches or larger

The Lottery currently provides sales agents with a variety of display systems including 6 inch dual-game interlocking units, 4 inch two-game interlocking units, 24-game in-counter units, and metal clips for hanging tickets.

For each new Scratch-off Game launch, games are delivered from the Scratch-off ticket production facility to the Lottery's distribution center in Albany, New York or the Lottery's backup distribution center in Latham, New York at least four (4) weeks prior to the launch date to pre-pack shipments to the Lottery. Approximately 12,000 sales agents receive automatic shipments of new games on the day of the launch.

The Commission expects Scratch-off tickets for the fiscal year 2023-2024 to be approximately \$4.37 billion in sales resulting from approximately 35-40 new games, ten (10) staple games, and production of an estimated 675-950 million tickets.

The Lottery has expansive digital offerings, including second chance opportunities with Scratch-off tickets, which are managed under a separate contract. Currently the digital landscape is comprised of two different websites ([nylottery.ny.gov](http://nylottery.ny.gov); [nycollectnwin.com](http://nycollectnwin.com)) and several different mobile applications ("apps"). The Lottery's native website averages 5 million page views per week and over one million visitors per week. Traffic does increase on the websites and apps during events, such as a high jackpot. During these events the websites and apps can see a volume of over one million people at a given time.

The Lottery is also a complex, retail-driven program. The Lottery's sales agent network is diverse, requiring solutions that are tailored rather than "one-size-fits-all." There are locations with different business operations, trade styles, environments, and footprints. Sales agents and their employees are Lottery's front line to players. Effective Lottery games are needed to motivate sales agents and their employees, as well as players. The Commission's Lottery field marketing staff communicate upcoming games and promotions, optimize sales via industry best practices and improve adherence to Lottery-related policies with instructional and effective sales tools. With new Scratch-off game launches monthly, Lottery is an active account requiring constant attention to timelines, detail, and support. New game communications with consumers and sales agents are frequent and time sensitive.

Research projects to gain consumer and sales agent insights and to track Lottery program performance is ongoing throughout the year. Additionally, reactive, and dynamic efforts to meet consumer expectations require priority attention from the Commission's Scratch-off ticket design, development, and production service providers.

The Successful Primary Bidder will become a strategic partner with the Commission to provide consumer and product research, conduct ongoing analysis, prepare weekly sales reports, and help develop and implement impactful, innovative, and effective Scratch-off ticket plans that will drive business and achieve the Commission's Lottery goals and objectives.

The Successful Bidder(s) shall provide the following:

- Scratch-off game development schedule;
- Scratch-off game design;
- Scratch-off game trademark search;
- Scratch-off game prize structure development;
- Scratch-off game programming;
- Scratch-off game production schedule;
- Scratch-off game specifications (“working papers”);
- Scratch-off game manufacturing;
- Scratch-off game production audit;
- Scratch-off game End of Production Prize Structure;
- Scratch-off game packaging and delivery to the Commission’s Lottery warehouse facilities;
- Scratch-off ticket reconstruction;
- Scratch-off game and ticket testing;
- Licensed properties; and
- Scratch-off dispenser and display acquisition and delivery.

Each contract term will be for two (2) years with the option for three (3) one-year extensions, at the Commission’s discretion.

#### **1.4 Multiple Awards and Management Fee**

The Bidder with the highest composite score pursuant to Part 4 of the RFP will be the Successful Primary Bidder, and shall receive a management fee calculated as a percentage of total net Scratch-off sales, less prizes.

Awards may be made to the next two highest scoring Bidders for secondary and tertiary awards, respectively, to provide Scratch-off ticket printing services.

Unless otherwise specified, reference to “Successful Bidder” within this RFP applies to each Successful Bidder awarded a contract.

#### **1.5 Minimum Qualifications**

Any Bidder submitting a Proposal in response to this RFP must meet the minimum qualifications listed below. Information demonstrating the qualifications defined below must be incorporated into a Successful Bidder’s response to **Part Four - Evaluation and Selection**.

- A.** No less than ten (10) years of secure lottery Scratch-off ticket manufacturing experience, including game, ticket and prize structure design, game development, game programming and production, and game audit and testing, and at least three (3) current clients who are members of the North American Association of State and Provincial Lotteries.
- B.** Must be legally qualified to do business in New York state.

## 1.6 Specified Options

A Specified Option, as noted in this RFP, is identified as being of specific interest to the Commission. The Commission anticipates acquiring such Specified Option from the Successful Bidder; although the Commission may choose not to exercise such a Specified Option. **Bidders are required to include and price all Specified Options in their respective Proposals.** A Proposal may be rejected if a **Specified Option** is not included.

Specified Options are identified throughout this RFP and in the Pricing Sheets. All Specified Options identified by a Bidder must be specifically noted as such throughout a Bidder's Technical Proposal.

## 1.7 Licensing

Successful Bidders will be required to successfully complete a licensing process with the Commission prior to the placement of any product orders. Any Successful Bidders already licensed with the Commission will be required to sustain a valid license. Failure to successfully complete the licensing process, or to sustain a valid license, may result in cancellation of an award.

## 1.8 Successful Bidder/Contractor Differentiation

Throughout this RFP the term "Bidder" is used to reference an entity during the preparation and submission of a Proposal and any requirements preceding the award of a final contract through **Contract Form (Appendix B)** ("Contract"). In describing post-contract award requirements, the terms "Successful Bidder", "Consultant", "Vendor", and "Contractor" are used.

## 1.9 Headings

The headings used in this RFP are for convenience only and shall not affect the interpretation of any provisions of this RFP.

## 1.10 Questions and Inquiries

Questions from Bidders regarding this RFP shall be submitted via electronic mail to [Stacey.Relation@gaming.ny.gov](mailto:Stacey.Relation@gaming.ny.gov) and [Alysan.Bowers@gaming.ny.gov](mailto:Alysan.Bowers@gaming.ny.gov), no later than the date and time specified in the Schedule. Neither faxed nor telephoned questions are acceptable. If questions are provided via an attachment to electronic mail, the questions must be provided in Microsoft Word format to be considered.

Bidders are cautioned that any question or inquiry regarding the RFP shall be written in generic terms and shall not contain pricing information. The inclusion of specific information about a Bidder's pricing in an inquiry may result in the Bidder's disqualification and will disqualify the question from consideration.

Responses to all questions, and any changes to the RFP resulting from such questions, will be communicated via published amendments, which will be posted on the Commission's website.

**Attachment 1, Bidder Acknowledgement of Amendment**, will be provided with each amendment. Bidders are required to include with their respective Proposals a signed Bidder Acknowledgement of Amendment for each amendment to the RFP for such Bidder's Proposal to be fully considered.

### **1.11 Non-Exclusive Rights**

Nothing in this RFP or the Contract resulting from this RFP shall preclude the Commission from purchasing other products, services, or equipment from other sources throughout the duration of the resulting Contract.

### **1.12 Game Playing and Prize Payment Restrictions**

No officer or employee of a Successful Bidder or of any subcontractor nor anyone residing in the household of such officer or employee shall participate in the purchase of lottery games of the Lottery or be paid a prize in any Lottery game. A Successful Bidder shall ensure that this requirement, and any pertinent Commission rule or regulation regarding this subject matter, is made known to each officer and employee of the Successful Bidder and of any subcontractor of the Successful Bidder.



## PART TWO – SCOPE OF WORK

### 2.1 Introduction

The section below provides an overview of the responsibilities of each Successful Bidder throughout the term of the Contract. For each Successful Bidder, the Commission plans to enter into a Contract agreement with an organization that has the expertise to provide all aspects of Scratch-off ticket design, development, production and delivery services and Scratch-off ticket dispenser and display acquisition.

The expectation is that Successful Bidders produce Scratch-off tickets using secure “state of the art” production techniques including the provision of all services required to design and produce secure, high-quality Scratch-off tickets. The Primary Successful Bidder shall work collaboratively with Commission staff as a dedicated, strategic business partner to develop and deliver Scratch-off games and assist with the creation and implementation of Scratch-off game plans that further the Commission’s mission to raise revenue for education in the state of New York through the administration and sale of Lottery Scratch-off games. Successful Secondary and Tertiary Bidders shall develop, produce, and deliver Scratch-off games as requested by the Commission.

### 2.2 Successful Bidder Requirements

#### A. Responsible Gaming Commitment

The Commission is committed to operating according to responsible gaming principles and upholding the integrity of the Commission. The Successful Bidder shall develop Scratch-off games that are not targeted to appeal to people under 18 years old and shall develop ticket designs and ticket messaging in a responsible manner that does not encourage individuals to purchase or participate in Lottery Scratch-off games beyond their means or control. The Commission’s guidelines regarding responsible gaming must be followed.

#### B. Integrity

The Commission operates the Lottery with the highest integrity, credibility, and quality to maintain the public trust. The Successful Bidder shall be held to the same standards. The Successful Bidder shall develop an in-depth knowledge of New York State laws and regulations that govern the Commission, the Lottery, operations, management of contracts, and the Successful Bidder’s subcontractors.

- Commission Regulations: <https://www.gaming.ny.gov/rules.php>
- New York State’s Racing, Pari-Mutuel Wagering and Breeding Law, Article 1: <https://www.gaming.ny.gov/statutes.php>
- New York State’s Tax Law, Article 34: <https://www.gaming.ny.gov/statutes.php>
- New York State’s State Finance Law, Article 11: <https://www.gaming.ny.gov/statutes.php>

### **C. Environmental Consciousness, Sustainability, Energy Conservation**

The Successful Bidder shall commit to preventing waste, maximizing resources, reducing energy consumption, and increasing efficiency. A Corporate Plan and a New York Lottery Plan that outline efforts to support the prevention of waste, maximizing resources, reducing energy consumption, increasing efficiency, and utilizing resources and production practices that will minimize environmental impact, must be provided as part of the Bidder's Proposal.

- Climate Act: New York's Climate Leadership & Community Protection Act, <https://climate.ny.gov/>
- Executive Order No. 22: Leading by Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program | Governor Kathy Hochul, <https://www.governor.ny.gov/executive-order/no-22-leading-example-directing-state-agencies-adopt-sustainability-and>

### **D. Retail Scratch-off Ticket Displays and Dispensers**

The Successful Bidder may be required to provide retail Scratch-off ticket displays, dispensers and associated hardware including, but not limited to, 6-inch dual-game interlocking units, 4-inch two-game interlocking units, 24-game in-counter units, metal clips for hanging tickets, on-counter ticket display mats, electronic ticket menu boards, and any new or innovative Scratch-off ticket displays, and dispensers as determined by the Commission. Upon the Commission's written approval, such displays, dispensers, associated hardware, communications, implementation, maintenance, and delivery costs shall be billed to the Commission as a pass-through cost with no markup. Displays, dispensers and associated hardware shall be delivered from the provider to the Commission's designated warehouse facilities in New York State or other location as determined by the Commission. The Successful Bidder shall adhere to section 2.2(K), Competitive Bidding Purchasing Requirement for items not provided by the Successful Bidder or its subsidiaries.

### **E. Licensed Properties**

The Successful Bidders may be asked to provide licensed properties. Upon the Commission's written approval specified in a game's executed working papers, such property and associated costs shall be billed to the Commission as a pass-through cost with no markup.

### **F. Staff**

The Successful Bidder shall designate an individual representative of the Successful Bidder who is assigned to coordinate with the Commission on Scratch-off game development, production, and support. Secondary and Tertiary awardees are not required to designate an individual who may only work exclusively on the Lottery account, but the individual designated shall be available to successfully perform these functions for any game produced by the Successful Bidder for the

Lottery account. The Successful Bidder shall provide sufficient staff to ensure the requirements of this RFP can be met.

The Successful Bidder shall provide an emergency operations contact that can be reached after regular business hours.

## **G. Scratch-off Game Development**

The Successful Bidder shall provide the management and oversight of all aspects of Scratch-off game development and delivery including, but not limited to, game design, ticket graphics, prize structure, ticket testing, game audit, trademark search, development of working papers and game production and delivery to the Commission's Lottery distribution center in Albany, New York or the Lottery's backup distribution center in Latham, New York. The Successful Bidder shall provide the following:

### **a. Scratch-off Game Planning**

- i. Recommendations for individual Scratch-off games including theme, game name, price point and relevance to New York. Recommendations shall be supported by lottery industry trends and data. New concepts must include rationale for inclusion in the Lottery Scratch-off game portfolio.
- ii. Scratch-off game development including, but not limited to, creative concept and the provision of various graphic design options, play style, play action, play instructions, print quantity, and prize structure.
- iii. Monthly virtual planning meetings to present recommendations.

### **b. Scratch-off Ticket Design**

- i. Electronic graphic ticket design for each phase of review and final mechanical artwork designed to the specifications required to meet Lottery's security and system requirements.
- ii. Ticket designs in a layered artwork file format that enables the Commission to make design changes in-house. Artwork files shall be made available to the Commission via Secure File Transfer Protocol ("SFTP"), or other secure method approved by the Commission.
- iii. Final ticket artwork in an electronic format such as JPEG or other mutually agreed to format that includes a separate file for the complete scratched and unscratched ticket art and ticket back. Final artwork shall be provided to the Commission within three (3) business days of execution of final working papers and thereafter upon request. All final ticket artwork shall be archived by the Successful Bidder for the term of the Contract.

### **c. Scratch-off Game Working Papers**

Creation and management of Scratch-off game working papers from inception through final execution. Working papers shall be generated by the

Successful Bidder in a format approved by the Commission. The Successful Bidder shall provide updated working papers within two (2) business days of Commission-requested change(s). Executed working papers shall be complete and free of any errors or omissions. Production of a Scratch-off game shall not proceed until final working papers are approved in writing by the Commission. At the Commission's discretion, specified requirements may be included in the working papers. Any required changes to working papers post-execution shall require written approval by the Commission through a documented post-execution change initiated by the Successful Bidder and executed by the Successful Bidder and the Commission prior to production. The Commission reserves the right to cease production of any Scratch-off game that has not yet printed. The Successful Bidder may invoice the Commission for actual costs incurred up to the cancellation date, provided the Successful Bidder provides a detailed accounting of costs and the cancellation is not due to the Successful Bidder's action or inaction. The Commission may pay such costs up to \$10,000 per incident. Working papers for each Scratch-off game shall include, but not be limited to, the following information and images:

- i. Game name, game number, working paper version
- ii. Color version of entire ticket front covered and uncovered at 100% of actual ticket size or other percentage as determined by the Commission
- iii. Black, white and greyscale version of entire ticket back, or color version if ticket back has color at 100% of actual ticket size or other percentage as determined by the Commission
- iv. Color version of entire ticket back covered, and uncovered if a play area or color is incorporated onto the ticket back, at 100% of actual ticket size or other percentage as determined by the Commission
- v. Color version of entire ticket uncovered with a benday pattern
- vi. Ticket size
- vii. Ticket quantity
- viii. Pack size
- ix. Ticket and pack numbering
- x. Play style
- xi. Play instructions
- xii. Prize structure including game name, game number, prize structure version and associated date, ticket price, quantity of tickets, revenue in dollars, prize payout percentage to the hundredth decimal point, prize payout in dollars, prizes by tier and number and type of wins by each level within a tier, odds of winning by prize level, tier, consolidated odds and overall odds, winners per pack and per pool, prize cost and percent of prize fund dedicated to each prize level and percent of prize fund dedicated to low-, mid- and high-tier prize levels, Guaranteed Low-End Prize Structure (GLEPS) for each pack of tickets in configurations or range allowed per pack for low tier prizes, funding to or from reserves, guaranteed prizes, non-cash prizes and other requirements as determined by the Commission
- xiii. Paper stock

- xiv. Specialty paper
- xv. Special requirements such as scene change, pulse, design/play action change
- xvi. Orientation of ticket front and back
- xvii. Placement of barcodes on ticket front, back, and uncovered
- xxviii. Unique game Universal Product Code (UPC) barcode and corresponding human-readable number
- xix. Description of location and/or float of the validation number, barcode, and UPC barcode and corresponding human-readable number.
- xx. Front display colors, overprint colors, and security tint colors
- xxi. Press layout configuration
- xxii. Pack ticket quantity and configuration
- xxiii. Ticket quantity per pool
- xxiv. Pack insert dimensions, quantity, and image of front and back
- xxv. Oversize card
- xxvi. Ticket layout for front and back imaging
- xxvii. Specific images or detail in actual size and at an increased percentage as requested by the Commission of legends, play spots, captions, numbers, symbols, prize spots or other play data
- xxviii. Game design programming parameters or constraints to ensure integrity of the game, play action, prize structure or other game design requirements
- xxix. Box dimensions, maximum number of packs per box and other packaging requirements to ensure structured packaging
- xxx. Ticket and delivery security requirements
- xxxi. Delivery schedule
- xxxii. Shipping and delivery requirements
- xxxiii. Order and price confirmation page to include, but not be limited to, any additional inks, varnishes, tints, specialty paper or other approved enhancements authorized by the Contract
- xxxiv. Any licensed property documentation, prize details, hashes or other features authorized by the Contract
- xxxv. Other specifications as requested by the Commission

#### **d. Scratch-off Game Production Schedule**

Weekly up-to-date production schedules for all games to be produced by the Successful Bidder. Each production schedule shall be created and provided for planning purposes and may change with written Commission approval. In the event of a conflict between the production schedule and executed working paper schedule, the working paper schedule prevails. A Scratch-off Game Production Schedule shall include, but not be limited to:

- i. Game name
- ii. Game number
- iii. Ticket quantity
- iv. Ticket size
- v. Pack size
- vi. Working paper draft deadline

- vii. Working paper execution deadline
- viii. Trademark search results deadline
- ix. Audit completion deadline
- x. Quality Assurance completion deadline
- xi. Press date
- xii. Ship date
- xiii. Delivery date
- xiv. End of Production Prize Structure date
- xv. Start of sale date

#### **e. Scratch-off Game Development Schedule**

Create and manage a Scratch-off game development schedule for each assigned game that ensures game development and delivery shall meet Commission-established timelines. The Successful Bidder shall adhere to a Commission-approved development schedule. Any changes to a Commission-approved schedule must be approved by the Commission in writing before taking effect.

Scratch-off game draft artwork and prize structure must be provided to the Commission within five (5) business days of the Commission's initial request for the same. The Commission must review and approve all artwork and prize structures in writing prior to development of working papers related to the same.

Establish a standard process and schedule for multiple game design, artwork, prize structure and working paper reviews.

### **H. Scratch-off Manufacturing and Support**

The Successful Bidder shall securely manufacture Scratch-off games as required below, ensuring security procedures and controls are established to maintain the highest standards of security and integrity are incorporated into product development. All games shall be printed within the United States, unless otherwise approved in writing by the Commission, prior to game execution.

#### **a. Ticket Stock**

All ticket stock must meet security requirements to prevent tampering and must not curl, separate or be easily split. Requirements for ticket stock may vary by game. The Commission prefers the use of recycled, recyclable stock provided ticket security requirements can be met. All tickets produced must dispense from existing Lottery dispensers and vending without scratches or damage.

Tickets may be printed on various stocks, including, but not limited to:

- i. 10-point virgin recyclable stock, coated two (2) sides
- ii. 10-point recycled, recyclable stock, coated two (2) sides

**b. Tickets and Packs**

Ticket size and number of tickets per pack may vary by game and price point and may be modified at the Commission's sole discretion. Tickets shall be 4 inches wide with multiple height configurations with a minimum height of 3 inches. Ticket width shall be 4 inches unless otherwise requested by the Commission.

Tickets and packs shall be designed in vertical orientation unless horizontal orientation is requested by the Commission. Ticket back shall be vertical orientation and shall include Commission-approved standard text and a large representation of the ticket price in greyscale.

Perforations between tickets must be deep enough and must contain adequate space between perforations to allow clerks and self-service vending machines to separate without damage. The perforations shall not be so deep as to allow unintentional detachment during normal handling and dispensing.

Unless otherwise specified by the Commission, one insert card shall be included in each shrink-wrapped pack of tickets. The size of the insert card shall be 6 inches x 4 inches and designed in a flexible format for use in Lottery dispensers or vending displays. The insert card shall be printed on 10-point recycled, recyclable paper and printed on the front and back according to Commission specifications as identified in the working papers. The insert card front shall include four color process artwork to represent the game contained in the pack. If specialty inks or paper are used to create the game, the insert card shall be produced with similar quality papers and inks. The insert card will closely represent the ticket artwork with a perforation separating the lower section. The insert card back shall display activation data using one color. The activation data shall include an Interleaved 2 of 5 barcode which contains a 4-digit game identification number and a 7-digit pack number. The game and pack number data shall also be printed in human-readable form. The insert card shall be packaged with the activation data face up in the front of each pack of tickets.

For each game, the Successful Bidder shall provide 25,000 oversize cards used for point-of-sale display. Artwork shall be required on both sides and may be different on each side, as specified in the working papers. The size shall be 6.5 inches x 10 inches. The oversize cards shall be produced on 12-point recycled, recyclable cardstock with matte finish, unless otherwise approved by the Commission. The Successful Bidder shall deliver oversize cards to the Commission's Lottery warehouse facilities and Lottery Regional offices, as specified in the working papers. The Commission may decline production of oversize cards for a particular Scratch-off game; and the Commission reserves the right to increase production requirements of oversize cards for any Scratch-off game.

The Successful Bidder shall provide up to 50,000 voided, non-winning ticket samples delivered in full-pack quantities of actual size tickets for each game produced, with quantities and delivery to the Commission's Lottery warehouse, headquarters, and regional offices detailed in the working papers. Such tickets shall have the word "VOID" printed prominently on the back. The "VOID" text shall replace the ticket number on the ticket front. All void samples shall be shrink-wrapped in pack sizes that are the same format as those in the actual game. The number of voided, non-winning ticket samples to be produced is subject to change at the Commission's sole discretion.

**c. Scratch-off Ticket Font Generation**

All Scratch-off ticket-imaged data or graphic fonts produced by the Successful Bidder, whether data or fonts are standard, customized, or licensed, must be approved by the Commission before implementation or production. Samples of all imaged data and/or graphic fonts for a specific game shall be included in that game's executed working papers.

**d. Imaged Data**

As outlined within executed working papers, the game data on each ticket shall include, but not be limited to, the following items: symbols, legends, captions, ticket numbers, pack numbers, validation numbers, and standard barcodes. These items must be printed using a computer-controlled imaging printer. Imaged data shall meet the following requirements:

- i. Printed in black or two-color ink approved by the Commission on the display printing side.
- ii. Uniformly positioned and aligned on the tickets, unless otherwise specified in the executed working papers to prevent potential pick-out problems associated with positioning and alignment.
- iii. Imaged symbols shall be printed clearly, easily readable, and distinguishable, and the images shall not bleed, be distorted, or smear, and shall be accompanied by appropriate captions and legends for play and prize symbols.
- iv. Captions and legends must spell out or abbreviate the play and prize symbols in a smaller font size than the actual play and prize symbols, in a different but recognizable format.
- v. No Scratch-off ticket will contain more game data than authorized in the executed working papers.
- vi. Game data shall meet Commission security requirements with respect to compromise and resistance to alterations.
- vii. The imaged data must not be damaged to a degree where the imaging is made illegible while removing the Scratch-off ticket coating using the normal pressure required to remove the Scratch-off ticket coating. The protective coating/seal must remain intact. After removal of the Scratch-off ticket coating, the imaged data must remain readable after application of any commonly occurring solvent



such as perspiration, saliva, water, soft drinks, or coffee then followed by moderate rubbing (minimum of ten (10) strokes) with a tissue, cotton swab, or other soft object.

- viii. Every imaged symbol in any ticket play area must be completely covered by Scratch-off ticket coating with the exception of the quality control inspection window(s) on each ticket. An exception to this requirement is granted for any game where the imaging is duplicated on the security coating, visible through translucent security coating, or any other process so players easily know where to scratch on the ticket.

**e. Scratch-off Game Numbers**

The game number shall be able to accommodate four digits and shall not be a duplicate of any existing games or other games in production.

**f. Scratch-off Game Pack Numbers**

Each pack of tickets within a game shall be identified with a unique consecutive and non-duplicating pack number except for omissions that occur with production. Game and pack numbers shall appear on the ticket back above the Interleaved 2 of 5 barcode image.

When used in reference to tickets and game packs, “omissions” refers to printed ticket game packs that do not meet quality standards and/or need to be removed from the print run to meet prize structure requirements.

**g. Scratch-off Game Ticket Numbers**

Each ticket within a pack shall display a unique sequential ticket number and reverse count such that the ticket count left in the pack is to be included with the ticket number on the ticket back. For example, the ticket number will begin on a 250-ticket pack with 001(250), 002(249) through 250(001), with the reverse count represented within parentheses. The numbers shall be consecutive and non-duplicating in a pack and shall not include omissions. The ticket number (not the reverse count number) shall appear in the quality control inspection window on the front of the ticket and shall match the three-digit ticket number printed above the Interleaved 2 of 5 barcode on the ticket back.

**h. Validation Number**

A unique validation number shall be imaged on the front of the ticket in a format approved by the Commission. The format of the validation number shall be detailed in a separate specifications document. This validation number shall be covered with a scratch-off coating and shall meet the requirements of the Commission. The validation configuration is subject to change at the Commission’s discretion. Any such change shall be accommodated by the Successful Bidder without additional cost to the

Commission. The Commission may change the location or position of the validation number under the scratch-off material for each game. The location of the validation number shall be specified in a game's executed working papers. The Commission requires the validation code to "float" within the play area.

**i. Validation Algorithm and Validation Files**

The Successful Bidder shall use the validation algorithm the Commission currently uses. The Commission shall provide the algorithm requirements to the Successful Bidder. The Successful Bidder shall provide to the Commission validation files in a format required by the Commission. The Commission shall provide validation format requirements to the Successful Bidder. The Successful Bidder shall make the validation files available via SFTP or other secure method approved by the Commission.

The Commission reserves the right to change the validation file requirements at no additional cost to the Commission.

**j. Scratch-off Ticket Barcodes**

Each ticket back shall contain an Interleaved 2 of 5 barcode that complies with the Lottery Computer Gaming System requirements, or such successor Lottery Computer Gaming System requirements as may be implemented by the Commission. Specifications shall be provided to the Successful Bidder upon Contract execution.

Games shall utilize a PDF417 code for ticket validation. The Successful Bidder shall provide a security process/feature for the verification of Scratch-off tickets.

Each ticket back shall contain a UPC barcode and corresponding human-readable UPC number as specified in the executed working papers and shall contain information as specified by the Commission.

The Commission currently uses the Scientific Games, Inc. security process/feature of FailSafe™ for the processing, verification, and validation of Lottery Scratch-off tickets. The Successful Bidder shall provide, at no additional cost to the Commission, a secure solution for use in the processing, verification, and validation of Scratch-off tickets to be used until all printed and approved tickets have been sold and expired, whether during or after the expiration of the Contract term. The Commission will determine which Successful Bidder's or Bidders' secure solution(s) will be used upon Contract award, or if it is in the Commission's best interest to continue use the FailSafe™ security process/feature, or a different security process/feature.

**k. Sales Agent Validation Prize Codes**

The Commission may require sales agent prize codes in the play area under the scratch-off material. Such validation prize codes shall correspond to PDF417 barcode algorithm. The Commission shall provide the Successful Bidder with approved validation prize codes. If validation prize codes are used in a game, executed working papers shall outline relevant prize codes and acceptable placement of codes.

**l. Scratch-off Coating**

Ticket scratch-off coating shall be opaque and of such quality as to maintain the integrity of the ticket symbols and validation information. The border between the scratch surface and the uncovered portion of the ticket must be sharp and even (*i.e.*, the coating may not drip onto the display printing). The scratch-off coating shall be smooth and regular to the touch and shall be readily removable with a reasonable degree of resistance when scratched with commonly used items such as scrapers, keys, and coins. After the scratch-off coating is removed, significant residue shall not be present. Scratch-off coating shall remain readily removable for a minimum shelf life of thirty-six (36) months under normal warehouse conditions (climate controlled between 70- and 80-degrees Fahrenheit). The scratch-off coating shall be non-toxic and non-irritating to the eyes and skin. The scratch-off coating shall cover the entire play area and overlay into the display area.

Subject to normal printing trade tolerances and practices, the scratch-off coating shall be properly registered as defined in the working papers.

**m. Protective Coating/Seal Coat**

The game data under the opaque scratch-off ticket coating shall be covered by a transparent coating that protects the data from damage when the scratch-off coating is rubbed off. If the seal coat is removed, it must exhibit evidence of tampering and shall be non-repairable.

**n. Display Printing**

Display colors on the ticket front shall be printed using either four color process or spot colors or both. Spot colors may be specified by the Commission as Pantone® Matching System colors or equivalents. Additional color must be available for printing on the ticket back, per Specified Option.

Inks must be of such a nature that there is no “offsetting” or picking from the front of tickets to the back of tickets on an adjacent page, and vice versa. Display printing shall be done with such inks as to avoid smearing from sweat, water, commercial soaps, or other normal environmental conditions.

Subject to normal printing trade tolerances and practices, the display printing shall be properly registered as defined in the working papers.

**o. Overprint**

The overprint colors shall be printed on top of the scratch-off coating. The overprint shall consist of an artistic design that covers at least the same dimensions of the scratch-off coating. The overprint shall be well-defined, clear, sharp and shall be of such design as to allow detection of scratch-off material tampering or alteration. Overprinting shall be performed with inks that prevent compromise of game data covering. Solvents used against the covering must cause the ink to distort the overprint covering.

The design of the overprint must be such that virtually all of the scratch-off coating is covered by an overprint color. The overprint must extend up to or beyond the edges of the play area onto the paper, foil, or holograph to easily detect any irregularities in the ticket.

Subject to normal printing trade tolerances and practices, the scratch-off coating and overprint shall be properly registered as defined in the working papers.

**p. Ticket Back Printing**

Ticket back printing shall be done with such inks as to avoid smearing from sweat, water, commercial soaps, or other normal environmental conditions. Ticket back text shall be clear and crisp for ease of reading, even if text may be small.

**q. Ink Colors**

The Successful Bidder shall be capable of producing a minimum of seven (7) display colors on the front of the ticket. A minimum of five (5) colors shall be available for use in the overprint area.

**r. Benday Patterns**

The benday patterns used for all games shall be printed in a configuration approved by the Commission. Unless otherwise approved by the Commission, benday patterns shall be printed using the maximum number of patterns based on the number of tickets across the web and the number of repeats on the press in each game. Benday patterns shall be printed using inks that are visible. Benday patterns shall cross every symbol and prize and shall be applied in a manner as to allow detection if tampering or an alteration has occurred.

**s. Security Tint or Primer**

Each game shall include a security tint in the play area on either or both the lily pad and/or seal coat to provide security against color copying. The security tint must display evidence of overprint, lily pad tampering, and/or penetration by any normal household product, chemicals, or solvents. Security tints are required regardless of paper stock or printing process. The Successful Bidder shall inform the Commission of security concerns if the Commission requests a different tint color than the Successful Bidder's proposed color.

**t. Integrity of Scratch-off Ticket Design**

Neither winning tickets nor non-winning tickets shall be recognizable from any characteristic of the ticket other than by the play data or symbols concealed by the scratch-off coating.

To maximize the security and integrity of Scratch-off games and to maximize consumer confidence in such games, the Commission deems it essential to minimize the possibility of tampering. Ticket design shall be such that tampering or attempts to tamper are evident based on reasonable review of the ticket. Accordingly, visible scratches, holes, or pitting in the scratch-off ticket coating that expose any portion of the underlying ticket stock (whether or not any portion of the play data or symbols are exposed) may be cause for the Commission's rejection of games produced by the Successful Bidder.

**u. Randomization**

Prizes shall be randomly distributed. The Successful Bidder shall have the ability to limit the number of consecutive non-winning tickets. The maximum number of consecutive non-winning tickets shall be specified in the executed working papers. The Commission reserves the right to inspect the methodology and implementation of such randomization in consultation with an independent auditor at any time.

**v. Guaranteed Low-End Prize Structure (GLEPS)**

Each pack of tickets shall contain a guaranteed dollar value of low-tier prizes as specified by the executed working papers. A minimum of four (4) different configurations of low-tier prizes shall be incorporated equally and randomly into each pool and throughout all pools in the game. Each configuration shall have a total dollar value of low-tier winners within a monetary range as determined by the Commission. At the Commission's discretion, a range of prizes per pack for each low-tier prize level may be used and incorporated randomly throughout the game. The low-tier prizes within a GLEPS configuration shall be placed randomly within a pack of tickets.

### w. Prize Guarantees

The Successful Bidder shall submit a standard, completed audit letter created and executed by a qualified and independent certified public accounting firm relating to the game production prior to delivery of a game to the Commission's Lottery warehouse facilities. (See Section 2.2(H)(gg), Production Audit)

The Successful Bidder must guarantee the following:

- i. Winning tickets are distributed with no discernible pattern throughout the entire game.
- ii. Unless otherwise agreed to in the working papers, game ticket quantities shall be guaranteed within +/- 3% from the quantity stated in the executed working papers, and prize amount levels shall be proportionate to the actual quantity shipped and consistent with the expected odds and prize amount level allocations based on the executed working papers.
- iii. Overall odds of the game shall not vary more than +/- .0005 from the End of Production Prize Structure, unless approved by the Commission.
- iv. Top prize and other tier-level prizes that are specified in the executed working papers as a guaranteed quantity shall be verified and guaranteed in the End of Production Prize Structure for the game produced.

### x. General Security Provisions

- i. The Successful Bidder must demonstrate the capability and integrity required to maintain constant vigilance against any breach of security. Failure to meet or to maintain security standards acceptable to the Commission may be grounds for Contract termination.
- ii. The Successful Bidder shall comply fully with all requirements of applicable information security standards, policies, and procedures of New York State, including, but not limited to the following standards, policies and procedures that have been adopted by the New York State Office of Information Technology Services ("ITS"), as may be amended and/or updated:
  - Acceptable Use of Information Technology Resources Policy: [nys-p14-001-acceptable-use-of-information-technology-resources.pdf](#)
  - Information Security Policy: [nys-p03-002 information security policy.pdf](#)
  - Security Logging Standard: [Microsoft Word – NYS-S14-005 Security Logging](#)

- Information Security Risk Management Standard: [nys-s14-001 information security risk management.pdf](#)
  - Sanitization/Secure Disposal Standard: [nys-s13-003 sanitization secure disposal standard.pdf](#)
  - Mobile Device Security Standard: [nys-s14-009 mobile device security.pdf](#)
  - Remote Access Standard: [nys-s14-010 remote access.pdf](#)
  - Secure System Development Life Cycle Standard: [nys-s13-001 secure system development life cycle.pdf](#)
  - Secure Configuration Standard: [nys-s14-008 secure configuration standard.pdf](#)
  - Secure Coding Standard: [nys-s13-002 secure coding standard.pdf](#)
- iii. ITS information security standards, policies, and procedures may be found at <https://its.ny.gov/policies>. The Successful Bidder warrants that its employees, agents, and subcontractors are properly informed and trained regarding generally accepted information security practices and ITS information security standards, policies, and procedures.
- iv. The Successful Bidder shall comply fully with all Commission fingerprinting and background check requirements, which are communicated to the Successful Bidder by the Commission during the performance of the Contract.
- v. The Successful Bidder shall also comply fully with all requirements of this Contract pertaining to security requirements specific to the services the Successful Bidder is providing to the Commission through the Contract. If any software application or vulnerability security scanning undertaken hereunder reveals vulnerabilities or any other security risks attendant to the provided solution, the Successful Bidder is responsible for ensuring those vulnerabilities and risks are promptly remediated to the Commission's reasonable satisfaction. In addition to the specific security provisions required herein, the Successful Bidder shall also use commercially reasonable best efforts to address and remediate any vulnerabilities associated with the types of configuration services it is providing under the Contract.
- vi. Encryption. The Successful Bidder shall use industry standard information security measures, including standard encryption protocols in compliance with the ITS Encryption Standard, NYS-S14-007 (which may be found at <https://its.ny.gov/system/files/documents/2023/04/nys-s14-007-encryption-standard.pdf>) to protect and guard the availability and security of all Commission data maintained by the Successful Bidder. If the requirements set forth in the RFP and/or the Contract are not

the same as the ITS security standards, policies, and procedures cited herein, the more restrictive standard, policy, or procedure shall apply. The Successful Bidder shall be strictly prohibited from using Commission data in any fashion other than that defined herein or authorized in writing by the Commission. All Commission data maintained by the Successful Bidder shall be encrypted including, but not limited to, data in transit and data at rest.

**y. Test Game**

- i. As a Specified Option, the Successful Bidder may be required to provide the Commission with a test scratch-off game, that includes a validation algorithm, inventory, validation files and sample tickets and/or barcodes of high-tier, mid-tier, low-tier, and non-winning tickets to verify compatibility and functionality of information and systems. The Successful Bidder shall develop working papers for a test game and the test game shall be delivered to the Commission as described in the executed working papers.
- ii. If at any time the Commission decides to change ticket, barcode or validation file formats for Scratch-off games, the Successful Bidder shall provide test games and related working papers to the Commission for review, with the Commission's approval of such change required before implementation of such change for future Scratch-off games.

**z. Ticket Reconstruction**

- i. Upon request of the Commission, the Successful Bidder shall provide only to authorized Commission-designated personnel a report reconstructing the play data of any ticket. The reconstruction may be accomplished by using the game, pack, and ticket numbers, validation number, or barcode, or portions or combinations of those items. The reconstruction report must be submitted by secure electronic transfer or, upon request, by fax, and shall contain the following information:
  1. The complete game number, pack number, ticket number, and validation number.
  2. An indication of whether the ticket was a winning or non-winning ticket.
  3. In the case of a winning ticket, the prize amount.
  4. A representation of the play area as it would have appeared on the actual ticket.
- ii. The Successful Bidder shall maintain an audit log of each ticket reconstructed that will provide the requestor, game/ticket information, date requested, date of reply, non-winning or winning ticket, amount of prize and person responding.



- iii. A monthly reconciliation report listing all reconstructions requested by the Commission shall be provided to the Commission-designated personnel no later than the tenth day of the following month.
- iv. The Successful Bidder shall reconstruct play data of any ticket produced by the Successful Bidder under this Contract until the game expires.

**aa. Employee Controls**

The Successful Bidder shall prevent its employees involved in game production and the Commission's lottery sales agents from ascertaining or learning the location of winning tickets, and at the Commission's request, the Successful Bidder shall provide its employee security procedures and controls.

**bb. Production and Transfer of Game Production Data**

In the event Scratch-off game tickets are produced at a location different than the production media, the Commission requires secure transfer of the game production data. Any production media that is transported via telecommunications shall be encrypted and transferred using a method approved by the Commission.

**cc. Production of Electronic Coupon Files**

As a **Specified Option**, the Successful Bidder shall create and deliver secure electronic coupon files for any Lottery traditional game for distribution through Commission digital platforms. Coupon file requirements shall be determined by the Commission. Coupon files shall be developed using the same working paper process as is required for development and implementation of a Scratch-off game. Validation and inventory files shall be delivered to the Commission in a secure manner that is mutually agreed to by both parties.

**dd. Production of Electronic Scratch-off Games**

As a **Specified Option**, the Successful Bidder shall propose the development and delivery of an electronic Scratch-off game to be distributed and played through Commission digital platforms. Such games shall be consistent with all production requirements contained within this RFP up to, but excluding, the physical production and delivery of the printed Scratch-off game tickets.

**ee. Scratch-off Game Play Demonstration File**

For each game produced, the Successful Bidder shall provide a play demonstration file, at no additional cost to the Commission, to be uploaded on the Commission's Lottery website and mobile application. The file shall

be provided in a format specified by the Commission and is intended to provide a visual representation of the game play.

**ff. Pre-Production Certification and Color Proof Approval**

- i. The Commission incorporates the highest standards of security and integrity and reserves the right to inspect all tickets produced under the Contract to ensure compliance.
- ii. The Successful Bidder shall certify in writing the accuracy of the game prize structure and that all approved game requirements have been met prior to production.
- iii. Upon written request by the Lottery Director and/or Director of Integrity and Investigations, the Successful Bidder shall provide game reports, including any GLEPS or summary reports.
- iv. The Successful Bidder shall provide a color proof of the ticket image for each game for Commission review. The Commission's approval is required prior to production.
- v. The Successful Bidder shall not produce any game unless and until the Commission receives written pre-production certification, the Commission approves the ticket color proof, the Commission receives satisfactory trademark search results, and the Commission authorizes game production in writing.

**gg. Production Audit**

The Successful Bidder, at its expense, shall engage a qualified and independent certified public accounting firm to review the procedures and controls employed by the Successful Bidder for each game. The certified public accounting firm shall create and execute a standard, completed audit letter to the Commission stating the results of the audit performed on the Successful Bidder's production procedures and controls prior to delivery of a game to the Commission's Lottery warehouse facilities (See section w. Prize Guarantees).

The procedures for these audits are as follows:

- i. Randomly select two (2) pools of tickets within the Scratch-off game prepared for printing
- ii. Review the audit program reports for the two (2) pools selected for agreed conformity of such results with the game specifications and prize structure in the executed working papers, noting any and all exceptions
- iii. Review test data and the audit error report to determine whether the audit program detected errors corresponding to the programming parameters and game specifications, noting any and all exceptions
- iv. Compare the recorded date and time stamp of the audit program used in the performance of the above reports, including updates, to the date and time stamp of the audit program used in the production of the game tickets, noting any and all exceptions

- v. Review print image data for each possible character image used and determine whether the correct character is set to print, noting any and all exceptions
- vi. Review End of Production Prize Structure and agreed guaranteed prizes with the prize structure in the executed working papers, noting any and all exceptions

#### **hh. Commission Testing Sample Packs**

Upon completion of a press run, the Successful Bidder shall ship five (5) packs of void tickets per executed working papers via overnight delivery to the Commission office in Schenectady for internal testing. Ticket packs shall not be drilled, stamped, or rubbed.

#### **ii. End of Production Prize Structure**

Prior to the arrival of a printed game to the Commission's Lottery warehouse facilities, the Successful Bidder shall submit an End of Production Prize Structure report for the game. The report shall be a summary of the prize values in the game by prize level to include the executed working paper prize structure, the theoretical prize structure based on ticket quantity printed, and the actual prize structure based on tickets printed. Any variance in the actual prize structure shall comply with Section **2.2(H)(w) Prize Guarantees**. The End of Production Prize Structure report shall be electronically provided to the Commission when the low-tier and mid/high-tier validation files are made available to the Commission. If the Commission finds errors in the End of Production Prize Structure for a game, the Successful Bidder must correct the errors as soon as identified and ensure the Scratch-off game delivery deadline is not extended. Should the End of Production Prize Structure cause the odds or other statements on the printed tickets to be incorrect, the Commission may determine the game to be non-conforming and may assess liquidated damages based on the conditions described in RFP Section 2.2(l)(b)(i-iv) .

#### **jj. Packaging**

Packaging specifications will be detailed in the executed working papers. No breaks in packs will be permitted, with the exception of properly omitted packs. Partial, miscut or incomplete packs are not acceptable.

#### **kk. Shrink-Wrapping**

All final packs produced must be individually shrink-wrapped in pack sizes determined by the Commission on a game-by-game basis. All ticket packs shall be wrapped in a manner such that the sealing seam of the pack does not obscure the barcode used for scanning. Individual shrink-wrapped packs shall be able to withstand normal handling during distribution. Shrink-wrapped packs shall not contain more than a minimal amount of scratch ticket coating, foil, or paper residue or other material that falls out of the

pack upon opening. Shrink-wrapping shall remain intact through the shelf life of the game.

## **II. Shipping Cartons**

- i. Carton sizes will vary depending upon ticket sizes as specified in the executed working papers. Shipping carton sizes must be pre-approved by the Commission.
- ii. Cartons shall be numbered consecutively beginning with number 1 and then ascending, and labeled with a computer-produced label showing the following, both printed in human-readable and barcode formats:
  1. Game name
  2. Game number
  3. Shipping carton number
  4. Range of pack numbers
  5. Omissions (if any)
- iii. Labels shall be color-coded by game or an additional color-coded sticker should be placed on the carton. The sticker shall not obscure the shipping label. There shall be full packing in each shipping carton. If, during the balancing process, a carton contains less than the required number of packs per carton for that game, the omitted pack(s) shall be replaced by a cardboard filler. Full packing may vary dependent upon ticket sizes and shall be defined in the executed working papers.
- iv. The Successful Bidder shall pack each carton so that the lowest numbered pack of tickets is visible when the carton is opened from the top. The lowest numbered pack of tickets shall be in the front left corner and the highest numbered pack of tickets shall be in the right back. Packing tape shall not obscure the shipping label. Shipping cartons shall be numbered starting with number 1 and then ascending. Shipping cartons shall be 275-lb test.

## **mm. Skids**

Unless otherwise approved by the Commission, the Successful Bidder shall adhere to the following:

- i. A standard skid 40 inches wide and 48 inches deep shall be used for all shipments and shall provide four-way entry with bottom boards and center brace to allow a forklift to enter 40 inches sides. Skids loaded with tickets must be able to be transported, moved, and stacked without damage to skids or product.
- ii. Each skid shall be stacked with the highest carton number on the bottom layer of cartons and the lowest carton number on the top layer of cartons. The skids shall be packed so that the cartons do not extend beyond the width or depth of each skid. The total height of

each skid from floor to top of skid shall not exceed 66 inches. Each layer of cartons on the skid shall be separated by cardboard spacers. Each skid shall be covered with shrink-wrap on all four sides and top and the four corners of the skid and its contents shall be stabilized by cardboard brackets or similar means, running the height of the skid and contents. Cartons shall be tightly stretch-wrapped and secured to the skid so not to topple in transit. Each skid shall be numbered in sequence with skid number 1 containing carton number 1, and the last skid in the shipment containing the highest numbered carton in the shipment. Carton labels shall face outward. Skid labels shall be color-coded to match the same color as the carton label. Omissions shall be legibly written on the skid label, when applicable. Skid labels shall be placed on both 40-inch sides of a skid. Any special requirements for skid size or number of cartons per skid shall be identified in a game's executed working papers.

- iii. Skids shall be arranged in sequence on the truck with the lowest numbered skid in the nose of the trailer and the highest numbered skid at the rear of the trailer.
- iv. All additional items, such as oversize cards and ticket samples (void tickets), shall be packaged on a separate skid from the skid being used to transport valid Scratch-off game tickets.

#### **nn. Delivery of Games to the Commission's Lottery Warehouse Facilities**

- i. The Successful Bidder shall notify the Commission via email to the contacts identified in the executed working papers with a shipment departure notification when a final game is ready to be shipped to the Commission's Lottery warehouse facilities. The shipment departure notification shall include, at a minimum, the following:
  1. Date of notification
  2. Successful Bidder name
  3. Shipment date and time
  4. Game number
  5. Game name
  6. Transportation carrier
  7. Trailer number(s)
  8. All seal numbers per trailer
  9. Total skids per trailer
  10. Total number of trailers
  11. Total number of skids
  12. Primary and secondary contact with name, title, email, and phone number
- ii. All Scratch-off game ticket shipments shall represent and include the entire game production, as per the executed working papers. Split shipments of game and validation media shall be not accepted unless pre-approved by the Commission. Deliveries of packaged tickets shall be F.O.B. destination to the Commission's Lottery

warehouse facilities in New York. The Successful Bidder shall make continuous and uninterrupted delivery of games without storage. All games shall be transported on a sealed and dedicated vehicle (*i.e.*, no other customer's products may be on board with the Commission's Scratch-off game products). The seal requirements shall be approved by the Commission. The seal shall be broken only by an authorized representative of the Commission. Failure to adhere to this requirement may be grounds for rejection of the entire shipment. Upon discovery of any breach of the seal, the Successful Bidder shall immediately notify by phone the Commission's Division of Lottery Director of Integrity & Investigations and the Commission's designated contacts identified in the executed working papers.

- iii. Shipping documentation shall be placed on the highest numbered skid at the rear of each trailer. Shipping documentation shall be placed in a sealed envelope and labeled "New York Lottery Shipment Report". The shipping report shall include the gross number of tickets, the number of omitted tickets, and net number of tickets. The report shall also include the range of pack numbers included in the shipment from lowest to highest pack numbers, and the bill of lading. An original and backup report, on a portable digital storage device such as CD or USB drive containing the following reports shall be included:
1. Summary of carton manifest that shall list carton number, pack range, quantity of packs included in the carton and quantity and pack number range of omitted packs
  2. Detailed carton manifest that lists the packs in each carton and specifies omitted packs
  3. Detailed list of cartons with other than full packaging (*e.g.*, short packs)
  4. Report of skid contents that lists all skids by number, as well as the starting and ending carton number, number of packs, and pack range for each skid
  5. Shipping summary that lists the gross number of tickets, number of omitted tickets, net number of tickets, and pack range

The format of the reports is subject to change at the Commission's request.

#### **oo. Backup Capabilities**

The Successful Bidder shall have internal and external backup capabilities that exist for all phases of ticket manufacturing to ensure delivery of Scratch-off game tickets by the dates specified in the executed working papers.

## I. Scratch-off Ticket Testing and Quality Control

### a. Quality Control

The Successful Bidder shall employ quality control processes and procedures to ensure that all Scratch-off game tickets delivered meet the specifications and requirements of the executed working papers and the Contract.

### b. Non-conforming Tickets

If the result of any test or inspection establishes that any ticket(s), pack(s), or the entire game fails to meet the requirements specified in this RFP, the Commission may reject, in whole or in part, non-conforming Scratch-off tickets or games at any time.

- i. **Incorrect Validation Media Prohibiting Validation of Game.** The failure of the Successful Bidder to provide validation media for a specific game that conforms to the specifications set forth in the executed working papers that prohibits validation of tickets or the correct or accurate validation of tickets, may result in the Commission assessing liquidated damages of fifty thousand dollars (\$50,000) per game per day that the validation media is not operating properly, against the Successful Bidder. In the event that the sale of the game is delayed by incorrect validation media, the Commission may assess liquidated damages of two-hundred thousand dollars (\$200,000) per game per day from the scheduled launch date up to the date of launch, up to a maximum of ten million dollars (\$10,000,000), against the Successful Bidder. In addition to the foregoing liquidated damages outlined, the Commission may require the Successful Bidder pay the Commission the amount of any prizes improperly paid by the Commission due to the non-conforming validation media.
- ii. **Non-conforming Delivered Scratch-off Tickets.** The failure of the Successful Bidder to comply with the requirements of this RFP regarding Scratch-off tickets which have been delivered to the Lottery warehouse(s) and determined to be non-conforming or defective may result in the Commission assessing liquidated damages against the Successful Bidder in the amount of thirty percent (30%) of the full retail value per pack for any delivered packs that must be removed from the game prior to distribution to licensed Lottery sales agents. In the event the entire game is determined by the Commission to be non-conforming, the Successful Bidder shall be responsible for the secure destruction of that game and shall be required to replace the non-conforming game at no additional charge to the Commission. In the event that the sale of the affected game is delayed, the Commission may assess liquidated damages against the Successful Bidder in the amount of two hundred thousand dollars

(\$200,000) per game per day from the scheduled launch date up to the date of launch, not to exceed a maximum of ten million dollars (\$10,000,000) in liquidated damages per event. This paragraph is not intended to apply where the Successful Bidder discovers a manufacturing error post-production, reprints the game and delivers the conforming tickets to the Lottery's warehouse on or before the scheduled delivery date.

- iii. **Non-conforming Scratch-off Ticket Artwork.** If the Successful Bidder fails to produce Scratch-off tickets that conform to all elements specified in the executed working papers for artwork, including, but not limited to, color on the ticket front or back, the Commission may assess liquidated damages against the Successful Bidder in the amount of fifty thousand dollars (\$50,000) per incident. In the event the entire delivered game is determined to be non-conforming and the Commission, in its sole discretion, decides not to distribute the game to licensed Lottery sales agents, the Successful Bidder shall be responsible for the secure destruction of that game at no additional cost to the Commission and shall be required to replace the non-conforming game with a conforming game approved by the Commission, at no additional charge to the Commission. In the event that the sale of the game is delayed due to non-conforming ticket artwork, the Successful Bidder may be assessed liquidated damages of two hundred thousand dollars (\$200,000) per game per day from the scheduled launch date up to the date of launch, not to exceed a maximum of ten million dollars (\$10,000,000) in liquidated damages per event. This paragraph is not intended to apply where the Successful Bidder discovers a manufacturing error post-production, reprints the order and delivers the conforming tickets to the Lottery warehouse on or before the scheduled delivery date.
- iv. **Non-conforming Scratch-off Tickets Delivered to Licensed Lottery Sales Agents.** If the Successful Bidder fails to comply with the requirements of this RFP so that Scratch-off tickets delivered to licensed Lottery sales agents are determined by the Commission to be non-conforming or defective may result in the Commission assessing the full retail value per pack as against the Successful Bidder. In the event the Commission determines that the entire game is non-conforming, the Successful Bidder shall be responsible for the secure destruction of that game and shall be required to replace the non-conforming game with a conforming game approved by the Commission at no additional charge to the Commission. In the event that the sale of the game is delayed, the Commission may assess liquidated damages against the Successful Bidder in the amount of two hundred thousand dollars (\$200,000) per game per day from the scheduled launch date up to the date of launch, not to exceed a maximum of ten million dollars (\$10,000,000) in liquidated damages per event. This paragraph is not intended to apply where the



Successful Bidder discovers a manufacturing error post-production, reprints the game, and delivers the conforming tickets to the Lottery warehouse on or before the scheduled delivery date.



**d. Omissions**

If any part of a pack fails to meet the quality or security requirements specified in this RFP, the entire pack shall be omitted. Omitted packs shall be reflected in the validation and inventory files and the Successful Bidder shall provide an independently audited report showing the disposition of all omitted tickets. Actual packs omitted shall be pulled from the shipping cartons and not delivered to the Commission and destroyed.

The quantity of omitted packs shall not result in a variation unacceptable to the Commission (under section 2.2(H)(w) Prize Guarantees) between the End of Production Prize Structure and the executed working paper prize structure.

**e. Scratch-off Ticket Laboratory Testing**

The Successful Primary Bidder shall contract with a Commission-approved independent laboratory to test all Scratch-off ticket games produced by the Successful Primary, Secondary and Tertiary Bidders for compliance with quality, security, and durability standards set by the Commission. The Commission shall bear the cost of laboratory testing. Laboratory testing costs shall be approved by the Commission in advance and invoiced to the Commission through the Successful Primary Bidder as a pass-through cost with no markup. The Successful Primary Bidder shall adhere to section 2.2(K), Competitive Bidding Purchasing Requirement for items not provided by the Successful Primary Bidder or the Successful Primary Bidder's subcontractors. The Successful Primary, Secondary and Tertiary Bidders shall send to the laboratory, at a minimum, one pack from each channel across the web at the respective Successful Bidder's expense.

The Commission-approved laboratory shall provide detailed results of testing directly to the Commission, prior to game delivery to the

Commission. In the event the game fails testing or is not accepted by the Commission, all testing costs for the game shall be at the expense of the Successful Bidder that produced the game. The Commission, in its sole discretion, reserves the right to request additional Scratch-off tickets for testing or additional tests. The Commission shall bear the cost of any additional requested testing.

**f. Testing Protocols**

Scratch-off tickets are subjected to an array of tests to ensure their security, integrity, and “playability.” Tickets are tested for consistency from ticket to ticket and from pack to pack within each game. The Commission requires testing of all games and reserves the right to require additional tests on any Scratch-off game. In addition to the independent laboratory tests, the Commission conducts tests that include, but are not limited to, barcode readability and accuracy through the Lottery Computer Gaming System and equipment, ticket dispensing without scratches or damage, inventory file integrity, and perforation stability.

The Commission will regularly review the tests and at any time may consider the addition or elimination of one or more tests based on necessity, and/or benefits or effectiveness of substituted methods. Subsequent tests may be developed based upon newly acquired industry information or advancements in ticket technology. Scratch-off tickets may be subject to additional tests after initial release as deemed necessary by the Commission.

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**h. Computer System Compatibility**

The Successful Bidder shall maintain compatibility with the Commission's Lottery Computer Gaming System. Detailed programming specifications, including but not limited to, production and validation shall be developed in joint meetings between the Successful Bidder and the Commission. Programming specifications shall be approved by the Commission before any systems work or programming begins.

**i. High-tier Winner Validation Files**

Tickets shall be manufactured in such a manner that there is no record of any kind in the validation files that connects the location of high-tier winning tickets in the game with the exposed pack number on the ticket.

**J. Scratch-off System and Plant Security**

The Successful Bidder must understand the overriding importance of security and integrity in all phases of Scratch-off game design, material procurement, production, transportation, storage, validation, and disposition of game tickets.

**a. Security Plan**

The Successful Bidder, at minimum, shall provide the following security measures for each area where game tickets and waste are produced and stored:

- i. Adequate security measures to prevent unauthorized entry to computer areas, ticket production and storage area(s) through window and door entry points. Locking and alarm devices must secure each critical computer production and storage area (including computer media) through all possible entry points. The Commission must approve the Successful Bidder's plant security prior to first production under any Contract resulting from this RFP and reserves the right to request changes in plant and system security procedures at any time during the Contract term. The Successful Bidder and its subcontractors shall implement all Commission-requested modifications prior to production taking place.
- ii. A visitor log for all facilities where Scratch-off tickets are manufactured or stored.

- iii. A log of the destination and disposition of Lottery-imaged material, and omitted tickets by shredding, burning, or dissolving at the Successful Bidder's facility. Such material shall not leave the Successful Bidder's facility until it has been processed and is no longer identifiable as the Commission's Lottery-imaged material. The Successful Bidder shall use an auditable record system to account for all ticket stock and materials destroyed.
- iv. Access to the area where Scratch-off tickets are manufactured or stored shall be controlled by the Successful Bidder security and shall include a system of individual identification such as badges or cards. If the area is part of a larger plant, it must be possible to limit this access and to secure the area outside normal work hours.
- v. The Successful Bidder shall notify the Commission of any and all significant changes to security.
- vi. Unless authorized specifically by the Commission to be kept for a specific period of time, all production computer-generated media shall be sanitized by an appropriate method to make its data irretrievable at the completion of production of the game(s) for which the data was used. Computer-generated media not scheduled for erasure at the end of the production run shall be kept in a secure manner as specified by the Commission.
- vii. The Successful Bidder shall provide an Information Security Plan approved by the Commission detailing the information security to be implemented during development and production of all computer-generated media, software, systems, and any other information designated by the Commission. This Plan is to include any encryption methods required for validation of winning tickets. Any and all changes to the Plan must be pre-approved by the Commission before implementation. The Information Security Plan shall include at a minimum:
  - 1. Information security organization structure
  - 2. Roles and responsibilities
  - 3. Policy and standards management
  - 4. Risk management
  - 5. Incident response
  - 6. Security and awareness training
  - 7. Information security procedures
  - 8. Internal controls
  - 9. Any relevant certifications
- viii. The Successful Bidder shall provide the Commission with any information security audits and remediation of findings upon the Commission's request.
- ix. The Successful Bidder shall provide a Business Continuity Plan with its Proposal, and thereafter annually and upon the Commission's request.
- x. The Successful Bidder shall provide a Service Organization Control ("SOC") Type 2 audit report ("SOC 2 Audit") as completed annually

by an independent certified public accounting firm on any facility producing and storing Scratch-off tickets for the Commission, including facilities outside the United States, as authorized by the Commission.

- xi. The Successful Bidder shall provide the Commission with copies of all SOC 2 Audit reports, including any management letters issued as a result of the SOC 2 Audit, within ten days of issuance. The first SOC 2 Audit report shall be provided to the Commission at least 60 days prior to the production of any Scratch-off tickets for the Commission under any contract resulting from the RFP.
- xii. To the extent any SOC 2 Audit reports do not satisfy the reporting or audit requirements required of the Successful Bidder, the Commission reserves the right to conduct its own audits at any time, including prior to production of any Scratch-off tickets.
- xiii. Up to two Commission staff may inspect Scratch-off ticket printing facilities annually. The Successful Bidder shall reimburse travel expenses for Commission staff to inspect printing facilities. All reimbursements shall be made in accordance with the travel reimbursement rule of the New York State Commission on Ethics and Lobbying in Government found in Title 19 NYCRR Part 931.

#### **K. Competitive Bidding Purchasing Requirement**

The Successful Bidder shall bid any services, technologies, and/or commodities not directly provided by the Successful Bidder or its subsidiaries, that are required to fulfill the requirements in the RFP:

##### **a. Competitive Bids**

For all procurements in excess of \$50,000, the Successful Bidder shall obtain at least three competitive written bids from qualified vendors.

##### **b. Competitive Bidding Process**

The Successful Bidder shall follow the process below for all competitive procurements:

- i. Define the process by which the procurement is being conducted.
- ii. Disclose the general process to potential bidders in an Invitation for Bids (“IFB”) for Best Price awards or a Request for Proposals for Best Value awards.
  - 1. IFBs and Requests for Proposals must be approved by the Commission before being issued.
  - 2. IFBs and Requests for Proposals must include specifications for the services or goods being solicited in as complete written detail as possible.

**c. Process**

The Successful Bidder shall adhere to the process while conducting the procurement and evaluating the bid responses.

- i. Procurements must state the methodology used, and evaluation criteria must be developed to align with the methodology.
- ii. Document the process, including information gathering and decisions made.

**d. Types of Awards**

There are four types of awards the Successful Bidder may utilize. The Commission reserves the right to determine the method of award, as well as evaluation criteria.:

- i. **Best Price** - Procurements shall be awarded to achieve the lowest cost on goods and/or services where there is parity among offerings from available and qualified vendors.
- ii. **Best Value** - Bids may be evaluated based on Best Value if the goods and/or services solicited are such that the technical or professional capabilities of vendors varies, and the Commission would benefit from a Best Value evaluation.
- iii. **Sole Source** - A sole source procurement is one in which only one vendor can supply the commodities or services required. The Successful Bidder must document why the proposed vendor is the only viable source for the commodities and/or services needed by the Successful Bidder.
- iv. **Single Source** - A single source procurement is one in which, although there are two or more potential vendors, the Successful Bidder has determined that it is in the best interest of the Commission to procure from a particular vendor. The Successful Bidder shall provide the Commission with detailed rationale for a single source award, which shall include an assessment of qualifications of the vendor and assuring vendor's cost aligns with the fair market value of the type of goods or services being procured.

**e. Procurements Below \$50,000**

For all procurements below \$50,000, the Successful Bidder may award a subcontract to an available, responsible, and qualified vendor. The Successful Bidder shall provide documentation validating the cost-effectiveness of the selected vendor to the Commission with rationale for the selection. The Commission's approval of a procurement is required before an award is issued.

**f. MWBE and SDVOB Procurements**

The Successful Bidder may limit competition of a procurement to a certified New York State Minority/Women-Owned Business (“MWBE”) or Service-Disabled Veteran-Owned (“SDVOB”) company if the value of the subcontract does not exceed \$500,000. In such cases, the Successful Bidder shall follow the guidelines for competitive procurements and provide a rationale to the Commission for the selection of the vendor, including evaluation of the vendor’s capabilities relative to the specific procurement.

**g. Authorization to Award**

Once the Successful Bidder makes a determination of award for any subcontract, the Successful Bidder shall provide the Commission with an award summary that includes the Successful Bidder recommendation, details of the bid process including price and service comparison, confirmation of bid process compliance, and request for the Commission’s approval. The Successful Bidder shall maintain electronic files of recommendation, proposals and any other documentation associated with bid process for all goods and services provided under this Contract. Any such documentation shall be provided to the Commission upon request.

The Successful Bidder shall be permitted to make an award only upon receipt of the Commission’s written approval. The Commission is not liable for any costs incurred without specific written approval by the Commission.

**h. Open Competition & Fair Practices**

All procurements subcontracted by the Successful Bidder as part of this scope of work, regardless of dollar value, shall do the following:

- i. Ensure fair and open competition allowing qualified vendors an opportunity to obtain State business as a subcontractor of the Successful Bidder;
- ii. The Successful Bidder shall consider qualified MWBE, SDVOB, and New York State-based companies in procurements whenever possible (Section 7.8 and Section 7.9).
- iii. Guard against favoritism, improvidence, extravagance, fraud, and corruption;
- iv. Ensure that the subcontract results meet the needs of the Commission;
- v. Ensure transparency by providing the Commission with checks and balances with which to oversee the Successful Bidder’s procurement activities;
- vi. Protect the interests of the State and its taxpayers.



## L. Base Ticket Requirements

### a. Requirements For All Tickets

The base ticket shall include the following at a price per thousand (1,000):

- i. Seven (7) display colors on ticket front
- ii. One (1) display color on ticket back
- iii. Five (5) overprint colors
- iv. Up to six (6) separate game play areas on ticket front
- v. Four color process on ticket front, when determined as a preferable printing process
- vi. Expanded imaging (Scratch-off coating across width of ticket)
- vii. Full ticket bleed
- viii. Full UV coating
- ix. Protective coating/sealcoat
- x. 25,000 oversize cards
- xi. 50,000 void samples
- xii. 6 inches x 4 inches insert/activation card in every pack
- xiii. Delivery tolerance plus or minus 3%
- xiv. Guaranteed delivery of all specified prizes
- xv. Validation barcode (PDF417) and validation number printed on ticket front, under Scratch-off coating
- xvi. Validation barcode (Interleaved 2 of 5) and UPC barcode and human readable number printed on ticket back
- xvii. Sales agent validation prize codes
- xviii. Visible benday
- xix. Security tint or primer
- xx. Play Demonstration File
- xxi. Ticket orientation horizontal or vertical
- xxii. Ticket price screened on ticket back
- xxiii. Ticket security process/feature (for use in processing, verification, and validation of Scratch-off tickets)
- xxiv. Reverse ticket number
- xxv. Numbering of tickets starting from 001 to book size

## M. Specified Options

The Commission requires the following **Specified Options**, however, the Commission does not commit to any quantity or timing for acquisition of a **Specified Option**.

### a. Manufacturing Options:

- i. Additional color on ticket back
- ii. Metallic ink
- iii. Fluorescent ink
- iv. Translucent gel or comparable marking system
- v. Latex on the back of tickets to facilitate additional game play

- vi. Holographic paper
- vii. Foil paper
- viii. Dual color game data imaging of play symbols - proposer may specify colors available
- ix. Alternating scene within a pack
- x. Pulsing color within a game
- [REDACTED]
- xii. Test games

**b. Electronic Coupon Files**

**c. Electronic Scratch-off Games**

**2.3 Requirements of Successful Primary Bidder Only**

- A.** The Successful Primary Bidder shall serve as the Commission’s strategic partner to provide consumer and product research, conduct ongoing game analysis, prepare weekly sales reports, and help develop and implement impactful, innovative, and effective Scratch-off ticket games and plans that will drive business and achieve the Commission’s New York Lottery goals and objectives. The Successful Primary Bidder shall be awarded seventy percent (70%) of the Scratch-off business during the contract term but must have the capacity to produce up to one hundred percent (100%) of the Scratch-off the printing business during the contract term if no secondary or tertiary awards are made.
- B.** In addition to the services described previously, the Successful Primary Bidder shall also provide the following services:
- a. Development and ongoing management of a 12 to 18 month rolling Scratch-off game plan. The Scratch-off game plan shall include innovative and relevant concepts that appeal responsibly to New York’s diverse adult population to further the Commission’s mission to raise revenue for education. Plan recommendations shall include, but not be limited to, analysis of the New York lottery gaming landscape and Scratch-off game opportunities and challenges, product mix recommendation to include price points, themes, play styles, top prizes and payout structures, standard facings by price point to optimize aid to education, release schedule, sales and aid to education projections, and innovative solutions.
  - b. Scratch-off game analysis for all Scratch-off games in-market on a weekly, monthly, quarterly, and annual basis. Analysis shall include, but not be limited to, game index, sales, and Gross Gaming Revenue (“GGR”) by price point, sales trends, ongoing analysis of price points, prize structures, themes, play styles, top prizes, ticket callouts, and any other Scratch-off analysis requested by the Commission.
  - c. Product and player research as requested by the Commission. Any research shall be approved by the Commission prior to execution and complete results shall be provided to the Commission. Pre-approved third-party research contracts shall be billed by the Successful Primary Bidder as

a pass-through cost with no markup. The Successful Primary Bidder shall adhere to section 2.2.K, Competitive Bidding Purchasing Requirement.

- d. Support staff as described below. The following Successful Primary Bidder positions shall be available to Commission staff for regular virtual meetings and contact, as determined by the Commission.
  - i. Dedicated Project Coordinator – This position shall be responsible for coordination with printing and production facilities, ongoing Scratch-off game development and delivery, and working with Commission staff as needed to ensure all project timelines are met. The Dedicated Project Coordinator must have a minimum of three years of Scratch-off game coordination experience.
  - ii. Dedicated Senior Account Manager or Director – This position shall provide senior level strategic planning and follow through on incidents. The individual in this role shall participate in monthly on-site or virtual strategic Scratch-off game planning sessions at the Commission’s headquarters in Schenectady, or at another location determined by the Commission. The Dedicated Senior Account Manager or Director must have a minimum of seven years of Scratch-off game Manager or Director experience.
  - iii. Senior Level Executive – This position shall ensure all contractual obligations are met and monitor and present lottery industry trends to the Commission. The Dedicated Senior Account Manager or Director must have a minimum of 10 years of Scratch-off game experience at the executive level.

### **C. Management Fee - Percentage of Total Net Instant Sales Less Prizes**

The Successful Primary Bidder shall receive a management fee calculated as a percentage of total net Scratch-off game sales, less prizes. The Successful Primary Bidder shall provide a proposed **Management Fee** expressed as a percentage of the total net Scratch-off game sales less prize liability utilizing Attachment 2 – Pricing Proposal. Prize liability shall be based on each Scratch-off game’s actual prize payout as defined in game’s End of Production Prize Structure. The **Management Fee** will be paid weekly to the Successful Primary Bidder at the point Scratch-off ticket packs are settled for the Commission. Exhibit 2 – Management Fee Calculation, of this RFP provides history and projections of net sales less prize liability.

## PART THREE – THE PROPOSAL

### 3.1 Technical and Pricing Proposals

Part Three provides the requirements for development of the Proposal, consisting of Technical and Pricing Proposals, and explains the proposal clarification process. In preparation of the Proposal, each Bidder should pay special attention to the requirements and information being requested to respond fully to the RFP. Any proposal found to be incomplete or placing conditions in response to the requirements under this RFP may be deemed nonresponsive and disqualified. **Attachment 3, Document Submittal Checklist**, is provided to assist the Bidder in including all required information and documentation.

Proposals shall address all goods and services described in the Scope of Work. In addition to the Bidder's descriptions, certain information is requested in this Part that is of interest to the Commission and shall be included in the Proposal.

### 3.2 Technical Proposal

#### A. Business Organization, Financial Viability, and References

The Proposal must include the information listed below:

##### a. Business Organization

A Bidder must:

- i. State the full name and address of the Bidder, and, if applicable, any branch office, or other subordinate element that will perform or assist in the performance of the work hereunder;
- ii. Identify whether the Bidder is qualified as a partnership, corporation, joint venture, or other specified form of business organization;
- iii. State whether the Bidder is qualified, authorized, and/or registered to do business in the State of New York;
- iv. State the name, address, telephone number, and email address of the individual from the Bidder who is authorized to bind the Bidder to the terms and conditions of the Bidder's Proposal;
- v. State the name, address, telephone number, and email address of Bidder's representative to contact regarding all contractual matters concerning this Proposal;
- vi. State the name, address, telephone number, email address, and function of any and all known subcontractors, associated companies, or consultants to be involved in any phase of work under this RFP;
- vii. Provide the Bidder's Federal Employer Identification Number;
- viii. Provide an organizational chart by staff title for the Bidder;
- ix. Provide a summary of the Bidder's mission, culture, and guiding philosophy;
- x. Explain the Bidder's hiring practices, including suitability standards;
- xi. Describe the Bidder's strengths in relation to the work defined in this RFP, including capacity to undertake and successfully carry out the

- proposed services;
- xii. Provide a list of accounts lost or resigned from over the past five years and an explanation of why such loss(es) occurred; and
  - xiii. To the extent not already provided in the Vendor Responsibility Questionnaire, describe key corporate personnel, ownership control, and the facilities available to satisfy the requirements of the RFP. This information will be used in conjunction with the Vendor Responsibility Questionnaire.

#### **b. Financial Viability**

In order to determine the Bidder's financial ability to perform under the RFP, including, but not limited to, the resulting Contract, the Commission requires the following financial information:

- i. Audited financial statements prepared by an independent certified public accountant (or equivalent for non-U.S. companies) for the Bidder for the last three fiscal years (the most recent and the two prior fiscal years). If the Bidder is a subsidiary of another corporation, the financial statements of the Bidder, as well as the consolidated financial statements of the parent company, shall be submitted. If the Bidder is a parent corporation, parent-only financial statements, if available, and statements for the operating division that will perform these services, shall be submitted;
- ii. If audited statements are not available, the Commission will accept unaudited statements, provided the Bidder's Chief Financial Officer certifies that the statements are current, accurate, and complete;
- iii. If the Bidder is a subsidiary and will rely on the financial resources of the parent company to perform this Contract, the parent company must certify, in writing, the availability of its resources to the Bidder;
- iv. The Bidder must provide a letter of commitment from a creditor, if borrowing funds will provide any or all of the capital necessary for the Bidder to perform any work for the Contract resulting from this RFP; and
- v. The Commission reserves the right to require any additional information necessary to determine the financial integrity and responsibility of the Bidder.

#### **c. References**

Provide references relevant to any of the requested services, as outlined below. References must include company name, contact person (name, title, phone number, email address and mailing address) and include a general statement of the type and length of engagement performed for this reference.

- A. If a single Bidder only, submit three references.
- B. If submitting a joint proposal, provide two references for each individual and/or business organization submitting the joint proposal.

- C. If proposing to utilize a subcontractor for any significant portion of the work, provide two references for the primary Bidder and two for each subcontractor.

Bidders who have previously held a comparable contract with the Commission within the past three years do not need to submit references. Such Bidders will be evaluated based on the goods and services provided to the Commission.

The Commission reserves the right to request other references and additional information from any Bidder, as deemed necessary by the Commission. The Commission reserves the right to contact references as many times as is necessary and to contact as many references as is necessary to obtain a complete understanding of the Bidder's performance and experience. The Committee evaluating the Proposals in response to this RFP (Section 4.3) also reserves the right to request additional or alternative references to those provided in the Proposal, as needed. References will be used to substantiate the Technical Proposal.

## **B. Experience of Organization**

The Bidder must demonstrate in its Proposal that its organization is of sufficient size and has the qualifications and experience required to perform the requested services defined in the RFP. The Bidder should include sufficient detail to demonstrate the relevance of such qualifications and experience to this RFP, by providing the following:

- i. A description of the experience of the Bidder's organization that would be considered relevant to the successful accomplishment of the Scope of Work required herein and whether any of that experience included the Bidder as a prime contractor or subcontractor. The Bidder must also provide the name of the entity(ies) in the prime and subcontractor roles related to the Bidder's relevant past experience, if applicable. The description must include how the Bidder meets the Minimum Qualifications as outlined in Section 1.5.
- ii. The Bidder must detail its experience producing Scratch-off games for the three largest accounts based on ticket volume that the Bidder has produced within the last three years.
- iii. If applicable, the Bidder must provide a list of any Scratch-off games produced in the last two years where, due to any type of production error, distribution of the game was discontinued or tickets were pulled from the market, and explain the reason for such action.

## **C. Project Management and Staffing**

The Proposal must include the information listed below:

- a. Identify all staff (name and title/position) and other personnel to be used under the Contract pursuant to this RFP.

**Note:** If staff is "To Be Determined", the Bidder must indicate the staff title, qualifications, and attributes required for the position.

- b. Provide résumés (not biographies) for all key staff, stating the relevant experience of each. **Biographies do not provide sufficient information to allow for adequate evaluation of an individual's capabilities.**

#### **D. Work Plan**

The Proposal must include a detailed Work Plan that identifies the processes to be utilized for all aspects required of the RFP, including specific deliverable dates. The Bidder's Work Plan should include the following:

- a. **Responsible Gaming Commitment**

Describe how the Bidder will commit to responsible gaming principles. Include practices and controls utilized to ensure Scratch-off games are not targeted to people under 18 years old. Provide any additional responsible gaming efforts or support Bidder will provide to the Commission at no additional cost.

- b. **Integrity**

Describe how the Bidder will develop an in-depth knowledge of New York State laws and regulations that govern the Commission, the New York Lottery, operations, management of contracts, and the Bidder's subcontractors.

- c. **Environmental Consciousness, Sustainability, Energy Conservation**

Describe the Bidder's commitment to preventing waste, maximizing resources, reducing energy consumption, and increasing efficiency. Provide Bidder's Corporate Plan and New York Lottery Plan that outlines efforts as required in Section 2.2(C), Environmental Consciousness, Sustainability, Energy Conservation.

- d. **Retail Scratch-off Ticket Displays and Dispensers**

Describe the Bidder's capability to provide and/or procure retail Scratch-off displays, dispensers, on-counter ticket display mats, electronic ticket menu boards and associated hardware either directly or through third parties.

- e. **Licensed Properties**

Describe the Bidder's strategic approach regarding the use of licensed properties to meet Commission goals and objectives.

**f. Staff**

Describe how the Bidder has sufficient staff to meet the requirements of this RFP.

**g. Scratch-off Game Development**

Describe how the Bidder will provide the management and oversight of all aspects of Scratch-off game development and delivery including, but not limited to, game design, ticket graphics, prize structure, ticket testing, game audit, trademark search, development of working papers and game production and delivery to the Commission's Lottery warehouse facilities currently located in Albany and Latham, New York. Explain how the Bidder will provide and manage the following:

- i. Scratch-off game planning
- ii. Scratch-off ticket design
- iii. Scratch-off game working papers
- iv. Scratch-off game production schedule
- v. Scratch-off game development schedule

**h. Scratch-off Manufacturing and Support**

Describe how the Bidder will securely manufacture Scratch-off games. Explain how the Bidder will provide the following requirements as outlined in this RFP:

- i. Ticket stock
- ii. Tickets and packs
- iii. Scratch-off ticket font generation
- iv. Imaged data
- v. Scratch-off game numbers
- vi. Scratch-off game pack numbers
- vii. Scratch-off game ticket numbers
- viii. Scratch-off game numbers
- ix. Validation number
- x. Validation algorithm and validation files
- xi. Scratch-off ticket barcodes
- xii. Sales agent validation prize codes
- xiii. Scratch-off coating
- xiv. Protective coating/seal coat
- xv. Display printing
- xvi. Overprint
- xvii. Ticket back printing
- xviii. Ink colors
- xix. Visible benday patterns
- xx. Security tint or primer
- xxi. Integrity of Scratch-off ticket design
- xxii. Randomization



- xxiii. GLEPS and the use of a range per pack for low-tier prizes
- xxiv. Prize guarantees
- xxv. General security provisions
- xxvi. Test game
- xxvii. Ticket reconstruction
- xxviii. Employee controls
- xxix. Production and transfer of game production data
- xxx. Production of electronic coupon files
- xxxi. Production of electronic Scratch-off games
- xxxii. Scratch-off game play demonstration file
- xxxiii. Pre-production certification and color proof approval
- xxxiv. Production audit
- xxxv. Sample packs for Commission testing
- xxxvi. End of Production Prize Structure
- xxxvii. Packaging
- xxxviii. Shipping cartons
- xxxix. Skids
  - xl. Delivery of games to the Commission's Lottery warehouse facilities
  - xli. Backup capabilities

**i. Scratch-off Ticket Testing and Quality Control**

Describe how the Successful Bidder will meet the requirements outlined in the RFP for the following: for the following:

- i. Quality control
- ii. Non-conforming tickets
- iii. [REDACTED]
- iv. Omissions
- v. Scratch-off ticket laboratory testing. Include recommended independent laboratory and their experience with testing Scratch-off ticket games. Multiple laboratories may be proposed.
- vi. Testing protocols
- vii. Guidelines for ticket testing
- viii. Computer system compatibility
- ix. High-tier winner validation media

**j. Scratch-off System and Plant Security**

Describe the Bidder's scratch-off system and plant security in all phases of Scratch-off game design, material procurement, production, transportation, storage, validation, and disposition of game tickets. Explain how the Bidder will provide the following requirements as outlined in this RFP:

- i. Prevention of unauthorized entry
- ii. Visitor log
- iii. Log of destination and disposition of lottery-imaged material and omitted tickets
- iv. Access controls to where lottery tickets are manufactured and stored

- v. Plant security changes notifications
- vi. Sanitization of production computer generated media and secure storage of media not scheduled for erasure at the end of production
- vii. Information Security Plan
- viii. Information security audits and remediation of findings
- ix. Business Continuity Plan
  - x. Current SOC 2 Audit report and annual SOC 2 Audit report
  - xi. Facility inspections

**k. Competitive Bidding Purchasing Requirement**

Affirm the Bidder will comply with the Commission's competitive bidding purchasing requirement as outlined in this RFP.

**l. Base Ticket Requirements**

Describe how the Bidder will provide the **Base Ticket Requirements** required in this RFP.

**m. Specified Options**

Describe how the Bidder will provide the **Specified Options** required in this RFP.

- i. Manufacturing options
- ii. Electronic coupon files
- iii. Electronic Scratch-off games

**n. Samples**

Provide ten actual samples that have been produced by the Bidder in the past 24 months of each of the following Scratch-off tickets:

- i. \$1, \$2, \$3, \$5, \$10, \$20, \$30, and \$50 (if available) Scratch-off tickets
- ii. Scratch-off ticket with at least one (1) color on the back
- iii. Full bleed Scratch-off ticket
- iv. Crossword or Bingo type Scratch-off ticket with transparent/translucent scratch area
- v. Scratch-off ticket with metallic ink
- vi. Scratch-off ticket with fluorescent ink
- vii. Scratch-off ticket with dual-color imaging
- viii. Scratch-off ticket with symbols in the play area
- ix. Scratch-off ticket with the following play actions: key number match, legend, add up, tic-tac-toe type, match 3, play actions relevant but not listed
- x. Any Scratch-off tickets that show features proposed under **Specified Options**

**E. Account Management Work Plan**

The Account Management Work Plan should include the following:

- a. Describe the Bidder’s ability to manage and print up to one hundred percent (100%) of the Commission’s Scratch-off games produced during the contract term, including specific details on printing and storage capacity.
- b. Explain how the Bidder will create, manage, and implement a comprehensive 12 to 18 month rolling Scratch-off plan. Provide a sample 18-month Scratch-off plan.
- c. Describe the types of analysis the Bidder will provide, and the resources used to conduct analysis. Provide sample reports.
- d. Describe the Bidder’s capacity and ability to support research utilizing in-house resources and/or third-party or subcontractor resources.
- e. Describe how the Bidder will provide oversize cards or printed marketing materials to support Scratch-off games.
- f. Provide the name, title, and résumé of the Bidder’s support staff: Dedicated Project Coordinator, Dedicated Senior Account Manager or Director, and Senior Level Executive. Explain how the Successful Bidder envisions collaboration among these resources and with the Commission.

**3.3 Pricing Proposal**

Bidders shall complete the **Pricing Proposal Forms**, based on **PART TWO - SCOPE OF WORK** of the RFP. **Bidders shall use Attachment 2 (A through F) - Pricing Proposal, for their Pricing Proposal.**

Using **Attachment 2-A** through **2-F**, the Successful Bidder shall provide pricing for the following:

**BASE TICKET REQUIREMENTS PRICING**

- For requirements, see RFP, 2.2(K)
- For pricing, see Attachments 2-A through 2-F

Using **Attachment 2-G**, the Successful Bidder shall provide pricing for the following:

**SPECIFIED OPTIONS PRICING**

- For requirements, see RFP, 2.2(L)
- For pricing, see Attachment 2-G

Using **Attachment 2-H**, the Successful Bidder may provide pricing for the following:

## **MANAGEMENT FEE PRICING**

- For requirements, see RFP, 2.3(C)
- For pricing, see Attachment 2-H

**The Bidder must use Attachment 2 for the Bidder's Pricing Proposal. Alternate forms will be considered nonresponsive.**

### **3.4 Proposal Clarification Process**

The Commission may request clarification from a Bidder to resolve any ambiguity or question information presented in the Bidder's proposal. Clarifications are an opportunity to explain, but not to enhance, a proposal. Requests for clarification may occur throughout the proposal submission review and/or the proposal evaluation process. Clarification responses must be in writing and must address only the information requested. Responses must be submitted to the Commission within the response time stipulated at the time of the request for clarification. As applicable, clarifications will be treated as addenda to the Bidder's Proposal.

## **PART FOUR – EVALUATION AND SELECTION**

### **4.1 Introduction**

This Part describes the evaluation and award process that will be used to determine which Proposal provides the greatest overall benefits to the State. The ability of the Commission to evaluate a Bidder's Proposal is dependent upon the proper submission and completeness of the Proposal. The failure of a Bidder to provide information requested by this RFP, to submit the Proposal according to the required format, or to respond appropriately to a clarification request or demonstration request, may result in disqualification of the Bidder's Proposal or reduction in scoring during the evaluation.

### **4.2 Method of Award**

The method of award under this RFP is multiple awards based on "Best Value," the evaluation method for awarding a contract to one Bidder whose proposal optimizes quality, cost, and efficiency among responsible offers. The determination of Best Value will be based on a scoring of Technical and Pricing Proposals in response to the RFP specifications and as defined in this Part 4. The Primary award will be made to the Bidder with the highest composite score. The Secondary award will be made to the responsive and responsible Bidder with the second highest composite score. The Tertiary award will be made to the responsive and responsible Bidder with the third highest composite score.

### **4.3 Evaluation Methodology**

The Commission will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. An evaluation committee (the "Committee") will be designated and will be comprised of Commission staff and may include other employees of the State of New York. The Commission reserves the right to make changes in the Committee's membership as necessary.

Scoring of the Technical Proposals will be by consensus of the Committee. Pricing Proposals will be scored following conclusion of the Technical Proposal scoring process. The relative scoring weight of Technical to Price will be: Technical – sixty percent (60%); Price – forty percent (40%).

The evaluation and award process for will be comprised of the following:

- A. Pass/Fail evaluation of the minimum qualifying requirements of the Bidder as provided for in Part 1 of this RFP;
- B. Review of Proposals to assess compliance with proposal submission requirements, including responsiveness to terms, conditions, and requirements;
- C. Detailed review by the Committee of the Technical Proposals relative to proposed functions, features, services, and references;
- D. Proposal clarifications, if applicable;

- E. Scoring of Technical Proposals by the Committee using pre-defined evaluation criteria;
- F. Assessment and scoring of Pricing Proposals after finalization of the technical scoring process;
- G. Compilation of the technical and pricing scores of each Bidder into a summary score sheet, by staff of the Commission's Contracts Office;
- H. Preparation of a Recommendation of Award Memorandum ("Memorandum"), on behalf of the Committee, by the Commission's Contract Management Specialist III, or designee;
- I. Submission of the Memorandum to the Commission's Executive Director or designee for review and acceptance of the Committee's recommendation and briefing of the Commissioners;
- J. Review and acceptance of the recommended award by the Commissioners, if appropriate;
- K. Execution of the Memorandum by the Commission's Executive Director or designee; and
- L. Notice of Award.

#### **4.4 Information from Other Sources**

The Commission reserves the right to obtain information concerning a Bidder, the Bidder's offerings and capabilities, and the Bidder's performance, that the Commission deems pertinent to this RFP, even if the information comes from sources other than the Bidder, and the Commission may consider such information obtained when evaluating the Bidder's Proposal. This additional pursuit of information may include, but is not limited to, the Commission's Contract Administration Office or the Chair of the Committee, if applicable, engaging experts from outside the Committee to better inform the Committee's findings.

#### **4.5 Evaluation and Selection Criteria**

Proposals determined to comply with the requirements set forth in this RFP will be evaluated based on the following criteria:

- |                                               |                  |
|-----------------------------------------------|------------------|
| A. Technical Proposal evaluation              | <b>60 points</b> |
| Business organization and financial viability | (5 points)       |
| Experience of organization                    | (10 points)      |
| Bidder's project management and staffing      | (15 points)      |
| Work Plan                                     | (30 points)      |
| B. Pricing Proposal evaluation                | <b>40 points</b> |

**There are three components to the Pricing Proposal that will be scored separately, as follows:**

- **Base Ticket Price Fees:** a maximum of 25 points will be awarded to the lowest estimated cost of Base Ticket Price Fees, as identified in Attachment 2 – Pricing Proposal Form.
- **Management Fee:** a maximum of 10 points will be awarded to the lowest estimated cost for Management Fee, as identified in Attachment 1 – Pricing Proposal Form.
- **Specified Option Fees:** a maximum of 5 points will be awarded to the lowest estimates cost for Specified Option Fees, as identified in Attachment 2 – Pricing Proposal Form.

The Bidder with the lowest price for each component from the Pricing Proposal – Attachment 2, will be awarded the full points allocated to the Pricing evaluation for that component. The score for each of the remaining Bidders will be proportionate to the lowest Bidder.

**Note:** Points awarded will be rounded to the nearest hundredth place.

#### **4.6 Final Composite Score/Determination of Award Process**

The Technical and Pricing scores will be combined to determine the final composite score for each Bidder. The Primary award will be made to the responsive and responsible Bidder who achieves the highest composite score. The Secondary award will be made to the responsive and responsible Bidder who achieves the second highest composite score. The Tertiary award will be made to the responsive and responsible Bidder who achieves the third highest composite score.

#### **4.7 Notice of Award**

Contract award notification letters will be sent to Successful Bidders and unsuccessful Bidders advising that an award was, or awards were, made and that each award is subject to approval by the Office of the New York State Attorney General (“OAG”) and the Office of the New York State Comptroller (“OSC”).

#### **4.8 Debriefings**

The Commission shall, upon request, provide a debriefing to any unsuccessful Bidder that responded to this RFP regarding the reasons that the Bidder’s Proposal was not selected for an award. A debriefing shall be requested by an unsuccessful Bidder within 15 calendar days of release by the Commission of a notice in writing or electronically that the Bidder’s Proposal is unsuccessful. The Commission will make good faith efforts to accommodate debriefings in-person or via telephone, if requested by the Bidder, to the extent that these methods of debriefing are available and practical.

## 4.9 Protest or Appeal

If a Bidder decides to protest the award decision, the following protest procedures shall be followed:

- A. Any protest of the award decision must be filed with the Commission no later than 10 business days following the date of the written notification of award provided to the unsuccessful Bidder.
- B. The protest must clearly state the basis for the protest and include all relevant documentation supporting such protest.
- C. The Commission shall conduct a review of the protest and issue a written determination to the protesting party within 15 business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Commission will inform the Bidder of the delay and of the time frame within which a determination may be expected. The final written determination provided to the Bidder will constitute the Commission's final administrative determination of the protest.
- D. If an unsuccessful Bidder wants to appeal the Commission's final administrative determination of the Bidder's protest, the unsuccessful Bidder must submit such an appeal to OSC's Bureau of Contracts ("BOC"), within 10 business days of the Bidder's receipt of the Commission's final written determination. The protest appeal must be in writing and must contain specific factual and/or legal allegations setting forth the basis on which the protesting party challenges the Contract award by the Commission. A copy of the appeal must be served on the Commission, the Successful Bidder(s), and any other party that participated in the review of the protest conducted by the Commission. The unsuccessful Bidder's appeal must contain written affirmation that a copy of the appeal has been served as required by this paragraph.
- E. The appeal must be filed with: Director, Bureau of Contracts – 11th Floor, Office of the New York State Comptroller, 110 State Street, Albany, NY 12236.
- F. The Commission will submit an answer to the appeal to the BOC simultaneously with the delivery of the Contract to the BOC for its review, or within 7 business days of the submission of the appeal, whichever is later. The Commission's answer to the appeal must include written affirmation that, simultaneous with the submission to BOC, the answer was transmitted to the protestor and the Successful Bidder(s).
- G. A Successful Bidder may, but is not required to, submit an answer to the appeal with the BOC. Such answer must include written affirmation that the answer was simultaneously delivered to the Commission and the protester and must meet the submission requirements as noted above for the Commission.
- H. The BOC will evaluate the merits of the protest, the Commission's determination, and any response submitted by an interested party. The BOC, in its review, may require the Commission, the protesting party, the Successful Bidder, or any other interested party to address additional issues raised; may obtain information from



an outside source; or may determine whether it deems it necessary to conduct a fact-finding hearing, and the level of formality of any hearing conducted.

- I. The BOC will issue a written determination addressing the issues raised by the appeal. All interested parties shall be provided with a copy of the determination. The determination shall be made part of the procurement record.

## **PART FIVE – GENERAL REQUIREMENTS FOR PROPOSALS**

### **5.1 General**

Bidders shall submit a complete proposal in response to this RFP that satisfies the requirements set forth below. Failure to do so may render the Bidder's Proposal nonresponsive. A Document Submittal Checklist is included in this RFP as **Attachment 3 – Document Submittal Checklist**.

All proposals submitted in response to this RFP shall be written in English, with quantities expressed in Arabic numerals and United States Dollars (\$ USD).

### **5.2 Proposal Disclosure by Bidder**

Disclosure by a Bidder, or agent of the Bidder, of a Bidder's Proposal contents, other than to comply with this RFP process, prior to the notice of the Contract award may result in disqualification of the disclosed Proposal.

### **5.3 Material Requirements**

Material requirements of the RFP are those requirements designated as mandatory, without which an adequate analysis and comparison of proposals is impossible, or those requirements that affect the competitiveness of proposals or the cost to the Commission. Proposals that do not meet all material requirements of this RFP, or that fail to provide all required and mandatory information, documents, or supporting materials, or include language that is conditional or contrary to terms, conditions, and requirements, may be disqualified as nonresponsive. The Commission, in its sole discretion, reserves the right to determine whether a proposal meets the requirements of the RFP.

### **5.4 Proposal Content and Submission**

Bidders shall submit a complete proposal in response to this RFP that satisfies the requirements set forth below. Failure to do so may render the Bidder's Proposal nonresponsive.

#### **A. Proposal description**

Each Bidder is expected to provide the Commission with information and evidence that will make possible a contract award that best serves the stated interests of the Commission and the State of New York. A Bidder is given wide latitude in the degree of detail it offers or the extent to which it reveals plans, designs, systems, processes, and procedures.

There is no limit on the number of pages in each proposal; however, a Bidder should prepare a proposal simply and economically, providing a straightforward and concise description of its abilities to satisfy the requirements of this RFP. Proposals containing a preponderance of boilerplate text are discouraged. Emphasis in each proposal should be on completeness and clarity of content.

Failure by a Bidder to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores during the evaluation or determination of a nonresponsive proposal. Responses to

complex RFP requirements that are stated in a form semantically equivalent to “Bidder agrees to comply” may be disqualified as nonresponsive at the discretion of the Commission. If a requirement is complex and not fully understood, Bidders should seek clarification of the requirement(s) pursuant to RFP Section 1.10 – Questions and Inquiries.

## **B. Proposal format**

Each Bidder must submit a complete Proposal in the format described below.

**Each Proposal must consist of two volumes:** Volume I – Technical Proposal and Volume II – Pricing Proposal. Each Volume must be submitted separately from the other when submitted to the Commission as defined in Item C of this section, “Proposal Submission”.

### **Volume I – Technical Proposal:**

The Technical Proposal shall include a transmittal letter, signed by the individual identified in Section 3.2(a.iv) who is authorized to bind the Bidder to its provisions, and shall include Information outlined below in Item 1.

The Technical Proposal shall include descriptive and technical matter only. No pricing information shall be contained in the Technical Proposal.

**The contents of the Technical Proposal (Volume I) shall follow the outline below, and include appropriate headings as represented in the RFP and page numbers.**

To assist Bidders in their Technical Proposal responses and submittal of the required documents, **Attachment 3 – Document Submittal Checklist**, is incorporated into this RFP. This checklist shall be completed and included with the Bidder’s Technical Proposal.

- i. Transmittal Letter: The transmittal letter must be signed and shall contain names, addresses (physical and email), and telephone numbers of individuals who are authorized by the Bidder to address matters related to the proposal including, but not limited to, contractual, technical, site visit, and references. **The transmittal letter must also contain a statement that the proposal will remain valid for at least 180 days from the proposal due date;**
- ii. Certifications and representations as required by this RFP and as listed in the **Document Submittal Checklist** – (Attachment 3);
- iii. Bidder **Acknowledgement of Amendment** – (Attachment 1);
- iv. Signed **Contract Form (Appendix B)** (Section 6.2);
- v. Designation of Proprietary Information (FOIL) in the form described in Section 5.11 of this RFP;

- vi. Disclosure and Investigations During Proposal Evaluation as described in Section 5.12 of this RFP;
- vii. Disclosure of Litigation and Other Information as described in Section 5.13 of this RFP;
- viii. Response to Minimum Qualifications in Section 1.5;
- ix. References; and
- x. Response to specifications in the order provided for in this **Part Five – General Requirements for Proposals**, including technical documentation as appendices.

**Volume II – Pricing Proposal:**

The Pricing Proposal must be prepared as directed using the **Pricing Proposal Form, Attachment 2**.

**C. Proposal submission**

Both volumes of the Bidder’s Proposal shall be submitted to the Commission as set forth below and shall be received by the date and time set forth in the Schedule of Events.

**Volume I – Technical Proposal**

The Technical Proposal shall be submitted separately from the Pricing Proposal, clearly marked “Technical Proposal”, and be submitted as noted below:

- i. **Electronic (non-redacted): One searchable PDF file of the complete non-redacted Technical Proposal.**
- ii. **Electronic (redacted pursuant to Section 5.11 “Designation of Proprietary Information (FOIL)”): One searchable PDF file of the complete redacted Technical Proposal.**

The electronic files shall include all Technical Proposal sections within a single file to facilitate searches for terms across the breadth of the Technical Proposal.

Technical Proposals and redacted Technical Proposals **must** be sent by email to: [Officer.Contracting@gaming.ny.gov](mailto:Officer.Contracting@gaming.ny.gov). In the Subject line, please include “**RFP #C202305 – Technical Proposal**”.

**Do not include any pricing in the Technical Proposal. Technical Proposals that contain pricing will be deemed nonresponsive and disqualified.**

## **Samples**

Samples outlined in Section 3.2.D(m) shall be submitted as part of the Technical Proposal in a sealed box and contain the following identifying information on the outside of the package:

Identification label containing: "Sealed Proposal – RFP C202305", and the Bidder's name.

If a delivery service is used which prohibits such markings on the envelope or package, this information must be placed on the outside of an interior envelope or package.

The address for Proposal Samples submitted by contract carrier, courier delivery, in-person delivery, or by U. S. Postal Service is:

Stacey Relation  
New York State Gaming Commission  
Contracts Management Unit – 4<sup>th</sup> Floor  
1 Broadway Center  
Schenectady, NY 12305

If a delivery method other than U.S. Postal Service is used, the Bidder should contact the designated contacts identified in this RFP, prior to delivery to assure proper receipt of the Proposal.

## **Volume II – Pricing Proposal**

The Pricing Proposal shall be submitted separately from the Technical Proposal.

- i. **Electronic (non-redacted): One Excel file of the complete non-redacted Pricing Proposal.**
- ii. **Electronic (redacted pursuant to Section 5.11 "Designation of Proprietary Information (FOIL)"): One Excel or searchable PDF file of the complete redacted Pricing Proposal.**

Pricing Proposals **must** be sent by email to: [Procurement@gaming.ny.gov](mailto:Procurement@gaming.ny.gov). In the Subject line, please include "**RFP #C202305 – Pricing Proposal**".

The Commission is not responsible for technical, hardware, software, telephone, or other communication malfunctions, errors or failures of any kind, lost or unavailable network connections, website, Internet, or ISP availability, unauthorized human intervention, traffic congestion, incomplete or inaccurate capture of entry information (regardless of cause) or failed, incomplete, garbled, jumbled or delayed computer transmissions which may limit one's ability to submit proposals electronically, including any injury or damage to Bidder's or any other person's or entity's computer or computer system relating to or resulting from the Bidder's electronic submission of its Proposal.

Any late, illegible, incomplete, invalid, unintelligible, misdirected, or corrupted submissions shall be disqualified.

#### **D. Proposal receipt**

The Commission will send an email to the sender of a proposal, confirming the Commission's receipt of such proposal.

Upon receipt of a proposal, the Pricing Proposal (**Volume II**) will be secured by the Commission's Contract Administration Office and will not be opened until after the evaluation of the Technical Proposal is complete.

The Technical Proposal (**Volume I**) will remain with the Commission's Contract Administration Office for initial review of document submission as provided in this RFP, and subsequently distributed to the Committee at the start of the evaluation process.

### **5.5 Deadline for Submission**

A Proposal must be **received** by the Commission on or before the due date and time specified in the Schedule of Events, of this RFP. The Bidder is responsible for the Commission's timely receipt of the Bidder's proposal and should plan for delivery accordingly. Failure of a Bidder to submit a proposal for the Commission's confirmed receipt by the specified time may result in disqualification of the Proposal.

### **5.6 Joint Proposals**

Two or more business operations may join to submit one Proposal in response to this RFP. If a joint proposal is submitted, the Proposal must define the responsibilities that each entity is proposing to undertake. Of the entities submitting a joint proposal, one must be designated as the primary Bidder. Any contract award issued resulting from such a submission will be made exclusively to the primary Bidder. A joint proposal must designate a single authorized official from one of the entities participating in such joint proposal to serve as the sole point of contact between the Commission and the entities that are responding together.

### **5.7 Multiple Proposals from One Bidder Prohibited**

Multiple proposals from one Bidder are not permitted under this RFP. A Bidder shall submit, or be part of a joint submission of, only a single proposal, consisting of a Technical Proposal and a Pricing Proposal. However, for informational purposes only, a Bidder may, within the single proposal, and separate from the response to the requirements of this RFP, identify options, including solicited and unsolicited products, services, and features, absent of price, that the Bidder believes may be appealing and useful to the Commission. The inclusion of options accommodates the purpose of defining possible alternatives for execution of a single proposal, rather than through multiple proposals.

### **5.8 Costs Associated with Preparation of Proposals**

The Commission or the State shall not be liable for any of the costs incurred by a Bidder in preparing or submitting a proposal, and, therefore, the Commission and/or State will

not assume any responsibility or liability for any costs incurred by a Bidder. The responsibilities and liabilities of the Commission or State shall be limited to those set forth in the Contract.

### **5.9 Accuracy of Proposals**

Bidders are responsible for the accuracy of their Proposals. All Bidders are directed to take extreme care in developing their Proposals. Bidders are cautioned to review their Proposals carefully prior to submitting their Proposals, as request for proposal withdrawals after the proposal due date will not be granted. All exceptions and deviations shall be noted in Proposals, and no adjustments shall be made after an award is issued. If a Bidder submits a Proposal ahead of the submission deadline, the Bidder may submit an amended Proposal any time prior to the proposal due date identified in the Schedule of Events.

### **5.10 Extraneous Terms**

Proposals shall conform to the terms set forth in the RFP. Material deviations may render the Proposal nonresponsive and may result in disqualification of the Proposal. Extraneous terms proposed by a Bidder for consideration shall be submitted using the format and process set forth in the RFP. Any Bidder submissions on standard, pre-printed forms, such as, but not limited to, product literature, order forms, license agreements, contracts, or other documents that are attached or referenced with submissions shall not be considered part of the proposal or resulting Contract but shall be deemed included for informational or promotional purposes only. Only extraneous terms accepted by the Commission, in writing, shall be expressly incorporated into the Contract. Acknowledgement of receipt and/or processing of a Proposal shall not constitute acceptance of extraneous terms. The Commission will not entertain any exceptions to **Appendix A, Standard Clauses for New York State Contracts**.

### **5.11 Designation of Proprietary Information (FOIL)**

During the evaluation process, the content of each Proposal will be held in confidence and details of any Proposal will not be revealed, except as may be required under the New York State Freedom of Information Law ("FOIL") as found in New York State's Public Officers Law Article 6. FOIL provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exemption applies both during and after the evaluation process.

**If a Bidder believes the Bidder's Proposal contains any such trade secrets or other confidential information, the Bidder must submit a request with the Bidder's Proposal to exempt such information from disclosure. Such request must: (a) identify the specific information in the Proposal; (b) identify the location (section, page number) of such information; and (c) state the reasons why the Bidder believes that FOIL permits the exemption of such information from disclosure.**

Requests for exemption of the entire contents of a proposal from disclosure have generally not been found to be meritorious and are discouraged. Please limit any requests for exemption of information from disclosure to *bona fide* trade secrets or other specific

information, the disclosure of which would cause a substantial injury to the Bidder's competitive position.

For requested exemptions, the Commission's legal staff, as directed by the Designated Contacts, will review each requested exemption, and communicate with the Bidder regarding the Commission's determination of whether such requested exemption has been designated as an exemption. The designation shall not become final until accepted by the Commission via formal letter. Once a designation is final, the Bidder will be required to submit a redacted version of the Proposal consistent with the accepted designation. The redacted version will be the material that is released in response to a relevant FOIL request or posted on the Commission's website to provide the public with access to the same information that would be produced in response to a relevant FOIL request.

### **5.12 Disclosure and Investigations During Proposal Evaluation**

Subsequent to proposal submission, the Commission may initiate investigations into the backgrounds of the Bidder and individuals, or entities related to any officers, directors, members, principals, investors, owners, subcontractors, employees, independent contractors, or any other individuals or entities related to the Bidder, as the Commission may deem appropriate, in the discretion of the Commission. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services ("DCJS") and the Federal Bureau of Investigation ("FBI"), and such additional investigation as may be required.

The Commission may disqualify a proposal based upon the results of any such background checks. Each Bidder is advised that any Bidder who knowingly provides false or intentionally misleading information in connection with any investigation by the Commission may cause the proposal of such Bidder to be disqualified, or a contract to be canceled by the Commission, in the sole discretion of the Commission.

If a Bidder or a subcontractor is a subsidiary of a parent entity, the Commission may, in its sole discretion, also require the above disclosures from the parent entity.

### **5.13 Disclosure of Litigation and Other Information**

The Commission has a strong interest in the Successful Bidder's continuing ability to provide secure, high-quality products and services, and as such, the Commission requires that a Bidder list and summarize pending or threatened litigation, administrative or regulatory proceedings, or similar matters that could materially affect the Bidder. As part of its disclosure requirement, a Bidder must also state whether the Bidder, or any of the owners, officers, directors, or partners of such Bidder, has ever been convicted of a felony. Failure to disclose any such matter may result in disqualification of the Bidder's Proposal or termination of a contract. Such disclosures must be included in the Bidder's Proposal.

This disclosure obligation is a continuing requirement. Any such matter commencing after submission of a Proposal, and with respect to the Successful Bidder after the approval of the Contract, must be disclosed to the Commission in a written statement and in a timely manner.



#### **5.14 Change in Financial Condition**

If a Bidder who has submitted a Proposal in response to this RFP experiences a substantial change in financial condition prior to the award of a Contract pursuant to this RFP, or if a Successful Bidder experiences a substantial change in financial condition during the Term of the Contract with the Commission, the Bidder is required to notify in writing the Commission's Executive Director at the time the change occurs or is identified. Failure to notify the Executive Director of such a change may result in disqualification of a Bidder's Proposal or termination of the Contract, in the sole discretion of the Commission. The Commission also reserves the right, based on its assessment of a change in financial condition, to disqualify a Bidder's Proposal or terminate a Contract. **This disclosure obligation is a continuing requirement.**

#### **5.15 Change in Ownership**

If a Bidder experiences a material change in ownership prior to the award of a Contract or during the Term of a Contract with the Commission, the Bidder is required to notify the Executive Director of the Commission, in writing, at the time the change occurs or is identified. "Material change in ownership" is defined as any merger, acquisition, assignment, or change in parties who, in the aggregate, own greater than 5 percent of the Bidder or the parent company of the Bidder. Failure to notify the Executive Director of such a change may result in the disqualification of a Bidder's Proposal or termination of the Contract, in the sole discretion of the Commission. The Commission reserves the right, based on its assessment of a material change in ownership, to disqualification a Bidder's Proposal or terminate a Contract. **This disclosure obligation is a continuing requirement.**

#### **5.16 New York State Public Officers Law**

Contractors, consultants, vendors, and subcontractors may hire former Commission employees. However, as a general rule, and in accordance with New York State Public Officers Law § 73, former employees of the Commission may neither appear nor practice before the Commission, nor receive compensation for services rendered on a matter before the Commission, for a period of two years following their separation from Commission service. In addition, former Commission employees are subject to a "lifetime bar" from appearing before the Commission or receiving compensation for services regarding any transaction in which they personally participated, or which was under their active consideration, during their tenure with the Commission.

#### **5.17 Ethics Requirements**

The Successful Bidder and its subcontractor(s) shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York State Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines, or policies promulgated or issued by the New York State [Commission on Ethics and Lobbying in Government \("Commission on Ethics"\)](#), or its predecessors or successors (collectively, the "Ethics Requirements"). The Successful Bidder certifies that its employees and those of its subcontractor(s) who are former employees of the State, and who are assigned to perform services pursuant to this Contract, shall be assigned in accordance with all Ethics

Requirements. During the Contract's Term, no person who is employed by the Successful Bidder or its subcontractor(s) and who is disqualified from providing services set forth in this Contract pursuant to any Ethics Requirements may share in any net revenues of the Successful Bidder or its subcontractor(s) derived from this Contract. The Successful Bidder shall identify and provide the State with notice of those employees of the Successful Bidder and its subcontractor(s) who are former employees of the State that will be assigned to perform services pursuant to this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Successful Bidder provide the State with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the Commission on Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the Commission on Ethics. The State shall have the right to withdraw or withhold approval of any subcontractor(s) if utilizing such subcontractor(s) for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate the Contract resultant from this RFP at any time if any work performed hereunder conflicts with any of the Ethics Requirements.

### **5.18 Hiring of Commission Personnel**

In addition to the hiring and compensation limitations outlined in the New York State Public Officers Law section, above, at all times during the proposal evaluation period and continuing for one year following either the award of a contract or disqualification of all proposals, Bidders are prohibited from making any employment offer, or proposing any business arrangement whatsoever, to any Commission employee involved in the evaluation of proposals, the contract award, or contract negotiations. A Bidder making such an offer or proposition may be disqualified.

### **5.19 News Releases**

A news release pertaining to this RFP, or the services, evaluation, or project to which this RFP relates, may not be made without prior written Commission approval, and then only in accordance with express written instructions from the Commission. No outcome of the award under this procurement may be released without prior approval by the Commission and then only to persons designated by the Commission.

### **5.20 Advertising**

Each Bidder agrees to not use the Commission's name, logos, images, nor any data, or results arising from this RFP or the Contract as part of any advertising without prior written approval by the Commission, and then only in consultation and cooperation with the Commission.

### **5.21 State's Reserved Authority**

In addition to any authority set forth elsewhere in this RFP, the Commission reserves the authority to:

- A. award a contract or contracts for all, part, or none of the services requested by this RFP;

- B. waive any informality or technical defect if, in the judgment of the Commission, the best interest of the Commission will be so served;
- C. eliminate any non-material mandatory specification(s) that cannot be complied with by any of the prospective Bidders;
- D. amend the RFP and direct Bidders to submit proposal modifications accordingly;
- E. change any of the scheduled dates stated herein;
- F. reject or disqualify any or all Proposals received in response to this RFP, and reissue a modified version of this RFP;
- G. withdraw the RFP at any time, at the sole discretion of the Commission;
- H. seek clarifications and revisions to Proposals;
- I. use information obtained through management interviews, and the State's investigation of a Bidder's qualifications, experience, ability, or financial standing, and any material or information submitted by the Bidder in response to the request by the Commission for clarifying information in evaluation and/or selection under this RFP;
- J. disqualify any Bidder whose conduct and/or Proposal fails to conform to the requirements of this RFP;
- K. negotiate with each Successful Bidder within the scope of the RFP in the best interests of the State;
- L. request best and final offers;
- M. set aside an original Successful Bidder if the Commission determines that such Bidder is nonresponsive or not responsible. The Commission may then award a Contract to a Bidder with the next highest total combined score if such a Bidder is responsible and such Bidder's Proposal is responsive; and
- N. stop the work covered by the RFP, Proposal, and the Contract at any time that it is deemed a Successful Bidder is unable, unwilling, or incapable of performing the work to the Commission's satisfaction. If the Commission issues a stop work order, providing the reason for the work stoppage, the Successful Bidder affected shall have 10 working days from the date of the Commission's stop work order to respond appropriately thereto in an effort to convince the Commission that the work stoppage should not take effect, before any such stop work order shall become effective. If after consideration of a response from the Successful Bidder (or no response), the Commission decides thereafter, in its discretion, that the stop work order should take effect, the Commission may then arrange for the completion of the work as it deems advisable. If the cost thereof exceeds the amount of the Successful Bidder's Proposal, the Successful Bidder and its surety shall be liable to the State for such cost.

## **5.22 Default**

The Commission reserves the right to cancel the Contract and to pursue any and all legal remedies provided at law, in equity, in this RFP, or in the Contract, for breach or nonperformance of a contract or other infractions, whether or not such default results in the cancellation of the Contract executed pursuant to this RFP. In addition to the remedy of Contract cancellation and all other remedies available to the Commission hereunder, in the Contract, at law or in equity, the Commission may in its sole discretion accept partial, incomplete, or otherwise non-complying performance, and may deduct from the price to be paid under the Contract a sum which in the Commission's determination reasonably reflects the difference in value between the Contract as it was to have been performed, and as it was actually performed. The Commission shall be entitled to collect costs incurred as the result of a breach by a Successful Bidder and/or any of a Successful Bidder's subcontractors, including court costs and reasonable attorneys' fees.

## **5.23 Disputes Under the Contract**

In the event that any dispute arises between the parties with respect to the performance required of a Successful Bidder under a Contract, the Commission's Executive Director shall issue a written determination to the Successful Bidder. That interpretation shall be final, conclusive, and not subject to review in all respects unless the Successful Bidder, within 30 days of receipt of said writings, delivers a written appeal to the Executive Director. The decision of the Executive Director on any such appeal shall be made within 30 days and shall be final and conclusive and the Successful Bidder shall thereafter in good faith and due diligence render such performance as the Executive Director has determined is required of it. The Successful Bidder's options with respect to any such decision on appeal shall be whether (a) to accept the determination of the Executive Director as a correct and binding interpretation of the Contract, or (b) to make such claims as it may desire before the appropriate court of competent jurisdiction in the State of New York. Pending a final judicial resolution of any such claim, the Successful Bidder shall proceed diligently and in good faith with the performance of the Contract as interpreted by the Executive Director, and the Commission shall compensate the Successful Bidder pursuant to the terms of the Contract.

## **5.24 Delegation and/or Assignment**

No delegation of any duties under this RFP by a Successful Bidder shall be binding upon the State until the Commission has given written consent to such delegation; nor shall assignments of rights to monies due or to become due under this RFP be permitted to any business organization other than a Successful Bidder, except by express written consent of the Commission.

## **5.25 Right to Audit Successful Bidder's Operations**

The Commission reserves the right to audit a Successful Bidder's records and operations as they relate to the Successful Bidder's operations for the Commission. Said audits may be conducted by the Commission's own auditors, by an independent firm, or a State agency specified by the Commission. Each Successful Bidder agrees to cooperate fully with any and all audits.

## 5.26 Indemnification

To the extent permitted by law, each Successful Bidder shall forever defend, indemnify, and hold harmless the State of New York, the Commission, and their respective commissioners, members, officers, agents, directors, employees, other contractors, and sales agents, and all agents, employees, officers and directors thereof, from and against any and all claims, liabilities, losses, damages, costs, injuries, debts, or expenses (including reasonable fees, court costs, and expenses of attorneys of the Commission's choice), which may be made, incurred, suffered, or required, in whole or in part, based on, arising out of, or being related to:

- A. the Successful Bidder's response to this RFP;
- B. the Successful Bidder's obligations to the State of New York or other governmental or legal authority;
- C. the Successful Bidder's contracts and subcontracts,
- D. products and services provided by the Successful Bidder under the Contract;
- E. the Successful Bidder's performance under the Contract;
- F. claims that any or all of the products or services provided by the Successful Bidder under the Contract violate the intellectual property rights of a third party; and/or
- G. an actual or alleged act or omission of any of the following individuals or entities, related to this RFP, the Successful Bidder's Proposal, and the Contract:
  - i. the State of New York and/or the Commission;
  - ii. the Successful Bidder;
  - iii. a subcontractor of Successful Bidder; or,
  - iv. any person directly or indirectly employed by or in an agency relationship with the Successful Bidder or a subcontractor,

which may arise out of or be related to the Successful Bidder's response to this RFP or its or any of its subcontractor's performance or failure to perform under any Contract.

All obligations to defend, indemnify, and hold harmless shall survive the termination of the Contract.

## 5.27 Authority of the Commission

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due or to become due, the decision of the Commission shall be final and binding. Each Successful Bidder shall follow

the lawful instructions of the Commission in regard to any services provided to, or to be provided to, or performed for, the Commission and/or the State of New York.

## PART SIX – PROVISIONS

### 6.1 Governing Law

The proposal submission process, the evaluation of Proposals, the award procedure, and the Contract(s) resulting from this RFP, shall be governed by the laws of the State of New York and shall be interpreted according to New York State law. All disputes of claims arising under this RFP or any Contract resulting from this RFP, other than as specifically set forth in this RFP, shall be brought exclusively in the appropriate court of the State of New York. By submitting a Proposal, a Bidder waives access to any other court or forum that may have concurrent jurisdiction within or outside New York State to hear or resolve any such dispute or claim.

### 6.2 Form of Contractual Agreement

- A. Every Bidder responding to this RFP must include as part of its Technical Proposal a signed **Contract Form (Appendix B)**, which serves as the Bidder's acknowledgment and agreement to the terms of the Contract if the Bidder is deemed to be a Successful Bidder under the RFP process. **Failure to comply with this submission requirement may deem the Bidder's Proposal nonresponsive.**
- B. Any exception to the Contract in **Contract Form (Appendix B)** must be raised in a Bidder question submitted to the Commission pursuant to the Schedule of Events and in accordance with the question-and-answer process established in this RFP. The Commission does not intend, but reserves the right, to negotiate any changes in the provisions of the Contract following the receipt of proposals.
- C. Following notification of award, a Successful Bidder will be expected to sign a final Contract with the Commission, which will be in the form incorporated into this RFP or as revised through the RFP amendment process. **Appendix A, Standard Clauses for New York State Contracts** becomes part of all New York State contracts and is incorporated into the Contract. The Contract executed by the Successful Bidder will become binding and effective after approval by the Commission, the OAG, and the OSC.

### 6.3 Term of Contract

The Contract shall be effective upon OSC approval and remain in effect for two years, with the option of three additional one-year renewals. There will be no adjustment to the rates provided in Attachment 2 – Pricing Proposal.

### 6.4 Transition

Upon expiration or termination of the Contract, each Successful Bidder shall, upon the appointment of a successor vendor, provide such successor vendor access to all necessary records in the Successful Bidder's possession relating to the services provided under the Contract. At the Commission's request, the Successful Bidder shall, at no cost to the Commission, make appropriate staff available to the Commission and to the successor vendor during normal business hours to answer questions regarding such

records and the services which have been provided by the Successful Bidder under the Contract. Each Successful Bidder shall cooperate to the fullest extent with a successor vendor in order to accomplish an efficient and orderly transition, including, but not limited to, debrief on existing marketing and advertising plans and efforts, so that the services required are uninterrupted and are not adversely impacted by the change in service providers.

It is contemplated that the Commission, approximately six (6) months prior to the expiration of the Contract, will award a new contract for scratch-off ticket printing services. The parties understand and agree that the Commission may utilize part of the last year of a Contract resulting from this RFP or any renewal or extension thereof for transition to another service provider. Each Successful Bidder agrees to cooperate fully and in good faith in such transition. Any transition shall not interfere with a Successful Bidder's ability to fulfill its Contract.

### **6.5 Severability**

If a court of competent jurisdiction determines any portion of this RFP and/or the Contract to be invalid, such portion shall be severed, and the remaining portions of the RFP and/or the Contract shall remain in effect.

### **6.6 Standard Clauses for All New York State Contracts**

**Appendix A, Standard Clauses for New York State Contracts** is attached and becomes part of all New York State contracts.

### **6.7 Compensation, Invoicing, and Payment**

- A. The Successful Bidder(s) will be compensated as quoted in the Pricing Proposal as set forth in the Part 4 of this RFP:
  - a. Each Successful Bidder will receive compensation based on printing pricing as provided in Attachment 2 – Pricing Proposal.
  - b. The Successful Primary Bidder will receive additional compensation as a percentage of total net instant sales less prizes, as provided in Attachment 2 – Pricing Proposal.
- B. A Successful Bidder shall not be compensated for expenses, such as travel and other out-of-pocket expenses that may be required or incurred in order to provide the services required in the Contract.
- C. Payments to a Successful Bidder will be directed by the Commission based on invoices submitted to the Commission. Upon verification of invoices against approved estimates and confirmation of services performed, the Commission will direct payment to the Successful Bidder either (a) by the Commission directly or (b) by the Commission's full service lottery system provider. The Commission shall be responsible for any failure by the full service lottery system provider to make



payments to a Successful Bidder as provided herein and shall pay the Successful Bidder directly in the event of such failure.

- D. Payments to third parties by a Successful Bidder can only be reimbursed to the Successful Bidder for work performed in connection with this Contract and a Successful Bidder must pass through to the Commission the third party's best available rate for work performed by the third party, without markup and including, without limitation, any discounted rates. The Commission will not be responsible for any expenses incurred by a Successful Bidder for any obligation not approved in advance by the Commission.
- E. Payment under the Contract will be in accordance with New York State Prompt Payment Law (Article 11-A of New York State's State Finance Law). Payment for services will be made upon completion of the services, in accordance with the terms of this RFP, and upon receipt by the Commission of a proper invoice.
- F. For the purpose of the provisions of the State Finance Law and the Lottery for Education Law governing the retention of a portion of sales revenues as compensation, each Successful Bidder shall be considered a "licensed sales agent."

#### **6.8 Successful Bidder Responsibilities as Primary Vendor**

- A. Each Successful Bidder is required to assume responsibility for all contractual activities offered in the Successful Bidder's respective Proposal, whether or not the Successful Bidder, itself, performs such activities. Further, the Commission will consider the Successful Bidder to be the sole point of contact regarding contractual matters, including payment of any and all charges resulting from the Contract.
- B. Upon approval by the Commission, a specific Successful Bidder may have and utilize the service of subcontractors, but that Successful Bidder shall accept full responsibility for the performance of any such subcontractor. If any part of the work is to be subcontracted, responses to this RFP shall include a list of subcontractors proposed to be utilized by a Successful Bidder, identifying the proposed subcontractors' anticipated involvement in execution of the Successful Bidder's Proposal.

#### **6.9 Approval of Staffing**

Subsequent to award of the Contract, the Commission must be notified by a Successful Bidder of any personnel changes on the Commission's account at least five days prior to the departure of any given employee in the event of a resignation from the Successful Bidder. In the event of a termination by the Successful Bidder, or a departure that provides less than five days of notice to the Successful Bidder, the Commission must be notified within 24 hours after the termination or abrupt departure. The Successful Bidder's senior management must present the Commission with a transition plan within 48 hours of the Successful Bidder's announcement that a position will be vacated. The Commission reserves the right to review and, if perceived necessary, disapprove of any employee of the Successful Bidder who is proposed to be assigned to the Commission's account, either at Contract inception or during the term or any extension thereof. The Successful

Bidder agrees to commit to the level and quality of staffing as specified in its Proposal, and to submit quarterly reports to the Commission specifying current staffing levels, personnel, vacancies, and plans for filling vacancies.

### 6.10 Subcontract Approval

- A. Any subcontractors need the Commission's written approval before beginning work, which may require the Successful Bidder to replace subcontractors who are determined to be unacceptable, either at Contract inception or during the Contract term, or any extension thereof. Subcontractors are subject to background checks of personnel and principals.
- B. The Successful Bidder agrees not to subcontract any of its services without the prior written approval of the Commission. Approval shall not be unreasonably withheld upon receipt of a written request to subcontract.
- C. The Successful Bidder may arrange for a portion(s) of its responsibilities pursuant to the Contract to be subcontracted to qualified, responsible subcontractors, subject to approval by the Commission. If the Successful Bidder determines to subcontract a portion of the services, the subcontractor(s) must be clearly identified and the nature and extent of its involvement in and/or proposed performance under the Contract must be fully explained by the Successful Bidder to the Commission. As part of this explanation, the subcontractor (and any of its subcontractors) must submit to the Commission a completed **Appendix J, Vendor Assurance of No Conflict of Interest or Detrimental Effect**, as required of the Successful Bidder prior to execution of the Contract.
- D. A Successful Bidder retains ultimate responsibility for all services performed under its Contract.
- E. All subcontracts shall be in writing and shall contain provisions that are functionally identical to, and consistent with, the provisions of the Contract involving the relevant Successful Bidder including, but not limited to, the body of the Contract, **Appendix A, Standard Clauses for NYS Contracts**, and the RFP. Unless waived in writing by the Commission, all subcontracts between the Successful Bidder and subcontractors shall expressly name the State and the Commission as the sole intended third-party beneficiaries of such subcontract. The Commission reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s). Such right shall not make the Commission or the State a party to any subcontract, or create any right, claim, or interest to the subcontractor or proposed subcontractor as against the State or the Commission.
- F. The Commission reserves the right, at any time during the Term of the Contract, to verify that the written subcontract(s) between the Successful Bidder and subcontractor(s) complies with all the provisions of this section and any subcontract provisions contained in the related Contract.
- G. The Successful Bidder shall give the Commission immediate notice in writing of the initiation of any legal action or suit that relates in any way to a subcontract with a subcontractor, or that may affect the performance of the Successful Bidder's

duties pursuant to the Contract. Any subcontract shall not relieve the Successful Bidder in any way of any responsibility, duty and/or obligation of the Contract.

- H. If at any time during performance under the Contract, total compensation to a subcontractor exceeds or is expected to exceed \$100,000, that subcontractor shall be required to submit and certify a **New York State Vendor Responsibility Questionnaire, Appendix E**.

### **6.11 Delegation and/or Assignment**

No delegation of any duties under the Contract to another entity shall be binding upon the State or the Commission until the Commission has given written consent to such delegation; nor shall rights to monies due, or to become due, under this Contract be permitted to any entity other than the Successful Bidder, except by express written consent of the Commission.

### **6.12 Vendor Code of Conduct**

Contractors and subcontractors associated with the Commission are expected to:

- A. Offer goods and services only of the highest standards;
- B. Use their best efforts to prevent themselves and their industry from becoming embroiled in unfavorable publicity;
- C. Make sales presentations in a responsible manner, and when it is necessary to point out the superiority of their goods or services over those of their competitors, to do so in such a manner as to avoid unfavorable publicity for the State;
- D. Avoid promotional activities that could be interpreted as improper and result in embarrassment to the State;
- E. Report security problems, or potential security problems, promptly to the Commission; and
- F. Not offer or give any gift, gratuity, favor, entertainment, loan, or any other thing of material monetary value to any Commission employee, or to any individual influencing the outcome of the RFP, or any project or service under the RFP.

### **6.13 Intellectual Property**

The Bidder agrees that any intellectual property developed or produced by the Successful Bidder for the Commission under this RFP and the resulting Contract shall be the property of the Commission as a work made for hire; provided, however, the Bidder retains all right, title and interest, including, without limitation, intellectual property rights, in and to Contractor Tools (as defined below in this paragraph). To the extent that any materials include any Contractor Tools, the Bidder hereby grants to the Commission a non-exclusive, non-transferable, non-sublicensable, worldwide, royalty-free, perpetual license to use and copy the Contractor Tools solely for internal purposes and solely as part of the materials. "Contractor Tools" shall mean any and all concepts, analyses, know-how, tools, frameworks, models, and industry information and perspectives used by the Successful

Bidder in connection with services required by this RFP and the resulting Contract that are not part of the Successful Bidder's work made for hire for the Commission.

The Commission understands and agrees that materials that include Contractor Tools will be furnished solely for the internal use of the Commission and, unless applicable law requires otherwise, may not be furnished in whole or in part to any person or entity other than as described in this Section 6.13 without the Successful Bidder's prior written consent. The Commission may furnish materials that include Contractor Tools to their commissioners, members, officers and employees (and to their legal counsel, accountants and investment bankers if retained by the Commission to provide services relating to the Successful Bidder's specific services hereunder), in each case, unless applicable law requires otherwise, only if such persons (i) need to know such information, (ii) are informed of the confidential nature of the materials, and (iii) agree to comply with the restrictions stated in this Section 6.13, subject to applicable law. The Commission further agrees that, without the Bidder's prior written consent, the Commission shall not otherwise refer to the Bidder or attribute any information to the Bidder in any written communication external to the Commission, including without limitation in press releases or web sites.

#### **6.14 Access by Personnel**

The Successful Bidder, the Successful Bidder's officers, agents, employees, subcontractors, and independent contractors shall be required to comply with all applicable facility and information-security policies and procedures of the Commission and the State in performing the Scope of Work under this RFP. Such policies and procedures shall be communicated to the Successful Bidder as a condition precedent to the Successful Bidder's obligations under this paragraph.

#### **6.15 Ownership of Proposal Contents, Materials and Intellectual Property**

Any and all content and 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. Ownership of all data, documentary material and operating reports originated and prepared pursuant to the Contract resulting from this RFP shall belong to the Commission. The Bidder agrees that, except where noted, all content, materials, documents, products, reports, data, and other information, whether finished, unfinished, or draft developed, gathered or compiled under this RFP by the Bidder are the sole exclusive property of the Commission and shall not be used by the Bidder or any other person, or destroyed without express written permission of the Commission. Except for each Bidder's Proposal, any work product created by a Bidder pursuant to the requirements of this RFP, the Contract, and any subcontract, shall be "works made for hire" and shall become the property of the Commission, which shall have all rights of ownership and authorship in such work product. Additionally, the Bidder hereby assigns to the Commission any and all intellectual property rights to any such work product.

- A. A Successful Bidder shall only provide for the use of any patented design, device, material, or process to be used or furnished under the Contract by suitable legal

agreement with the patentee or owner and shall file a copy of any necessary agreements with the Commission.

- B. A Successful Bidder is obligated to ensure that the Successful Bidder's or the Commission's use of materials does not infringe on patent, copyright, trademark, trade secrets, or other intellectual property rights of third parties. This obligation may require the Successful Bidder to obtain written permission for use and facilitate payment made for such, to third parties.

## 6.16 Technology Provisions

The Successful Bidder shall be compliant with all [New York State Office of Information Technology Services security policies and standards](#).

## 6.17 Force Majeure

- A. A Force Majeure occurrence is an event, condition, or effect that is caused by facts and circumstances that are beyond the reasonable control of such party and leads to non-performance, but that cannot be reasonably anticipated or controlled and occurs without the fault or negligence of the non-performing party. As herein used, Force Majeure includes, but is not limited to, the enactment, imposition or modification of any law that occurs, takes effect or is applied after the date of the Contract and that prohibits or materially impedes the performance of the obligations of the Commission and/or the Successful Bidder, whether caused by new or pre-existing conditions including, but not limited to, riot, sabotage, boycott, embargo, or civil or military disturbances; interruption of or delay in transportation; national emergency; acts of terrorism; inability to procure material; rationing; failure of electricity or other utilities; restrictive laws, regulations or orders, or any act or failure to act, or interference of any federal, state or local government or governmental agency or authority; confiscation or seizure by any governmental authority; condemnations by any governmental authority; riots or insurrection; war or war-like actions; earthquake, flood, storm, wash-outs, fire, lightning or other severe inclement weather or action of the elements, or other acts of God; explosions or other accidents; nuclear reaction or radiation; epidemic, pandemic, or other public health crisis or emergency, whether national or local; interruption or loss of internet, computer, telephone, broadcast or other communications or service; strikes, lockouts or other labor stoppage, disturbance, or disruption; or any other cause that is beyond the control of the party affected, and that, by the exercise of reasonable diligence, said party is unable to prevent delays arising as a result thereof or to predict and through advance planning avoid such delays.
- B. Except as otherwise provided in the Contract, neither the Successful Bidder nor the Commission shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein, nor shall any such delay or failure of performance constitute default hereunder, to the extent that such delay or failure is caused by a Force Majeure occurrence. The existence of such causes of delay or failure shall extend the schedule for performance to such extent as may be necessary to complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed, if approval for such extension is given by the Commission. During any period of non-performance due to a Force

Majeure occurrence, payments from the Commission to the Successful Bidder will be suspended.

- C. While any such delay in or failure of performance shall not in and of itself give rise to any liability for damages, the Commission may elect to terminate the Contract for cause should the Commission's continuing operations, in its sole judgment, be materially threatened or harmed by reason of extended delay or failure of performance, even if the delay or failure of performance is due to a Force Majeure occurrence.

#### **6.18 Successful Bidder Personal Background**

- A. The Commission may initiate investigations into the backgrounds of any officers, principals, investors, owners, subcontractors, employees, or any other associates of such Successful Bidder as the Commission deems appropriate during the Term of the Contract. Background investigations may include fingerprint identification by the DCJS, the FBI, or other domestic or foreign law enforcement agencies. The Commission reserves the right to require the removal of any and all subcontractors, employees, or any other associates of such Successful Bidder from any responsibility in the performance of services as provided for under this RFP, based upon the results of background checks, or if the Commission finds that any such subcontractor, employee, or any other associate of such Successful Bidder is not performing in the best interest of the Commission.
- B. Upon award and during the Term of the Contract, the Successful Bidder shall provide to the Commission the following items:
- i. A list of the names, addresses, dates of birth and Social Security numbers (or comparable identification number for foreign nationals) of all employees managing systems or data that house personally identifiable information as part of the Contract.
  - ii. Authorizations signed by the Successful Bidder's employees, independent contractors, and subcontractors to allow law enforcement agencies to release relevant background information. This obligation may be extended to include officers, investors, owners, and associates.
  - iii. Assurance to the Commission that, as changes are made throughout the Contract term and any extension thereof for the aforementioned personnel, any changes in the information and authorizations required in this section, herein, shall be reported to the Commission within one month of the relevant change(s), if a shorter timeframe is not otherwise required within this RFP and the Contract.

## PART SEVEN – RFP REQUIREMENTS AND CERTIFICATIONS

### 7.1 Procurement Lobbying Restrictions

- A. As required by the New York State Procurement Lobbying Law (New York State's State Finance Law §§ 139-j and 139-k), this RFP includes and imposes certain restrictions on communications between the Commission and a Bidder during the procurement process. From the earliest solicitation of offers through final award and approval of the resulting Contract by the Commission and OSC ("Restricted Period") a Bidder is restricted from making contact with the Commission's commissioners or employees, other than designated staff members, unless the contact is permitted by the statutory exceptions set forth in New York State's State Finance Law § 139-j(3)(a). Designated Contacts are identified on page 2 of this RFP.
- B. Commission employees are permitted to communicate with Bidders concerning this RFP only under circumstances described in the New York State Procurement Lobbying Law. Any Bidder causing or attempting to cause a violation or circumvention of those requirements may be disqualified.
- C. Commission employees are required to obtain certain information when contacted by a Bidder during the Restricted Period and to determine the responsibility of the Bidder pursuant to §§ 139-j and 139-k of the New York State Procurement Lobbying Law. A violation can result in a determination of non-responsibility, which can result in disqualification for a contract award. In the event of two such determinations within a four-year period, a Bidder will be debarred for a period of four years from obtaining a governmental procurement contract award. Further information about these requirements can be found at: <http://www.ogs.ny.gov/acpl>.
- D. The Commission reserves the right, in its sole discretion, to terminate any Contract resulting from this RFP in the event that the Commission determines that the certification filed by the Successful Bidder in accordance with State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notice to the Bidder in accordance with the written notice terms of the Contract.
- E. The **Bidder/Offerer Disclosure/Certification Form, Appendix C** must be completed and submitted with a Bidder's Proposal.

### 7.2 Non-Collusive Bidding Requirement

In accordance with State Finance Law § 139-d, if a Contract is awarded based upon the submission of proposals, the Bidder must warrant, under penalty of perjury, that its Proposal was arrived at independently and without collusion aimed at restricting competition. Each Bidder must further warrant that, at the time the Bidder submitted its Proposal, an authorized and responsible person executed and delivered to the Commission a Non-Collusive Bidding Certification on Bidder's behalf. The **Non-Collusive Bidding Certification form, Appendix D** must be completed and submitted with a Bidder's Proposal.

### 7.3 New York State Vendor Responsibility Questionnaire

Each Bidder agrees to fully and accurately complete the New York State Vendor Responsibility Questionnaire (“Questionnaire”). Bidders are encouraged to complete the [online form](#), as it will expedite Contract approval, if awarded. If a Bidder does not have an online Questionnaire that is current and certified at the time the Bidder’s Proposal is submitted, the Bidder must complete the hard-copy **New York State Vendor Responsibility Questionnaire, Appendix E** and include it as part of Bidder’s Proposal. The Bidder acknowledges that the State’s execution of each Contract will be contingent upon the Commission’s determination that the respective Successful Bidder is responsible, and that the Commission will be relying upon the respective Successful Bidder’s responses to the Questionnaire in making that determination. The Bidder agrees that if it is determined by the Commission that it is a Successful Bidder and that Successful Bidder’s responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, the Commission may terminate the Contract by providing 10 days written notification to that Successful Bidder. In no case shall such termination of the Contract by the Commission be deemed a breach thereof, nor shall the Commission be liable for any damages for lost profits or otherwise, which may be incurred by a Successful Bidder as a result of such termination.

### 7.4 Vendor Identification Number

**Substitute Form W-9, Appendix F.** To do business with the State of New York, each Bidder is required to obtain a New York State Vendor Identification Number for use in the Statewide Financial System (“SFS”). If the Bidder does not already have a Vendor ID Number, the Substitute Form W-9 (Form AC 3237-S; “Request for Taxpayer Identification Number & Certification”) must be completed and submitted directly to the Commission by the Bidder upon notification of award. The purpose of the Substitute Form W-9, which will capture the Successful Bidder’s taxpayer identification number, business name, and business contact person, is to allow the State to establish a Vendor file in the SFS. Note: IRS Form W-9 is not acceptable for this purpose.

### 7.5 Electronic Payments

If awarded a Contract pursuant to this RFP, a Successful Bidder may enroll in direct deposit through the [SFS Vendor Portal](#). Additional information and procedures for enrollment can be found [online](#).

### 7.6 Tax Law Section 5-A

A Successful Bidder must comply with the requirements of New York State Tax Law § 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities, or public benefit corporations, to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors, have a valid certificate of authority to collect New York State and local sales and compensating use taxes. Additionally, a contractor, affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York State of more than \$300,000 during the relevant period. The OSC or other responsible approver cannot approve a Contract unless the respective



Successful Bidder is registered with the New York State Department of Taxation and Finance to collect sales and compensating use taxes.

Contractor Certifications **ST-220-TD and ST-220-CA, Appendix G** must be filed in compliance with Tax Law § 5-a. Any Bidder awarded under this RFP shall, within seven calendar days of notification of award, file the completed ST-220-TD form directly with the Department of Taxation and Finance at the address provided on the form and file the completed ST-220-CA form with the Commission.

### **7.7 New York State Subcontractors and Suppliers**

Bidders are encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the Contract. Such partnering may be as subcontractors, suppliers, protégés, or in other partnering or supporting roles. Subcontractor and supplier requirements are set forth in **Encouraging Use of New York State Businesses in Contract Performance, Appendix H**.

### **7.8 Requirements and Procedures for Equal Employment and Business Participation Opportunities for Minority Group Members and New York State-Certified Minority/Women-Owned Business Enterprises**

By submission of a Proposal in response to this RFP, the Bidder agrees with all terms and conditions of Clause 12 of Appendix A — Equal Employment Opportunities for Minorities and Women. 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 Successful Bidder 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 requirements related to equal employment opportunities and Minority/Women-Owned Business Enterprises ("MWBE") are set forth in **Appendix I, EEO, MWBE and SDVOB Programs**, of this RFP. The MWBE goal established under this solicitation is **30% (13% MBE and 17% WBE)**.

### **7.9 New York State Service-Disabled Veteran-Owned Businesses**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOB"), thereby further integrating such businesses into New York State's economy. The Commission recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of Commission contracts. In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles. See the **Participation Opportunities for New York State Service-Disabled Veteran-Owned Businesses form, Appendix I**. The SDVOB goal established under this RFP is **6%**.

## 7.10 Conflicts of Interest

- A. Throughout the procurement process, Bidders must identify and bring to the attention of the Commission, actual or apparent conflicts of interest as knowledge of such conflicts arises, as follows:
- i. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of five percent (5%) or more, or parent, subsidiary, or affiliated business organization or entity, that would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Bidder, or former officers and employees of the Commission, in connection with the Bidder rendering services set forth in this RFP. If a conflict does or might exist, the Bidder must describe how the Bidder would eliminate or prevent such conflicts. The Bidder should also advise what procedures will be followed to detect, notify the Commission of, and resolve any such conflicts.
  - ii. Disclose whether the Bidder, or any of its members, shareholders of 5 percent or more, or parent, subsidiary, or affiliated business organization or entity, has been the subject of any investigation or disciplinary action by the Commission on Ethics, and if so, a brief description must be included advising how any matter before the Commission on Ethics was resolved, or whether it remains unresolved.
- B. The Bidder must complete and return with the Bidder's Proposal a **Vendor Assurance of No Conflict of Interest or Detrimental Effect form, Appendix J. This disclosure obligation is a continuing requirement.** Any Bidder awarded a Contract under this RFP will have an ongoing obligation to inform the Commission of any actual, apparent, or potential conflicts of interest.
- C. The Bidder understands and agrees that before it, as a Successful Bidder, is provided access to, or copies of, any applications the Commission will provide first the Successful Bidder with the names of the companies and principals involved with each application and the Successful Bidder must identify any direct or indirect conflict of interest, or potential conflict of interest, the Successful Bidder has or may have with any such companies and/or principals.

For those applications that the Successful Bidder does not identify any direct or indirect conflict of interest, or potential conflict of interest, with involved companies and principals, the Successful Bidder will provide a certification to the Commission stating that no direct or indirect conflict of interest, or potential conflict of interest, exists with respect to such application.

For those applications that the Successful Bidder identifies is or may be a direct or indirect conflict of interest, or potential conflict of interest, the Successful Bidder will disclose the conflict of interest or potential conflict of interest and the steps the Successful Bidder will take to mitigate the conflict of interest or potential conflict of interest. The Successful Bidder will not be permitted to review such application until the conflict of interest or potential conflict of interest is reviewed by the Commission and the Commission has approved the steps proposed by the

Successful Bidder to mitigate the conflict of interest, or potential conflict of interest.

### **7.11 Certification of Compliance with State Finance Law § 139-I**

By submission of its Proposal, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has, and has implemented, a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of New York State Labor Law § 201-g. The Successful Bidder must certify compliance pursuant to New York State's State Finance Law § 139-I by signing and returning **Appendix K, Statement on Sexual Harassment**.

### **7.12 Executive Order No. 177 Certification**

- A. The New York State Human Rights Law within Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status, or predisposing genetic characteristics.
- B. The New York State Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.
- C. In accordance with Executive Order No. 177, a Bidder must certify that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law by signing and returning **Appendix L, Anti-Discrimination EO 177 Certification**.
- D. Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including, but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and New York State Human Rights Law § 296(11).

### **7.13 Executive Order No. 16 Certification**

On March 17, 2022, Governor Kathy Hochul issued Executive Order No. 16, which stated that “[a]ll Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” On March 24, 2022, the United States, in coordination with the European Union and the Group of Seven (G-7), imposed sanctions on an additional 400 Russian individuals and entities. The federal sanctions include efforts to block moves by Russian

entities and individuals to evade the sanctions imposed or to use international reserves. Executive Order No. 16 is intended to ensure that New York State is not entering into contracts with entities conducting business in Russia and thereby indirectly supporting Russia's unjustified war against the Ukrainian people. Bidders must certify compliance by signing and returning **Appendix M, EO 16 Certification**.

#### **7.14 Insurer Qualifications and Insurance Requirements**

Insurer qualifications and insurance requirements are provided in **Appendix N, Insurer Qualifications and Insurance Requirements**, of this RFP. The Successful Bidder must comply with these requirements to remain responsible under the terms of the Contract resulting from this solicitation. In its Proposal, a Bidder must provide a statement agreeing that if awarded a Contract under this RFP, the Bidder will comply with the insurer qualifications and insurance qualifications.

#### **7.15 Bond Requirements**

Bidders are required to obtain bonds as specified in **Appendix O, Bond Requirements**.

#### **7.16 Liquidated Damages**

Applicable to the sections herein referencing liquidated damages, the Commission and the Successful Bidder agree that it will be extremely impractical and difficult to determine actual damages sustained by the Commission in all scenarios. The goods and services to be provided under the Contract are not readily available on the open market. Further, any breach by the Successful Bidder will delay and disrupt the Commission's operations and will lead to damages. Therefore, the parties agree that liquidated damages specified in within this RFP are reasonable and are not to be construed as a penalty.

Any assessment of liquidated damages shall be in addition to, and not in lieu of, such other remedies as may be available to the Commission. Except as and to the extent expressly provided herein, the Commission shall be entitled to recover liquidated damages under each section applicable to any single incident.

##### **A. NOTIFICATION OF LIQUIDATED DAMAGES ASSESSMENT**

Upon determination that liquidated damages may be assessed, the Commission shall notify the Successful Bidder of the assessment in writing. The availability of any period for curing the cause of such liquidated damages will depend on the situation and will be in the sole discretion of the Commission.

##### **B. CONDITIONS FOR CANCELLATION OF LIQUIDATED DAMAGE ASSESSMENTS**

As determined appropriate by the Commission, and if approved by the Commission in writing, the Successful Bidder may obtain relief from additional assessment of liquidated damages that have been assessed if the Successful Bidder issues a written notice verifying the timely correction of the condition(s) for which liquidated damages were assessed, and all corrections have been subjected to system testing or other verification at the discretion of the Commission. As appropriate, the Successful Bidder also shall conduct

system testing or other verification of any correction, as the Commission deems necessary. Such testing or verification shall be developed jointly by the Commission and the Successful Bidder, and shall be approved by the Commission, including the test script, test environment, test results, and verification means. A notice of correction will not be accepted until verified by the Commission.

### **C. SEVERABILITY OF INDIVIDUAL LIQUIDATED DAMAGES**

If any portion of the liquidated damages provisions is determined to be unenforceable in one or more applications, that portion remains in effect in all applications not determined to be invalid and is severable from the invalid applications. If any portion of the liquidated damages provisions is determined to be unenforceable, the other provision or provisions shall remain in full force and effect.

### **D. WAIVERS OF LIQUIDATED DAMAGES**

The Commission's waiver of any liquidated damages due the Commission shall constitute a waiver only as to such liquidated damages and not a waiver of any future liquidated damages. Failure to assess liquidated damages or to demand payment of liquidated damages within any period of time shall not constitute a waiver of such claim by the Commission.

### **E. PAYMENT OF LIQUIDATED DAMAGES**

All assessed liquidated damages shall be deducted from any monies owed the Successful Bidder by the Commission and, in the event the amount due the Successful Bidder is not sufficient to satisfy the amount of the liquidated damages, the Successful Bidder shall pay the balance to the Commission within thirty (30) calendar days of written notification. If the amount due is not paid in full, the balance will be deducted from subsequent payments to the Successful Bidder or through a claim made against the Successful Bidder's Performance Bond per **Appendix O – Bond Requirements**, and/or applicable insurance coverage available per **Appendix N - Insurer Qualifications and Insurance Requirements**, at the Commission's discretion.

At the Commission's discretion, in lieu of monies owed or a portion thereof, the Commission may accept services, upgrades, or other tangible or intangible compensation from the Successful Bidder in satisfaction of assessed liquidated damages.

The Successful Bidder is ultimately responsible for payment of all liquidated damages assessed.

### **F. APPLICABILITY OF LIQUIDATED DAMAGES**

The Successful Bidder shall not be required to pay liquidated damages for delays solely due to matters as enumerated in the section entitled "Force Majeure," or for time delays specifically due to, or approved by, the Commission.

## PART EIGHT – APPENDICES AND ATTACHMENTS

### 8.1 Appendices

**This section provides a description of the Appendices associated with this RFP.**

Letter	Appendix Title
A	Standard Clauses for New York State Contracts
B	Contract Form
C	Bidder/Offerer Disclosure/Certification Form
D	Non-Collusive Bidding Certification
E	New York State Vendor Responsibility Questionnaire
F	Substitute Form W-9
G	ST-220 Certifications
H	Encouraging Use of New York State Businesses in Contract Performance
I	EEO, MWBE and SDVOB Programs
J	Vendor Assurance of No Conflict of Interest or Detrimental Effect
K	Statement on Sexual Harassment
L	Anti-Discrimination EO 177 Certification
M	EO 16 Certification
N	Insurer Qualifications and Insurance Requirements
O	Bond Requirements

### 8.2 Attachments

**This section provides a description of the Attachments associated with this RFP.**

Number	Attachment Title
1	Bidder Acknowledgement of Amendment
2	Pricing Proposal Form
3	Document Submittal Checklist
4	Non-Bid Response Form
5	Intent to Bid and Confidentiality and Non-Disclosure Agreement

### 8.3 Exhibits

**This section provides a description of the Exhibits associated with this RFP.**

Number	Exhibit Title
1	Fiscal Year Launches with Order Quantity
2	Management Fee Calculation

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**

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## **STANDARD CLAUSES FOR NYS CONTRACTS**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, “the contract” or “this contract”) agree to be bound by the following clauses which are hereby made a part of the contract (the word “Contractor” herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER’S APPROVAL.** In accordance with Section 112 of the State Finance Law, if this contract exceeds \$50,000 (or \$75,000 for State University of New York or City University of New York contracts for goods, services, construction and printing, and \$150,000 for State University Health Care Facilities) or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller’s approval of contracts let by the Office of General Services, either for itself or its customer agencies by the Office of General Services Business Services Center, is required when such contracts exceed \$85,000. Comptroller’s approval of contracts established as centralized contracts through the Office of General Services is required when such contracts exceed \$125,000, and when a purchase order or other procurement transaction issued under such centralized contract exceeds \$200,000.

**4. WORKERS’ COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers’ Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor’s employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records

must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "(a), (b) and (c)" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not

apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this

law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business and Technology Development  
625 Broadway  
Albany, New York 12245  
Telephone: 518-292-5100

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue 33rd Floor  
New York, NY 10017  
646-846-7364  
email: [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law §§ 899-aa and 899-bb and State Technology Law § 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a “procurement contract” as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: <https://ogs.ny.gov/iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

## LOTTERY SCRATCH-OFF TICKET PRINTING AND SERVICES

### CONTRACT # C202305

THIS AGREEMENT made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the NEW YORK STATE GAMING COMMISSION, 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 [Contractor], having an office at [address] (the "Contractor").

WHEREAS the Commission issued a Request for Proposals ("RFP") on [\_\_\_\_\_] soliciting proposals for Lottery Scratch-off Ticket Printing and Services and clarified the requirements of the RFP with questions and answers dated [\_\_\_\_\_] and [\_\_\_\_\_] (collectively, the "RFP"); and

WHEREAS the Contractor submitted a Technical Proposal and a Pricing Proposal dated [\_\_\_\_\_, 2023] (collectively, the "Proposal"), which was deemed by the Commission's RFP evaluation committee to be the Best Value for [Primary, Secondary or Tertiary] award, as outlined within the RFP, from among competing proposals;

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 Lottery scratch-off ticket printing and services as more fully set forth in the RFP and the Proposal. Both the RFP and the Proposal are hereby incorporated into this Contract with the same force and effect as if they were fully set forth herein.

**2. Term.** The Contract shall be effective for a period of two years upon approval of the Office of the New York State Comptroller, with the option for three additional one-year renewals.

**3. Financial Arrangements.**

(a) Compensation. In full consideration for all goods and services specified in the RFP and the Proposal, the Commission agrees to pay, and the Contractor agrees to accept, compensation in accordance with the prices set forth in the Proposal, unless otherwise stated herein. No minimum amount is guaranteed by this Contract and the Contractor shall not have any right to make a claim therefor. Expenditures under this Contract shall not exceed [XXXXXXXX].

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

**5. Mutual Cooperation.** The parties agree to cooperate fully and in good faith and to assist each other, to the extent reasonably practicable, in order to accomplish the objectives outlined in the RFP and Proposal.

**6. Limitation of Contractor's Lobbying Activities.** The Contractor agrees to abide by all applicable laws relating to its lobbying activities in New York. In addition, the Contractor agrees to provide, during the term of this Contract or any extensions thereof, written notification, updated quarterly, to the Commission specifying the name, business address and telephone number of any lobbyist, as that term is defined in Section 1-C of the New York State Lobbying Act (New York State Legislative Law Article 1-A) employed or hired to represent the Contractor within the State of New York related to Commission issues. Failure to provide this information to the Commission will constitute a material breach of the terms of this Contract and be cause for termination.

7. **Termination and Suspension.**

(a) In addition to the bases referenced in the RFP, the Commission shall have the right to terminate this Contract for convenience or for any of the following causes:

- (i) a material breach by the Contractor of any of the provisions of this Contract;
- (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;
- (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 Commission;
- (v) in the judgment of the Commission, a real or potential conflict of interest cannot be cured;
- (vi) the refusal by the Contractor or any of its directors, officers, or employees to sign a waiver of immunity against subsequent criminal prosecution or to answer any relevant question concerning a transaction or contract, when called before a grand jury, head of a state department, the Commission, a temporary state commission or other state agency, or the organized crime task force in a department of law, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation, concerning any such transaction or contract had with the State, any political subdivision thereof, a public authority or with any public department, agency or official of the State or of any political subdivision thereof or of a public authority; or



(vii) upon the conviction of any person of a crime defined in article two hundred or four hundred ninety-six or section 195.20 of New York State's Penal Law.

(b) If termination is sought because of a criminal conviction as described in 7(a)(iv), 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 30-day period.

(c) If the Contract is cancelled or terminated based on the grounds listed in 7(a)(vi) or (vii), above, such person, and any firm, partnership or corporation of which the person is a member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with the state or any public department, agency or official thereof, for goods, work or services, for a period of five years after such refusal, and to provide also that any and all contracts made with the State or any public department, agency or official thereof, since the effective date of New York State's State Finance Law § 139-a, by such person, and by any firm, partnership or corporation of which such person is a member, partner, director or officer may be cancelled or terminated by the State without incurring any penalty or damages on account of such cancellation or termination, but any monies owing by the State for goods delivered or work done prior to the cancellation or termination shall be paid.

(d) In the event that the Commission decides to exercise the right to terminate this Contract for cause, the Commission shall give the Contractor written Notice of Intention to Terminate for Cause ("Notice"). Such Notice shall state clearly and specify the cause for which termination is sought, and the Contractor shall be entitled to a period of 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.

(e) The Commission reserves the right to terminate this Contract in the event the Commission determines that the certification filed by the Contractor in accordance with New York State's State Finance Law § 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notice to the Contractor in accordance with the written notice terms of this Contract.

(f) 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 Commission's Executive Director or the Executive Director's designee (collectively the "Executive Director") at the Contractor's expense where the Contractor is determined by the Executive Director to be non-responsible or nonresponsible. In such event, the Executive Director may complete the contractual requirements in any manner the Executive Director may deem advisable and pursue available legal or equitable remedies for breach.

(g) The Executive Director, in the Executive Director's sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when the Executive Director 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 if, and at such time as, the Executive Director issues a written notice authorizing a resumption of performance under the Contract.

## **8. Conflict of Interest.**

(a) The Contractor has provided a completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form, in the form annexed to the RFP as Appendix J), signed by an authorized executive or legal representative of the Contractor attesting that the Contractor's performance of the services does not and will not create a conflict of interest with, nor position the Contractor to breach any other contract currently in force with the State of New York, that

the Contractor will not act in any manner that is detrimental to any State project on which the Contractor is rendering services.

(b) The Contractor hereby reaffirms the attestations made in its Proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the Contractor's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this Contract. The Contractor shall have a duty to notify the Commission immediately of any actual or potential conflicts of interest.

(c) In conjunction with any authorized subcontract under this Contract, the Contractor shall obtain and deliver to the Commission, prior to entering into such a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form in the form annexed to the RFP as Appendix J, completed and signed by an authorized executive or legal representative of the subcontractor. The Contractor shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting or sub-subcontracting agreement, obtain and deliver to the Commission a completed and signed Vendor Assurance of No Conflict of Interest or Detrimental Effect form in the form annexed to the RFP as Appendix J for each of the subcontractor's subcontractors prior to entering into a sub-subcontract.

(d) The Commission and the Contractor recognize that conflicts may occur in the future because the Contractor may have existing, or establish new, relationships. The Commission will review the nature of any relationships and reserves the right to terminate this Contract for any reason, or for cause, if, in the judgment of the Commission, a real or potential conflict of interest cannot be cured, pursuant to paragraph 7(a)(v), above.

**9. Confidentiality and Non-Disclosure.**

(a) "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

Contract. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, business rules, reports, product information; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, network configurations, 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’s 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 confidentiality 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 or applicable professional standards, so long as the Contractor provides the Commission with notice of such disclosure requirement and an 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 Contract. The Contractor shall not make copies of any written Confidential Information without the express written permission of the Commission, except as necessary to perform the services required by this Contract. The Commission’s disclosure of Confidential Information to the Contractor shall not convey to the Contractor any right 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.

**10. Records Retention** Records required by this Contract to be retained by the Contractor shall be retained for the periods specified in Appendix A, Standard Clauses for New York State Contracts, 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.

**11. Notices.** All notices required by this Contract 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  
New York State Gaming Commission  
One Broadway Center  
Schenectady, NY 12305

(b) As to the Contractor:

Contact:  
Company Name:  
Address:

**12. Liability and Indemnification.** The Contractor shall be responsible for all damages to life and property due to the activities of the Contractor, as well as the activities of the subcontractors (if any), agents or employees of the Contractor in connection with the performance of services under this Contract. The Contractor's indemnification obligations are outlined in section 5.26 of the RFP, incorporated herein.

**13. Relationship.** The relationship of the Contractor to the Commission arising out of this Contract 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, and that it will not 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, and the Contractor alone shall be responsible for the work of its personnel and its subcontractors' personnel, the direction thereof, and their compensation. Nothing in this Contract 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 insurance, and the Contractor hereby agrees to indemnify and hold harmless the Commission and the State against any such liabilities, as well as to defend, indemnify, and hold harmless the Commission and the State as required under the RFP.

**14. Documents Incorporated.** Appendix A, Standard Clauses for New York State Contracts, dated June 2023, the RFP, and the Proposal are hereby incorporated herein and made a part hereof.

**15. Order of Precedence.** Any conflict between the provisions of this Contract 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) Addenda or amendments to the Contract;
- (c) Contract;
- (d) Clarifications and Amendments to the RFP;
- (e) RFP; and
- (f) the Proposal.

**16. Miscellaneous Provisions.**

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

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

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

(d) The Contractor shall at all times during the Contract Term remain responsible. The Contractor agrees, if requested by the Executive Director, 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) This Contract may be executed in counterparts, each of which shall be deemed an original. Executed copies of this Contract may be sent by facsimile (fax) or as PDF copies sent by email, and any signatures thereon shall be considered for all purposes to be binding as originals.

(f) If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Contract shall not be affected,

but shall remain binding and effective as against all parties hereto.

(g) No delegation of any duties under this Contract shall be binding upon the State until the Commission has given written consent to such delegation; nor shall assignments of rights to monies due or to become due under the Contract be permitted to any individual or business organization other than the Contractor, except by express written consent of the Commission.

IN WITNESS WHEREOF, the parties hereto have executed this Contract to be effective as of the date executed by the Office of the New York State Comptroller, below.

CONTRACTOR

NEW YORK STATE  
GAMING COMMISSION

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

NEW YORK STATE OFFICE OF THE  
ATTORNEY GENERAL

OFFICE OF THE NEW YORK STATE  
COMPTROLLER

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Acknowledgement Required of the Contractor is on the following page:*



**Acknowledgement**

**ACKNOWLEDGEMENT BY INDIVIDUAL**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_, to me known and known to me to be the person described in and  
who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY UNINCORPORATED ASSOCIATION**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_, to me known and known to me to be the person described in and  
who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say  
that he/she is a member of the firm of \_\_\_\_\_ and that he/she executed the foregoing  
instrument in the firm name of \_\_\_\_\_, and that he/she had authority to sign same, and  
he/she did duly acknowledge to me that he/she executed the same as the act and deed of said firm of  
\_\_\_\_\_, for the uses and purposes mentioned therein.

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGEMENT BY CORPORATION**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_, before me personally  
came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that  
he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_  
of the \_\_\_\_\_, the corporation described in and which executed the above  
instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such a  
corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he  
he/she signed his/her name thereto by like order.

\_\_\_\_\_  
Notary Public

**BIDDER/OFFERER DISCLOSURE/CERTIFICATION FORM**

**CONTRACT/PROJECT DESCRIPTION: Lottery Scratch-off Ticket Printing and Services**

**CONTRACT/PROJECT NUMBER: #C202305**

**RESTRICTED PERIOD FOR THIS PROCUREMENT: September 8, 2023 through approval of the Office of the State Comptroller.**

**PERMISSABLE CONTACTS: Technical or Procurement Inquiries: Stacey Relation and Alysyan M. Bowers  
MWBE or SDVOB Inquiries: Christine Carpenter or Robert J. Williams**

1. CONTACTS - Contractor affirms that it understands and agrees to comply with the procedures on procurement lobbying restrictions regarding permissible contacts in the restricted period for a procurement contract in accordance with State Finance Law §§ 139-j and 139-k.  I agree

2. BIDDER/OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS Pursuant to Procurement Lobbying Law (SFL §139-j)

(a) Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?

Yes  No

If yes, please answer the following question:

(b) Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?

Yes  No

(c) If "Yes" was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?

Yes  No

If "Yes", please provide details regarding the finding of non-responsibility:

Governmental Entity: \_\_\_\_\_

Date of Finding of Non-Responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility (attach additional sheets if necessary): \_\_\_\_\_

3. Has any governmental agency terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?

Yes  No

If yes, provide details:

Governmental Entity: \_\_\_\_\_

Date of Termination or Withholding of Contract: \_\_\_\_\_

Basis of Termination or Withholding: (add additional pages if necessary) \_\_\_\_\_

4. TERMINATION CLAUSE:

Contractor certifies that all information provided to the Agency with respect to State Finance Law §§139 (j) and 139 (k) is complete true and accurate. If found to be in violation of State Finance Law §§139 (j) and 139 (k), the contract will result in termination.

I agree

Name of Contractor's Firm/Company: \_\_\_\_\_

Contractor Address: \_\_\_\_\_  
\_\_\_\_\_

Contractor's signature: \_\_\_\_\_  
*I understand that my signature represents that I am signing and responding to both certifications listed above*

Print Name: \_\_\_\_\_

Occupation of Person signing this form: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Non-Collusive Bidding Certification  
Required By Section 139-D of the State Finance Law**

**By submission of this bid, bidder and each person signing on behalf of bidder certifies, under penalty of perjury, that to the best of his/her knowledge and belief:**

**[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;**

**[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and**

**[3] No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.**

**A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE WHERE [1], [2], [3] ABOVE HAVE NOT BEEN COMPLIED WITH; PROVIDED HOWEVER, THAT IF IN ANY CASE THE BIDDER(S) CANNOT MAKE THE FORGOING CERTIFICATION, THE BIDDER SHALL SO STATE AND SHALL FURNISH BELOW A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFORE:**

**[AFFIX ADDEDUM TO THIS PAGE IF SPACE IS REQUIRED FOR STATEMENT.]**

**Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day \_\_\_\_\_, 20\_\_ as the act and deed of said corporation.**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Signature**

The submission of the attached Vendor Responsibility Questionnaire, also found online at <https://www.osc.state.ny.us/vendrep/>, is required with your bid.

You must include your ten-digit Vendor ID identifier number issued by New York State. Please insert the Vendor ID number on the top right corner of pages 2-10 of the questionnaire.

If you have previously submitted a New York State Vendor Questionnaire that was signed less than one year ago in connection with another State solicitation or contract, and there are no material changes to that questionnaire, you may submit an Affidavit of No Change along with a copy of the previously completed Vendor Questionnaire.

You are encouraged to complete the questionnaire online. By doing so, you will not be required to complete the questionnaire for future contracts with New York State agencies, so long as you certify the information every six months.

If you are interested in completing the online questionnaire, please visit the following website for additional information:

<https://www.osc.state.ny.us/vendrep/>

If you have filed your questionnaire online, please sign below and return only this page with your bid.

-----

Complete the below only if you have filed your questionnaire online, otherwise, please complete the attached questionnaire.

_____	_____
Contractor Name (print)	Signature
_____	_____
Company Name	Date



**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

You have selected the For-Profit Non-Construction questionnaire which may be printed and completed in this format or, for your convenience, may be completed online using the New York State VendRep System.

**COMPLETION & CERTIFICATION**

The person(s) completing the questionnaire must be knowledgeable about the vendor's business and operations. An owner or owner's official representative authorized to legally bind the Reporting Entity must certify the truth of the questionnaire answers.

**NEW YORK STATE VENDOR IDENTIFICATION NUMBER (VENDOR ID)**

The Vendor ID is a ten-digit identifier issued by New York State when the vendor is registered on the Statewide Vendor File. This number must now be included on the questionnaire. If the business entity has not obtained a Vendor ID, contact the IT Service Desk at [ITServiceDesk@osc.ny.gov](mailto:ITServiceDesk@osc.ny.gov) or call 866-370-4672.

**DEFINITIONS**

All underlined terms are defined in the "New York State Vendor Responsibility Definitions List," found at <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>. These terms may not have their ordinary, common or traditional meanings. Each vendor must read the respective definitions for any and all underlined terms. By submitting this questionnaire, the vendor agrees to be bound by the terms as defined in the "New York State Vendor Responsibility Definitions List" existing at the time of certification.

**RESPONSES**

Every question must be answered fully. Each response must provide **all** relevant information to appropriately explain the answer. If you have concerns as to the legal requirements behind your answers, please seek clarification from your counsel. However, information regarding a determination or finding made in error which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity is not required to be identified. Individuals and Sole Proprietors may use a Social Security Number but are encouraged to obtain and use a federal Employer Identification Number (EIN).

**REPORTING ENTITY**

Each vendor must indicate if the questionnaire is filed on behalf of the entire Legal Business Entity or an Organizational Unit within or operating under the authority of the Legal Business Entity and having the same EIN. Generally, the Organizational Unit option may be appropriate for a vendor that meets the definition of "Reporting Entity" but due to the size and complexity of the Legal Business Entity, is best able to provide the required information for the Organizational Unit, while providing more limited information for other parts of the Legal Business Entity and Associated Entities.

**ASSOCIATED ENTITY**

An Associated Entity is one that owns or controls the Reporting Entity, or any entity owned or controlled by the Reporting Entity. However, the term Associated Entity does **not** include "sibling organizations" (i.e., entities owned or controlled by a parent company that owns or controls the Reporting Entity), unless such sibling entity has a direct relationship with or impact on the Reporting Entity. Please refer to the Definitions List for the complete definition.

**STRUCTURE OF THE QUESTIONNAIRE**

The questionnaire is organized into eleven sections. Section I is to be completed for the Legal Business Entity. Section II requires the vendor to specify the Reporting Entity for the questionnaire. Section III refers to the individuals of the Reporting Entity, while Sections IV-VIII require information about the Reporting Entity. Section IX pertains to any Associated Entities, with one question about their Officials/Owners. Section X relates to disclosure under the Freedom of Information Law (FOIL). Section XI requires an authorized contact for the questionnaire information.

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

<b>I. LEGAL BUSINESS ENTITY INFORMATION</b>			
<u>Legal Business Entity Name*</u>		<u>EIN</u>	
Address of the <u>Principal Place of Business</u> (street, city, state, zip code)		<u>New York State Vendor Identification Number</u>	
		Telephone <span style="float: right;">Ext.</span>	Fax
Email		Website	
Additional <u>Legal Business Entity</u> Identities: If applicable, list any other <u>DBA</u> , <u>Trade Name</u> , <u>Former Name</u> , Other Identity, or <u>EIN</u> used in the last five (5) years and the status (active or inactive).			
Type	Name	EIN	Status
1.0 <u>Legal Business Entity</u> Type – Check appropriate box and provide additional information:			
<input type="checkbox"/> <u>Corporation</u> (including <u>PC</u> )		Date of Incorporation	
<input type="checkbox"/> <u>Limited Liability Company (LLC or PLLC)</u>		Date of Organization	
<input type="checkbox"/> <u>Partnership</u> (including <u>LLP</u> , <u>LP</u> or <u>General</u> )		Date of Registration or Establishment	
<input type="checkbox"/> <u>Sole Proprietor</u>		How many years in business?	
<input type="checkbox"/> Other		Date Established	
If Other, explain:			
1.1 Was the <u>Legal Business Entity</u> formed or incorporated in New York State?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If ‘No,’ indicate jurisdiction where <u>Legal Business Entity</u> was formed or incorporated and attach a <u>Certificate of Good Standing</u> from the applicable jurisdiction or provide an explanation if a <u>Certificate of Good Standing</u> is not available.			
<input type="checkbox"/> United States    State    _____			
<input type="checkbox"/> Other            Country    _____			
Explain, if not available:			
1.2 Is the <u>Legal Business Entity</u> publicly traded?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” provide <u>CIK Code</u> or Ticker Symbol			
1.3 Does the <u>Legal Business Entity</u> have a <u>DUNS</u> Number?			<input type="checkbox"/> Yes <input type="checkbox"/> No
If “Yes,” Enter <u>DUNS</u> Number			

\*All underlined terms are defined in the “New York State Vendor Responsibility Definitions List,” which can be found at <https://www.osc.state.ny.us/files/vendors/2017-11/vendor-questionnaire-definitions.pdf>



**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**I. LEGAL BUSINESS ENTITY INFORMATION**

1.4 If the Legal Business Entity's Principal Place of Business is not in New York State, does the Legal Business Entity maintain an office in New York State?  
(Select "N/A," if Principal Place of Business is in New York State.)

Yes    No  
 N/A

If "Yes," provide the address and telephone number for one office located in New York State.

1.5 Is the Legal Business Entity a New York State certified Minority-Owned Business Enterprise (MBE), Women-Owned Business Enterprise (WBE), Service-Disabled Veteran-Owned Business (SDVOB), New York State Small Business (SB) or a federally certified Disadvantaged Business Enterprise (DBE)?

Yes    No

If "Yes," check all that apply:

New York State certified Minority-Owned Business Enterprise (MBE)  
 New York State certified Women-Owned Business Enterprise (WBE)  
 New York State certified Service-Disabled Veteran-Owned Business (SDVOB)  
 New York State Small Business (SB)  
 Federally certified Disadvantaged Business Enterprise (DBE)

1.6 Identify Officials and Principal Owners of the Reporting Entity, if applicable. For each person, include name, title, date of birth, and percentage of ownership. For each Business Entity that is a Principal Owner, include name, address, EIN, and percentage ownership. Identify all Business Entities owning 25% or more of the Reporting Entity and include name, address, EIN and percentage of ownership. Attach additional pages if necessary. If applicable, reference to relevant SEC filing(s) containing the required information is optional. Each Business Entity identified as a Principal Owner must also submit a vendor responsibility questionnaire.

If there is no person or Business Entity that owns 25% or more of the Reporting Entity (or 10% or more if the Reporting Entity is publicly traded), check here.

Name of Officials and Principal Owners (for each person, please include a middle initial)	Title	Date of Birth	Percentage Ownership <i>(Enter 0% if not applicable)</i>
Name of each Business Entity owning 25% or more of Reporting Entity	Address	EIN	Percentage Ownership

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**II. REPORTING ENTITY INFORMATION**

2.0 The Reporting Entity for this questionnaire is:

Note: Select only one.

Legal Business Entity

*Note: If selecting this option, “Reporting Entity” refers to the entire Legal Business Entity for the remainder of the questionnaire. (SKIP THE REMAINDER OF SECTION II AND PROCEED WITH SECTION III.)*

Organizational Unit within and operating under the authority of the Legal Business Entity

SEE DEFINITIONS OF “REPORTING ENTITY” AND “ORGANIZATIONAL UNIT” FOR ADDITIONAL INFORMATION ON CRITERIA TO QUALIFY FOR THIS SELECTION.

*Note: If selecting this option, “Reporting Entity” refers to the Organizational Unit within the Legal Business Entity for the remainder of the questionnaire. (COMPLETE THE REMAINDER OF SECTION II AND ALL REMAINING SECTIONS OF THIS QUESTIONNAIRE.)*

**IDENTIFYING INFORMATION**

a) Reporting Entity Name

Address of the <u>Primary Place of Business</u> (street, city, state, zip code)	Telephone  ext.
---------------------------------------------------------------------------------	-----------------------

b) Describe the relationship of the Reporting Entity to the Legal Business Entity

c) Attach an organizational chart

d) Does the Reporting Entity have a DUNS Number?  Yes  No

If “Yes,” enter DUNS Number

e) Identify the designated manager(s) responsible for the business of the Reporting Entity.  
*For each person, include name and title. Attach additional pages if necessary.*

Name	Title



**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**INSTRUCTIONS FOR SECTIONS III THROUGH VII**

For each “Yes,” provide an explanation of the issue(s), relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). For each “Other,” provide an explanation which provides the basis for not definitively responding “Yes” or “No.” Provide the explanation at the end of the section or attach additional sheets with numbered responses, including the Reporting Entity name at the top of any attached pages.

<b>III. LEADERSHIP INTEGRITY</b>	
<i>Within the past five (5) years, has any current or former reporting entity official or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of the reporting entity with any government entity been:</i>	
3.0 <u>Sanctioned</u> relative to any business or professional permit and/or license?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.1 <u>Suspended, debarred, or disqualified</u> from any <u>government contracting process</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.2 The subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation for any business-related conduct?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
3.3 Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a <u>judgment</u> for: a) Any business-related activity; or b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Other
For each “Yes” or “Other” provide an explanation for the response and attach additional sheets with numbered responses if necessary:	

<b>IV. INTEGRITY – CONTRACT BIDDING</b>	
<i>Within the past five (5) years, has the reporting entity:</i>	
4.0 Been <u>suspended or debarred</u> from any <u>government contracting process</u> or been <u>disqualified</u> on any government procurement, permit, license, concession, franchise or lease, including, but not limited to, <u>debarment</u> for a violation of New York State Workers’ Compensation or Prevailing Wage laws or New York State Procurement Lobbying Law?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.1 Been subject to a denial or revocation of a government prequalification?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.2 Been denied a contract award or had a bid rejected based upon a <u>non-responsibility finding</u> by a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.3 Had a bid rejected on a <u>government contract</u> for failure to <u>make good faith efforts</u> on any <u>Minority-Owned Business Enterprise, Women-Owned Business Enterprise, Service-Disabled Veteran-Owned Business or Disadvantaged Business Enterprise</u> goal or <u>statutory affirmative action requirements</u> on a previously held contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.4 Agreed to a voluntary exclusion from bidding/contracting with a <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.5 Initiated a request to withdraw a bid submitted to a <u>government entity</u> in lieu of responding to an information request or subsequent to a formal request to appear before the <u>government entity</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**V. INTEGRITY – CONTRACT AWARD**

*Within the past five (5) years, has the reporting entity:*

- |                                                                                                                                                                             |                                                          |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 5.0 Been <u>suspended</u> , cancelled or <u>terminated for cause</u> on any <u>government contract</u> including, but not limited to, a <u>non-responsibility finding</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.1 Been subject to an <u>administrative proceeding</u> or civil action seeking specific performance or restitution in connection with any <u>government contract</u> ?     | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 5.2 Entered into a formal monitoring agreement as a condition of a contract award from a <u>government entity</u> ?                                                         | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:

**VI. CERTIFICATIONS/LICENSES**

*Within the past five (5) years, has the reporting entity:*

- |                                                                                                                                                                                                                                                                                                                                                      |                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 6.0 Had a revocation, <u>suspension</u> or <u>disbarment</u> of any business or professional permit and/or license?                                                                                                                                                                                                                                  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 6.1 Had a denial, decertification, revocation or forfeiture of New York State certification of <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , <u>Service-Disabled Veteran-Owned Business</u> or federal certification of <u>Disadvantaged Business Enterprise</u> status for other than a change of ownership? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered responses if necessary:

**VII. LEGAL PROCEEDINGS**

*Within the past five (5) years, has the reporting entity:*

- |                                                                                                                                                                                                                                                                                                                  |                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------|
| 7.0 Been the subject of an <u>investigation</u> , whether open or closed, by any <u>government entity</u> for a civil or criminal violation?                                                                                                                                                                     | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.1 Been the subject of an indictment, grant of immunity, <u>judgment</u> or conviction (including entering into a plea bargain) for conduct constituting a crime?                                                                                                                                               | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.2 Received any OSHA citation and Notification of Penalty containing a violation classified as <u>serious or willful</u> ?                                                                                                                                                                                      | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.3 Had a <u>government entity</u> find a willful prevailing wage or supplemental payment violation or any other willful violation of New York State Labor Law?                                                                                                                                                  | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.4 Entered into a consent order with the New York State Department of Environmental Conservation, or received an enforcement determination by any <u>government entity</u> involving a violation of federal, state or local environmental laws?                                                                 | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 7.5 Other than previously disclosed:<br>a) Been subject to fines or penalties imposed by <u>government entities</u> which in the aggregate total \$25,000 or more; or<br>b) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any <u>government entity</u> ? | <input type="checkbox"/> Yes <input type="checkbox"/> No |

For each “Yes,” provide an explanation for the response and attach additional sheets with numbered response if necessary:



**NEW YORK STATE**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**FOR-PROFIT BUSINESS ENTITY**

VIII. FINANCIAL AND ORGANIZATIONAL CAPACITY	
8.0 Within the past five (5) years, has the <u>Reporting Entity</u> received any <u>formal unsatisfactory performance assessment(s)</u> from any <u>government entity</u> on any contract?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.1 Within the past five (5) years, has the <u>Reporting Entity</u> had any <u>liquidated damages</u> assessed over \$25,000 for any reason, including failure to meet <u>Minority-Owned Business Enterprise</u> , <u>Women-Owned Business Enterprise</u> , <u>Service-Disabled Veteran-Owned Business</u> , or <u>Disadvantaged Business Enterprise goals</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.2 Within the past five (5) years, have any <u>liens, claims</u> or <u>judgments</u> (not including UCC filings) over \$25,000 been filed against the <u>Reporting Entity</u> which remain undischarged?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide an explanation of the issue(s), relevant dates, the Lien holder or Claimant's name(s), the amount of the <u>lien(s)</u> , the current status of the issue(s), and the balance of the <u>lien</u> or <u>judgment</u> not yet paid. Provide answer below or attach additional sheets with numbered responses.	
8.3 In the last seven (7) years, has the <u>Reporting Entity</u> initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "Initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with numbered responses.	
8.4 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any tax returns required by <u>federal</u> , state or local tax laws?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the taxing jurisdiction, the type of tax, the liability year(s), the tax liability amount the <u>Reporting Entity</u> failed to file/pay and the current status of the tax liability. Provide answer below or attach additional sheets with numbered responses.	
8.5 During the past three (3) years, has the <u>Reporting Entity</u> failed to file or pay any New York State unemployment insurance returns?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes," provide the years the <u>Reporting Entity</u> failed to file/pay the insurance, explain the situation and any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	
8.6 During the past three (3) years, has the <u>Reporting Entity</u> had any <u>government audit(s)</u> completed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
a) If "Yes," did any audit of the <u>Reporting Entity</u> identify any reported significant deficiencies in internal control, fraud, illegal acts, significant violations of provisions of contract or grant agreements, significant abuse or any <u>material disallowance</u> ?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If "Yes" to 8.6 a), provide an explanation of the issue(s), relevant dates, the <u>government entity</u> involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	



**NEW YORK STATE**  
**VENDOR RESPONSIBILITY QUESTIONNAIRE**  
**FOR-PROFIT BUSINESS ENTITY**

**IX. ASSOCIATED ENTITIES**

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.  
(See definition of "associated entity" for additional information to complete this section.)*

9.0 Does the Reporting Entity have any Associated Entities?

Yes  No

Note: All questions in this section must be answered if the Reporting Entity is either:

- An Organizational Unit; or
- The entire Legal Business Entity which controls, or is controlled by, any other entity(ies).

If "No," SKIP THE REMAINDER OF SECTION IX AND PROCEED WITH SECTION X.

If "Yes," provide the name, address and EIN of each Associated Entity and its relationship to the Reporting Entity.

9.1 Within the past five (5) years, has any Associated Entity Official or Principal Owner been charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for:

Yes  No

- a) Any business-related activity; or
- b) Any crime, whether or not business-related, the underlying conduct of which was related to truthfulness?

If "Yes," provide an explanation of the issue(s), the individual involved, their title and role in the Associated Entity, identify the Associated Entity's name(s), EIN(s), primary business activity, the individual's relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s).

9.2 Does any Associated Entity have any currently undischarged federal, New York State, New York City or New York local government liens or judgments (not including UCC filings) over \$50,000?

Yes  No

If "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the Lien holder or Claimant's name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

9.3 Within the past five (5) years, has any Associated Entity:

a) Been disqualified, suspended or debarred from any federal, New York State, New York City or other New York local government contracting process?

Yes  No

b) Been denied a contract award or had a bid rejected based upon a non-responsibility finding by any federal, New York State, New York City, or New York local government entity?

Yes  No

c) Been suspended, cancelled or terminated for cause (including for non-responsibility) on any federal, New York State, New York City or New York local government contract?

Yes  No

d) Been the subject of an investigation, whether open or closed, by any federal, New York State, New York City, or New York local government entity for a civil or criminal violation with a penalty in excess of \$500,000?

Yes  No

e) Been the subject of an indictment, grant of immunity, judgment, or conviction (including entering into a plea bargain) for conduct constituting a crime?

Yes  No

f) Been convicted of a criminal offense pursuant to any administrative and/or regulatory action taken by any federal, New York State, New York City, or New York local government entity?

Yes  No

g) Initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?

Yes  No

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**IX. ASSOCIATED ENTITIES**

*This section pertains to any entity(ies) that either controls or is controlled by the reporting entity.  
(See definition of "associated entity" for additional information to complete this section.)*

For each "Yes," provide an explanation of the issue(s), identify the Associated Entity's name(s), EIN(s), primary business activity, relationship to the Reporting Entity, relevant dates, the government entity involved, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.

**X. FREEDOM OF INFORMATION LAW (FOIL)**

10. Indicate whether any information supplied herein is believed to be exempt from disclosure under the Freedom of Information Law (FOIL).

Yes  No

Note: A determination of whether such information is exempt from FOIL will be made at the time of any request for disclosure under FOIL.

If "Yes," indicate the question number(s) and explain the basis for the claim.

**XI. AUTHORIZED CONTACT FOR THIS QUESTIONNAIRE**

Name	Telephone	Fax
	ext.	
Title	Email	

**NEW YORK STATE  
VENDOR RESPONSIBILITY QUESTIONNAIRE  
FOR-PROFIT BUSINESS ENTITY**

**Certification**

The undersigned: (1) recognizes that this questionnaire is submitted for the express purpose of assisting New York State government entities (including the Office of the State Comptroller (OSC)) in making responsibility determinations regarding award or approval of a contract or subcontract and that such government entities will rely on information disclosed in the questionnaire in making responsibility determinations; (2) acknowledges that the New York State government entities and OSC may, in their discretion, by means which they may choose, verify the truth and accuracy of all statements made herein; and (3) acknowledges that intentional submission of false or misleading information may result in criminal penalties under State and/or federal law, as well as a finding of non-responsibility, contract suspension or contract termination.

It being acknowledged and agreed that all responses included in this questionnaire are to the knowledge, information and belief of the Business Entity, the undersigned certifies under penalties of perjury that they:

**The undersigned certifies that he/she:**

- are knowledgeable about the submitting Business Entity's business and operations;
- have legal authority to bind the Business Entity;
- have read and understand all of the questions contained in the questionnaire, including all definitions;
- have not altered the content of the questionnaire in any manner;
- have reviewed and/or supplied full and complete responses to each question;
- have provided true, accurate and complete responses, including all attachments, if applicable;
- understand that New York State government entities will rely on the information disclosed in the questionnaire when entering into a contract with the Business Entity; and
- are under an obligation to update the information provided herein to include any material changes to the Business Entity's responses at the time of bid/proposal submission through the contract award notification, and may be required to update the information at the request of the New York State government entities or OSC prior to the award and/or approval of a contract, or during the term of the contract.

Signature of Owner/Official \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name of Signatory \_\_\_\_\_

Title \_\_\_\_\_

Name of Business \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_



**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER  
SUBSTITUTE FORM W-9:  
REQUEST FOR TAXPAYER IDENTIFICATION NUMBER & CERTIFICATION**

**TYPE OR PRINT INFORMATION NEATLY. PLEASE REFER TO INSTRUCTIONS FOR MORE INFORMATION.**

**Part I: Vendor Information**

1. Legal Business Name:	2. Business name/disregarded entity name, if different from Legal Business Name:
3. Entity Type (Check one only): <input type="checkbox"/> Individual Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Liability Co. <input type="checkbox"/> Corporation <input type="checkbox"/> Not For Profit <input type="checkbox"/> Trusts/Estates <input type="checkbox"/> Federal, State or Local Government <input type="checkbox"/> Public Authority <input type="checkbox"/> Disregarded Entity <input type="checkbox"/> Other _____	
<input type="checkbox"/> <b>Exempt Payee</b>	

**Part II: Taxpayer Identification Number (TIN) & Taxpayer Identification Type**

1. Enter your TIN here: *(DO NOT USE DASHES)*  
See instructions.      

--	--	--	--	--	--	--	--	--	--

2. Taxpayer Identification Type (check appropriate box):  
 Employer ID No. (EIN)     Social Security No. (SSN)     Individual Taxpayer ID No. (ITIN)     N/A (Non-United States Business Entity)

**Part III: Address**

1. Physical Address: Number, Street, and Apartment or Suite Number	2. Remittance Address: Number, Street, and Apartment or Suite Number
City, State, and Nine Digit Zip Code or Country	City, State, and Nine Digit Zip Code or Country

**Part IV: Certification and Exemption from Backup Withholding**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (TIN), and
2. I am a U.S. citizen or other U.S. person, and
3. (Check one only):  
 **I am not subject to backup withholding.** I am (a) exempt from back up withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, or  
 **I am subject to backup withholding.** I have been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, and I have not been notified by the IRS that I am no longer subject to back withholding.

**Sign Here:**

Signature	Title	Date
Print Preparer's Name	Phone Number	Email Address

**Part V: Vendor Primary Contact Information – Executive Authorized to Represent the Vendor**

Primary Contact Name:	Title:
Email Address: _____	Phone Number: _____

**DO NOT SUBMIT FORM TO IRS — SUBMIT FORM TO NYS ONLY AS DIRECTED**

## NYS Office of the State Comptroller Instructions for Completing Substitute Form W-9

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New York State (NYS) must obtain your correct Taxpayer Identification Number (TIN) to report income paid to you or your organization. NYS Office of the State Comptroller uses the Substitute Form W-9 to obtain certification of your TIN in order to ensure accuracy of information contained in its payee/vendor database and to avoid backup withholding.<sup>1</sup> We ask for the information on the Substitute Form W-9 to carry out the Internal Revenue laws of the United States. You are required to give us the information.

Any payee/vendor who wishes to do business with New York State must complete the Substitute Form W-9. Substitute Form W-9 is the only acceptable documentation. We will not accept IRS Form W-9.

### ***Part I: Vendor Information***

1. **Legal Business Name:** For individuals, enter the name of the person who will do business with NYS as it appears on the Social Security card or other required Federal tax documents. An organization should enter the name shown on its charter or other legal documents that created the organization. Do not abbreviate names.
2. **Business name/disregarded entity name, if different from Legal Business Name:** Enter your DBA name or another name your entity is known by.
3. **Entity Type:** Check the Entity Type doing business with New York State.

### ***Part II: Taxpayer Identification Number (TIN) and Taxpayer Identification Type***

The TIN provided must match the name in the "Legal Business Name" box to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, refers to IRS W-9 instructions for additional information. For other entities, it is your employer identification number (EIN). If you do not have a number or if the account is in more than one name, refer to IRS W-9 instructions for additional information.

1. **Taxpayer Identification Number:** Enter your nine-digit Social Security Number, Individual Taxpayer Identification Number (ITIN) or Employer Identification Number (EIN).
2. **Taxpayer Identification Type:** Check the type of identification number provided.

### ***Part III: Address***

1. **Physical Address:** Enter the location of where your business is physically located.
2. **Remittance Address:** Enter the address where payments should be mailed.

### ***Part IV: Certification and Exemption from Backup Withholding***

Check the appropriate box indicating your exemption status from backup withholding. Individuals and sole proprietors are not exempt from backup withholding. Corporations are exempt from backup withholding for certain types of payments. Refer to IRS Form W-9 instructions for additional information. The signature should be provided by the individual, owner, officer, legal representative, or other authorized person of the entity listed on the form. Certain exceptions to the signature requirement are listed in the IRS instructions for form W-9.

### ***Part V: Vendor Primary Contact Information***

Please provide the contact information for an executive at your organization. This individual should be the person who makes legal and financial decisions for your organization.

---

<sup>1</sup> According to IRS Regulations, OSC must withhold 28% of all payments if a payee/vendor fails to provide OSC its certified TIN. The Substitute Form W-9 certifies a payee/vendor's TIN.





Department of Taxation and Finance

# Contractor Certification

(Pursuant to Tax Law Section 5-a, as amended,  
effective April 26, 2006)

# ST-220-TD

(4/15)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business		City	State ZIP code
Contractor's mailing address (if different than above)		City	State ZIP code
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )	
Covered agency or state agency	Contract number or description	Covered agency telephone number ( )	
Covered agency address	City	State	ZIP code
Is the estimated contract value over the full term of the contract (but not including renewals) more than \$100,000?			
Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown at this time <input type="checkbox"/>			

## General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than \$100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency*, certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

**Note:** Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

**NYS TAX DEPARTMENT  
DATA ENTRY SECTION  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0826**

## Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

## Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



### Telephone assistance

**Sales Tax Information Center:** (518) 485-2889

To order forms and publications: (518) 457-5431

**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): (518) 485-5082



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_  
*(name)* *(title)*  
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

**Complete Sections 1, 2, and 3 below. Make only one entry in each section.**

**Section 1 – Contractor registration status**

- The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.
- The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 2 – Affiliate registration status**

- The contractor does not have any affiliates.
- To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

**Section 3 – Subcontractor registration status**

- The contractor does not have any subcontractors.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the \$300,000 cumulative sales threshold during such quarters on Schedule A of this certification.
- To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of \$300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

\_\_\_\_\_  
*(sign before a notary public)*

\_\_\_\_\_  
*(title)*

**Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding \$300,000 cumulative sales threshold**

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the \$300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

Column A – Enter **C** in column A if the contractor; **A** if an affiliate of the contractor; or **S** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner’s given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity’s principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

**Individual, Corporation, Partnership, or LLC Acknowledgment**

STATE OF \_\_\_\_\_ }  
: SS.:  
COUNTY OF \_\_\_\_\_ }

On the \_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that \_he resides at \_\_\_\_\_,

Town of \_\_\_\_\_,

County of \_\_\_\_\_,

State of \_\_\_\_\_; and further that:

*(Mark an X in the appropriate box and complete the accompanying statement.)*

(If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.

(If a corporation): \_he is the \_\_\_\_\_ of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(If a partnership): \_he is a \_\_\_\_\_ of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_ LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

\_\_\_\_\_  
Notary Public

Registration No. \_\_\_\_\_



# Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

# ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		\$
Contractor's telephone number	Covered agency name		
Covered agency address		Covered agency telephone number	

I, \_\_\_\_\_, hereby affirm, under penalty of perjury, that I am \_\_\_\_\_

(name)

(title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with \_\_\_\_\_  
(insert contract number or description)  
and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_

(sign before a notary public)

(title)

## Instructions

### General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

**Note:** Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

### When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).



Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_, before me personally appeared \_\_\_\_\_,
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
\_he resides at \_\_\_\_\_,
Town of \_\_\_\_\_,
County of \_\_\_\_\_,
State of \_\_\_\_\_; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): \_he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): \_he is the \_\_\_\_\_
of \_\_\_\_\_, the corporation described in said instrument; that, by authority of the Board
of Directors of said corporation, \_he is authorized to execute the foregoing instrument on behalf of the corporation for
purposes set forth therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on
behalf of said corporation as the act and deed of said corporation.
(If a partnership): \_he is a \_\_\_\_\_
of \_\_\_\_\_, the partnership described in said instrument; that, by the terms of said
partnership, \_he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth
therein; and that, pursuant to that authority, \_he executed the foregoing instrument in the name of and on behalf of said
partnership as the act and deed of said partnership.
(If a limited liability company): \_he is a duly authorized member of \_\_\_\_\_,
LLC, the limited liability company described in said instrument; that \_he is authorized to execute the foregoing instrument
on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, \_he executed
the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited
liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain
personal information pursuant to the New York State Tax Law, including but
not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096,
1142, and 1415 of that Law; and may require disclosure of social security
numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities
and, when authorized by law, for certain tax offset and exchange of tax
information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided
to certain state agencies for purposes of fraud prevention, support
enforcement, evaluation of the effectiveness of certain employment and
training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or
criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management,
NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone
(518) 457-5181.

Need help?

Visit our Web site at www.tax.ny.gov
• get information and manage your taxes online
• check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889
To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with
hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the
Americans with Disabilities Act, we will ensure that our
lobbies, offices, meeting rooms, and other facilities are
accessible to persons with disabilities. If you have questions
about special accommodations for persons with disabilities, call the
information center.

**ENCOURAGING USE OF NEW YORK STATE BUSINESSES  
IN CONTRACT PERFORMANCE**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor’s optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

Bidders/proposers can demonstrate their commitment to the use of New York State businesses by responding to the question below:

Will New York State Businesses be used in the performance of this contract?                        
Yes No

If yes, identify New York State businesses that will be used and attach identifying information.

Firm Name: \_\_\_\_\_

Signature \_\_\_\_\_ Date: \_\_\_\_\_

## **EEO, MWBE AND SDVOB PROGRAMS**

### **Forms:**

- I-1: EEO Policy Statement
- I-2: MWBE Staffing Plan
- I-3: MWBE and SDVOB Utilization Plan
- I-4: MWBE and SDVOB Waiver
- I-5: Monthly SDVOB Compliance Report

### **PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

#### **I. General Provisions**

- A. The New York State Gaming Commission (the “Commission”) is required to implement the provisions of New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”) for all State contracts, as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the Commission, to fully comply and cooperate with the Commission in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for New York State-certified minority and women-owned business enterprises (“MWBEs”). The Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) and other applicable federal, state, and local laws.
- C. Failure to comply with all the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the assessment of liquidated damages pursuant to Section VII of this Appendix and such other remedies are available to the Commission pursuant to the Contract and applicable law.



## II. MWBE Contract Goals

- A. For purposes of this solicitation, the Commission hereby establishes an overall goal of **30%** (13% MBE and 17% WBE) for MWBE participation based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the MWBE Contract Goals established in Section II-A hereof, the Contractor should reference the directory of MWBEs at the following internet address: <https://ny.newnycontracts.com>. Additionally, the Contractor is encouraged to contact the Division of Minority and Women's Business Development at (212) 803-2414 or [mwbebusinessdev@esd.ny.gov](mailto:mwbebusinessdev@esd.ny.gov) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. The Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a supplier that shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.
- D. The Contractor must document "good faith efforts," pursuant to 5 NYCRR § 142.8, to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. Such documentation shall include, but not necessarily be limited to:
1. Evidence of outreach to MWBEs;
  2. Any responses by MWBEs to the Contractor's outreach;
  3. Copies of advertisements for participation by MWBEs in appropriate general circulation, trade, and minority or women-oriented publications;
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Commission with MWBEs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for MWBE participation.

## III. Equal Employment Opportunity ("EEO")

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to the Contract.

B. In performing the Contract, the Contractor shall:

1. Ensure that each contractor and subcontractor performing work on the Contract shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, and rates of pay or other forms of compensation.
2. The Contractor shall submit an EEO policy statement to the Commission within seventy-two (72) hours after the date of the notice by the Commission to award the Contract to the Contractor.
3. If the Contractor, or Subcontractors, does not have an existing EEO policy statement, the Commission may provide the Contractor or Subcontractor a model statement (see Form I-1 Minority and Women-Owned Business Enterprises --Equal Employment Opportunity Policy Statement).
4. The Contractor's EEO policy statement shall include the following language:
  - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
  - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
  - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
  - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Staffing Plan—Form I-2

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. The Contractor shall complete the staffing plan form and submit it as part of their bid or proposal.

D. Workforce Audit Report

1. The Contractor shall submit a quarterly Workforce Audit Report, and shall require each of its subcontractors to submit a Workforce Audit Report, by the 10th day following the end of each quarter during the term of the contract. The form shall be submitted through the New York State Contract System (“NYSCS”) at <https://ny.newnycontracts.com>.
2. Separate forms shall be entered by the Contractor and any Subcontractors.
3. Pursuant to Executive Order #162, Contractors and Subcontractors are also required to report the gross wages paid to each of their employees for the work performed by such employees on the contract on a quarterly basis.

E. The Contractor shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and its subcontractors shall 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.

**IV. MWBE Utilization Plan – Form I-3**

- A. The Contractor shall complete a **proposed** MWBE Utilization Plan on Form I-3 and submit it as part of their bid or proposal. Upon execution of the contract, the Contractor shall submit a MWBE Utilization Plan through the NYSCS at <https://ny.newnycontracts.com>.
- B. The Contractor agrees to adhere to such MWBE Utilization Plan in the performance of the Contract.
- C. The Contractor further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Commission shall be entitled to any remedy provided herein, including but not limited to, a finding that the Contractor is non-responsive.

## **V. Waivers—Form I-4**

- A. If the Contractor, after making good faith efforts, is unable to achieve the MWBE Contract Goals stated herein, the Contractor may submit a request for a waiver on Form I-4. Such waiver request must be supported by evidence of the Contractor's good faith efforts to achieve the maximum feasible MWBE participation towards the applicable Contract Goals. The Commission shall evaluate the request and issue a written notice of approval or denial.
- B. If the Commission, upon review of the MWBE Utilization Plan, quarterly MWBE Contractor Compliance Reports described in Section VI, or any other relevant information, determines that the Contractor is failing or refusing to comply with the MWBE Contract Goals, and no waiver has been issued regarding such non-compliance, the Commission may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

## **VI. Quarterly MWBE Contractor Compliance Report**

The Contractor will be required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS at <https://ny.newnycontracts.com> by the 10th day following the end of each quarter during the term of the Contract.

## **VII. Liquidated Damages - MWBE Participation**

- A. Where the Commission determines that the Contractor is not in compliance with the requirements of this Appendix and the Contractor refuses to comply with such requirements, or if the Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Contractor shall be obligated to pay to the Commission liquidated damages.
- B. 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.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the Commission, the Contractor shall pay such liquidated damages to the Commission within sixty (60) days after they are assessed. Provided, however, that the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

## **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The New York State Gaming Commission (the “Commission”) recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of the Commission’s contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

### **I. SBVOB Contract Goals**

- A. The Commission hereby establishes an overall goal of 6% for SDVOB participation, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://ogs.ny.gov/veterans/>. Questions regarding compliance with SDVOB participation goals should be directed to the Commission’s Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see clause IV below).
  1. Evidence of outreach to SDVOBs;
  2. Any responses by SDVOBs to the Contractor’s outreach;
  3. Copies of advertisements for participation by SDVOBs in appropriate general circulation,
  4. The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the Commission with SDVOBs; and,
  5. Information describing specific steps undertaken by the Contractor to reasonably structure the Contract scope of work to maximize opportunities for SDVOB participation.

**II. SDVOB Utilization Plan – Form I-3**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed **proposed** SDVOB Utilization Plan on Form I-3 with their bid or proposal.
- B. The Contractor agrees to adhere to such SDVOB Utilization Plan in the performance of the Contract.
- C. The SDVOB Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the SDVOB Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of an SDVOB Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Commission.
- D. The Commission will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of the Commission's acceptance or issue a notice of deficiency.
- E. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Commission 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/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by the Commission, a request for a partial or total waiver of SDVOB participation goals on Form I-4. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. The Commission may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - 1. If a Bidder fails to submit an SDVOB Utilization Plan;
  - 2. If a Bidder fails to submit a written remedy to a notice of deficiency;
  - 3. If a Bidder fails to submit a request for waiver; or
  - 4. If the Commission determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.

- H. Contractor further agrees that a failure to use SDVOBs as agreed in the SDVOB Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Commission shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

### **III. Request for Waiver—Form I-4**

- A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at the Commission for guidance at [gam.sm.gamingcompliance@gaming.ny.gov](mailto:gam.sm.gamingcompliance@gaming.ny.gov).
- B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form I-4, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Commission at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, the Commission shall evaluate the request and issue a written notice of acceptance or denial.
- C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB 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.
- D. If the Commission, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (Form I-5) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, the Commission may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Commission at:

[gam.sm.gamingcompliance@gaming.ny.gov](mailto:gam.sm.gamingcompliance@gaming.ny.gov).

### **IV. Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.
2. Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.

3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Commission with certified SDVOBs whom the Commission determined were capable of fulfilling the SDVOB goals set in the Contract.
4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
5. Other information deemed relevant to the waiver request.

**V. Monthly SDVOB Contractor Compliance Report- Form I-5**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to the Commission during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using Form I-5 and should be completed by the Contractor and submitted to the Commission, by the 10th day following the end of each month during the term of the Contract, for the preceding month's activity to: [gam.sm.gamingcompliance@gaming.ny.gov](mailto:gam.sm.gamingcompliance@gaming.ny.gov).

**VI. Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.



## MWBE and SDVOB Participation / Equal Employment Opportunity Policy Statement

I, \_\_\_\_\_ (CONTRACTOR OR GRANT REPRESENTATIVE),

the \_\_\_\_\_ (GRANTEE/COMPANY NAME)

agree to adopt the following policies with respect to the project being developed or services rendered at

\_\_\_\_\_.

### NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (c) At the request of the Commission, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.
- (d) Organization shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The organization and its sub-vendors shall 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.
- (e) The organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

### MWBE PARTICIPATION (MWBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the MWBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to MWBE contractor associations.



- (2) Request a list of State-certified MWBEs from the Commission or search the directory in the NYS Contract System ([newnycontracts.com](http://newnycontracts.com)) and solicit bids from the listed vendors directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective MWBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by MWBEs and encourage the formation of joint venture and other partnerships among MWBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to MWBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting MWBE contract participation goals.
- (6) Ensure that progress payments to MWBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage MWBE participation.

**SDVOB PARTICIPATION (SDVOB)**

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the SDVOB contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified SDVOBs, including solicitations to contractor associations.
- (2) Request a list of State-certified SDVOBs from the Commission or search the directory (Office of General Services [ny.gov](http://ny.gov)) and solicit bids from the listed vendors directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective SDVOBs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by SDVOBs and encourage the formation of joint venture and other partnerships among SDVOB contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to SDVOBs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting SDVOB contract participation goals.
- (6) Ensure that progress payments to SDVOBs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage SDVOB participation.

Agreed on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

By: \_\_\_\_\_  
(SIGNATURE)

Print Name: \_\_\_\_\_

Title:



**Minority & Women-owned Business Enterprise-Equal Employment Opportunity Liaison**

\_\_\_\_\_ (name of designated contractor/grantee liaison) is designated as the Minority and Women-owned Business Enterprise Liaison responsible for administering the Minority and Women-owned Business Enterprises-Equal Employment Opportunity (MWBE-EEO) program.

**MWBE Contract Goals**

\_\_\_\_\_% Minority Business Enterprise Participation  
 \_\_\_\_\_% Women’s Business Enterprise Participation  
 \_\_\_\_\_% TOTAL/OVERALL MWBE Participation Goal

**EEO Contract Goals**

NOT APPLICABLE % Minority Labor Force Participation  
NOT APPLICABLE % Female Labor Force Participation

**SDVOB Contract Goals**

\_\_\_\_\_% Service Disabled Veteran Business Participation

\_\_\_\_\_  
 (Signature of Contractor’s Authorized Representative)

\*Name: \_\_\_\_\_  
 \*Company: \_\_\_\_\_  
 \*Title: \_\_\_\_\_  
 \*Phone: \_\_\_\_\_  
 \*Fax: \_\_\_\_\_  
 \*Address: \_\_\_\_\_  
 \_\_\_\_\_

## STAFFING PLAN

C202305

I-2

**Submit with Bid or Proposal – Instructions on page 2**

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force
<b>Offeror's Name:</b>		<input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor <b>Subcontractor's name</b> _____
<b>Offeror's Address:</b>		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

EEO-Job Category	Total Work force	Work force by Gender			Work force by Race/Ethnic Identification																				
		Total	Total	Total	White			Black			Hispanic			Asian			Native American			Disabled			Veteran		
		Male (M)	Female (F)	X (X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)
Officials/Administrators																									
Professionals																									
Technicians																									
Sales Workers																									
Office/Clerical																									
Craft Workers																									
Laborers																									
Service Workers																									
Temporary /Apprentices																									
Totals																									

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		Submit completed with bid or proposal MWBE 101 (Rev 03/11)

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (MWBE 101) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OMWBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL** any person who:
  - has a physical or mental impairment that substantially limits one or more major life activity(ies)
  - has a record of such an impairment; or
  - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male, Female, or X

## MWBE and SDVOB Utilization Plan

**INSTRUCTIONS:** This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE and SDVOB Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (MWBE) and/or Service Disabled Veteran Owned Business (SDVOB) under the contract. Attach additional sheets if necessary.

\* indicates mandatory fields

\* Contractor Name: \_\_\_\_\_

Address: \_\_\_\_\_

\* Representative Name: \_\_\_\_\_

Town, State & Zip: \_\_\_\_\_

\* Phone: \_\_\_\_\_

\* Contract/Project Number: \_\_\_\_\_

\* Fax: \_\_\_\_\_

RFP/RFQ/Solicitation Number: \_\_\_\_\_

\* Email: \_\_\_\_\_

\* MWBE Goal: MBE \_\_\_\_\_% + WBE \_\_\_\_\_% = MWBE GOAL \_\_\_\_\_%

\* Total Dollar Value of Contract/Grant: \$ \_\_\_\_\_

\* SDVOB Goal: \_\_\_\_\_%

1. * Certified MWBE or SDVOB Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. * Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. * Check Firm Type That Applies for Work Completed on this Project	6. * Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	
B.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	

## MWBE and SDVOB Utilization Plan

7. If unable to fully meet the MWBE and/or SDVOB goals set forth in the contract, the Contractor must submit a Waiver Request form.

<p>PREPARED BY (Signature): _____ DATE: _____</p> <p>Preparer's Name (Print or Type): _____</p> <p>Preparer's Title: _____</p> <p>Date: _____</p> <p>SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLE 15-A AND NYS VETERANS' SERVICES LAW ARTICLE 3, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.</p> <p>The MWBE Certification status of the firms listed on this form <b>MUST</b> be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises. _____          This directory is available at <a href="https://ny.newnycontracts.com">https://ny.newnycontracts.com</a>.</p> <p>The SDVOB Certification status of the firms listed on this form <b>MUST</b> be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses. _____          This directory is available at <a href="https://online.ogs.ny.gov/SDVOB/search">https://online.ogs.ny.gov/SDVOB/search</a>.</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;">TELEPHONE NO.:</td> <td style="width: 50%; padding: 5px;">EMAIL ADDRESS:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p><b><u>Policy Regarding Use of MWBE Suppliers and Brokers</u></b></p> <p>Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p><b>FOR CONSTRUCTION/CAPITAL PROJECTS</b> – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p><b>FOR ALL OTHER PROJECTS</b> - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p> </td> </tr> <tr> <td colspan="2" style="text-align: center; padding: 5px;"> <p><b>** FOR COMMISSION USE ONLY **</b></p> </td> </tr> <tr> <td style="padding: 5px;">REVIEWED BY:</td> <td style="padding: 5px;">DATE:</td> </tr> <tr> <td colspan="2" style="padding: 5px;"> <p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p> </td> </tr> </table>	TELEPHONE NO.:	EMAIL ADDRESS:	<p><b><u>Policy Regarding Use of MWBE Suppliers and Brokers</u></b></p> <p>Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.</p> <p><b>FOR CONSTRUCTION/CAPITAL PROJECTS</b> – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.</p> <p><b>FOR ALL OTHER PROJECTS</b> - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.</p>		<p><b>** FOR COMMISSION USE ONLY **</b></p>		REVIEWED BY:	DATE:	<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p>	
TELEPHONE NO.:	EMAIL ADDRESS:										
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<p><b>** FOR COMMISSION USE ONLY **</b></p>											
REVIEWED BY:	DATE:										
<p>UTILIZATION PLAN APPROVED?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> PARTIAL <input type="checkbox"/> NO Date: _____</p>											





# Waiver Request Form

Request for Waiver	
Contractor Name:	Fed ID No.:
Full Address:	Contract / Project Number:
Project Details (Project Name, Project Location):	Have you Previously submitted a Waiver Request? (YES/NO)
Current Contract Value:	MWBE Goal: MBE      % + WBE      % Overall MWBE Goal:      % SDVOB Goal:      %

By submitting this form and the required information, the Contractor certifies that every "Good Faith Effort" has been taken to promote MWBE and SDVOB participation pursuant to the MWBE and SDVOB requirements set forth under the contract. Review [5 NYCRR § 142.8](#) and [9 NYCRR § 252](#), Contractor's Good Faith Efforts, for the precise definition of "Good Faith Effort." Failure to adequately demonstrate Good Faith Efforts will result in a denial of your Waiver Request. It is the Contractor's responsibility to ensure that adequate, clear and complete information is presented to the Commission.

**\*UTILIZATION VALUE MET:**

MBE: \$\_\_\_\_\_ | WBE: \$\_\_\_\_\_ | SDVOB: \$\_\_\_\_\_

**\*CONTRACTOR IS REQUESTING :**

- MBE Waiver** – A waiver of the MBE Goal for this procurement is requested.  
REQUESTED MBE GOAL: \_\_\_\_\_%
- WBE Waiver** – A waiver of the WBE Goal for this procurement is requested.  
REQUESTED WBE GOAL: \_\_\_\_\_%
- OVERALL MWBE Waiver** – A waiver of the MWBE Goal for this procurement is requested.  
REQUESTED MWBE GOAL: \_\_\_\_\_%
- SDVOB Waiver** – A waiver of SDVOB Participation Goal for this procurement is requested.  
REQUESTED SDVOB GOAL: \_\_\_\_\_%

PREPARED BY (Signature): \_\_\_\_\_ Date: \_\_\_\_\_

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT THAT IT HAS MADE GOOD FAITH EFFORTS, PURSUANT TO 5 NYCRR §142.8 AND/OR 9 NYCRR §252, TO INCLUDE THE PARTICIPATION OF NEW YORK STATE CERTIFIED MINORITY AND WOMEN OWNED BUSINESSES AND SERVICE DISABLED VETERAN OWNED BUSINESSES IN THE ABOVE PROJECT OR CONTRACT. CONTRACTOR HEREBY AGREES TO PROVIDE ANY AND ALL RELEVANT DOCUMENTATION IN SUPPORT OF THE DEMONSTRATION OF ITS GOOD FAITH EFFORTS AND ACKNOWLEDGES THAT IT HAS PROVIDED WITH THIS WAIVER REQUEST ALL AVAILABLE DOCUMENTATION SUPPORTING ITS GOOD FAITH EFFORTS.

<b>*Name and Title of Preparer:</b>	<b>*Telephone Number:</b>	<b>*Email:</b>
-------------------------------------	---------------------------	----------------



## Waiver Request Form

### Contractor's Good Faith Efforts

- (a) Contractors must document their good faith efforts toward utilizing certified firms, including but not limited to, those identified within a utilization plan. Such documented efforts, shall include, at a minimum:
- (1) Copies of its solicitations of certified firms enterprises and any responses thereto;
  - (2) If responses to the contractor's solicitations were received, but a certified firm was not selected, the specific reasons that such firm was not selected;
  - (3) Copies of any advertisements for participation by certified firms timely published in appropriate general circulation, trade, MWBE and SDVOB oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
  - (4) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified firms enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
  - (5) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified firms.
- (b) In addition to the information provided by the contractor in subdivision (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) where applicable, whether the contractor submitted an amended utilization plan consistent with the subcontract or supplier opportunities in the contract;
  - (2) the number of certified firms in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
  - (3) the actions taken by the contractor to contact and assess the ability of certified firms located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
  - (4) whether the contractor provided relevant plans, specifications or terms and conditions to certified firms sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
  - (5) the terms and conditions of any subcontract or provision of suppliers offered to certified firms and a comparison of such terms and conditions with those offered in the ordinary course of the contractor's business and to other subcontractors or suppliers of the contractor;
  - (6) whether the contractor offered to make up any inability to comply with the certified firms goals in the subject State contract in other State contracts being performed or awarded to the contractor;
  - (7) the extent to which contractor's own actions, including but not limited to, any failure by contractor to discharge contractor's duties pursuant to this Part, Article 15-A of the Executive Law or Article 3 of the Veterans' Services Law, contributed to contractor's inability to meet the maximum feasible portion of the contract goals;
  - (8) whether the contractor knowingly utilized one or more certified firms, in the performance of the subject State contract, that contractor knew or reasonably should have known could not perform a commercially useful function.



### Waiver Request Form

- (9) whether the contractor submitted compliance reports, which identified certified firms that contractor knew or reasonably should have known did not perform a commercially useful function on a State contract on which goals were assigned. and
- (10) any other information that is relevant or appropriate to determining whether the contractor has demonstrated a good faith effort.

Submit with the Bid or Proposal.	<b>***** FOR COMMISSION USE ONLY *****</b>	
	REVIEWED BY:	DATE:
	<p>Waiver Granted: <input type="checkbox"/> YES    MBE: <input type="checkbox"/>    WBE: <input type="checkbox"/>    SDVOB: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver                      <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> *Conditional                        <input type="checkbox"/> Notice of Deficiency Issued _____</p> <p>* <u>Comments:</u></p> <hr/> <hr/> <hr/> <hr/> <hr/>	

**CONTRACTOR'S MONTHLY SDVOB COMPLIANCE REPORT (DUE ON THE 10<sup>TH</sup> DAY OF EACH MONTH FOR THE PRECEDING MONTH'S ACTIVITY AS EVIDENCE TOWARDS ACHIEVEMENT OF THE SDVOB GOALS ON THE CONTRACT**

Contract No.: \_\_\_\_\_

Contractor/Vendor Name, Address and Phone No.:	Contractor/Vendor Federal ID No.:	SDVOB Goals	Reporting Period	
			Month	Year
	Contract Name	%		
SDVOB Firm Name, Address and Phone Number (List All Firms)	Description of Work or Supplies Provided	SDVOB Payment	Total Monthly Payments from NYS	
Federal ID No.:		<input type="checkbox"/> No Payment This Month		
Federal ID No.:		<input type="checkbox"/> No Payment This Month		
Federal ID No.:		<input type="checkbox"/> No Payment This Month		
Federal ID No.:		<input type="checkbox"/> No Payment This Month		

_____ Signature	_____ Print Name and Title	_____ Date
<b>Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.</b>		For Commission's Use Only
		<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Reviewed By:</td> <td style="width: 50%;">Date:</td> </tr> </table>
Reviewed By:	Date:	



**Vendor Assurance of No Conflict of Interest or Detrimental Effect**

The individual or entity (hereinafter referred to as "the Firm") offering to provide services pursuant to the RFP and Contract, as a contractor, joint venture contractor, subcontractor, or consultant, attests that its performance of the services outlined in the RFP and Contract does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

1. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;
2. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;
3. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm's ability to carry out its obligations under any existing contracts between the Firm and the State;
4. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;
5. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
6. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;
7. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and
8. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment,

hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to the RFP should note that the State recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The State will review the nature of any such new relationship and reserves the right to terminate the Contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title:

Signature:

Date:

This form must be signed by an authorized executive or legal representative of the Firm.

## Statement on Sexual Harassment

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

Contractor certifies that this statement provided to the Agency with respect to State Finance Law §139 (l) is complete, true and accurate.

---

**Authorized Signatory**

---

**Signature**

---

**Title**

---

**Company Name**

### Anti-Discrimination EO 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law. 3

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Contractor:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_



## Certification Under Executive Order No. 16 Prohibiting State Agencies and Authorities from Contracting with Businesses Conducting Business in Russia

Executive Order No. 16 provides that “all Affected State Entities are directed to refrain from entering into any new contract or renewing any existing contract with an entity conducting business operations in Russia.” The complete text of Executive Order No. 16 can be found [here](#).

The Executive Order remains in effect while sanctions imposed by the federal government are in effect. Accordingly, vendors who may be excluded from award because of current business operations in Russia are nevertheless encouraged to respond to solicitations to preserve their contracting opportunities in case the sanctions are lifted during a solicitation or even after award in the case of some solicitations.

As defined in Executive Order No. 16, an “entity conducting business operations in Russia” means an institution or company, wherever located, conducting any commercial activity in Russia or transacting business with the Russian Government or with commercial entities headquartered in Russia or with their principal place of business in Russia in the form of contracting, sales, purchasing, investment, or any business partnership.

Is Vendor an entity conducting business operations in Russia, as defined above? Please answer by checking one of the following boxes:

1. No, Vendor does not conduct business operations in Russia within the meaning of Executive Order No. 16.
- 2.a. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but has taken steps to wind down business operations in Russia or is in the process of winding down business operations in Russia. (Please provide a detailed description of the wind down process and a schedule for completion.)
- 2.b. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16 but only to the extent necessary to provide vital health and safety services within Russia or to comply with federal law, regulations, executive orders, or directives. (Please provide a detailed description of the services being provided or the relevant laws, regulations, etc.)
3. Yes, Vendor conducts business operations in Russia within the meaning of Executive Order No. 16.

The undersigned certifies under penalties of perjury that they are knowledgeable about the Vendor’s business and operations and that the answer provided herein is true to the best of their knowledge and belief.

Vendor Name: \_\_\_\_\_  
(legal entity)

By: \_\_\_\_\_  
(signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## **INSURER QUALIFICATIONS AND INSURANCE REQUIREMENTS**

### **Insurer Qualifications**

All insurance required under this RFP must be written by a company with a current rating of “A-” or better as rated by A.M. Best & Co., that has a record of successful continuous operation, that is licensed, admitted, and authorized to do business in the State of New York, and that is approved by the New York State Gaming Commission (the “Commission”).

Required coverage and limits must be put into effect as of the effective date of the Contract and must remain in effect throughout the term of the Contract, as determined by the Commission.

To the extent that lesser, incomplete, or improper insurance coverage is offered and/or procured by the Contractor, the Contractor acknowledges and agrees that it is financially responsible for any shortages, discrepancies, and liabilities remaining if coverage is denied or not available for a claim made that would otherwise have been covered by the insurance requirements herein.

To the extent that the Contractor is self-insured for any portion of the required insurance program, the Contractor must provide a letter explaining the substantive coverage provided through self-insurance and the limits of such self-insurance, as signed by the Contractor authorized representative with direct knowledge of and responsibility for that insurance/risk management program. The Contractor is allowed to use such self-insurance in place of any portion of the required insurance program, only if authorized by the Commission.

### **Insurance Requirements**

Prior to the start of work the Contractor shall procure at its sole cost and expense and shall maintain in force at all times during the term of the Contract, policies of insurance as herein below set forth, written by companies authorized by the New York State Department of Financial Services to issue insurance in the State of New York (“Admitted Carriers”).

Upon award, the Contractor shall deliver to the Commission evidence of such insurance coverage as defined below. In the event there is a claim asserted that is covered by insurance, the Contractor shall make available for inspection to the Commission upon the Commission’s request, at Commission headquarters, during reasonable business hours, any applicable policy required by the Contract.

Throughout the Contract period, the Contractor shall notify the Commission of any material changes to the policy coverages, or any cancellations prior to the expiration date. The insurance carrier shall also send notification of cancellation, termination, or failure to renew any policy in accordance with the policy provisions when practicable.

## **General Conditions**

A. **Conditions Applicable to Insurance.** All policies of insurance required by the RFP and the Contract must meet the following requirements:

**1. Coverage Types and Policy Limits.** The types of insurance coverage and policy limits required from the Contractor are specified in Paragraph B below – Specific Coverages and Limits.

**2. Policy Forms.** Policies must be written on an **occurrence** basis, except as may be otherwise specifically provided herein, or agreed to in writing by the Commission. Under certain circumstances, the Commission may elect to accept policies written on a claims-made basis provided that, at a minimum, the policy remains in force throughout the performance of the services and for three (3) years after completion of the Contract. If the policy is cancelled or not renewed during that time, the Contractor must purchase at its sole expense Discovery Clause coverage sufficient to complete the 3-year period after completion of the Contract. Written proof of this extended reporting period must be provided to the Commission prior to the expiration or cancellation of the policy.

**3. Certificates of Insurance/Notices.** The Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under the Contract. Certificates shall be mailed using the contact information provided in Part 1 of this RFP. Copies of each full policy shall be provided to the Commission by the Contractor upon request.

Unless otherwise agreed, insurance policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior written notice to the Commission.

Certificates of Insurance shall:

- a. be in the form approved by the Commission.
- b. disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the RFP and the Contract.
- c. specify the Additional Insureds and Named Insureds as required herein.
- d. be signed by an authorized representative of the insurance carrier or producer.

**4. Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary, and not on an excess or contributing, basis as to any other insurance that may be available to the State or the Commission for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by the State or the Commission shall be

excess to and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in either party's policy of insurance.

**5. Policy Renewal/Expiration.** At least 14 days prior to the expiration of any insurance policy required by the Contract and this Appendix, evidence of renewal or replacement policies of insurance with terms no less favorable to the State and the Commission than the expiring policies shall be delivered to the Commission in the manner required for service of notice in Paragraph A.3 above. If, at any time during the term of the Contract, the coverage provisions and limits of the insurance policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to the Commission, the Contractor shall immediately cease work on the project. The Contractor shall not resume work on the project outlined within the RFP and the Contract until authorized to do so by the Commission. Any delay, time lost, or additional cost incurred as a result of the Contractor not having the insurance required by the Contract, or not providing proof of same in a form acceptable to the Commission, shall not give rise to a delay claim or any other claim against the Commission. Should the Contractor fail to provide or maintain any insurance required by this Contract, or fail to provide valid proof of insurance to the Commission, the Commission may withhold further Contract payments, treat such failure as a breach or default of the Contract, and/or, after providing written notice to the Contractor, require the Contractor's Surety, if any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

**6. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the Commission contact identified in the Contract Award Notice after renewal or upon request by the Commission. This requirement means that the Contractor shall provide any applicable insurance documents to the Commission as soon as possible, but in no event later than the following time periods:

- a. For certificates of insurance: five business days from request or renewal, whichever is later;
- b. For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
- c. For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
- d. For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
- e. For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: five business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor has promptly requested the insurance documents from its broker or insurer and has thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to the Commission, but fails to provide the documents within the timeframes above, the Commission may extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days from the Commission's original request.

**7. *Self-Insured Retention/Deductibles.*** Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within any self-insured retention or deductible.

**8. *Subcontractors.*** Should the Contractor engage a subcontractor, the Contractor shall endeavor to impose the same insurance requirements of this document on the subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the subcontractor. An Additional Insured endorsement evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and shall be provided to the Commission upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the below-named Additional Insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required pursuant to this section had the subcontractor obtained insurance policies to provide such defense and indemnity. Proof of insurance or self-insured status shall be supplied to the Commission. To the extent that a subcontractor does not obtain the insurance requirements outlined above, the Contractor, through insurance or self-insurance, shall supplement the subcontractor's insufficient or incomplete insurance coverage to ensure that the State and the Commission are made whole.

**9. *Additional Insured.*** In each of the liability insurance policies required below, the Contractor shall cause coverage to be included for ongoing and completed operations, including, but not limited to, during any products and completed operations phases, naming as Additional Insureds the following:

the State of New York and the New York State Gaming Commission, and their respective commissioners, officers, members, agents, and employees.

An Additional Insured endorsement evidencing such coverage shall be provided to the Commission by or on behalf of the Contractor within 30 days of renewal and upon request. . The "Additional Insured" coverage shall be provided and available without limiting the scope of coverage available based on the source of negligent conduct otherwise covered under the pertinent insurance policy. In other words, the "Additional Insured" coverage conferred should be the same as if the Additional Insureds were included as Named Insureds on the insurance policy. For a Contractor that is utilizing its self-insurance as per the Commission's pre-approval, the Contractor shall be obligated to defend and indemnify the above-named Additional Insureds in the same manner that

the Contractor would have been required to defend and indemnify pursuant to this Appendix had the Contractor obtained insurance policies that included the required Additional Insured endorsements and insurance coverage. No endorsement or exclusions shall be included within any insurance policy to reduce, limit, or exclude the State of New York's or the Commission's full positions each as an Additional Insured.

**10. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

**B. Specific Coverages and Limits.** The types of insurance and minimum policy limits shall be as provided below.

**1. General Liability.** Commercial General Liability Insurance (CGL), covering the liability of the Contractor for bodily injury, property damage, and personal/advertising injury arising from all work and operations under this Contract. The limits under such policy shall not be less than the following:

- Each Occurrence limit: \$2,000,000
- General Aggregate: \$4,000,000
- Products/Completed Operations  
should equal the General Aggregate limit
- Personal and Advertising Injury \$2,000,000
- Property Damage \$50,000
- Medical Expense \$5,000

Coverage shall include, but not be limited to, the following: premises liability; independent Contractors; blanket contractual liability, including tort liability of another assumed in a Contract; defense and/or indemnification obligations, including obligations assumed under this Contract; cross-liability for additional insureds; products/completed operations for a term of no less than three years, commencing upon acceptance of the Contractor's and any subcontractor's work, as required by the Contract; explosion, collapse, and underground hazards; contractor means and methods; liability resulting from Section 240 or Section 241 of the New York State Labor Law.

The following ISO forms must be endorsed to the CGL policy:

- CG 20 37 12 19 or the equivalent
- CG 20 10 12 19 or the equivalent
- CG 20 38 12 19 or the equivalent

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

Personal and Advertising Injury coverage must cover claims arising from, but not limited to, occurrences committed by the Contractor, including, but not limited to, the following:

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

The CGL policy, and any umbrella/excess policies used to meet the “Each Occurrence” limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such policy(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Commission. Any other insurance maintained by the Commission shall be in excess of and shall not contribute with the Contractor’s or any subcontractor’s insurance, regardless of the “other insurance” clause contained in either party’s policy of insurance.

**2. Professional Errors and Omissions.** The Contractor shall procure and maintain during, and for a period of two years after completion of, the Contract, Professional Errors and Omissions Insurance in the amount of \$10,000,000 issued to and covering damage for liability imposed on the Contractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render services required by this Contract.

Said insurance shall provide coverage for damages arising from work and operations required by the Contract, including, but not limited to, errors, omissions, printing or production problems of any type caused by the Contractor or its subcontractors, regardless of negligence. Claims against the insurance may be invoked when a game’s prize redemption exceeds the number of prizes at any prize level in a game’s End of Production Prize Structure. . The insurance for such over-redemption shall be enforced through thirteen (13) months following the official announced end of game for each game.

The insurance policy shall include coverage for third-party fidelity including cyber theft, if such coverage is not provided for in a separate Data Breach and Privacy/Cyber Liability policy.

**3. Property.** The Contractor must maintain insurance on all buildings, furniture, fixtures, computer and communications equipment used in operating and supporting as the services required in the Contract, in an amount equal to or greater than the actual replacement cost thereof. Coverage must include a Property Floater to insure personal property including, but not limited to, contents, equipment, and mobile items, against fire, theft, collision flood, etc.

**4. Business Automobile Liability.** The Contractor shall maintain liability insurance arising out of the use of automobiles in connection with performance under the Contract for owned, leased, non-owned, and/or hired vehicles with limits of not less than \$1,000,000 for each occurrence.

**5. Crime.** The Contractor must maintain crime insurance with a limit of not less than \$3,000,000 protecting the State of New York and the Commission against losses resulting from fraudulent or dishonest acts by the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors.

**6. Data Breach and Privacy/Cyber Liability.** The Contractor must maintain insurance covering the failure to protect confidential information and failure of the security of the Contractor's computer systems due to the actions of the Contractor, any subcontractors, or any officer, employee or agent of the Contractor or any subcontractors, which results in unauthorized access to confidential data. Said insurance shall be maintained with a limit of not less than \$3,000,000.

Said insurance shall provide coverage for damages arising from, but not limited to, the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Disclosure or use of personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Computer network systems attacks;
- Introduction, implementation, or spread of malicious software code;
- Unauthorized access and use of computer systems;
- Website media liability; and
- Cyber theft of customers' property, including, but not limited to, money and securities.

In lieu of separate policies in "5" and "6" above, one policy could be provided to cover Crime, Data Breach, and Privacy/Cyber Liability for \$6,000,000.

**7. Media Liability Insurance.** To the extent that Personal and Advertising Liability insurance is not available to, or excluded from coverage for, the Contractor under the CGL Policy because the Contractor is a business engaged in advertising, publishing, broadcasting, or similar activities, the Contractor must obtain separate Media Liability insurance coverage with a limit of not less than \$5,000,000 to cover claims arising from, but not limited to, occurrences committed by the Contractor such as:

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

**8. Workers' Compensation and Disability.** For work to be performed in New York State, the Contractor shall provide and maintain insurance coverage during the life of the Contract for the benefit of such employees as are required to be covered by the New York State Workers' Compensation Law ([www.wcb.ny.gov](http://www.wcb.ny.gov)).

Evidence of New York State Workers' Compensation and Employers Liability coverage and New York State Disability Benefits coverage, or exemption from coverage, must be provided on **one** of the following forms specified by the Commissioner of the New York State Workers' Compensation Board. For forms and guidance, the Board's website is:

[http://www.wcb.ny.gov/content/main/forms/Forms\\_EMPLOYER.jsp](http://www.wcb.ny.gov/content/main/forms/Forms_EMPLOYER.jsp)

A. Workers' Compensation and Employers Liability Coverage:

- **Form CE-200** - Certificate of Attestation of Exemption from NYS Workers' Compensation and/or Disability Benefits Coverage; or
- **Form C-105.2** - (September 2015, or most current version) – Certificate of NYS Workers' Compensation Insurance Coverage, sent to the Commission by the Contractor's insurance carrier upon request; or
- **Form U-26.3** – NY State Insurance Fund Certificate of Workers' Compensation Coverage from the State Insurance Fund. Contractor must request that the State Insurance Fund send this form to the Commission; or



- **Form SI-12** – Affidavit Certifying That Compensation Has Been available from the New York State Workers' Compensation Board's Self- Insurance Office; or
- **Form GSI-105.2** – Certificate of Participation in Workers' Compensation Group Board-approved self-insurance, available from the Contractor's Group Self-Insurance Administrator.

B. Disability Benefits:

- **Form CE-200** - Certificate of Attestation of Exemption (New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required); or
- **Form DB-120.1** (September 2015 or most current version), Certificate of NYS Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the Commission.
- **Form DB-155**, Compliance with Disability Benefits Law.

**All forms must name THE NEW YORK STATE GAMING COMMISSION as the Entity Requesting Proof of Coverage (*i.e.*, the entity being listed as the Certificate Holder).**

**All forms are valid for one year from the date the form is signed/stamped, or until policy expiration, whichever is earlier. (ACORD forms are NOT acceptable proof of Workers' Compensation insurance coverage).**

## **BOND REQUIREMENTS**

All required bonds must be issued by reliable surety companies which are “A” or higher rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Commission.

### **PROPOSAL VALIDITY AND PROPOSAL BOND**

Proposals must remain valid for a period of one-hundred eighty (180) days.

Each Bidder must submit a Proposal Bond with its Proposal. The Proposal Bond must be acceptable to the New York State Gaming Commission (the “Commission”) in form and substance, and issued by a qualified issuer as described below, in the amount of five hundred thousand dollars (\$500,000). This Proposal Bond must guarantee the availability of the goods and services at the price(s) quoted in the Bidder’s Proposal for a period of 180 days after submission of the Proposal. In lieu of the Proposal Bond, the Commission will accept a certified check from the Bidder in this amount that will remain valid for 180 days after submission of the Proposal. The check or Proposal Bond shall be made payable to the “New York State Gaming Commission”.

An unsuccessful Bidder’s check or Proposal Bond will be returned to the unsuccessful Bidder upon the award of the Contract. The check or Proposal Bond of the Bidder awarded the Contract (the “Successful Bidder”) will be retained by the Commission until the Contract is signed and approved, and until the Commission is furnished with an acceptable Performance Bond. The check or Proposal Bond will be forfeited to the Commission in its entirety if the Successful Bidder fails to submit timely the Performance Bond or other security, as required, or fails to sign the Contract when required to do so by the Commission.

### **LITIGATION BOND**

Each Bidder must submit with the Bidder’s Proposal a Litigation Bond in the amount of two million dollars (\$2,000,000). A claim upon a Bidder’s Bond may be made by the Commission if such Bidder sues the Commission, the State of New York, or any of their respective officers, employees, representatives, other contractors, or sales agents with regard to any matter relating to this RFP, determination of responsiveness of the Commission or the award of a contract pursuant to this RFP; and the Commission or other defendant is the prevailing party in such suit.

The Litigation Bond shall provide for payment of the Commission’s and State of New York’s reasonable attorneys’ fees, expenses and court costs resulting from such litigation, and shall remain in effect for a period of two (2) years from the date of submission of the Proposal.

### PERFORMANCE BOND – SUCCESSFUL PRIMARY BIDDER

Upon notification of the respective Contract award, a Successful Bidder will be required to obtain a Performance Bond or other acceptable form of security in the amount of \$2,000,000 dollars (\$2,000,000). The Performance Bond shall be maintained throughout the term of any resulting Contract, and any extension or renewal thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Bidder defaults in the performance of the Contract.

The Performance Bond must be available to pay the Commission any liquidated damages assessed by the Commission against the Successful Bidder under the Contract, if such liquidated damages have not otherwise been paid to the Commission within thirty (30) calendar days of the Commission's written notice to the Successful Bidder that liquidated damages are due to the Commission.

Other forms of security may be acceptable but are subject to the Commission's discretion. Successful Bidder's failure to post a replacement security within seven (7) days after notice from the Commission that the Successful Bidder's proposed security is inadequate shall be grounds for the Commission's immediate termination of the Contract and/or a claim on the Proposal Bond or check provided in lieu of a Proposal Bond.

Along with its Proposal, each Bidder must include a letter from a qualified surety company or agent acting on behalf of such surety stating that the Bidder will be able to secure a Performance Bond as required by the RFP, should the Bidder be a Successful Bidder for whichever Lot the Bidder submitted its Proposal.

### PERFORMANCE BOND – SUCCESSFUL SECONDARY AND TERTIARY BIDDERS

Upon notification of the respective Contract award, a Successful Bidder will be required to obtain a Performance Bond or other acceptable form of security in the amount of \$1,000,000 dollars (\$1,000,000). The Performance Bond shall be maintained throughout the term of any resulting Contract, and any extension or renewal thereof. The Performance Bond may be paid in full or in part to the Commission if the Successful Bidder defaults in the performance of the Contract.

Other forms of security may be acceptable but are subject to the Commission's discretion. Successful Bidder's failure to post a replacement security within seven (7) days after notice from the Commission that the Successful Bidder's proposed security is inadequate shall be grounds for the Commission's immediate termination of the Contract and/or a claim on the Proposal Bond or check provided in lieu of a Proposal Bond.

Along with its Proposal, each Bidder must include a letter from a qualified surety company or agent acting on behalf of such surety stating that the Bidder will be able to secure a Performance Bond as required by the RFP, should the Bidder be a Successful Bidder for whichever Lot the Bidder submitted its Proposal.



**RFP: C202305 – Lottery Scratch-off Ticket Printing and Services**

**BIDDER ACKNOWLEDGEMENT OF AMENDMENT**

Amendment Number: \_\_\_\_\_

Date Issued: \_\_\_\_\_

Summary:

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

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

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

## New York Lottery Scratch-off Game Pricing Schedule

Bidder Name:   
Bidder FEIN:

Enter Grand Total from each subsequent page of the Attachment

<b>Attachment 2-A:</b>	<u>\$0.00</u>
<b>Attachment 2-B:</b>	<u>\$0.00</u>
<b>Attachment 2-C:</b>	<u>\$0.00</u>
<b>Attachment 2-D:</b>	<u>\$0.00</u>
<b>Attachment 2-E:</b>	<u>\$0.00</u>
<b>Attachment 2-F:</b>	<u>\$0.00</u>
<b>Attachment 2-G:</b>	<u>\$0.00</u>
<b>Attachment 2-H:</b>	<u>\$0.00</u>

Base Tickets 2-A through A-F:	\$0.00
Specified Options 2-G:	\$0.00
Management Fee 2-H:	\$0.00

Authorized Bidder Representative's Signature:

**New York Lottery  
Scratch-off Game Pricing Schedule**

Bidder Name:

Ticket Size: **3" High x 4" Wide**

Order Quantity	Base price for packs of 250 tickets		% + (-) of base price for packs of 125 tickets	% + (-) of base price for packs of 100 tickets
	10-pt virgin recyclable ticket stock, coated two (2) sides (Price per 1,000 tickets)	10-pt recycled, recyclable ticket stock, coated two (2) sides (Price per 1,000 tickets)		
Under 5,000,000				
5,000,001 10,000,000				
10,000,001 15,000,000				
15,000,001 20,000,000				
20,000,001 30,000,000				
30,000,001 40,000,000				
40,000,001 50,000,000				
50,000,001 & Over				

Estimated Annual Usage*													
10-pt virgin recyclable ticket stock, coated two (2) sides	Extended Price Base Virgin (E x M)/1000	Extended Price Packs of 125 (E x I)/(M/1000)	Extended Price Packs of 100 (E x K)/(M/1000)	Extended Cost Base Virgin (N)	Extended Cost Packs of 125 (N+O)	Extended Cost Packs of 100 (N+P)	10-pt recycled, recyclable ticket stock, coated two (2) sides	Extended Price Base recycled (G x T)/1000	Extended Price Packs of 125 (G x I)/(T/1000)	Extended Price Packs of 100 (G x K)/(T/1000)	Extended Cost Base recycled (U)	Extended Cost Packs of 125 (U + V)	Extended Cost Packs of 100 (U + W)
4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
16,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	16,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	20,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
30,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	30,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
35,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	35,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
40,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	40,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
45,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	45,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	50,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
55,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	55,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
60,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	60,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Estimated Annual Usage 10 pt virgin = \$0.00

Estimated Annual Usage 10 pt recyclable = \$0.00

Data shall be entered in any of the yellow cells.

Provide pricing for Base Ticket Requirements as required in this RFP (Section 2.2 L)

\*Estimated Annual Usage is for evaluation purposes only. Payment will be based on actual usage.

**New York Lottery  
Scratch-off Game Pricing Schedule**

Bidder Name:

**Ticket Size: 4" High x 4" Wide**

Order Quantity		Base price for packs of 250 tickets	Base price for packs of 250 tickets	% + (-) of base price for packs of 125 tickets	% + (-) of base price for packs of 100 tickets
		10-pt virgin recyclable ticket stock, coated two (2) sides  (Price per 1,000 tickets)	10-pt recycled, recyclable ticket stock, coated two (2) sides  (Price per 1,000 tickets)		
Under	5,000,000				
5,000,001	10,000,000				
10,000,001	15,000,000				
15,000,001	20,000,000				
20,000,001	30,000,000				
30,000,001	40,000,000				
40,000,001	50,000,000				
50,000,001	& Over				

Estimated Annual Usage*													
10-pt virgin recyclable ticket stock, coated two (2) sides	Extended Price Base Virgin (E x M)/1000	Extended Price Packs of 125 (E x I)/(M/1000)	Extended Price Packs of 100 (E x K)/(M/1000)	Extended Cost Base Virgin (N)	Extended Cost Packs of 125 (N+O)	Extended Cost Packs of 100 (N+P)	10-pt recycled, recyclable ticket stock, coated two (2) sides	Extended Price Base recycled (G x T)/1000	Extended Price Packs of 125 (G x I)/(T/1000)	Extended Price Packs of 100 (G x K)/(T/1000)	Extended Cost Base recycled (U)	Extended Cost Packs of 125 (U + V)	Extended Cost Packs of 100 (U + W)
	4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	4,000,000	\$0.00	\$0.00	\$0.00	\$0.00
8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
18,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	18,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Estimated Annual Usage 10 pt virgin = \$0.00

Estimated Annual Usage 10 pt recyclable = \$0.00

Data shall be entered in any of the yellow cells.

Provide pricing for Base Ticket Requirements as required in this RFP (Section 2.2 L)

\*Estimated Annual Usage is for evaluation purposes only. Payment will be based on actual usage.

**New York Lottery  
Scratch-off Game Pricing Schedule**

Bidder Name

Ticket Size: **6" High x 4" Wide**

Order Quantity	Base price for packs of 250 tickets		Base price for packs of 250 tickets		Estimated Annual Usage			Estimated Annual Usage				Estimated Annual Usage											
	10-pt virgin recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	10-pt recycled, recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	% + ( ) of base price for packs of 100 tickets	% + ( ) of base price for packs of 50 tickets	% + ( ) of base price for packs of 25 tickets	10-pt virgin recyclable ticket stock, coated two (2) sides	Extended Price Base Virgin (E x O)/1000	Extended Price Packs of 100 (E x I)/O/1000	Extended Price Packs of 50 (E x K)/O/1000	Extended Price Packs of 25 (E x M)/O/1000	Extended Cost Base Virgin (P)	Extended Cost Packs of 100 (P+Q)	Extended Cost Packs of 50 (P+R)	Extended Cost Packs of 25 (P+S)	10-pt recycled, recyclable ticket stock, coated two (2) sides	Extended Price Base recycled (G x X)/1000	Extended Price Packs of 100 (G x I)/(X/1000)	Extended Price Packs of 50 (G x K)/(X/1000)	Extended Price Packs of 25 (G x M)/(X/1000)	Extended Cost Base recycled (Y)	Extended Cost Packs of 100 (Y+Z)	Extended Cost Packs of 50 (Y + AA)	Extended Cost Packs of 25 (Y + AB)
Under	5,000,000					4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
5,000,001	10,000,000					8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10,000,001	15,000,000					12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
15,000,001	20,000,000					16,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	16,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20,000,001	30,000,000					25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
30,000,001	40,000,000					38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
40,000,001	50,000,000					47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50,000,001	& Over					65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
											Estimated Annual Usage 10 pt virgin				\$0.00	Estimated Annual Usage 10 pt recyclable				\$0.00			

Data shall be entered in any of the yellow cells.  
Provide pricing for Base Ticket Requirements as required in this RFP (Section 2.2 L)  
\*Estimated Annual Usage is for evaluation purposes only. Payment will be based on actual usage.



**New York Lottery  
Scratch-off Game Pricing Schedule**

Bidder Name

Ticket Size: 8" High x 4" Wide

Order Quantity	10-pt virgin recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	10-pt recycled, recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	% + ( ) of base price for packs of 30 tickets	% + ( ) of base price for packs of 25 tickets	% + ( ) of base price for packs of 20 tickets	Estimated Annual Usage								Estimated Annual Usage																							
						10-pt virgin recyclable ticket stock, coated two (2) sides <i>(F x D)(1/1000)</i>	Extended Price Packs of 30 <i>(E x K)(O/1000)</i>	Extended Price Packs of 25 <i>(E x K)(O/1000)</i>	Extended Price Packs of 20 <i>(E x M)(O/1000)</i>	Extended Cost Base Virgin <i>(P)</i>	Extended Cost Packs of 30 <i>(P+Q)</i>	Extended Cost Packs of 25 <i>(P+R)</i>	Extended Cost Packs of 20 <i>(P+S)</i>	10-pt recycled, recyclable ticket stock, coated two (2) sides	Extended Price Base recycled <i>(G x X)(1/1000)</i>	Extended Price Packs of 30 <i>(G x I)(X/1000)</i>	Extended Price Packs of 25 <i>(G x K)(X/1000)</i>	Extended Price Packs of 20 <i>(G x M)(X/1000)</i>	Extended Cost Base recycled <i>(Y)</i>	Extended Cost Packs of 30 <i>(Y+Z)</i>	Extended Cost Packs of 25 <i>(Y+AA)</i>	Extended Cost Packs of 20 <i>(Y+AB)</i>															
Under 5,000,000						4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
5,000,001 10,000,000						8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10,000,001 15,000,000						12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
15,000,001 20,000,000						18,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20,000,001 30,000,000						25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
30,000,001 40,000,000						38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
40,000,001 50,000,000						47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50,000,001 & Over						65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Data shall be entered in any of the yellow cells.

Provide pricing for Base Ticket Requirements as required in this RFP (Section 2.2 L).

\*Estimated Annual Usage is for evaluation purposes only. Payment will be based on actual usage.

Estimated Annual Usage 10 pt virgin \$0.00

Estimated Annual Usage 10 pt recyclable \$0.00

**New York Lottery  
Scratch-off Game Pricing Schedule**

Bidder Name

Ticket Size: 9" High x 4" Wide

Order Quantity	Base price for packs of 50 tickets 10-pt virgin recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	Base price for packs of 50 tickets 10-pt recycled, recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	% + ( ) of base price for packs of 30 tickets	% + ( ) of base price for packs of 25 tickets	% + ( ) of base price for packs of 20 tickets	Estimated Annual Usage																														
						10-pt virgin recyclable ticket stock, coated two (2) sides	Extended Price Base Virgin <i>(E x O)/1000</i>	Extended Price Packs of 30 <i>(E x K)(O/1000)</i>	Extended Price Packs of 25 <i>(E x K)(O/1000)</i>	Extended Price Packs of 20 <i>(E x M)(O/1000)</i>	Extended Cost Base Virgin <i>(P)</i>	Extended Cost Packs of 30 <i>(P+Q)</i>	Extended Cost Packs of 25 <i>(P+R)</i>	Extended Cost Packs of 20 <i>(P+S)</i>	10-pt recycled, recyclable ticket stock, coated two (2) sides	Extended Price Base recycled <i>(G x X)/1000</i>	Extended Price Packs of 30 <i>(G x I)(X/1000)</i>	Extended Price Packs of 25 <i>(G x K)(X/1000)</i>	Extended Price Packs of 20 <i>(G x M)(X/1000)</i>	Extended Cost Base recycled <i>(Y)</i>	Extended Cost Packs of 30 <i>(Y+Z)</i>	Extended Cost Packs of 25 <i>(Y+AA)</i>	Extended Cost Packs of 20 <i>(Y+AB)</i>													
Under 5,000,000						4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		
5,000,001 10,000,000						8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
10,000,001 15,000,000						12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
15,000,001 20,000,000						18,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	18,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20,000,001 30,000,000						25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
30,000,001 40,000,000						38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
40,000,001 50,000,000						47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50,000,001 & Over						65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Data shall be entered in any of the yellow cells.

Provide pricing for Base Ticket Requirements as required in this RFP (Section 2.2 L).

\*Estimated Annual Usage is for evaluation purposes only. Payment will be based on actual usage.

Estimated Annual Usage 10 pt virgin

\$0.00

Estimated Annual Usage 10 pt recyclable

\$0.00

**New York Lottery  
Scratch-off Game Pricing Schedule**

Bidder Name

Ticket Size: 10" High x 4" Wide

Order Quantity	Base price for packs of 30 tickets 10-pt virgin recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	Base price for packs of 30 tickets 10-pt recycled, recyclable ticket stock, coated two (2) sides <i>(Price per 1,000 tickets)</i>	% + ( ) of base price for packs of 25 tickets	% + ( ) of base price for packs of 20 tickets	% + ( ) of base price for packs of 15 tickets	Estimated Annual Usage								Estimated Annual Usage											
						10-pt virgin recyclable ticket stock, coated two (2) sides 4,000,000	Extended Price Base Virgin (E x O)/1000	Extended Price Packs of 25 (E x K)(O/1000)	Extended Price Packs of 20 (E x K)(O/1000)	Extended Price Packs of 15 (E x M)(O/1000)	Extended Cost Base Virgin (P)	Extended Cost Packs of 25 (P+Q)	Extended Cost Packs of 20 (P+R)	Extended Cost Packs of 15 (P+S)	10-pt recycled, recyclable ticket stock, coated two (2) sides 4,000,000	Extended Price Base recycled (G x X)/1000	Extended Price Packs of 25 (G x I)(X/1000)	Extended Price Packs of 20 (G x K)(x/1000)	Extended Price Packs of 15 (G x M)(X/1000)	Extended Cost Base recycled (Y)	Extended Cost Packs of 25 (Y+ Z)	Extended Cost Packs of 20 (Y + AA)	Extended Cost Packs of 15 (Y + AB)		
Under 5,000,000						4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	4,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
5,000,001 10,000,000						8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	8,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10,000,001 15,000,000						12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	12,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
15,000,001 20,000,000						18,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	18,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
20,000,001 30,000,000						25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	25,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
30,000,001 40,000,000						38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	38,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
40,000,001 50,000,000						47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	47,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
50,000,001 & Over						65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	65,000,000	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Data shall be entered in any of the yellow cells.

Provide pricing for Base Ticket Requirements as required in this RFP (Section 2.2 L).

\*Estimated Annual Usage is for evaluation purposes only. Payment will be based on actual usage.

Estimated Annual Usage 10 pt virgin \$0.00

Estimated Annual Usage 10 pt recyclable \$0.00

New York Lottery  
Scratch-off Game Pricing Schedule

Bidder Name:

Square Inches=  
32

SPECIFIED OPTIONS (Pricing shall be provided for each option. Indicate cost in price per 1,000 tickets or flat rate. Price shall be per game cost):	Price Per 1,000, per square inch, if applicable	Estimated Usage (based on 8" x 4" ticket size)	Price per 1,000, if applicable	Total Price per 1,000	Set-Up Fee (Flat Rate), if Applicable	Estimated Annual Usage (based on 8" x 4" ticket size)	Estimated Specified Option Cost (2.2 M.a.i. through x.)*
Additional color on ticket back		32		\$0.00		18,000,000	\$0.00
Metallic ink		32		\$0.00		4,000,000	\$0.00
Fluorescent ink		32		\$0.00		18,000,000	\$0.00
Translucent gel or comparable marking system		32		\$0.00		18,000,000	\$0.00
Latex on the back of tickets to facilitate additional game play		32		\$0.00		18,000,000	\$0.00
Holographic paper		32		\$0.00		18,000,000	\$0.00
Foil paper		32		\$0.00		18,000,000	\$0.00
Dual color game data imaging of play symbols - proposer may specify colors available		32		\$0.00		12,000,000	\$0.00
Alternating scene within a pack		32		\$0.00		18,000,000	\$0.00
Pulsing color within a game		32		\$0.00		18,000,000	\$0.00
					Game Programming Rate	Estimated # Hours	Estimated Specified Option Cost (2.2 M.a.xi. through xii.)*
<b style="color: red;">SPECIFIED OPTIONS (Pricing shall be provided for each option. Indicate cost as game programming rate. Price shall be per game cost):</b>							
Security Compliance Scratch-off games						12.50	\$0.00
Test games						12.50	\$0.00
						Flat Rate	Estimated Specified Option Cost (2.2M b. through c.)*
<b style="color: red;">SPECIFIED OPTIONS (Pricing shall be provided for each option. Indicate cost as flat rate. Price shall be per game cost):</b>							
Electronic Coupon Files							\$0.00
Electronic Scratch-off Games							\$0.00
<b style="color: red;">Total Estimated Specified Options Cost*</b>							<b>\$0.00</b>

Data shall be entered in any of the yellow cells. (Pricing shall be entered as 'Price Per 1,000, per square inch' or 'Price per 1,000', but not both.)

Provide pricing for **Specified Options** as required in this RFP Section 2.2 M

## New York Lottery Scratch-off Game Pricing Schedule

Bidder Name:

		x Est. Annual Net Revenues Less Prizes *	Extended Rate
<b>Management Fee - Scratch-off Game Management</b>		\$1,152,500,000.00	\$0.00
	(X.0000%)		

Data shall be entered in any of the yellow cells.

Provide pricing for **Management Fee** in this RFP (Section 2.3 C)

\*Estimated Annual Net Revenues Less Prizes is for evaluation purposes only. Percentage rate will be applied to actual net revenues less prizes.



## RFP – Lottery Scratch-off Ticket Printing and Services

### DOCUMENT SUBMITTAL CHECKLIST

#### Submissions Required with Proposal:

Description of Document	RFP	Submittal Requirements	Checklist
Confidentiality and Non-Disclosure Agreement (Attachment 5)	§1.2	By submission deadline indicated in the RFP “Schedule of Events”	
Transmittal Letter	§5.4	Must contain a statement that the proposal will remain valid for 180 days from the Proposal Due Date.	
Bidder Acknowledgement of Amendment (Attachment 1)	§1.10	With Proposal, if applicable	
Document Submittal Checklist (Attachment 3)	§3.1	With Proposal	
Contract Form (Appendix B) (incorporates Appendix A)	§6.2	Must be signed—With Proposal	
Bidder/Offerer Disclosure/Certification Form (Appendix C)	§7.1	With Proposal	
Non-Collusive Bidding Certification (Appendix D)	§7.2	With Proposal	
NYS Vendor Responsibility Questionnaire (Appendix E)	§7.3	Complete the form online or submit with the Proposal	
Encouraging Use of New York State Businesses in Contract Performance (Appendix H)	§7.7	With Proposal	
Work Force Employment Staffing Plan (Appendix I-2)	§7.8	With Proposal	
MWBE/SDVOB Utilization Plan Form (Appendix I-3) <ul style="list-style-type: none"> <li>• Proposed Plan</li> </ul>	§7.8	Proposed plan, including estimated percentage—With Proposal	
Vendor Assurance of No Conflict of Interest or Detrimental Effect (Appendix J)	§7.10	With Proposal	
Statement on Sexual Harassment (Appendix K)	§7.11	With Proposal	
Anti-Discrimination EO 177 Certification (Appendix L)	§7.12	With Proposal	

Executive Order No. 16 Certification (Appendix N)	§7.13	With Proposal	
Insurer Qualifications and Insurance Requirements (Appendix N) <ul style="list-style-type: none"> <li>Compliance Statement</li> </ul>	§7.14	Include a statement of compliance with the insurer qualifications and insurance requirement—With Proposal	
Bonds (Appendix O)	§7.15	Proposal Validity/Proposal Bond and Litigation Bond With Proposal	
Designation of Proprietary Information (FOIL)	§5.11	With Proposal	
Disclosure and Investigations During Proposal Evaluations	§5.12	With Proposal	
Disclosure of Litigation	§5.13	With Proposal	
References	§3.2	With Proposal, if applicable	
Technical & Pricing Proposals	§5.4	Submit Technical and Pricing Proposals Separately as Defined in the RFP	

**Submissions Required Subsequent to Award:**

Description of Document	RFP	Submittal Requirements	Checklist
Substitute Form W-9 (Appendix F)	§7.4	Upon notification of award	
ST-220 Contractor Certification forms (Appendix G) <ul style="list-style-type: none"> <li>ST220-TD (submit to DTF)</li> <li>ST220-CA (submit to Commission)</li> </ul>	§7.6	Within seven calendar days of notification of award	
Equal Employment Opportunity Policy Statement (Appendix I-1)	§7.8	Within 72 hours of notification of award	
Insurer Qualifications and Insurance Requirements (Appendix N)	§7.14	Provide insurance certificates upon notification of award	
Bonds (Appendix O)	§7.15	Performance Bond upon notification of award	

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

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



**NON-BID RESPONSE**

RFP: C202305 – Lottery Scratch-off Ticket Printing and Services

Company Name: \_\_\_\_\_

If your company will not be submitting a response to the RFP, it would be helpful in the preparation of future bidding opportunities to understand why your company is not submitting a Proposal. Please help us by selecting your reason from the choices below or selecting "Other" with a brief explanation.

\_\_\_\_\_ Although the bid is within the scope of our business, and we are interested in principle, at present, we are unable to respond, due to other commitments.

\_\_\_\_\_ The services / products described in the subject RFP are not within our area of expertise.

\_\_\_\_\_ We do not have the staffing / resources available at this time to provide the services requested.

\_\_\_\_\_ There were certain requirements or restrictions stated in the RFP that preclude our company from bidding. Those requirements are:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Other: \_\_\_\_\_

\_\_\_\_\_

**This form may be emailed to: [officer.contracting@gaming.ny.gov](mailto:officer.contracting@gaming.ny.gov), or mailed to:**

New York State Gaming Commission  
Contract Unit, 4<sup>th</sup> Floor  
One Broadway Center  
Schenectady, NY 12305

Please be advised that **no response** may result in removal of your company from our bidders' list.



**RFP C202305 - Lottery Scratch-off Ticket Printing and Services  
Intent to Bid and Confidentiality and Non-Disclosure Agreement**

The New York State Gaming Commission has issued a redacted RFP # C202305 - Lottery Scratch-off Ticket Printing and Services, with accompanying appendices, attachments, and exhibits. Redacted information in the RFP is confidential, and completion of this Intent to Bid and the enclosed Confidentiality and Non-Disclosure Agreement (the “Agreement”) are required prior to issuance of the full unredacted RFP, which includes “Confidential Information” as defined within the Agreement.

The Agreement must be signed, notarized and returned by the date and time specified in the RFP’s “Schedule of Events” to: [officer.contracting@gaming.ny.gov](mailto:officer.contracting@gaming.ny.gov).

In addition, each potential bidder must complete the following Intent to Bid:

**INTENT TO BID: RFP # C202305**

The Bidder identified below intends, but is not obligated, to submit a proposal for in response to RFP # C202305 – Lottery Scratch-off Ticket Printing and Services. This Bidder attests that it meets the minimum qualifications defined in Section 1.5 of the RFP.

BIDDER NAME: \_\_\_\_\_

AUTHORIZED BIDDER REPRESENTATIVE:

PRINTED NAME: \_\_\_\_\_

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

DATE: \_\_\_\_\_

**NEW YORK STATE GAMING COMMISSION  
CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

**Bidder:** \_\_\_\_\_

**Authorized Bidder Representative:** \_\_\_\_\_  
(Name/Title)

**Address:** \_\_\_\_\_

**Telephone Number:** \_\_\_\_\_

**Facsimile Number:** \_\_\_\_\_

**E-mail Address:** \_\_\_\_\_

The New York State Gaming Commission, an executive agency of the State of New York with its principal place of business located at One Broadway Center, Schenectady, New York, 12305 (the "Commission"), issued a Request for Proposals (the "RFP") for # C202305 for Lottery Scratch-off Ticket Printing and Services. In the interest of receiving informed proposals, the Commission will provide relevant information and data (collectively, the "Data") to any potential bidder ("Bidder") who intends to submit a proposal in response to the RFP. Such Data includes certain confidential and proprietary information relative to the Commission's operations and it is critical and essential to the Commission that such information be secured and held confidential by the Bidder. Therefore, in order for the Bidder to receive the Data, the Bidder must first agree with and accept the terms and conditions of this Confidentiality and Non-Disclosure Agreement (the "Agreement"), by entering into this Agreement with the Commission. By execution of this Agreement, the Bidder agrees to keep the Data secure and confidential and the Commission thereby agrees to provide the Data requested, in accordance with the terms and conditions of this Agreement.

**The parties agree as follows:**

1. **Confidential Information.** For purposes of this Agreement, "Confidential Information" means any information not generally known to the public, whether oral or written, to which access is provided to the Bidder by the Commission for the business purposes set forth above and which is claimed confidential by the disclosing party, the Commission, at the time of disclosure. Data includes the full unredacted RFP and all appendices, attachments and exhibits, which include and constitute Confidential Information. Other Data may also constitute "Confidential Information" under this Agreement as identified during the RFP process, and as designated by the Commission in writing.
2. **Exempt Information.** Data not subject to this Agreement is any information, whether oral or written, which at the time of disclosure: (a) is already in the public domain or becomes publicly known through no act of the Bidder, the receiving party; (b) is already known by the Bidder free of any confidentiality obligations; (c) is information that the Commission has approved in writing for disclosure; or (d) is required to be disclosed by the Bidder pursuant to law so long as the Bidder provides the Commission with notice of such requirement and a reasonable opportunity to defend the disclosure, prior to any such disclosure.

3. **Permitted Use.** The Bidder may use Confidential Information solely for the purposes of participation in this RFP process or for Commission business if awarded a contract under this RFP process. The Bidder shall not make copies of any written Confidential Information, except for the purpose of preparing quotations, without the express written permission of the Commission. The Commission's disclosure of Confidential Information to the Bidder shall not convey to the Bidder 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.

The Bidder shall identify by name, title, and location, individuals who will have access to such Confidential Information and the purpose for such access and attach such list to this Agreement. The Bidder will need prior written approval from the Commission in the event that the Bidder deems it necessary to provide access to other parties to Confidential Information. The Commission may deny such additional access.

4. **Protections.** The Bidder 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 Bidder uses to maintain its own confidential information.
5. **Return of Confidential Information.** Upon written request by the Commission, the Bidder shall return all Confidential Information to the Commission or certify in writing that the Confidential Information in its possession has been destroyed.

**Note:** Information stored on routine back-up media for the purpose of disaster recovery will be subject to destruction in due course. Latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques will not be within the requirements set forth by this paragraph.

6. **Limitations.** Neither party shall be liable to the other hereunder for amounts representing loss of profits, loss of business, or indirect, consequential, or punitive damages of the other party in connection with the provision of Confidential Information to the other party. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in the Confidential Information except as provided herein.
7. **Media Releases.** All media releases and public announcements or disclosures by the Bidder relating to this Agreement shall be coordinated with and subject to the Commission's approval in writing, prior to the release thereof.
8. **Miscellaneous.** Any notices required by this Agreement shall be given in hand, sent by first class mail, via facsimile or by e-mail to the applicable addresses set forth herein. The parties' obligations under this Agreement shall survive the completion of the RFP process, and shall bind the parties' employees, subcontractors, agents, heirs, successors, and assigns. The parties agree that this Agreement is (a) the complete and exclusive statement between the parties with respect to the protection of the relevant Confidential Information; (b) may only be modified in writing by authorized representatives of the parties; and (c) shall be governed by the laws of the State of New York.
9. **Agreement Term.** The effective date of this Agreement shall be the later date of the signature dates written below and shall continue unless and until the Data disclosed pursuant to this Agreement is returned or destroyed as provided in paragraph 5 of this Agreement.

**IN WITNESS WHEREOF**, the Commission and the Bidder have each caused this Agreement to be signed and delivered by its respective duly authorized representative.

**BIDDER**

**NEW YORK STATE GAMING COMMISSION**

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

***Acknowledgement Required of the Bidder is on the following page:***

**Acknowledgement  
Intent to Bid and Confidentiality and Non-Disclosure Agreement**

**ACKNOWLEDGEMENT BY INDIVIDUAL**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

**ACKNOWLEDGEMENT BY LIMITED LIABILITY COMPANY**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did acknowledge that \_\_\_\_\_ is/are the member/manager of \_\_\_\_\_, a Limited Liability Company of the State of \_\_\_\_\_, and that he/she/it signed the said instrument on behalf of said Limited Liability Company by authority of its Articles of Organization and/or its Operating Agreement.

Notary Public

**ACKNOWLEDGEMENT BY CORPORATION**

STATE OF \_\_\_\_\_ )  
 ) ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_\_, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn did depose and say that he/she resides in \_\_\_\_\_; that he/she is the \_\_\_\_\_ of the \_\_\_\_\_, the corporation described in and which executed the above instrument; and that he/she signed his/her name(s) thereto by authority of the board of directors of said corporation.

Notary Public











