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## **DIVISION OF LOTTERY**

### **REQUEST FOR PROPOSALS**

#### **FOR**

### **Market Research Regarding Alternative Approaches For the Future of Lottery in New York State**

**September 13, 2013**

**C130005**

## PART 1 – GENERAL INFORMATION

### 1.1 INTRODUCTION

The New York State Gaming Commission (the “Commission”), Division of Lottery (the “Lottery”), on behalf of the State of New York is issuing this Request for Proposals (“RFP”) to solicit Proposals from Vendors for research and analysis of alternative approaches for the future of Lottery in New York State taking into consideration the pending public referendum on casinos.

The contract resulting from this RFP will require the firm to deliver an initial Business Plan and to provide services on an hourly basis as further described throughout the RFP. The Commission intends to award only one contract as a result of this RFP.

The Commission is the only office authorized to clarify, modify, amend, alter or withdraw the provisions of this RFP. Every Vendor responding to this RFP must include in its Proposal a signed Contract in the form attached as **Appendix B** of this RFP. This agreement will become binding and effective after approval by the Commission and the New York State Offices of the Attorney General and the State Comptroller.

In the RFP the Commission has defined a series of objectives, requirements, and a proposal evaluation approach that will represent its best interests in conformance with Commission policies, State regulations and New York State statutes. The contents of this RFP, any modifications to the RFP, and the Proposal will become contractual obligations if a contract ensues. Failure of the successful vendor to accept these obligations may result in cancellation of the award.

### 1.2 BACKGROUND INFORMATION

The New York Lottery had annual sales of over \$7.1 billion in FY 2012-13. The highest producing lottery in the United States, the Lottery expends approximately \$85 to \$90 million annually in marketing its products as it drives over \$2.17 billion in aid to education to the State. The Lottery markets lottery tickets through over 17,700 retailer locations across the State and by subscription over the internet. The Lottery’s main product breakdowns are: multi-jurisdictional jackpot games, which make up 10% of traditional sales; Quick Draw at 8%; Numbers and Win 4, which combine for 23%; Instant Tickets at 52%; and other games which account for 7%.

The Upstate New York Gaming Economic Development Act of 2013, passed by the legislature and subject to approval by the State electorate, authorizes four upstate destination gaming resorts to enhance tourism development. New York State is already in the business of gambling with nine video lottery facilities, five tribal class III casinos, and three tribal class II facilities and New York has more electronic gaming machines than any state in the Northeast or Mideast; however, while gambling already exists throughout the State, it is believed that the State does not fully capitalize on the economic development

potential of legalized gambling. It is anticipated that four upstate casinos can boost economic development, create thousands of well-paying jobs and provide added revenue to the State.

Since 1967, the New York Lottery has adapted to change. The Lottery is faced with increased competition for discretionary income purchases as the possibility for casinos in New York State is put before the public in November. The Lottery anticipates the need to review different strategies to remain as a relevant gaming option and important source of funding for State aid to education.

### 1.3 MINIMUM QUALIFICATIONS

It is required any Vendor submitting a Proposal in response to this RFP:

- A) Have at least three (3) years demonstrated experience in work similar to that required under this RFP.
- B) Have demonstrated knowledge and understanding of lottery player reaction to changes in wagering opportunities within a jurisdiction or surrounding jurisdictions.
- C) Have knowledge and experience building and/or implementing strategic business plan alternatives specifically related to discretionary dollar spending of consumers.
- D) Have experience evaluating the sales and profit results of business decisions where the upside or downside potential is in excess of \$250 million in profit.
- E) Have demonstrated knowledge and understanding of product and marketing opportunities within the lottery industry.
- F) Not hold an existing license or direct contract under the New York Lottery, the Commission or any of its Divisions, Bureaus or offices.

### 1.4 SCHEDULE

The following dates are established for informational and planning purposes. The Commission reserves the right to change any of the dates.

RFP Issued	September 13, 2013
First Vendors' Questions Due by 4:00 pm	September 19, 2013
Commission Responses to First Questions	September 24, 2013
Vendor Proposals Due by 4:00 pm	October 7, 2013
Apparent Winning Proposal Designated	October 23, 2013

## 1.5 VENDOR/CONSULTANT DIFFERENTIATION

Throughout this RFP the terms "vendor", "proposer", "bidder", "consultant" and "offerer" may be used interchangeably in reference to the preparation and submission of the Proposal and any requirements preceding the award of the final contract. In describing post-contract award requirements, an effort is made to use the terms "Contractor" or "Consultant."

## 1.6 HEADINGS

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

## 1.7 PERMISSIBLE CONTACTS

Consistent with the public policy established by the Procurement Lobbying Law, described below, the Contracting Officer and Finance Officer designated below are the only points of contact with regard to all contractual matters relating to the services described in this RFP, unless additional points of contact are designated by the Contracting or Finance Officer.

**ALL VENDORS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS  
CONCERNING THIS PROCUREMENT MUST  
BE ADDRESSED IN WRITING TO THE CONTRACTING OFFICER OR FINANCE  
OFFICER AS NOTED BELOW:**

New York State Gaming Commission  
Finance Office  
One Broadway Center  
Schenectady, NY 12301-7500

Gail P. Thorpe, Contracting Officer  
[gail.thorpe@gaming.ny.gov](mailto:gail.thorpe@gaming.ny.gov)  
(518) 388-3329  
or

Deborah L. Martino, Finance Officer  
[debbie.martino@gaming.ny.gov](mailto:debbie.martino@gaming.ny.gov)  
(518) 388-3325

## 1.8 PROCUREMENT LOBBYING RESTRICTIONS

As required by the Procurement Lobbying Law (State Finance Law Sections 139-j and 139-k), this RFP includes and imposes certain restrictions on communications between the Commission and a proposer during the procurement process. A proposer is restricted from making contacts from the earliest solicitation of offers through final award and approval of the resulting contract by the Commission and the Office of the State Comptroller

("restricted period") to other than designated staff members unless the contact is permitted by the statutory exceptions set forth in New York State Finance Law Section 139-j (3)(a). Designated staff members are identified in Section 1.7 of this RFP. Commission employees are also required to obtain certain information when contacted during the "restricted period" and to make a determination of the responsibility of the proposer/bidder pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility, which can result in disqualification for a contract award. In the event of two determinations within a four-year period, an offeror 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.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The Commission reserves the right to terminate the contract in the event that the Commission determines that the certification filed by the proposer in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such determination, the Commission may exercise its termination right by providing written notification to the proposer in accordance with the written notification terms of this contract.

**The BIDDER DISCLOSURE/CERTIFICATION FORM, included with this RFP as Appendix C, must be completed and submitted with the Proposal.**

#### 1.9 RESTRICTIONS ON COMMUNICATIONS WITH COMMISSION STAFF

Questions or comments concerning this procurement must be addressed in writing to the Contracting or Finance Officer, as directed above, in accordance with the requirements of the Procurement Lobbying Law set forth in Sections 139-j and 193-k of the State Finance Law. Commission employees are permitted to communicate with vendors concerning this RFP only under circumstances described in the New York State Procurement Lobbying Law. Any vendor causing or attempting to cause a violation or circumvention of those requirements may be disqualified from further consideration for selection.

#### 1.10 QUESTIONS AND INQUIRIES

Questions from vendors regarding this RFP must be submitted in writing, either by e-mail or standard mail and, must be delivered to the Contracting or Finance Officer no later than the date and time specified in Section 1.4 of this RFP. **Neither faxed questions nor telephone questions are acceptable.** Vendors must include with their questions an email address to which responses can be directed. It is also requested that e-mail questions be provided in Microsoft Word format if feasible.

Vendors are cautioned that an RFP inquiry must be written in generic terms and must not contain pricing information. The inclusion of specific information about a Vendor's Pricing Proposal in an inquiry may result in the Vendor's disqualification.

**Responses to all questions and any changes to the RFP resulting from such questions will be communicated via published addenda, which will be posted on the**

**Commission's website (www.gaming.ny.gov).** An acknowledgement Form, incorporated into this RFP as **Attachment 1**, will be provided with each addendum. Written acknowledgement of all addenda issued prior to the Proposal due date shall become part of the Vendor's Proposal reply.

**Vendors are responsible for checking the website for updated information relative to the procurement process and RFP. The Commission will not be responsible for a Vendor's failure to obtain updated information.**

#### 1.11 RFP APPENDICES AND ATTACHMENTS

The following documents are incorporated into this RFP:

- Appendix A: Standard Clauses for NYS Contracts
- Appendix B: Contract Form
- Appendix C: Procurement Lobbying – Bidder/Offeror Disclosure
- Appendix D: NYS Vendor Responsibility Questionnaire
- Appendix E: Sales & Use Tax Certification
- Appendix F: Non-Collusive Bidding Certification
- Appendix G: Electronic Payment Authorization & W-9 Form
- Appendix H: Consultant Disclosure
- Appendix I: Equal Employment Opportunity
- Appendix J: Minority and Women-Owned Business Enterprise Program

- Attachment 1: Vendor Acknowledgement of Addendum
- Attachment 2: Pricing Proposal Form
- Attachment 3: Document Submittal Checklist
- Attachment 4: Statement of Work Form

#### 1.12 FORM OF CONTRACTUAL AGREEMENT

The successful vendor will be expected to sign a contractual agreement with the Commission in the form attached to this RFP as **Appendix B** (the "Contract"). The Commission does not intend to negotiate any changes in the provisions of the contract form subsequent to award. **Any exception to the contract form must be raised in a vendor question submitted to the Commission pursuant to the schedule set forth in Section 1.4 of this RFP and in accordance with Section 1.10 of this RFP. Failure to include the signed Contract, in the form provided, in the Proposal will deem the Proposal non-responsive.**

#### 1.13 NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE

Vendor agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached as **Appendix D** (hereinafter the "Questionnaire"). The vendor acknowledges that the State's execution of the contract will be contingent upon the Commission's determination that the Vendor is responsible, and that the Commission will

be relying upon the Vendor's responses to the Questionnaire in making that determination. The vendor agrees that if it is determined by the Commission that the vendor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such determination, the Commission may terminate the contract by providing ten (10) days written notification to the Consultant. 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 sustained by the Consultant as a result of such termination.

If the Vendor intends to utilize the services of a sub-contractor to fulfill its requirements under this RFP, the same provisions of this section apply to such Sub-Consultant, including completion of the Questionnaire.

**The NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE, included in this RFP as Appendix D, must be completed and submitted with the Proposal.**

1.14 TAX LAW SECTION 5-A

The vendor awarded a contract pursuant to this RFP must comply with the requirements of Tax Law Section 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 Sub-contractors, and the affiliates of their Sub-contractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A Consultant, affiliate, sub-contractor, or affiliate of a sub-contractor 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 Office of the State Comptroller (OSC) or other responsible approver cannot approve the contract unless the Consultant is registered with the New York State Tax Department to collect sales and compensating use taxes.

**The Sales & Use Tax forms, included in this RFP as Appendix E – ST-220-TD and Appendix E – ST-220-CA, must be filed in compliance with Tax Law Section 5-a as follows: ST-220-TD is to be filed directly with the Tax Department at the address provided on the form. ST-220-CA is to be filed with the Commission as part of the Vendor's Proposal submission.**

Consultants can visit the New York State Department of Taxation and Finance website to obtain more information:  
[http://www.tax.state.ny.us/pdf/publications/sales/pub223\\_606.pdf](http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf).

**ST-220-TD**

[http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf)

**ST-220-CA**

[http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca\\_606\\_fill\\_in.pdf](http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf)

#### 1.15 IRAN DIVESTMENT ACT

By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Consultant (or any assignee) certifies that it is not on the “Entities Determined To Be Non-Responsive Bidders/Offerors Pursuant to The New York State Iran Divestment Act of 2012” list (“Prohibited Entities List”) posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any sub-contractor that is identified on the Prohibited Entities List. Additionally, if applicable, Bidder/Consultant is advised that should it seek to renew or extend a Contract awarded in response to a solicitation, it must provide the same certification at the time the Contract is renewed or extended.

During the term of the Contract, should the Commission receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Commission 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 Commission shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Consultant in default.

The Commission 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.

#### 1.16 NON-COLLUSIVE BIDDING REQUIREMENT

In accordance with Section 139-d of the New York State Finance Law, if the contract is awarded based upon the submission of bids, the Vendor must warrant, under penalty of perjury, that its Proposal was arrived at independently and without collusion aimed at restricting competition. Each Vendor must further warrant that, at the time the Vendor submitted its Proposal, an authorized and responsible person executed and delivered to the Commission a Non-Collusive Bidding Certification on Vendor’s behalf.

**The Non-Collusive Bidding Certification Form, included in this RFP as Appendix F, must be completed and submitted with the Proposal.**

#### 1.17 FREEDOM OF INFORMATION LAW (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 or other State law). The Freedom of Information Law 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 exception applies both during and after the evaluation process. **If you believe your firm's Proposal contains any such trade secrets or other confidential or proprietary information, you must submit a request with your Proposal to exempt such information from disclosure. Such request must be in writing, must state the reasons why the information should be exempted from disclosure and must be provided at the time of submission of the subject information.** 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 specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm. **Pricing information may not be designated as proprietary or confidential.**

## 1.18 PROPOSALS

Vendors must submit a complete Proposal as described below and in accordance with the format defined in Part 4 – Information Required from Vendors. A Proposal that does not comply with these requirements may be deemed non-responsive. The Proposal must be separated into two (2) volumes as defined below in Item C – Proposal Format and submitted to the Commission as defined below in Item D – Proposal Submission.

### A. Proposal Contents:

Each Vendor is expected to provide the Commission with information, evidence and demonstrations that will make possible a contract award that best serves the stated interests of the Commission and the State of New York. Vendors are given wide latitude in the degree of detail they offer or the extent to which they reveal plans, designs, systems, processes, and procedures.

There is no limit on the number of pages in each Proposal; however, Vendors should prepare their Proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals that are of excessive length, or containing preponderance of boilerplate text, are discouraged. Special bindings, colored displays, promotional material, etc., will receive no evaluation credit. Emphasis in each Proposal should be on completeness and clarity of content.

Failure by a Vendor 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 non-responsive Proposal. Responses to complex RFP requirements that are stated in a form semantically equivalent to “vendor agrees to comply” may be rejected for non-responsiveness at the discretion of the Commission.

### B. Material Deviations:

Material requirements of the RFP are those designated as mandatory, without which an adequate analysis and comparison of Proposals is impossible, or those that affect the competitiveness of Proposals, or the cost to the Commission.

A Proposal that does not meet all material requirements of this RFP or that fails to provide all required and mandatory information, documents, or supporting materials, or includes language that is conditional or contrary to the requirements of this RFP may be rejected as non-responsive.

The Commission, in its sole discretion, reserves the right to determine whether a Proposal meets the material requirements of the RFP.

#### C. Proposal Format:

Each Vendor must submit a complete Technical and Pricing Proposal in the format described below and in response to the requirements described in Part 3 – Scope of Work and Part 4 – Information Required from Vendors.

Each Proposal must be submitted in two (2) separate volumes as defined below and the technical Proposal must be signed in ink by an official authorized to bind the Vendor to its provisions and must include a statement as to the period during which the entire Proposal remains valid. This period must be at least [180 days] from the due date for responses to this RFP.

**Note: No pricing information shall be included in any of the documents of the Technical Proposal. Pricing must only be contained within the Pricing Proposal.**

#### **Volume I – Technical (non-price) Proposal:**

Each Technical Proposal shall include descriptive and technical matter only and must be appropriately labeled on the outside of the enclosure with the Vendor's name and address and RFP reference, "Market Research Regarding Alternative Approaches for the Future of Lottery in New York State." **No pricing information shall be contained in the Technical Proposal.**

Except where required, there shall be no attachments, enclosures, or exhibits other than those essential to providing a complete understanding of each Proposal. Each section of the proposal must be clearly identified with appropriate headings and responses should be separated by tabs and in the order presented in this RFP. Ensure that each Proposal submittal is complete, including signatures and attachments as required by this RFP.

Two (2) originals and five (5) copies of the Technical Proposal must be delivered to the Commission's Contracting Officer. In addition, two (2) electronic versions of the entire Technical Proposal must be submitted on a compact disc using a PDF

file. **The electronic versions must include all proposal sections within a single file to facilitate searches for terms across the breadth of the Proposal. One version will mirror the full Technical Proposal and the other version shall be a redacted version (indicating the places where trade secrets, competitive information or personal identifying information have been removed) of the Technical Proposal to facilitate FOIL requests. Please mark each disc clearly as to its contents.** If there are any differences between the hardcopy and electronic versions of the Technical Proposal, the hard copy version will be given priority.

The contents of the Technical (non-price) Proposal volume must follow this outline, employing divider pages with tabs to separate the response sections:

1. Transmittal Letter (signed): The transmittal letter shall contain names, addresses (including e-mail), and telephone numbers of individuals who are authorized by the Vendor to address matters related to the Proposal including, but not limited to, contractual, technical, site visit, and background investigation issues. The transmittal letter must also contain explicit formal Agreement by the Vendor to comply with all contractual provisions and contain a statement that the Proposal will remain valid at least 180 days from due date of Proposals.
2. Signed Contract (Appendix B).
3. Disclosure of Litigation and Other Information (see Section 1.22).
4. Response to specifications and in the order provided for in Part 4 – Information Required from Vendors, including technical documentation as appendices.
5. Designation of proprietary information in the form described in Section 1.17 of this RFP.
6. Proof of insurance or insurability for all the insurance coverage required in the RFP or Contract.
7. Submission of certifications and representations as required by this RFP.
8. Acknowledgement of all RFP addenda in the form provided in **Attachment 1**.

To assist vendors in completion and submittal of the required documents, a Submittal Checklist is incorporated into this RFP as **Attachment 3**. This Checklist must be included with the Vendor's Technical Proposal.

## **Volume II – Pricing Proposal:**

The Pricing Proposal must be prepared as provided in Part 4 and in the form provided in **Attachment 2** of this RFP. Vendors should carefully review the basis and terms of compensation set forth; any deviation from this format may cause the Proposal to be deemed non-responsive.

Two (2) originals and two (2) copies of the Pricing Proposal must be delivered to the Commission's Contracting Officer. In addition, two (2) electronic versions of the Pricing Proposal must be submitted on a compact disc using a PDF file. If there are any differences between the hard copy and electronic version of the Pricing Proposal, the hard copy version will be given priority.

The contents of the Pricing Proposal volume must follow this outline:

1. Transmittal letter.
2. Pricing in the format provided as **Attachment 2** of this RFP.

### **D. Proposal Submission:**

Both volumes of each Proposal must be submitted to the Commission as defined below, and received by the date and time defined in Section 1.4 - Schedule. Originals should be clearly marked so as to differentiate from the copies.

**VENDORS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS ON THE OUTSIDE OF EACH ENVELOPE:**

"Sealed Proposal" label, Commission contract number, company or organization name, due date and time. 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 Finance Office address for Proposals submitted by contract carrier, courier delivery, personal delivery or by U. S. Postal Service is:

Gail P. Thorpe, Contracting Officer  
New York State Commission  
Finance Office  
One Broadway Center  
Schenectady, NY 12305

**Fax or e-mail submissions are not acceptable and will not be considered.**

E. Proposal Receipt and Opening:

If a Proposal is to be delivered by a method other than U.S. Postal Service, the bidder should contact the Contracting or Finance Officer prior to delivery to assure proper receipt of the proposal. If hand delivered, the Commission will provide a time stamped receipt indicating when the Proposal is received at the Security Desk in the Commission's Lobby on the ground floor of One Broadway Center. This will be the official time of receipt. If delivered by other than hand delivery, the Commission will confirm receipt of any Proposal by electronic mail.

Upon receipt of Proposal, the Pricing Proposal volume will be secured by the Commission's Internal Audit unit and will not be opened until after the Technical Evaluation process is complete. Each Technical Proposal volume will be distributed to the Evaluation Committee members at the start of the evaluation process.

F. Late Proposal:

A Proposal must be received by the Commission Finance Office on or before the due date and time specified. The Vendor is responsible for timely receipt of its Proposals and should plan for delivery accordingly. Failure of a Vendor to submit a Proposal by the specified time may result in rejection or disqualification of the Proposal. Proposals rejected or disqualified for lateness may be returned unopened to the Vendor.

G. Joint Proposals:

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

H. Multiple Proposals from one Vendor Prohibited:

A vendor shall submit a single Proposal only. Within the single Proposal, and separate from the response to the requirements of this RFP, the vendor may identify options, including solicited and unsolicited products, services, and features, absent of pricing that the Vendor believes may be appealing and useful to the Commission. The inclusion of options accommodates the purpose of defining alternatives through multiple Proposals.

I. Costs Associated with Preparation of Proposals:

Neither the Commission nor the State shall be liable for any of the costs incurred by a Vendor in preparing or submitting a Proposal. The Commission and the State assume no responsibility or liability for costs incurred by a Vendor prior to the award of a contract. The responsibility and liability of the Commission and the State shall be limited to the provisions of the contract.

1.19 CLARIFICATION PROCESS

The Commission may request clarification from a Vendor for the purpose of resolving any ambiguity or questioning information presented in the Proposal. Clarifications are an opportunity to explain, but not to enhance, a Proposal. Requests for Commission clarification may occur throughout the Proposal submission review and/or the Technical Proposal evaluation process. Clarification responses shall be in writing and shall address only the information requested. Responses shall be submitted to the Commission within the time stipulated at the time of the occasion of the request. As applicable, clarifications will be treated as addendums to the Vendor's Proposal.

1.20 PROPOSAL VALIDITY

Proposals must remain valid for a period of 180 days.

1.21 DISCLOSURE AND INVESTIGATIONS DURING PROPOSAL EVALUATION

Subsequent to Proposal submission, the Commission may initiate investigations into the backgrounds of the Vendor and individuals or entities related to any officers, directors, members, principals, investors, owners, Sub-contractors, employees, or any other individuals or entities related to the Vendor, as deemed appropriate. 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 reject a Proposal based upon the results of these background checks. The Vendor is advised that any person who knowingly provides false or intentionally misleading information in connection with any investigation by Commission may cause the Proposal to be rejected, or a subsequent contract to be canceled.

If the Vendor or a substantial sub-contractor is a subsidiary of a parent entity, the Commission may request the above disclosures from the parent entity as necessary.

1.22 DISCLOSURE OF LITIGATION AND OTHER INFORMATION

Since the Commission has a strong interest in the successful Vendor's continuing ability to produce secure, high quality products and services, the Commission requires that Vendors list and summarize pending or threatened litigation, administrative or regulatory proceedings or similar matters that could materially affect the Vendor. As part of this disclosure requirement, Vendors must state whether they or any owners, officers,

directors, or partners have ever been convicted of a felony. Failure to disclose such matters may result in rejection of the Proposal or in termination of a contract. Such disclosures must be included in the Proposal.

This is a continuing disclosure requirement; any such matter commencing after submission of a Proposal and, with respect to the successful Vendor after the approval of a contract, must be disclosed in a timely manner in a written statement to the Commission.

#### 1.23 CHANGE IN FINANCIAL CONDITION

If a Vendor 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 Vendor experiences a substantial change in financial condition during the term of a contract with the Commission, the Executive Director of the Commission must be notified in writing at the time the change occurs or is identified. Failure to notify the Commission of such a change may result in rejection of Vendor's Proposal or termination of the contract.

#### 1.24 CHANGE IN OWNERSHIP

If a Vendor experiences a material change in ownership prior to contract award or during the term of a contract with the Commission, the Commission must be notified 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 comprise ownership greater than five percent (5%) of the Vendor or the parent company of the Vendor. Failure to notify the Commission of such a change may result in the rejection of a Vendor's Proposal or termination of the contract. The Commission reserves the right, based on its assessment of a material change in ownership, to reject the Vendor's Proposal or terminate the contract.

#### 1.25 NEWS RELEASES

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

#### 1.26 ADVERTISING

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

## 1.27 AWARD

In determination of awards, the qualifications of the bidder, the conformity with the specifications of services to be supplied and the performance and delivery terms will be considered. The contract award will be based on "Best Value," the evaluation method for awarding a contract to the Vendor whose Proposal optimizes quality, cost, and efficiency among responsible offers. The determination will be based on a scoring of Technical and Pricing Proposals as defined in Part 5 of this RFP.

## 1.28 STATE'S RESERVED AUTHORITY

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

- A. Award a contract for all, part or none of the services requested by this RFP;
- B. Waive any informality or technical defect if, in the Commission's judgment, 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 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 its sole discretion;
- H. Seek clarifications and revisions to Proposals;
- I. Use Proposal information obtained through site visits, management interviews and the State's investigation of a Vendor's qualifications, experience, ability or financial standing, and any material or information submitted by the Vendor in response to the Commission's request for clarifying information in the course of evaluation and/or selection under this RFP;
- J. Disqualify any bidder whose conduct and/or Proposal fail to conform to the requirements of this RFP;
- K. Negotiate with the successful offeror within the scope of the RFP in the best interests of the State;
- L. Set aside the original successful offeror if it is determined that the offeror is non-responsible. The Commission may then award a contract to the responsible

offeror with the next highest total combined score;

- M. Set aside a conditional award to the successful offeror should the Commission be unsuccessful in finalizing an Agreement with that offeror within a time frame acceptable to the Commission; such time frame is to be determined solely by the Commission based on the best interests of the State. The Commission may then award a contract to the offeror with the next highest total combined evaluation score.

## 1.29 PROTEST OR APPEAL

In the event that a proposer decides to protest the award decision, the following protest procedures will be followed:

- Any protest of the award decision must be filed with the Commission's Contracting Officer, no later than ten (10) business days following the date of written Notification of Award to the unsuccessful Proposer.
- The protest must clearly state the basis for the protest and include all relevant documentation supporting such protest.
- The Commission will conduct a review of the protest and will issue a written determination to the protesting party within fifteen (15) business days of receipt of the protest. If additional time for issuance of the determination is necessary, the Commission will inform the Proposer of the delay and of the time frame within which a determination may be expected. The final written determination provided to the Proposer will constitute the Commission's final administrative determination of the protest.
- If an unsuccessful Proposer decides to appeal the Commission's protest determination, the unsuccessful Proposer must submit such an appeal to the New York State Office of the State Comptroller (OSC), Bureau of Contracts ("BOC"), within ten (10) business days of 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 Proposer's appeal must contain written affirmation that a copy of the appeal has been served as required by this paragraph.
- The protest must be filed with: Charlotte Breeyear, Director, Bureau of Contracts – 11th Floor, New York State Office of the State Comptroller, 110 State Street, Albany, NY 12236.
- The Commission will submit an answer to the appeal to the OSC BOC simultaneously with the delivery of the contract to the OSC BOC for its review, or

within seven (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 OSC, the answer was transmitted to the protestor and the successful bidder(s).

- A successful Proposer may, but is not required to, submit an answer to the appeal with the OSC BOC. Such answer must include written affirmation that the answer was simultaneously delivered to the Commission and the protestor and must meet the submission requirements as noted above for the Commission.
- The OSC BOC shall evaluate the merits of the protest, the Commission's determination and any response submitted by an interested party. In its review, the OSC BOC may require the Commission, the protesting party, the successful Proposer, 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.
- The OSC BOC shall 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 2 – CONTRACTUAL PROVISIONS**

### **2.1 GOVERNING LAW**

The Proposal submission process, the evaluation of Proposals, the award procedure, and any contract 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. Any and all litigation arising under this RFP or any contract resulting hereunder shall be instituted in the appropriate court of the State of New York; and, by submitting a Proposal, a Vendor is deemed to waive access to any other court which may have concurrent jurisdiction within or outside New York State.

### **2.2 STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**Appendix A** - Standard Contract Clauses for New York State contracts is attached. **Appendix A** becomes part of all New York State contracts.

### **2.3 CONTRACT ELEMENTS**

The contract resulting from this RFP will include the following parts:

- Appendix A – Standard Clauses for New York State Contracts
- Addendums to the Contract
- Contract
- Clarifications and Addendums to the RFP
- RFP
- Clarifications to the Vendor’s Proposal
- Vendor’s Proposal

In the event of a conflict in the provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

### **2.4 SEVERABILITY**

If a court of competent jurisdiction determines any portion of a contract to be invalid, it shall be severed and the remaining portion of a contract shall remain in effect.

### **2.5 TERM OF CONTRACT**

The initial term of the contract shall begin upon the signatures of both parties and end upon delivery of the Business Plan, defined in Part 3 – Scope of Work – of the RFP. Following the initial term, the Contract shall continue for a period of two (2) years throughout which time the Commission may enlist the services of the Consultant for “Other Engagements”, or on an hourly basis, as defined in Part 3 of the RFP.

## 2.6 CONTRACT EXTENSIONS

As determined by the Commission, the Contract may be extended for one (1) additional year beyond the term defined in Section 2.5.

If the parties exercise this extension provision, the Consultant will be entitled to an increase in the hourly rates based on changes in the Consumer Price Index (CPI) as published by the U.S. Department of Labor – Bureau of Labor Statistics for the New York area for the immediate preceding twelve (12) months prior to December 31, of the previous year, but not to exceed five percent (5%).

## 2.7 COMPENSATION

Consultant will be reimbursed based on the Deliverable and hourly rates for work performed on an hourly basis or under an engagement, as quoted in the Pricing Proposal as defined in Part 4 of the RFP. Pricing shall be all-inclusive. There will be no reimbursement for travel or other incidentals under this Contract.

## 2.8 CONTRACT INVOICING AND PAYMENT

Upon completion of the initial term through delivery of the Business Plan, an invoice consistent with the Pricing Proposal may be directed to the Finance Office. For services provided after the initial term, on an hourly basis or under a defined Statement of Work (SOW), Consultant shall submit monthly, itemized, invoices reflecting the hours worked at the rates provided in the Pricing Proposal. Payment will not be made outside of the rates and titles reflected in the Pricing Proposal.

Pursuant to Prompt Payment Law (Article 11-A of the New York State Finance Law), upon receipt of a proper invoice, the Commission shall process all payments due to the Consultant that conform to the provisions of this RFP and are approved by the Project Manager and the Commission's Contract Administrator.

## 2.9 ELECTRONIC PAYMENT (E-PAY) PROGRAM

In accordance with a directive by the New York State Division of the Budget, if awarded a contract under this RFP the Consultant will be required to enroll in the Electronic Payment (e-pay) Program through the New York State Office of the State Comptroller (OSC). In order to participate in this program it will be necessary, upon execution of the contract, for the Consultant to submit both an Electronic Payment Authorization Form and the Substitute Form W-9 as provided below.

**Substitute Form W-9:** The Substitute Form W-9 must be completed and submitted directly to the Commission. The purpose of the Substitute Form W-9, which will capture the Consultant's taxpayer identification number, business name, and business contact person, is to allow the State to establish a vendor file in the State Financial System. Note: IRS Form W-9 is not acceptable for this purpose.

**Electronic Payment Authorization Form:** Only an original of the Electronic Payment Authorization Form will be accepted and should be submitted with an attached voided check (as verification of the Consultant's banking information). The Electronic Payment Authorization Form should be mailed to OSC's Bureau of Accounting Operations as directed on the Form. If a vendor chooses not to submit a voided check, its financial institution must complete Part IV and V of the Form as directed in Part II of the Form.

If the Consultant is already enrolled in the NYS e-pay program, then only the Substitute Form W-9 requires completion and submission to the Commission. Additional information and procedures for enrollment into the e-pay program can be found at OSC's website: <http://www.osc.state.ny.us/e-pay>.

**The Electronic Payment Authorization Form and the Substitute Form W-9 are included in this RFP as Appendix G.**

## 2.10 SURETY AND INSURER QUALIFICATIONS

All required bonds and insurance must be written by company rating of "A-" or better rated by A.M. Best & Co., have a record of successful continuous operation, are licensed, admitted, and authorized to do business in the State of New York, and are approved by the Commission. Required coverage and limits must be put into effect as of the effective date of the contract and must remain in effect throughout the term of the contract, as determined by the Commission. The successful vendor must submit copies of each required insurance contract, and any renewals thereof, to the Commission upon the Commission's request. The insurance policies must provide thirty (30) days' advance written notice to the Commission of cancellation, termination or failure to renew any policy.

## 2.11 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 Insurance Department to issue insurance in the State of New York (Admitted Carriers). The Commission may, at its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when Certificates and/or other policy documentation is accompanied by a completed Excess Lines Association of New York (ELANY) Affidavit; provided that nothing herein shall be construed to require the Commission to accept insurance placed with a non-authorized carrier under any circumstances. The Contractor shall deliver to the Commission evidence of such policies in a form acceptable to the Commission. These policies must be written in accordance with the requirements of the paragraphs below, as applicable.

## **General Conditions**

**A. Conditions Applicable to Insurance.** All policies of insurance required by this agreement must meet the following requirements:

**1. Coverage Types and Policy Limits.** The types of 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 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.** Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to the Commission, before commencing any work under this contract. Certificates shall be mailed using the contact information in Section 1.7 of the RFP.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice except for non-payment as required by law to the Commission.

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 contract.
- c. Specify the Additional Insureds and Named Insureds as required herein.
- d. When coverage is provided by a non-admitted carrier, be accompanied by a completed ELANY Affidavit, and be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance, Supplemental Insurance Certificates, and other attachments) will be accepted.

**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 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 Commission shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance clause contained in the Commission's own policy of insurance.

**5. Policy Renewal/Expiration.** At least two weeks prior to the expiration of any policy required by this contract, evidence of renewal or replacement policies of insurance with terms no less favorable to 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 this contract, the coverage provisions and limits of the 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 until authorized to do so by the Commission. Any delay, time lost, or additional cost incurred as a result of the Contractor not having 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 proof thereof is not provided 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 Surety if, any, to secure appropriate coverage and/or purchase insurance complying with the Contract and charge back such purchase to the Contractor.

**6. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retention on each policy. Additional surety/security may be required in certain circumstances. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

**7. Subcontractors.** Should the Contractor engage a Sub-contractor, the Contractor shall endeavor to impose the insurance requirements of this document on the Sub-contractor, as applicable. Required insurance limits should be determined commensurate with the work of the Sub-contractor. Proof thereof shall be supplied to the Commission.

**B. Specific Coverages and Limits.** The types of insurance and minimum policy limits shall be as follows:

**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: \$1,000,000
- General Aggregate: \$2,000,000
- Products/Completed Operations should equal the General Aggregate limit
- Personal Advertising Injury – \$1,000,000
- Damage to Rented Premises - \$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 insured's; products/completed operations for a term of no less than 3 years, commencing upon acceptance of the 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 policy:

- CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- CG 20 10 11 85, or, an equivalent- Additional Insured-Owner, Lessees or Contractors (Form B)

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

Policies shall name the Commission as Additional Insureds, and such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term.

The CGL policy, and any umbrella/excess policies used to meet the "Each Occurrence" limits specified above, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds, and such polic(ies) shall be primary to, and non-contributing with, any other insurance maintained by the Commission. Any other insurance maintained by the Commission shall be in excess of and shall not contribute with the Contractor's or Subcontractor's insurance, regardless of the "Other Insurance" clause contained in either party's policy of insurance.

## **2. Professional Liability**

The Professional and any Professional sub-consultant retained by the Professional to work on the Contract shall procure and maintain during and for a period of three (3) years after completion of this Contract, Professional Liability Insurance in the amount of

\$1,000,000 issued to and covering damage for liability imposed on the Professional by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render professional services required by this Contract . The professional liability insurance may be issued on a claims-made policy form, in which case the Professional shall purchase at its sole expense, with extended Discovery Clause coverage of up to three (3) years after work is completed, if coverage is cancelled or not renewed.

### 3. Workers' Compensation

For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Workers' Compensation Law.

- (a) Evidence of Workers' Compensation and Employers Liability coverage must be provided on one of the following forms specified by the Commissioner of the Workers' Compensation Board:
- (1) C-105.2 (September 2007, or most current version) – Certificate of Workers' Compensation Insurance. Consultant must request its carrier to send this form to the Commission; or
  - (2) U-26.3 – Certificate of Workers' Compensation Insurance from the State Insurance Fund. Consultant must request that the State Insurance Fund send this form to the Commission; or
  - (3) GSI-105/SI-12 – Certificate of Workers' Compensation Self Insurance.

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 coverage.)

**All forms must name THE NEW YORK STATE GAMING COMMISSION, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

- (b) If the Contractor is legally exempt from obtaining Workers' Compensation insurance coverage, Contractor must provide: **Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required** which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us) ).
- (c) If the Contractor is self-insured, Contractor must provide: **Form SI-12, Certificate of Workers' Compensation Self-Insurance**, 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 Self-Insurance**, available from the Contractor's Group Self-Insurance Administrator.

#### 4. Disability Benefits

For work to be performed in NYS, the Contractor shall provide and maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the NYS Disability Benefits Law.

- (a) Evidence of Disability Benefits coverage must be provided on: **Form DB-120.1** (May 2006 or most current version), *Certificate of Insurance Coverage under the NYS Disability Benefits Law*. Consultant must request its business insurance carrier to send this form to the Commission.
- (b) If the Contractor is legally exempt from obtaining Workers' Compensation Disability insurance, Contractor must provide: **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website ([www.wcb.state.ny.us](http://www.wcb.state.ny.us)).
- (c) If the Contractor is self-insured, Contractor must provide: **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*.

All forms are valid for one year from the date the form is signed/ stamped, or until policy expiration, whichever is earlier. **All forms must name THE NEW YORK STATE GAMING COMMISSION, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

#### 2.12 CONSULTANT DISCLOSURE

The Consultant must comply with the requirements of New York State Finance Law Section 163(4) (g), which imposes certain reporting requirements on Consultants doing business as consultants with New York State. In furtherance of these reporting requirements, the Consultant agrees to complete and submit Consultant's Planned Employment report (**Appendix H – Form A**) within two (2) business days after receiving notice of a contract award and Consultant's Annual Employment Report (**Appendix H – Form B**) by May 15<sup>th</sup> for each fiscal year (April 1 – March 31) the contract term is in effect. Page two of each form provides the necessary addresses for submitting the form.

While the Planned Employment report (Form A) is a one-time projection of the planned employment under the upcoming contract term, the Annual Employment Report (Form B) is a reporting of the actual employment history for the previous fiscal year.

Forms A and B should be completed as follows:

- **Employment Category:** The Consultant must use specific occupation titles as listed in the O\*net occupational classification system found through the U.S. Department of Labor's Employment and Training Administration

([www.online.onetcenter.org](http://www.online.onetcenter.org)). The classification system provides a code for various occupational titles; the Consultant should use the code which best defines the employment titles to be utilized under the contract.

- **Number of Employees:** Enter the number of employees in the employment category employed to provide services (Form A), or who have performed services (Form B), during the reporting period, including part-time employees and employees of Sub-contractors.
- **Number of Hours Worked or to be Worked:** Enter the number of hours to be worked (Form A), or worked (Form B) under the employment category for the reporting period.
- **Amount payable or paid under the Contract:** Enter the estimated amount to be paid (Form A), or actually paid (Form B) for each employment category for the reporting period.
- **Scope of Contract (Form B only):** Choose the category that best describes the predominate nature of the services performed under the contract.

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

In accordance with Article 15-a of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) 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 offeror/Consultant agrees to be bound by the following provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.

A. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS

By submission of a Proposal in response to this solicitation, the offeror agrees with all of the terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women. In addition, as part of the Proposal, each respondent must submit a copy of the respondent's Equal Employment Opportunity ("EEO") Policy. If the respondent does not already have an EEO Policy in effect, then an EEO Policy must be adopted and a copy of the new policy must be submitted. **Appendix I** contains: Instructions for Completion **(I-1)**, Work Force Employment Staffing Plan **(I-2)**, and the Work Force Employment Utilization Periodic Report **(I-3)** described below.

Proposal and contract requirements:

1. Each Proposal must include a Staffing Plan (**Appendix I-2**) describing the work force expected to be used on the contract. If it is impossible to describe the portion(s) of the respondent's work force that will be devoted to performing the contract, then the staffing plan must describe the respondent's total work force, including apprentices. The staffing plan must show the ethnic backgrounds, gender, and Federal occupational categories of the members of the work force.
2. During the term of the contract, the Consultant will be required to submit periodically, as defined below, to the Commission a Work Force Utilization Report (**Appendix D-3**) showing the work force actually used in performing the contract, categorized by ethnic background, gender, and Federal occupational categories.

If the Staffing Plan provides for only the work force devoted to this contract, quarterly reporting is required. If the Staffing Plan includes the respondent's total work force, semi-annual reporting is required.

3. All of the foregoing equal employment and affirmative action requirements are applicable to all subcontracts related to this contract. The successful vendor shall include in every subcontract in connection with this contract the requirement that Sub-contractors shall undertake or continue existing programs of affirmative action and, when requested, provide to the Consultant information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this contract.
4. The Consultant will be required to follow the EEO Policy throughout the term of the contract.
5. As to the performance of the contract, Consultants and Sub-contractors shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, gender, age, disability or marital status. For these purposes, equal opportunity 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.
6. As a part of the Consultant's EEO policy statement, the Consultant, as a precondition to entering into a valid and binding State contract, shall agree to the following in the performance of the contract:
  - (i) The Consultant will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action 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, 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.

- (ii) The Consultant 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, gender, age, disability or marital status;
- (iii) If requested by the Lottery, the Consultant 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, and that such union or representative will affirmatively cooperate in the implementation of the Consultant's obligations herein.

As a precondition to contract award, the Consultant's EEO Policy must contain a statement agreeing to comply with the requirements of Appendix A, Clause 12 and the elements listed above during the performance of this contract.

#### B. MINORITY/WOMEN-OWNED BUSINESS PARTICIPATION

It is the policy of New York State to maximize the opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as offerors, Sub-contractors and suppliers for its procurement contracts. Information on the availability of New York State Sub-contractors and suppliers can be found in the Directory of Certified Minority and Women-Owned Business Enterprises available from the New York State Department of Economic Development, [http://www.empire.state.ny.us/Small\\_and\\_Growing\\_Businesses/mwbe.asp](http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp)

In accordance with Article 15-A of the New York State Executive Law and 5 NYCRR §141.2, the Commission has established a goal of **10%** participation by New York State Certified Minority Owned Business Enterprises and **10%** participation by New York State Certified Women Owned Business Enterprises as Sub-contractors/suppliers in this proposed contract.

**The Minority and Women-Owned Business Utilization Plan Form (Appendix J-1), included in this RFP, must be completed as directed below.**

Proposal and contract requirements:

1. Each Proposer must include a summary (anticipated participation) of their MBE/WBE utilization plan in their Proposal. The plan shall include the business name of the supplier/sub-Consultant, a description of the proposed products or services to be provided, contact information for a representative of the supplier/sub-Consultant, and the estimated value of the payments over the term of this contract. To provide the plan, the Proposer may use the Utilization Plan Form (**Appendix J-1**) or similar format as long as the required information is present.

2. The successful vendor must submit the complete Utilization Plan within fourteen (14) days after notification of the contract award for review and acceptance by the Commission.
3. The contact information for the designated officer who will be assigned the responsibility and authority to monitor the MWBE program for this contract shall also be provided.
4. Any modifications or changes to the agreed participation by certified Minority or Women-Owned Business Enterprises (MWBEs), over the term of the contract, must be reported on a revised Utilization Plan.
5. During the term of the contract, the successful vendor will be required to submit to the Commission a **Quarterly Activity Report (Appendix J-2, Parts 1 & 2)** showing MWBE's actually used in performing the contract. This information shall be broken down by sub-contractor/supplier and dollar amount of purchase/service. **The Quarterly Activity Report must be received by the Commission 10 calendar days following the end of the previous quarter. The State's fiscal year is April 1 through March 31. The quarterly end dates are: June 30, September 30, December 31, and March 31.**
6. In accordance with 5 NYCRR § 142.13, a Consultant who willfully and intentionally fails to comply with the minority and women-owned business enterprise participation requirements of 5 NYCRR Parts 140-145 as set forth in this RFP shall be liable to the Lottery for damages, which shall be calculated based on the actual cost incurred by the Lottery related to the Lottery's expenses for personnel, supplies and overhead related to establishing, monitoring, and reviewing certified minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance. If the Lottery elects to proceed against a Consultant for breach of contract as provided in 5 NYCRR § 142.13, the Lottery shall be precluded from seeking enforcement pursuant to Executive Law § 316.

#### 2.14 SUCCESSFUL VENDOR RESPONSIBILITIES AS PRIMARY CONSULTANT

The Consultant will be required to assume responsibility for all contractual activities offered in the Proposal whether or not the Consultant performs such activities. Further, the Lottery will consider the Consultant to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

The Consultant may have Sub-contractors; however, the Consultant must accept full responsibility for the performance of any such sub-contractor. **If any part of the work is to be subcontracted, responses to this RFP must include a list of Sub-contractors, as defined in Part 4 of this RFP.**

## 2.15 APPROVAL OF STAFFING

The Commission reserves the right to review and, if perceived necessary, disapprove any employee of the successful Vendor who is assigned to the Commission contract, either at contract inception or during the term or any extension thereof.

## 2.16 SUB-CONTRACT APPROVAL

The Commission must approve Sub-contractors and may require the successful Vendor to replace Sub-contractors who are determined to be unacceptable upon inception or during the term or any extension thereof. Sub-contractors are subject to background checks of personnel and principals, and may also require Vendor licensing.

## 2.17 DELEGATION AND/OR ASSIGNMENT

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

## 2.18 CODE OF CONDUCT FOR VENDOR

The Commission is an extremely sensitive enterprise because of the nature of the business and because it is government operated; therefore, it is essential that its operation, and the operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Due to this, Consultants associated with the Commission are expected to:

- A. Offer goods and services only of the highest standards;
- B. Use their best efforts to prevent the 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 industry;
- D. Avoid promotional activities which could be interpreted as improper and result in embarrassment to the industry;
- E. Report security problems or potential security problems promptly to the Commission.
- 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 this project.

## 2.19 TICKET PURCHASE AND PRIZE PAYMENT RESTRICTIONS

Restrictions apply to the purchase of Lottery tickets and payment of Lottery prizes to individuals related to the Successful Vendor or the Successful Vendor's significant Sub-contractors. No officer, employee, or immediate supervisor of such employee, or relative living in the same household as these individuals shall purchase a Lottery draw or Instant Game ticket or be paid a prize in any Lottery draw or Instant Game if (i) he or she conducts duties directly pursuant to the Contract; or (ii) he or she has access to information made Confidential by the Commission during the term of this contract. The Successful Vendor shall ensure that this requirement is made known to each affected individual and must define how it will comply with this requirement.

## 2.20 TITLE TO AND USE OF INTELLECTUAL PROPERTY

The Commission and the Vendor shall agree that Intellectual Property associated with any service provided by (or developed solely by) the Successful Vendor during the term of this Contract and used by the Commission will remain the property of the Vendor; however, the Vendor will grant a license to the Commission to make use of any such Intellectual Property on a perpetual basis. The Vendor may not separately charge the Commission a fee for the right to use any Intellectual Property owned by the Successful Vendor. As part of its Proposal, the Vendor must provide a list of Intellectual Property currently owned by the Vendor that may be relevant to this procurement.

## 2.21 LICENSED INTELLECTUAL PROPERTY

To the extent that the Vendor utilizes or relies upon the Intellectual Property rights of a third party in fulfilling its obligations under the Contract, the Vendor will provide the Commission with whatever assurance the Commission deems necessary that the use of such third party Intellectual Property is permissible. In addition, in the event of failure to perform or breach of Contract the Vendor must ensure continued right of use of licensed Intellectual Property by the Commission. The Commission will not pay a fee for rights already held by the Vendor; however, if fees are incurred for the licensing of Intellectual Property owned by any third party relevant to the fulfillment of the services under this RFP, any fees to be paid by the Commission for use of a third party's Intellectual Property will be negotiated on a case by case basis. As part of its Proposal, the Vendor must provide a list of any third party's Intellectual Property relevant to this procurement that the Vendor is currently licensed to use.

## 2.22 COMMISSION SECURITY REQUIREMENTS

The Consultant, including its employees, officers, agents and Sub-contractors, shall be required to comply with all present and future security policies of the Commission. In addition, the Consultant, its Sub-contractors, project managers, their employees, officers and agents, and any and all persons involved in projects and work assignments under this contract will be required, prior to access to any Commission site, to be given a

security clearance by Commission. Anyone seeking access to a Commission site must provide their name, address, date of birth, company affiliation, and a company point of contact for employment verification, at least one week prior to any site visit. Once preliminary access approval is granted by the Commission, all visitors to a site must provide two (2) forms of valid identification, including one photo ID and written authorization that they are acting on behalf of a designated employer and/or Consultant. Only after site authorization is confirmed will access to the Commission site be approved.

#### A. Physical Security during the Delivery of Contracted Services

(i) The Consultant shall be solely responsible for the safety and security of the project sites, facilities, and components under this Contract, with the exception that the Consultant is not responsible for overall building security at locations under the control and management of Commission, State, local or federal agencies. The Consultant remains responsible, however, for security of project components or equipment within such buildings, e.g. secure equipment enclosures within the space provided by such agencies. The Consultant shall be responsible for and shall correct its failure or theft of any components or portion of the project due to the Consultant's inadequate physical and/or information security at its cost and expense.

(ii) The physical security and the information security of project data shall be provided at a level commensurate with that normally established for a similar system in today's heightened security environment. All components of site security shall be of suitable strength and design, and shall reasonably withstand attempts to gain unauthorized access.

#### B. Access by Personnel

(i) The Prime Consultant, its officers, agents, Sub-contractors, and their employees and independent Consultants, 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 Consultant as a condition precedent to Consultant's obligations under this paragraph.

(ii) The Consultant warrants that each individual performing work under this RFP is legally eligible to work in the United States and that such eligibility shall be maintained at all times during the engagement while the individual is accessing any Commission site, information systems or data contained therein. In addition, prior to accessing any Commission site, project information systems or data contained therein, the Consultant, and its officers, agents, Sub-contractors, and their collective employees and independent Consultants performing work under this RFP, shall be required to:

(a) Obtain security clearance from the Commission, which may include, at the Commission's discretion, a criminal history and/or background

investigation of each individual proposed to perform work under the Contract. Each individual assigned to the project by or through the Consultant shall be required to submit identifying information to the Commission.

(b) Obtain from the Commission and prominently display on their person, Commission issued identification cards at all times while physically present at any Commission site.

(iii) When an emergency or other circumstances occur which render immediate compliance with the foregoing requirements impractical, the Commission may, in its sole judgment, defer an individual's compliance with the foregoing requirements and grant temporary access. Such deferment shall not be construed as a waiver of the Commission's right to subsequently require security clearance as to any individual previously granted such temporary access; provided however, that even in such circumstances, the Commission shall approve such individual's access prior to such individual accessing a site, system or data and the Commission may accompany such individual at all times when on-site.

(iv) The Commission reserves the right, in its sole discretion, and without liability to the Consultant's officers, agents, Sub-contractors, and their collective employees and independent Consultants assigned to work under the Contract, to withhold approval of and refuse to permit access prior to such individual accessing a site, system or data and the Commission may accompany such individual at all times when on-site. The Commission reserves the right, in its sole discretion, and without liability to the Consultant's officers, agents, Sub-contractors, and their collective employees and independent Consultants assigned to work under the Contract, to withhold approval of and refuse to permit access to Commission facilities, electronic information systems or data contained therein to any individual proposed by or through the Consultant (A) who refuses to comply with the security procedures outlined in this section, or (B) where the Commission determines that the individual may present a risk to the Commission's security interests. The Commission shall not be liable for payments or damages of any kind if the Consultant is delayed or unable to perform under the Contract as a result of the Commission's denial of access to any individual(s) pursuant to this section.

## **PART 3 – SCOPE OF WORK**

### **3.1 WORK AND DELIVERABLE**

The Deliverable under this contract will be a Business Plan regarding alternative strategic approaches for the future of lottery in New York State. This project requires a Consultant capable of performing in-depth market research and analyses over a short period of time. Therefore, the Consultant who undertakes this project must have the experience, knowledge, and staffing necessary to deliver a comprehensive Business Plan, to the Commission, no later than **45 calendar days following November 5, 2013, Election Day**. Consultant shall provide services, staff, travel, equipment, programs and all other things necessary to complete the requirements of the contract.

### **3.2 SCOPE**

#### **A. Business Plan**

The Consultant will be expected to take all steps necessary to develop a comprehensive Business Plan that will address alternative approaches for the Division of the Lottery under either outcome (pass/fail) of the casino referendum. The Business Plan shall include, but not be limited to, the following:

- Description of specific business strategic opportunities, paths or actions the Commission may take, including timelines.
- Identification of estimated, relational, revenue opportunities under each opportunity, path, or action, for a five-year period.
- Provide estimated administrative costs to implement each path.
- Discussion of which aspects of each, opportunity, path, or actionable items are best suited to operation by the Commission and recommendations for use of outside vendors.
- Projection of staff size that will be required of the Commission and/or Division of Lottery, to implement the options.
- Identification and discussion of the competition that will be encountered depending on opportunities, paths, or actions selected by the Commission.

#### **B. Other Engagements (Statement of Work Process)**

It is anticipated that following development of the Business Plan, the Commission may need to engage the Consultant on various stages related to the implementation of the Business Plan and related tasks. In order to prepare for these engagements it is necessary to obtain a list of job titles and related compensation rates in the Pricing Proposal – **Attachment 2**. At such time that an engagement is required, the process for entering into these engagements is as follows:

- The Commission will define, in writing, the objectives and scope of the project.

- The Consultant will prepare a work plan in response to the objectives.
- The Commission will review the work plan and related cost (contract rates times estimated hours) and, if agreeable, will prepare a Statement of Work (SOW), in the form incorporated into this RFP as **Attachment 4**. The SOW will define the work plan and cost to complete the project, including the staff positions and associated hourly rates that will be dedicated to the work. As defined previously in the RFP, the pricing for this work will be based on the rates provided in **Attachment 2**.
- The SOW will be signed by both parties and forwarded to the Office of the State Comptroller (OSC) for final review and approval.
- Upon approval of the OSC the project can commence.

### **C. Hourly Consultation**

The Commission may also need to consult with appropriate persons on the Consultant's staff on an as needed basis. Under these circumstances, the Project Manager will contact the Consultant to discuss the work and the Consultant will provide assistance under the titles and rates proposed in the Pricing Proposal.

### **3.3 COMMISSION RESPONSIBILITY AND PROJECT CONTROL**

The Commission will assign a Project Manager who will serve as primary contact to the Consultant and be responsible for the direction and control of all aspects of the project, including all work performed throughout the term subsequent to the completion of the Business Plan.

The Commission will provide the Consultant with all available data required by the Consultant to analyze current Lottery operations and capabilities, including staffing, system capabilities and options available under current contracts. And, will make available, staff, as needed, to help the Consultant understand current Lottery operations and the existing options available to the Commission under existing lottery related contracts.

Although there will be continuous contact between the Consultant and the Project Manager, as well as other key staff, the Consultant and the Project Director will meet at least weekly throughout development of the Business Plan and as needed throughout implementation of new strategies.

The Commission will provide meeting space at its headquarters at One Broadway Center, Schenectady, NY. All in-person meetings between the Consultant and the Commission will be held at this location.

## **PART – 4 INFORMATION REQUIRED FROM VENDORS**

In preparation of the Proposal, each Vendor should pay special attention to the requirements and information being requested in order to respond fully to the RFP. Any Proposal found to be incomplete or placing conditions in response to the requirements may be deemed non-responsive and removed from further consideration.

### **4.1 BUSINESS ORGANIZATION**

- A. The Vendor must state the full name and address of its organization and, if applicable, any branch office or other subordinate element that will perform or assist in the performance of the work hereunder. The Vendor shall indicate whether it operates as an individual, partnership, corporation, joint venture, or other specified form of business organization. Each Vendor must state whether they are qualified and/or registered to do business in the State of New York.
- B. The Vendor must indicate the name, address (including e-mail) and telephone number of the individual from your organization that is authorized to enter into and bind the organization to the terms and conditions of its Proposal.

### **4.2 FINANCIAL VIABILITY**

The Vendor must submit information demonstrating the Vendor's financial viability, integrity and stability, including, but not limited to, annual reports and client lists for the past three years. Further, to the extent not already provided in the Vendor Responsibility Questionnaire, the Vendor shall describe key corporate personnel, ownership control, and facilities available to satisfy the requirements of the proposed contract.

### **4.3 EXPERIENCE OF THE VENDOR'S ORGANIZATION**

#### **Organization:**

The vendor must demonstrate in its Proposal that its organization is of sufficient size and has the qualifications required to perform the requested services as defined in this RFP. The Proposal must include the following:

- Thorough description of the organization, including employee capacity to undertake and successfully carry out the proposed services.
- Credentials of the firm and examples of past projects that illustrate such record.
- Resumes of the managing individuals describing relevant education, knowledge, training, and experience. The State expects that the same managers will have overall responsibility for all projects conducted pursuant to this RFP. Exceptions may be made only with the approval of the Commission.

- Description of prior experience of the bidding organization, including any sufficient description and detail to demonstrate the relevance of such experience, specifically as related to the service being sought under the RFP.
- Description of how the organization's quality assurance program will be applied to this Proposal.

#### **References:**

The Proposal must name as references at least three (3) clients relevant to the work to be performed under the contract resulting from this RFP. References must include company name, contact person (name, title, telephone number, email address, and mailing address). Also, each reference must include a general statement of the type of work performed for the reference. References will be used to substantiate the Technical Proposal.

#### **4.4 PROJECT MANAGEMENT AND STAFFING**

Identify the full time dedicated staff project director and other responsible individuals by name, title, and location who will work under a resulting contract. Identify the role and anticipated percentage of time allocated of each individual in the proposed work effort. A resume indicating the relevant experience of each individual and his or her role in the project must be provided.

#### **4.5 SUB-CONTRACTORS**

If applicable, the Proposal must list all sub-contractors, including firm name and address, contact person, and a complete description of work to be sub-contracted and the location that sub-contracting work will be conducted. Descriptive information relative to the sub-contractor's organization and capabilities must be included. If the vendor does not intend to utilize sub-contractors, that should be indicated in the Technical Proposal.

#### **4.6 WORK PLAN**

The Proposal must provide a work plan for accomplishing the deliverable defined in the RFP including a detailed description of the manner in which each of the tasks described in Part 3 will be accomplished. The description must identify each major event, task, or decision point in your work plan, as well as the time estimated (in terms of person hours and elapsed days) to complete each major component. A detailed work plan/time line developed with a business planning tool such as Microsoft Project must be submitted as a MS Project file or portable document file (pdf). Time estimates must include allowance for Lottery review (which shall be promptly provided) and revisions to the Business Plan. This work plan should provide a brief discussion of the subject matter, including important considerations, alternatives or methodologies, as applicable, that clearly demonstrate your understanding of the work effort required if awarded a contract through this RFP process.

#### 4.7 PRICING PROPOSAL

##### **A. Comprehensive Business Plan:**

Vendor must quote an all-inclusive price for the complete Business Plan in the form provided in **Attachment 2**.

##### **B. Other Engagements and Hourly Consultations:**

Vendor must provide a list of job titles and associated hourly rates for all personnel to be utilized under the Contract. Payment will not be made for any title/rate utilized but not provided for in the Proposal. The hourly rate associated with each job title will remain the same for the year quoted regardless of the engagement or consultation (i.e. the hourly rate assigned to a title must be the same whether utilized for hourly consultation on an as needed basis or under an engagement through the SOW process). The hourly rates must be provided in the form provided in **Attachment 2**.

#### 4.8 COMPLIANCE WITH REQUIREMENTS

Consultant must state compliance with the requirements outlined in the RFP and submit completed forms as required.

#### 4.9 ADDITIONAL INFORMATION AND COMMENTS

The Vendor should include any other information that is believed to be pertinent but not specifically asked for elsewhere.

## **PART 5 – EVALUATION AND SELECTION**

### **5.1 INTRODUCTION**

This section describes the evaluation 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 Vendor's Proposal is dependent upon the completeness and proper submission of the Proposal. The failure of a Vendor 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 rejection of the Vendor's Proposal or reduction in scoring during the evaluation.

### **5.2 EVALUATION METHODOLOGY**

The Commission will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. In making a selection, the Commission will be represented by an Evaluation Committee (the "Committee") composed of Commission staff members. 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. The Pricing Proposals will be scored by one or more individuals from the Finance Office designated by the Committee and will be based on a pre-determined formula. The relative weight of technical to price will be: technical 75%; price 25%.

### **5.3 EVALUATION STEPS**

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

- A. Pass/Fail evaluation of minimum qualifying requirements of the Vendor as provided for in Section 1.3 of the RFP.
- B. Review of Proposals to assess compliance with proposal submission requirements, including responsiveness to terms, conditions and requirements.
- C. Detailed evaluation of proposed functions, features, services, and references, using the requirements and criteria defined in this RFP.
- D. Proposal clarifications.
- E. Scoring of Technical Proposals by the Committee.
- F. Assessment and scoring of Pricing Proposals after finalization of the technical scoring process and by one or more individuals from the Gaming Commission Administration and Finance Bureau.

- G. Compilation by the Contracting Officer or Finance Officer of the technical scores and pricing score into a summary score sheet.
- H. Recommendation to Executive Director of the Commission of apparent winner.
- I. Acceptance by Commission of recommendation of award.
- J. Notice of Award.

#### 5.4 INFORMATION FROM OTHER SOURCES

The Commission reserves the right to obtain from sources other than the Vendor, information concerning a Vendor, the Vendor's offerings and capabilities, and the Vendor's performance, that the Commission deems pertinent to this RFP and to consider such information in evaluating the Vendor's Proposal. This may include, but is not limited to, the Chairperson of the Evaluation Committee engaging consultants and additional experts from outside the Committee to better inform the Committee's findings, as well as references from other lotteries and gaming jurisdictions.

In addition, as provided in Section 4.3, references will be checked regarding the Vendor's past experience. The Committee will select an equal number of current or previous clients for each Vendor. 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 Vendor's performance and experience.

#### 5.5 EVALUATION & SELECTION CRITERIA

Proposals determined to comply with the requirements set forth in this RFP and submission requirements outlined in Part 4 – Information Required from Vendors – of this RFP will be evaluated based on the following criteria:

- A. Technical Evaluation – 75%
  - Experience of Vendor's Organization (35 points)
  - Project Management & Staffing (25 points)
  - Work Plan (15 points)
- B. Pricing Evaluation – 25%

The Vendor with the lowest price will be awarded the full points allocated to the pricing evaluation. The score for each of the remaining Vendors will be proportionate to the lowest bidder based on a pre-determined formula.

## 5.6 FINAL COMPOSITE SCORE/DETERMINATION OF AWARD PROCESS

The technical and pricing scores will be combined to determine the final composite score for each Bidder. Award will be made to the Bidder who achieves the highest composite score and who is deemed to be a responsible Bidder.

## 5.7 NOTICE OF AWARD

A contract award notification letter will be sent to the successful offeror and unsuccessful offerors indicating a conditional award subject to approval by the Office of the Attorney General and Office of the State Comptroller.

No public discussion or news releases relating to this RFP or the resulting contract shall be made by any offeror without the prior approval of the Commission.

## 5.8 DEBRIEFINGS

At the time of award notification, offerors will be advised of the opportunity for a debriefing by the Commission regarding the evaluation of that offeror's proposal. Information relative to other Vendor Proposals and agency scoring of those Proposals is subject to the Freedom of Information Law (Article 6 of the Public Officers Law).