

**Development and Operation of a Video Lottery  
Facility at Aqueduct Racetrack  
Question & Answers – Round #1  
Issued May 25, 2010**

**Capital Construction Grant/NYRA**

- Q1. RFP §1.2: Will Vendor have direct access to draw at will on \$250MM capital grant cash or will there be a reimbursement process? If a reimbursement process, what are the details of that process?
- A1. It is anticipated (i) that there will be an initial advance, possibly in an amount equal to an acceptable estimate of the largest monthly requisition pursuant to the detailed construction schedule, followed by monthly disbursements against requisition vouchers with supporting documentation, and (ii) that approximately five percent (5%) of each disbursement will be retained pending final closeout of the capital construction grant.
- Q2. RFP §1.2: How many days after the MOU is signed will the ESDC issue the bonds and the cash are available?
- A2. ESDC expects to issue bonds within approximately ninety (90) days after all final transaction documentation and agreements between the State and the Vendor are executed and delivered, including satisfaction of all relevant conditions precedent to the funding of capital construction.
- Q3. RFP §1.2: When will the \$250M ESDC funds be made available?
- A3. See A2.
- Q4. RFP §1.2: What is the anticipated timing of issuance of the bonds required to raise the \$250 million Capital Construction Grant? When does the State expect the funds to be available for the gaming facility construction project?
- A4. See A2.
- Q5. RFP §1.2: Is the amount of the Construction Grant (\$250 million) **reduced** by amount(s) approved by the New York State Franchise Oversight Board as in 1.2 of the RFP or is **all** of the Capital Construction Grant (\$250 million) **available** as in 5.3 of the MOU?
- A5. Pursuant to a chapter of the laws of 2010, the \$250 million Construction Grant is reduced by \$25 million because of an advance to NYRA of \$25 million.
- In the event that NYRA is unable to repay such moneys by the earlier of March 31, 2011 or 30 days after the execution of the MOU, the vendor is obligated to advance up to \$25 million to NYRA so that NYRA can repay such moneys when required. Pursuant to a

chapter of the laws of 2010, upon repayment of such moneys by NYRA, the additional \$25 million Construction Grant shall be made available to the vendor.

In accordance with a plan approved by the Director of the Budget, the vendor may also be required to advance an additional \$1.25 to \$1.5 million per month from signing of the MOU until opening of the VLT facility.

In accordance with a plan approved by the Director of the Budget, the advance to NYRA from the vendor shall be repaid from portions of the vendor fee that would otherwise be due to NYRA pursuant to paragraphs 3 and 4 of subdivision f of section 1612 of the Tax Law on account of video lottery revenues from a video lottery facility at Aqueduct racetrack.

The MOU will be amended to reflect these requirements.

Q6. RFP §1.2: Does the \$250M ESDC bond include the purchase of the VLTs?

A6. No. The Lottery provides VLT machines and the central determinant system to operate them through our vendor contracts with Bally, Spielo, IGT, and Multimedia Games, The equipment remains the property of the vendors and neither the Lottery nor the facility operator incur capital costs for them. Such vendors are responsible for maintaining insurance coverage for such system and machines.

Q7. RFP §1.2: We note the recent abandonment of the \$17MM loan proposal to fund NYRA out of the \$250MM bond issuance. Will any new plan to fund NYRA reduce the \$250MM available to fund construction of the facility? When will the Vendor be informed whether it can rely on the upfront availability of the \$250MM capital grant for use during the construction phase?

A7. See A5.

Q8. RFP §1.2: If a plan is implemented whereby NYRA is funded out of the \$250MM capital grant or any other structure that reduces the \$250MM of cash available, will the Vendor be able to negotiate a separate agreement for repayment with NYRA before paying the minimum \$300MM license fee, or will the Vendor be able to rely on the state to seek repayment of such amount funded to NYRA?

A8. See A5.

Q9. RFP §1.2: Provides that the Capital Construction Grant may be reduced by amounts approved by the NYS Franchise Oversight Board as advance payments to NYRA until such time as Video Lottery revenues are available. The Vendor wishes to discuss this item to understand better its potential maximum liability to NYRA. The Vendor suggests that the amount available to NYRA resulting in the reduction of the Capital Construction Grant should be capped.

A9. See A5.

- Q10. RFP §1.2: Will professional fees (i.e. legal, architectural, etc.) that are required to support the development process be included in the capital contribution costs that are reimbursed from the \$250M ESDC grant?
- A10. Soft costs (other than the costs of bonding required for work on a State facility) are not anticipated to be eligible for funding from \$250 million in ESDC capital construction bond proceeds to be disbursed pursuant to the Capital Construction Grant.
- Q11. RFP §1.2: The last paragraph of Section 1.2 of the RFP indicates that the \$250 million Capital Construction Grant may be reduced to the extent that the New York State Franchise Oversight Board advances funds to NYRA. However, Section 5.3 of the MOU commits the State to provide the full \$250 million Capital Construction Grant to the Vendor. Will the RFP and the MOU be reconciled on this issue? Has there been a determination that the State can lawfully divert part of the New York Legislature's previously authorized Capital Construction Grant to NYRA? If the Capital Construction Grant is subject to reduction to provide for the advance of funds to NYRA, will the amount of that reduction be capped at a maximum dollar amount? At what point will the total amount of the Capital Construction Grant that is to be made available for the development of the gaming facility be known?
- A11. See A5.
- Q12. If an advance is provided to NYRA from the Capital Construction Grant, under what terms will those proceeds be repaid and be made available for the gaming facility development project? Will all amounts (capital funds, operating funds, purse subsidies and breeder's subsidies) anticipated to be paid to NYRA from the Vendor's gaming revenues be subject to offset until such time as these advances are repaid?
- A12. See A5.
- Q13. MOU Article 1.3.2: Section 1.2 of the RFP and Section 5.3 of the MOU both provide that the ESDC will disburse the Capital Construction Grant to the Vendor. However, Section 1.3.2 of the MOU states that disbursement of the proceeds shall be made to directly pay eligible capital costs. Please verify that the Capital Construction Grant will be disbursed by the State directly to pay eligible capital costs as instructed by the Vendor, and will not be paid to the Vendor.
- A13. ESDC may make disbursements pursuant to the Capital Construction Grant either directly to the Vendor or as directed by the Vendor.
- Q14. MOU Article 1.3.2: Please clarify that the funding of the Capital Construction Grant is an affirmative obligation of the State. The Vendor believes that such Grant should be fully funded at the time the Licensing Fee is paid. Additionally, please clarify the disbursement process of the Capital Construction Grant. Please confirm that the first \$250 million of construction and related costs will be paid directly to design

professionals, contractors and material vendors in connection with the hard and soft costs related to the construction of the VLF from the Capital Construction Grant and that the Vendor will not be responsible for any such costs until the Capital Construction Grant is fully expended.

A14. See A10. Issues related to hard costs may be addressed in the transaction documentation between ESDC and the Vendor.

Q15. MOU Article 5.3: Also for purposes of the Capital Construction Grant referred to in Section 5.3 of the MOU, will "eligible capital construction costs" include so-called "soft costs" such as architectural, construction management, engineering, legal accounting and other customary professional fees?

A15. No. See A10.

Q16. MOU Article 5.6: Provides that the Vendor is obligated to provide operating capital funds to NYRA after April 1, 2011 as directed by the NYS Franchise Oversight Board. The Vendor wishes to discuss the NYRA funding obligations as contemplated by this section, including, without limitation, the Vendor's obligations, if any, prior to the time that the VLF is fully open and operational and the mechanism by which NYRA will repay to the Vendor any amounts advanced. Additionally, the Vendor suggests that any NYRA funding obligations should be capped. Note that certain of the bidders in the 2009 auction for the Aqueduct VLF proposed limits on the aggregate monthly amount of such NYRA funding obligations.

A16. See A5.

Q17. MOU Article 5.6: Are the possible payments to NYRA commencing April 1, 2011 to be advances on account of future payments to NYRA under the license?

A17 See A5.

Q18. MOU Article 5.6: Would the possibility of having to fund NYRA commencing April 1, 2011 be moved if the closing date is later than anticipated?

A18. See A5.

Q19. MOU Article 5.6: Can you please provide an estimate of how much the NYRA funding exposure could be?

A19. See A5.

Q20. MOU Article 5.6: We note that Article 5.6 of the MOU requires a portion of the \$250M grant to be used to provide operating capital to the NYRA after April 11, 2011. In order to judge the potential magnitude of the erosion to the \$250M, what is the current run rate (operating cash flows) of the existing NYRA operations? How much of the \$250M ESDC bond is expected to fund the current operating losses? Would the Lottery entertain a cap on the amount to be paid towards the operating capital?

A20. See A5.

Q21. MOU Article 5.6: In Section 5.6 of the MOU, will the support payments to be made by the Vendor to NYRA prior to the opening of the gaming facility be subject to a monthly maximum dollar amount?

A21. See A5.

Q22. MOU Article 5.6: Will NYRA be required to repay the advances made by the Vendor pursuant to Section 5.6 after the gaming facility has been opened? Will all amounts (capital funds, operating funds, purse subsidies and breeder's subsidies) anticipated to be paid to NYRA from the Vendor's gaming revenues be subject to offset until such time as these advances are repaid?

A22. See A5.

Q23. MOU Article 5.6: Will the April 1, 2011 commencement date for the NYRA support payments specified in Section 5.6 of the MOU be deferred in the event that delays occur which result in the proposed closing date of September 1, 2010 not being achieved?

A23. No. See A5.

### **Construction & Operation**

Q24. RFP §4.5: Does NYRA have a minimum set of drawing and plans that are expected in the submission? If so, can the minimum set of drawings be specified?

A24. Yes. See section 4.5 of the MOU. The Lottery requires that drawings reflecting approximately 30% completion be included in the submission. Copies of plans and drawings of the existing space have been provided by NYRA and will be sent to any bidder who submits a \$1 million entry fee on June 1, 2010.

Q25. MOU Article 5.7: Section 4.5 of the RFP indicates that a phased opening of the permanent gaming facility will be permitted. However, other than an undefined reference to the "Preliminary Phase" in Section 5.7 of the MOU, the MOU does not appear to contemplate the possible phased opening of the permanent gaming facility. Will the MOU be modified to clear up this ambiguity?

A25. Yes. The "Preliminary Phase" is the initial phase of the phased opening.

- Q26. MOU Article 6: Article 6 of the MOU covers existing environmental conditions allowance, has the building been tested for hazardous materials, if yes can this report be provided as this work could impact overall construction schedule?
- A26. Yes. In 2004, asbestos abatement was commenced. Copies of relevant documents will be given to any bidder who submits a \$1 million entry fee on June 1, 2010
- Q27. MOU Article 9.2: With regard to the phased opening of the permanent facility, Section 9.2 of the MOU limits the gross area of the gaming facility to 30,000 square feet. The inclusion of a *porte cochere* to the facility to provide entry both for the phased opening and as a secondary entryway might cause the development plan for the gaming facility to exceed 30,000 square feet. Since such a secondary entry would be advantageous to the facility and would not negatively impact traffic flow, can the 30,000 square limitation be modified, or can allowance be made for a secondary entry?
- A27. The existing foot print can be increased by no more than 30,000 square feet to accommodate a porte cochere. A Vendor may consider use of the existing Clubhouse entrance for the preliminary phase.
- Q28. When can prospective bidders review the detailed construction plans developed by MGM Grand/NYRA in 2003 (or other construction plans that the Lottery has approved or endorsed)?
- A28. These plans are the property of the architectural firm that prepared them; the State does not have access to these plans for public dissemination.
- Q29. Item 16 on page 6 of 21 in the Full Environmental Assessment Form states that a specific solid waste facility be used. This specification does not allow for competitive proposals to be obtained for this work. Can multiple facilities be provided to allow for price competition?
- A29. Yes. The successful vendor may use one or more solid waste facility(s).
- Q30. Does Lottery have a specific view regarding the earliest reasonable period of time in which a Vendor may be able to open a temporary VLT facility following signing of an MOU? If so, what is that period of time?
- A30. The Lottery does not anticipate allowing a temporary facility to open. However, the Lottery will entertain a phased opening of the permanent facility if the fit and finish, access and parking amenities, and customer experience closely replicate the final facility.
- Q31. Who owns the equipment (HVAC and electrical systems) currently on the VLF Premises?

- A31. The State of New York represented by and through the Franchise Oversight Board, subject to any claims by MGM, the original purchaser of the equipment.
- Q32. Is there any limitation on food and beverage offerings allowable because of pre-existing contracts NYRA has with third party concessionaires?
- A32. No. The current NYRA concessionaire has an exclusive on food and beverage sales in connection with racing operations. The current contract contemplates a one year notification period to vacate the premises in the event that the VLT project proceeds during the term of the contract.
- Q33. How many service parking spots are available for use at Aqueduct (i.e. not contractually committed to a third party)?
- A33. Service vehicle parking areas located in the tunnel beneath Aqueduct Racetrack are shared capacity. The current configuration is four (4) full docks and two (2) mini docks.
- Q34. Has any progress been made toward SEQRA approval beyond the March 10, 2004 environmental assessment?
- A34. Since issuance of the 2004 SEQRA determination, the project has undergone several modifications and received funding through Empire State Development (ESD). In accordance with SEQRA, the Lottery, working through its agent – the New York State Office of General Services (OGS) has evaluated whether the site improvements proposed in 2003, together with a 2,000 space parking garage, would necessitate a modification of, or addition to, the previously issued “Negative Declaration.”

This non-final evaluation concludes that a proposal which would be substantially equivalent to that proposed in 2003 plus a 2,000 space parking garage would not alter the prior determination. However, the ultimate winning bidder’s construction plans must be assessed pursuant to SEQRA to determine if features or building components, not originally offered in the 2003 plan, will have an environmental impact.

- Q35. How many parking spaces currently exist at Aqueduct?
- A35. Rockaway parking area: 2800 spaces.  
Pitkin Avenue parking area: 2600 spaces.  
North Conduit parking area: 3550 spaces (part of JFK International Airport; controlled by the Port Authority of New York and New Jersey).  
NYRA has been annually receiving a permit from the PANYNJ for the use of 1200 of the spaces.
- Q36. How much gross parking area (in acres) currently exists at Aqueduct?
- A36. Rockaway parking area: 22.5 acres;

Pitkin Avenue parking area: 20 acres;

North Conduit parking area: 26 acres (NYRA has recently been permitted to use 8.7 acres).

Q37. What is the status of any existing leases with respect to operations on the site? (i.e. flea market)

A37. There are currently no leases in place. There are currently certain license agreements in place. However, these may be timely terminated in contemplation of VLT-related activities.

Q38. Will building the new parking structure require a new SEQRA application?

A38. See A34.

Q39. Can the Lottery please provide copies of (a) the Facilities Ground Lease dated September 12, 2008 between the State Franchise Oversight Board (FOB) and The New York Racing Association, Inc. (NYRA), (b) the Franchise Agreement dated September 12, 2008 between the FOB and the NYRA and (c) a proposed version of the amended and restated Facilities Ground Lease referenced in the recitals in the Sublease Agreement (if available)?

A39. The Facilities Ground Lease and Franchise Agreement are hereby added as Exhibits F and G to the RFP. The State does not intend to enter into an amended and restated Facilities Ground Lease.

Q40. The original SEQRA Environmental Assessment Form dated March 10, 2004 was based on 217,945 square feet of renovation. This current RFP requires a renovated area of not less than 275,000 sf. Does this jeopardize the project's ability to receive a SEQRA negative declaration? Is a current survey of the site available?

A40. See A34.

Q41. There is mechanical & electrical equipment in the Aqueduct building from the 2004 project that has not been installed and still remains on-site in crates. Who owns this material and can it be used for this project?

A41. See A31. This equipment may be available to the successful bidder, subject to any claims by MGM, the original purchaser of the equipment.

Q42. Please confirm that the violations of record and the pre-existing environmental conditions noted in Article 6 of the MOU are the Vendors responsibility in the Vendor's space only (not in NYRA space). Also, can you define these pre-existing and environmental conditions? Can you provide a list of the code issues which must be corrected? Will the

cost of correcting these pre-existing conditions (environmental, code, etc.) be funded through the \$250 M capital construction grant?

- A42. The definitions of “Construction Premises” and “Renovation Premises” set forth in Section 1.3.1 include interconnections with the premises to be occupied by NYRA. Such interconnections would be included in the Article 6 requirements.

OGS is unaware of any pre-existing environmental conditions at this time and has no knowledge of code issues which must be corrected, other than the sprinkler and fire alarm systems, and proper delineation and fire separations between non-involved and involved construction areas. Potential vendors are encouraged to bring appropriate representatives to the mandatory bidders conference and walk-through of the facility to assess for potential code issues.

- Q43. Should there be a defined line and separation between NYRA facilities and the VLT area or can certain spaces be shared?

- A43. NYRA recommends that certain spaces be shared and will negotiate with the successful bidder, subject to the Lottery’s approval.

- Q44. How much parking will be required for NYRA activities?

- A44. November-April Wed/Thur/Fri- 650 spaces for patrons; 400 spaces for employees.  
Saturdays and Sundays - 1300 spaces for patrons; 400 spaces for employees.  
Wood Memorial - 2800 spaces for patrons; 500 spaces for employees.  
January 1st- 2500 spaces for patrons; 400 spaces for employees.  
May-Oct (Non-Racing) 100 spaces for employees.

- Q45. Will space along the service lane on the ground floor be shared or will areas be provided for Video Lottery access and service?

- A45. Certain space should be dedicated; certain space should be shared. This issue will be addressed during the mandatory bidders conference on June 8, 2010.

- Q46. Can the Clubhouse entrance be used as an additional entry for patrons for both track and VLT functions?

- A46. Yes.

- Q47. Are there any scheduling restrictions on construction activities (i.e., certain times, days, months, etc.)?

- A47. There are residential communities which adjoin the property and which must be taken into consideration when setting the construction schedule. Vendors should assume a schedule which will not disturb the neighboring residential community, and as typically

approved in such a setting, based upon the type of construction (internal or external to the facility) being performed.

As per NYRA, there will be limited restrictions for heavy equipment (cranes, etc.) on the track side of the building during training and while racing is being conducted. Normal construction activity in the building and on the West side of the grandstand will have no restrictions. Interruption of water and power would have to be coordinated with NYRA so as to not disrupt regular operations.

- Q48. Are there any LEED design related requirements for the project?
- A48. The property is owned by the State of New York, represented by and through the Franchise Oversight Board and all work must comply with Executive Order 111, which incorporates elements of LEED design.
- Q49. If the Vendor installs a proprietary player-tracking system, will the Vendor have full ownership of the data?
- A49. Yes, but the Lottery requires the right to unfettered access and use of the data, subject to the provisions of (1) the Freedom of Information Law, under which the Lottery will not disclose any information constituting a trade secret or that would, if disclosed, cause substantial injury to the Vendor's competitive position, and (2) the Personal Privacy Protection Law, under which the Lottery may not disclose personal identifying information. These are the same conditions under which proprietary play-tracking systems are currently used at the eight existing video lottery facilities in New York.
- Q50. Will the Vendor be required to bear the expense of bringing all portions of the Aqueduct Racetrack grandstand and clubhouse building which are not planned for development as a part of the gaming facility (but instead are intended to be used by NYRA or left as unimproved vacant space) into compliance with applicable life safety codes and regulations, and the provisions of Section 1617-a of the New York Tax Law? Will the Vendor be required to make any other capital improvements to the NYRA space or the vacant spaces?
- A50. Any areas of the facility providing support to the Video Lottery program, including, but not limited to means of egress through non-gaming program areas, as well as areas identified as the "Construction Premises" and the "Renovation Premises" must comply with the referenced provisions. The vendor will not be required to make capital improvement to areas outside those identified in the MOU.

### **Licensing/License Fee**

- Q51. RFP §1.2: The Licensing Fee is described as non-refundable. If the Vendor and the Lottery are unable to reach agreement on all of the material Transaction Documents by the specified closing date of September 1, 2010 or if there is a lengthy environmental delay, due to no fault of either party, does the State retain the Licensing Fee?
- A51. Yes.

- Q52. RFP §1.2: The Vendor believes that the current deadline of submitting the Licensing Fee within 10 days of execution of the MOU without the executed Transaction Documents and a provision for the refundability of the Licensing Fee would limit the possible methods of financing, the number of bidders and competition among bidders. The Vendor wishes to discuss alternative timing arrangements for the payment of the Licensing Fee (e.g., delaying payment of the Licensing Fee until all the material Transaction Documents have been executed or, alternatively, providing a reasonable timeframe for accomplishing this before the Licensing Fee is due).
- A52. The Lottery does not anticipate making any change to this deadline.
- Q53. RFP §1.2: Where is the licensing fee deposited?
- A.53 A joint custody account of the NYS Office of the State Comptroller and the Lottery.
- Q54. RFP §1.2, §4.9: What happens to the licensing fee if the ancillary documents, permits and approvals contemplated by the MOU are not concluded or obtained?
- A54. The fee will be retained by the State.
- Q55. RFP §1.2: The licensing fee is due August 13, 2010 provided that the selection is August 3, 2010. How much time is there to complete the ancillary documents/approvals? When can construction begin?
- A55. The signed MOU, Assignment and Assumption of the Facilities Ground Lease, the Sublease and other documents required by the RFP must be submitted with the Proposal. All other documents must be completed as soon as possible.
- Construction may not begin until the SEQRA review process has been completed which is expected to take up to 6-8 weeks after bidder submits final plans to the satisfaction of the Lottery.
- Q56. RFP §1.2: What are the circumstances under which the license fee can get refunded to the winning applicant? (e.g. failure of conditions to closing to be satisfied for reasons beyond the control of the Vendor, Material Adverse Changes, failure to obtain the necessary approvals for the ESDC bond issuance, etc.)
- A56. The licensing fee is non-refundable.
- Q57. RFP §1.2: Can the license fee be paid into an escrow account and be released only upon Closing (as defined in the MOU)?
- A57. No.

Q58. RFP §1.2: Section 1.2 of the RFP indicates that the minimum upfront Licensing Fee required from the Vendor will be \$300 million. Section 5.2 of the MOU requires that the Licensing Fee be paid within 10 days after the MOU is signed by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly, and Section 7.2 confirms that there are no conditions precedent to the obligation of the Vendor to make payment of the Licensing Fee. Does this mean that the Vendor's \$300 million Licensing Fee would be forfeit even if:

- (a) the conditions precedent set forth in Article 7 of the MOU fail to be satisfied within a reasonable amount of time; or
- (b) the due diligence investigation to be conducted by the Vendor after execution of the MOU results in the discovery of unforeseen liabilities that the Vendor would be required to assume; or
- (c) the Transaction Documents between the State and the Vendor are unable to be completed on mutually agreeable terms; or
- (d) the Closing of the transaction contemplated in Section 8.5.2 of the MOU fails to occur for any reason?
- (e) If that is not the State's intent, under what circumstances would the \$300 million Licensing Fee be returned to the Vendor?

A58(a) - Yes.

A58(b) - Yes.

A58(c) - Yes. Most of the transaction documents will be completed and submitted as part of the Proposal process.

A58(d) - Yes.

A58(e) - None.

Q59. RFP §1.3: Provides circumstances in which the Vendor, certain holders of beneficial ownership interests in the Vendor and certain other entities and individuals may be excused from filing a video lottery license application, but does not provide an exemption for entities and holders of beneficial ownership interests in such entities already licensed and in good standing because of VLF operations elsewhere in NYS. Please confirm that an entity and holders of beneficial ownership interests in such entity already licensed and in good standing in NYS because of VLF operations elsewhere in NYS are exempt from submitting a video lottery license application.

A59. Confirmed. Any holder in good standing of a New York Video Lottery License is not required to submit a new application.

Q60. RFP §1.3: Section 1.3 of the RFP states that license application forms are required to be submitted for privately held companies "for any entity or individual with beneficial ownership of more than one percent (1 %) of the company". For purposes of clarification, if an individual has a 1.1% ownership of ABC Corporation and ABC Corporation is a

30% equity participant in a bidding group pursuing the right to develop and operate a video lottery gaming facility at Aqueduct Racetrack, will licensure by such individual be required if his or her indirect equity ownership in the bidding entity is less than one percent (1%)?

A60. No, that person would be considered a .33% owner.

Q61. RFP §3.2: The Vendor wishes to discuss the specific terms of the license granted by the Vendor to the State pursuant to this section. Additionally, please clarify the scope of the following provision: “At no time shall there be a licensing fee charged for use of the Vendor’s gaming brand or proprietary customer service programs and standards in conjunction with the VLF.” Does this sentence mean that the Vendor may not charge the Lottery for the Lottery’s use of the Vendor’s mark in connection with the Vendor’s gaming operations at Aqueduct?

A61. Yes, that is correct.

Q62. MOU Article 4.2: In Section 4.2, would the Lottery be willing to cap the maximum amount of the supplemental Licensing Fee payable for a 10-year extension of the gaming franchise at a fixed dollar amount?

A62. No.

Q63. In order to provide certainty with regard to the project's overall business terms so that financing of this opportunity can be obtained, will a bidder be allowed to tender copies of the Transaction Documents upon which its bid is based, with the expectation that the MOU and the Transaction Documents submitted as part of the bid will be executed simultaneously and in advance of the date that the Licensing fee is required to be paid?

A63. See A55.

### **Entry Fee/Bidders’ Conference**

Q64. RFP §1.4: Is a letter of credit acceptable as an alternative method of payment for the \$1MM entry fee?

A64. No.

Q65. RFP §1.4: If a Vendor withdraws its application, is their \$1 million entry fee refunded?

A65. Section 1.15.D of the RFP requires each Vendor to state the time period for which the Vendor’s Proposal will remain in effect and requires a minimum effective period of 180 days. During the effective period a Vendor may not withdraw its Proposal.

Q66. RFP §1.4: Can the Vendor attach any conditions to the \$1m entry fee described in Section 1.4 of the RFP?

A66. No.

- Q67. RFP 1.4, MOU 1.5: Is the \$1 million referred to in 1.4 of the RFP the same \$1 million referred to in section 5.1 of the MOU?
- A67. No. Section 1.4 of the RFP requires an entry fee of \$1 million for any Vendor (1) to attend the Mandatory Bidders Conference and (2) to submit a Proposal in response to the RFP. Section 5.1 of the MOU separately requires the selected Vendor to deposit up to \$3 Million in a State Expenses Fund to defray the expenses of the State or the Empire State Development Corporation in connection with transactions and activities contemplated in the MOU.
- Q68. RFP §1.11: Please (i) describe the agenda for the mandatory bidders conference on June 8, 2010, (ii) list the expected key attendees on behalf of the Lottery at such conference, (iii) address whether and to what extent the Lottery officials participating in such conference will be in a position to answer questions, provide clarification and address concerns with respect to certain provisions of the MOU and the bidding process generally, and (iv) address whether the Vendor's architects, construction firm and consultants will be permitted to ask questions about the VLF, the VLF Premises and the Aqueduct site generally at such conference.
- A68. The Lottery Director, Gordon Medenica, will offer opening remarks; introduce the evaluation committee members; provide an overview of the RFP process and timeline; and will then facilitate a question and answer session. The Lottery Gaming Director, Jim Nielsen, will conduct a facility tour.

### **Proposal, Evaluation, Scoring, Recommendation**

- Q69. RFP §1.15.D – Volume 1: As several individuals (and likely more than one company) will need access to the single MS Word document, is it possible to create yet a Vol 3 to isolate the license applications? The license applications contain highly confidential and private information which the partners wish to share only with Lottery and not with each other or with other parties.
- A69. The RFP requires that Volume 1 be presented in tab format of which Tab 7, for the original only, would include the Lottery license applications. License applications are not required in the copies of Volume 1. The Lottery is agreeable to the vendors separating the license applications in the electronic version and therefore submitting two CDs of Volume 1.
- Q70. RFP §1.15.D – Volume 1 (and Section 1.3): Will any part of the license applications be subject to disclosure under FOIL? Will the license applications be protected under applicable law as confidential and proprietary?
- A70. Names of license applicants are considered public information and may be publicly disclosed by the Lottery. Other information disclosed in a video lottery license application is subject to the provisions of (1) the Freedom of Information Law, under which the Lottery will not disclose any information constituting a trade secret or that would, if disclosed, cause substantial injury to the Vendor's competitive position, and (2)

the Personal Privacy Protection Law, under which the Lottery may not disclose personal identifying information.

- Q71. RFP §2.15: The Vendor wishes to discuss (i) whether the Lottery is amenable to receiving a copy of the MOU, as revised by the Vendor, compared against the State's original copy of the MOU showing the changes between the two versions (the "*Mark-up*"), in connection with the Vendor's submission of its Proposal and (ii) whether the Mark-up may be the signed copy of the MOU submitted by the Vendor in connection with the Proposal.
- A71. Proposed changes in the MOU must be submitted to the Lottery in a written question not later than 4 pm on June 15, 2010. The Lottery will announce in Answers to Questions published on June 22, 2010 which changes, if any, are accepted and will include a final version of the MOU in those Answers to Questions. A signed original of the final version of the MOU must be included in every Proposal submitted in response to the RFP.
- Q72. RFP §4.2: Provides that each member of a consortium must provide audited financial statements for the last 3 years. The Vendor wishes to discuss a situation in which not every member of the consortium has such audited financial statements available (ie. individuals may not be able to provide audited financials).
- A72. If any of the financial statements for the last 3 years of any member of a consortium have been audited, a copy of those audited financial statements must be included in the Proposal. If any such financial statements have not been audited, a copy of the unaudited financial statements must be included in the Proposal together with an explanation for why such financial statements were not audited.
- Q73. RFP §4.3: Will Vendors/Investors receive credit for experience in casino operations and construction if they have third-party contractors on the team with such experience, even if they are not participants in the ownership?
- A73. Yes, but each entity's level of involvement will be evaluated in the context of the whole proposal.
- Q74. RFP §4.5: Is there any agency standard (e.g. ESDC, etc...) that can be relied on to establish the expectation implied with the reference to plans that are "30% complete"?
- A74. No.
- Q75. RFP §4.5 of the RFP states that vendor is to submit 30% Schematic Documents with their response. Subsequent language in this section indicates that this same set of documents "must also be sufficient to demonstrate compliance with all applicable building codes". This second requirement for proof of code compliance will require documents to be significantly further into design than a set of 30% schematic documents would allow. We are requesting that this wording be changed to keep the 30% schematic requirement

however just state that final project shall be completed in accordance with all applicable building codes and not require proof of code compliance at this stage.

- A75. The Lottery believes the use of the term “demonstrate” compliance is broad enough to ensure the level of details provided at this stage will indicate elements of code compliance consistent with the level of document development. Further, it is the expectation of the Lottery that full code compliance will be maintained through project completion for both the physical work and the finished product and that full code compliance will be reflected in the final plans.
- Q76. RFP §5.5.A: RFP §5.5.A of the RFP describes the scoring process for the bidders' Technical Proposals. Within the Technical Evaluation criteria appearing in this section of the RFP, four of the listed evaluation items have subparts. Can the Lottery provide additional information about the evaluation categories and their subparts so bidders can better understand what aspects of their proposals will actually be evaluated and scored? In addition, can the Lottery specify the weighting that will be given to the subparts within each of the evaluation categories (for example, Management/Experience is worth 25 points total, weighted as \_% to Gaming, \_% to Construction and \_% to Hospitality)?
- A76. The Lottery has developed a detailed “evaluation instrument” that provides for sub-category criteria discussion; however, there will be no pre-set sub-category scoring breakdown. This Instrument will become part of the Procurement Record and will be subject to review subsequent to the selection of a vendor.
- Q77. RFP §5.5.B: Describes the scoring of the financial evaluation. Please provide the specific methodology to be used in calculating the “proportionate to the highest commitment” calculation provided for in this section.
- A77. See Q79/A79.
- Q78. RFP §5.5.B: The Financial Evaluation process is described in Section 5.5B of the RFP. Will the scoring of the bidders' Financial Proposals be limited to the up-front Licensing Fees offered? If not, what other criteria will be factored into the Financial Evaluation score, and how will these other criteria be weighed?
- A78. Yes, the points allocated to the Financial Evaluation apply only to the up-front Licensing Fee. Any further analysis of financial information will pertain to financing plans, access to capital, etc., which fall within the Technical Evaluation.
- Q79. RFP §5.5.B: Section 5.5B of the RFP states that the largest upfront Licensing Fee offered will be awarded the full 10 points available under the scoring of the bidders' Financial Evaluations, and all lesser bids will be given a score proportionate to the largest upfront Licensing Fee commitment. For purposes of clarity, if the largest amount bid for the upfront Licensing Fee is \$310 million and the next largest bid is \$300 million (that is, 96.8% of the high bid), would the Financial Evaluation score for the high bidder be 10, and would the Financial Evaluation score for the next highest bidder be 9.68?
- A79. Yes.

Q80. Please clarify the timetable on the Proposal process:

- (a) Will the Lottery reissue the MOU, the Ground Lease and the Sublease as part of its response to the Second Questions on June 22? If so, that may not give Vendors enough time to finalize their Proposals due on June 29.
- (b) Will the Vendor have the ability to provide a marked version of the MOU, the Ground Lease and the Sublease as part of its Proposal?
- (c) What is the expected time period between the announcement on August 3, 2010 of the Apparent Winning Proposal and execution by the Governor?

Additionally, please describe the anticipated timeframe and sequencing of events between the public announcement of the Lottery's recommendation (August 3) and when the Temporary President of the Senate ("*Senate President*") and Speaker of the Assembly ("*Assembly Speaker*") will be in a position to accept and approve the Lottery's recommendation and execute the MOU.

- (d) Will the Vendor have the ability to negotiate the Transaction Documents prior to signing the MOU?

A80(a)(1) - Yes.

(2) The Lottery does not intend to make major changes in the MOU, Assignment and Assumption of the Facilities Ground Lease and Sublease. Any changes that are made will be included in the Answers to Questions the Lottery will publish on June 22, 2010. Each Proposal submitted in response to the RFP must include signed originals of the final versions of the MOU, Assignment and Assumption of the Facilities Ground Lease and Sublease published by the Lottery on June 22, 2010.

A80(b) - No. See A80(a).

A80(c)- The Governor is expected to sign the MOU immediately after the Lottery's announcement of the recommended Vendor. The Temporary President of the Senate and the Speaker of the Assembly are expected to sign the MOU shortly thereafter. The Lottery's recommendation will include a complete report and analysis of the competing Proposals which will be in a format that will be readily reviewable in a brief period of time by the Temporary President of the Senate and the Speaker of the Assembly.

A80(d) - No. See A114.

Q81. All other things being equal, will Vendor proposals that include building the VLT facility on the ground level of the grandstand building (rather than the second-floor level) be favored, scored higher or be given stronger consideration in the scoring process?

A81. The Lottery will not pre-judge any Proposals.

Q82. All other things being equal, will Vendor proposals that include strong integration with racing be favored, scored higher or be given stronger consideration in the scoring

process? In the alternative, will Vendor proposals that include very limited integration with racing be favored in the scoring process?

A82. No. No.

Q83. All other things being equal, will Vendor proposals that include building a parking garage simultaneous with the VLT facility be favored, scored higher or be given stronger consideration in the scoring process? Is it Lottery's view that the existing SEQRA permit does not contemplate such a parking structure?

A83. No. The building of the parking garage simultaneous with the VLT facility is a requirement of the project.

See A34.

Q84. All other things being equal, will Vendor proposals that include opening a temporary facility on a heavily expedited schedule prior to full opening of the facility be favored, scored higher or be given stronger consideration in the scoring process?

A84. The Lottery does not anticipate allowing a temporary facility to open. However, the Lottery will entertain a phased opening of the permanent facility if the fit and finish, access and parking amenities, and customer experience closely replicate the full facility.

Q85. Is the brand component of the selection criteria necessarily an established brand or can it be a newly created brand?

A85. A Vendor may propose the use of either an established or a newly created brand. The Lottery will evaluate the strength and role of the brand in aiding customer acquisition, retention and satisfaction.

Q86. After the Proposal is submitted on June 29, and following a review for completeness by the New York State Division of Lottery, will the Vendor be apprised of any deficiencies in the Proposal and be given a time period to cure such deficiencies?

A86. As provided in section 1.16 of the RFP, the Lottery may request clarification for the purpose of resolving any ambiguities or questioning any information in a Proposal. As provided in section 1.25.B of the RFP, the Lottery reserves the authority to waive any informality or technical defect in a Proposal. Any material deficiency in a Proposal may, however, result in elimination of the Proposal from further consideration.

Q87. What parts of the application will receive confidential treatment? If subjected to FOIA/FOIL, will the State provide a response to the confidential treatment request and provide the applicant the ability to retract the Proposal, or any portion thereof, to the extent that it is not accorded confidential treatment?

A87. All Proposals will be made public, except those portions required to be withheld from public disclosure pursuant to the provisions of the Freedom of Information Law and Personal Privacy Protection Law. See A49 and A70. See also section 1.14 of the RFP, which summarizes the procedure to requesting confidential handling of a portion of a Proposal. Once submitted, a Proposal or any portion of a Proposal may not be withdrawn.

Q88. MOU Article 6: The two previous Memoranda of Understanding issued by the State relating to the development of a video lottery gaming facility at Aqueduct Racetrack included the award of mixed use development rights on property contiguous to the grandstand and clubhouse building. Section 2.6 of the MOU appears to restrict development activity to the so-called Renovation Premises. This restriction would prohibit the expansion of the gaming facility and its associated amenities beyond the grandstand and clubhouse building at Aqueduct Racetrack, and would preclude additions like a hotel, a conference center, retail space, an expansion of the parking garage, and an entertainment facility.

(a) Will the MOU be modified to expand the area subject to development beyond the Renovation Premises?

(b) Should the proposals submitted by bidders exclude any potential future development projects that are not currently within the scope of the RFP?

(c) If such future development concepts are going to be given consideration by the Lottery, how will these concepts be evaluated and scored?

A88. (a) The MOU will not be modified to expand the area subject to development.

(b) Proposals should not include potential future development projects.

(c) The Lottery does not intend to evaluate any such offerings.

Q89. At what point would it be appropriate for Lottery to receive a black lined version of the MOU to address certain mechanical and procedural issues?

A89. Any suggested change in the MOU must be submitted to the Lottery not later than 4 pm on June 15, 2010.

Q90. Can the MOU be amended by the Vendor or does it have to be signed as is?

A90. The MOU must be signed as is. The Lottery intends to publish a final version of the MOU not later than June 22, 2010, and a signed original of the final version of the MOU must be included in the Proposal.

Q91. Can the MOU that is signed by the Vendor be assigned at a subsequent date to a wholly owned subsidiary of the Vendor?

A91. Yes, subject to the approval of the Lottery.

Q92. As a general proposition, will the Lottery accept specific language changes and revisions to the terms of the MOU as part of a proposal for the video lottery gaming rights at Aqueduct Racetrack, or would any such changes and revisions to the MOU render the proposal non-conforming and subject to rejection by the Lottery?

A92. Any suggested changes or revisions to the MOU must be submitted to the Lottery not later than 4 pm on June 15, 2010. No suggested changed or revisions to the MOU are permitted in a Proposal. Any such suggestion may result in a Proposal being eliminated from further consideration.

## **Future of Gaming/Facilities**

Q93. The MOU does not address a situation in which the VLF is constructed and at a future time, for a reason not the fault of its own, the Vendor no longer has a license to operate the VLF (e.g., the State outlaws VLFs). The Vendor wishes to discuss reasonable approaches to this scenario.

A93. Licensing is an on-going and permanent activity of the Lottery. Any future changes in investors, managers or other key personnel will require new licenses to be issued. If any individual or entity loses its license at any time, that individual or entity must be removed from any association with the facility.

The hypothetical situation described in the question is beyond the scope of this evaluation. Any Vendor submitting a Proposal is required to assume all business risks, subject to all legal rights guaranteed by the constitution and laws of the United States and the State of New York.

Q94. The Vendor wishes to discuss the implications on the Aqueduct VLF and the Vendor in the event of the establishment in the future of a VLF or casino (including one or more casinos on Native American reservations) at Belmont or another location within certain proximity of the Aqueduct VLF.

A94. There will be no contingency for future competition from potential new or expanded gaming operations. The vendor assumes such future business risk.

Q95. Will there be any protection given in the event of a gaming facility opening at Belmont?

A95. See A94.

Q96. Would the winning bidder have a right of first refusal on any mixed used facilities at the site?

A96. No.

Q97. What recourse will be available to the Vendor in the event of a legislated reduction in its statutory vendor fee? (2) With regard to Section 5.7 of the MOU, will the on-going payments to be made by the Vendor to the Lottery and other racing stakeholders be subject to reduction in the event that the video lottery operations are authorized at Belmont Park, or if other competitive gaming operations are authorized in the New York City metropolitan area?

A97. See A93. (2) No.

## **General**

Q98. RFP §1.3: Lottery reserves the right in section 1.3 of the RFP to impose additional requirements. Can you give examples of what these additional requirements would be

and that they would apply to all of the bidders? Would changes to the vetting process be reflected in amendments to the MOU?

A98. One example would be a requirement to submit additional information to clarify a portion of the Proposal or respond to a question raised by a Proposal. Additional requirements may be imposed on any or all bidders, depending on the contents of each Vendor's Proposal. The Lottery does not intend to make any changes to the background review process described in the RFP.

Q99. RFP §1.22: Will responses to media questions be interpreted as violating prohibition of news releases under any circumstances?

A99. No.

Q100. RFP §1.22: Will disclosure pursuant to SEC or other regulatory authority be interpreted as violating prohibition of news releases under any circumstances?

A100. No.

Q101. RFP §1.23: Will the Governor accept Lottery's recommendation without exercising independent discretion?

A101. Yes.

Q102. RFP §1.27: What is the role of the Community Board described in Section 1.27 of the RFP?

A102. Informational. The Lottery is prohibited from accepting from Community Board 10 any communications with the purpose of influencing our evaluations.

Q103. RFP §1.27: Will teams be permitted to engage or respond to community groups other than Community Board #10 on the merits of individual proposals?

A103. Yes, but the Lottery is prohibited from accepting communications from such groups.

Q104. RFP §2.13: Section 2.13 of the RFP refers to a Project Labor Agreement; can a copy be provided?

A104. Each agreement is unique and drafted and negotiated in order to fit the circumstances of the project and the particular trades involved. A sample Project Labor Agreement is hereby added as Exhibit H to the RFP.

Q105. Can prospective bidders discuss the VLT Premises directly with NYRA?

A105. Only with the Lottery's permission. The Lottery does not intend to grant such permission until after the completion of the mandatory bidders conference on June 8, 2010 and then only to the extent necessary or advisable to achieve an open and fair evaluation process. NYRA has agreed to refer any such requests back to the Lottery.

Q106. RFP §3.4: Can the central system support games with random number generators if the Vendor pays for the additional costs as suggested by Section 3.4 of the RFP?

A106. The Lottery and its gaming vendors are currently developing technical solutions to allow Electronic Table Games and RNG-type games in New York. The Lottery anticipates, but can not guarantee, that these games will be available for installation in time for the opening of the facility. It is expected that the gaming floor will be a mix of Central Determination and RNG devices. Facility operators do occasionally pay fees for premium games directly to the Lottery's vendors through agreements approved by the Lottery.

Q107. MOU Article 3.4 provides for a non-compete covenant. Please clarify that the provisions of this section will not apply to the regional cross-marketing of the proposed Aqueduct VLF and any other VLF operating in New York State ("NYS"). The Vendor strongly believes that the cross-marketing (through advertising, targeted database marketing and otherwise) of NYS VLFs will be advantageous to NYS in creating a regional gaming destination so as to better compete with out of state gaming operators, resulting in increased revenues to NYS. Similarly, please confirm that the non-compete covenant would be inapplicable to an in-state VLF operator currently operating within 50 miles of the Aqueduct VLF.

A107. (1) Confirmed. (2) Confirmed.

Q108. MOU Article 3.4: Regarding section 3.4 of the MOU, what does the Lottery consider to be a competitive gaming venue for purposes of advertising in the NYC metropolitan area?

A108. Any non-New York Lottery facility.

Q109. MOU Article 3.4: Among other restrictions, Section 3.4 of the MOU prohibits the use of the gaming facility's database for the promotion of other gaming venues, and prohibits the Vendor and its affiliates from advertising any competitive gaming venue in the New York City metropolitan area. These restrictions are so broadly imposed that they might preclude bidding by any established gaming company whose existing facilities are patronized by residents of New York City.

(1) Would the Lottery consider modifying these blanket prohibitions to provide more reasonable assurance that the customers of the gaming facility at Aqueduct Racetrack will not be deliberately and systematically diverted to alternate gaming venues?

(2) Would the Lottery be willing to amend these restrictions to accommodate strategic marketing relationships between the Vendor and other major casino companies?

A109. The provision is designed to discourage gaming companies from using their position at Aqueduct to siphon gaming dollars to lower cost facilities or jurisdictions. The winning Vendor may apply later to the Lottery for specific dispensation for specific campaigns. Lottery approval for such campaigns will only be granted if the Lottery is convinced there would be no negative impact on New York State.

- (1) The Lottery would require that no diversion take place and no negative impact on New York occur.
- (2) The Lottery would consider approving strategic marketing relationships that benefit New York.

Q110. MOU Article 8.1.2: Provides for a Video Lottery Facility Operating Agreement (if required by the Lottery). Please describe the Lottery's considerations in deciding whether such an agreement will be required, including if the Vendor's established successful operation of a VLF in NYS will be factored into this determination.

A110. The Video Lottery law and Lottery rules and regulations are sufficient to structure the operating environment for the casino. If unanticipated conditions arise, the Lottery retains the option of adding an Operating Agreement for a Vendor unfamiliar with how the New York Video Lottery system works.

Q111. MOU Article 8.5.2: How would a September 2010 closing referred to in section 8.5.2 of the MOU be possible?

A111. The selected Vendor is expected to complete all required documentation as soon as possible.

Q112. MOU Article 9.1: Provides that the Vendor's due diligence will occur after execution of the MOU and payment of the Licensing Fee. The Vendor would like to conduct some or all of its due diligence prior to submitting its Proposal on June 29, 2010 and would like to complete all such due diligence prior to the scheduled award date and, accordingly, would like to have certain due diligence materials (e.g., the Existing Environmental Reports, the Facilities Ground Lease Agreement) provided as soon as reasonably possible.

Additionally, please address the following due diligence-related questions:

(a) Identify any outstanding material pending or threatened litigation relating to the proposed Video Lottery Premises.

(b) What are NYRA's current obligations with respect to (a) existing environmental conditions and (b) environmental compliance matters under the existing Facilities Ground Lease that will become the Vendor's liability under the Assignment and Assumption Agreement?

(c) Is there an outside date by which the Article 7 Conditions Precedent in the MOU are to occur? If these don't occur, will a bidder get its money back?

A112(a) - None.

A112(b) - See Exhibits to RFP.

A112(c) - See A51.

Q113. MOU Article 10.11: Are there any estimates for what the payments in lieu of real estate taxes required by Section 10.11 of the MOU will amount to on an annual basis? Will these taxes also be due for the portion of the facilities subleased to the New York Racing Association (which do not appear to be subject to apportionment under the Sublease Agreement)?

A113. The Lottery estimates that the payments will be more than \$10 million a year. The Lottery will publish more detailed information when it is available.

Q114. The MOU references numerous ancillary approvals and agreements necessary to consummate the transactions contemplated by the MOU, some of which are listed below. The Vendor wishes to discuss (i) all of the approvals required, including, without limitation, which entities need to approve the Video Lottery Project, the allocation of responsibilities between the Vendor and the State with respect to obtaining specific approvals, the consequences of not obtaining all required approvals (e.g., rescission of the MOU and the Transaction Documents and a refund of the Licensing Fee), the approximate time necessary to obtain such approvals and whether all such approvals need to be obtained prior to or after the execution of the MOU and (ii) the schedule and methodology with respect to the negotiation and execution of the Transaction Documents and other ancillary agreements. The Vendor suggests that the Licensing Fee be due only after the required approvals are obtained and the Transaction Documents are executed. The Vendor would also like clarification as to whether the Vendor will be permitted to directly negotiate with the other key stakeholders under each such agreement (such as NYRA), as applicable, as part of such process. Some of the ancillary approvals and agreements referenced in the MOU include:

(a) SEQRA environmental approvals

A114(a) - See A55.

(b) Video Lottery Facility Ground Lease

A114(b) - See A110.

(c) Sublease Agreement (NYRA)

A114(c) - See A55.

(d) Assignment and Assumption of Video Lottery Facility Ground Lease (NYRA)

A114(d) - See A55.

(e) Issuance of initial demolition and construction permits

A114(e) – As soon as possible.

(f) Completion of any NYS Franchise Oversight Board requirements

A114(f) – As soon as possible.

(g) Approval in respect of disposition by the State of any interest in real property under the MOU

A114(g) – Not applicable.

(h) Funding Agreement with the State for the \$250 million Capital Construction Grant

A114(h) – As soon as possible.

(i) PILOT payments

A114(i) – See A113.

(j) Shared use agreements with NYRA (if not fully covered by the Sublease)

A114(j) – While the relevant documents, including the sublease, are largely dispositive of the issues herein, NYRA is open to discussing reasonable accommodations.

(k) Conveyance of leasehold title

A114(k) – As soon as possible.

(l) Approval of the Capital Construction Grant by the ESDC

A114(l) – As soon as possible.

(m)The Vendor would also like clarification as to whether the Vendor will be permitted to directly negotiate with the other key stakeholders under each such agreement (such as NYRA), as applicable, as part of such process.

A114(m) – See A105.

Q115. Please advise as to what PILOT program will be available for the facility.

A115. See A113 and MOU section 10.11.

Q116. When can bidders meet with NYRA to ensure that the proposed sublease works for all involved parties?

A116. See A105.

Q117. With respect to press statements, can a publicly traded Vendor that submits a Proposal disclose by way of a press release that it has filed the Proposal and answer media and shareholder questions regarding the Proposal?

A117. Yes, subject to approval by the Lottery.

Q118. What will be the criteria for expanding the VLT count?

A118. As in current practice, the Lottery will determine the timing and changes to VLT counts as market conditions evolve.

Q119. There is currently a switch problem with the A train service. Who will be responsible to correct this issue?

A119. MTA.

Q120. Will the Lottery entertain revisions to the MOU and the Transaction Documents which support the Vendor's desired tax treatment for use of the Capital Construction Grant and payment of the Licensing Fee?

A120. The Lottery will entertain revisions in the context of the second round of Answers to Questions that the Lottery will publish on June 22, 2010.