

PRE-PROPOSAL CONFERENCE SUMMARY

VIDEO LOTTERY TERMINALS AND **RELATED SERVICES** **RFP #2009-12**

November 10, 2009

At approximately 10:00 a.m., Mr. Robert Howells, Director of Procurement for the Maryland State Lottery Agency, welcomed everyone to the Pre-Proposal Conference for Video Lottery Terminals and Related Services (RFP #2009-12), being conducted on behalf of the Maryland State Lottery Commission. He introduced the State representatives in attendance: Gina Smith, Assistant Director/Chief Financial Officer; John Gallagher, Chief Information Officer; and Paul Dorsey, Director of Policy and Development. Representing the State Lottery Commission was W. Ray Presley and Diane McGraw, Maryland Lottery Commissioners. Also present were representatives from WhiteSand Consulting.

Mr. Howells asked that if anyone did not sign in to please do so before leaving and reminded the attendees to sign-in or clip their business card on the sign-in sheet. If there were any minority businesses present, they were requested to indicate this on the sign-in sheet and he explained that prime vendors and potential subcontractors should take advantage of this opportunity to network. The attached Sign-In Sheet lists the attendees at the Conference.

Mr. Howells said that a Summary of the Pre-Proposal Conference, the Commission's complete and final answers to the written questions previously submitted and questions asked at the Pre-Proposal Conference, the Sign-In Sheet, and any Amendments to the RFP, if necessary, would be sent by e-mail to the attendees and to any other entities who were sent the RFP or who are known to have obtained a copy of the RFP. This information will also be published on e-Maryland Marketplace. This information will be sent out as quickly as possible.

QUESTION: From a timing standpoint, when will we have responses relative to this meeting so that we can move forward with putting together the RFP?

ANSWER: The information will be sent out next week.

QUESTION: So we are basically going to have a week to put the RFP together.

ANSWER: We will have some additional information on that topic in a few minutes.

Mr. Howells said when the video lottery law was passed it established an entity called the Facility Location Commission that is separate from the Lottery Commission and the

Lottery. The Facility Location Commission's function is to select the actual VLT facility locations and they have been working on that project since December 2008. Two locations have been selected and two more are pending. The Lottery Commission has been charged with background investigations of the licensees as well as issuing of the licenses to the facilities, manufacturers, and the employees at the facilities. Anyone that needs to be licensed falls upon the Lottery Commission. The Lottery Commission also prepares and publishes the VLT Program regulations and will own and operate the central system and VLTs. The central monitor and control system RFP was issued in August 2009 and we will be making a decision on that shortly. The RFP for the VLTs was issued and we are in the process of preparing an RFP for testing of the VLTs. Some of the questions that were received are on issues for which answers are not yet available. We will keep you updated as we go forward. The first video lottery facility scheduled to open is Ocean Downs on May 27, 2010, with 600 VLTs.

Mr. Howells stated that the Commission encourages and welcomes questions, comments and feedback from the vendor community, but please understand that we cannot change State law. The Commission had received several written questions prior to the Conference. Although we will attempt to answer some of these questions today, the responses given verbally by State representatives are not binding upon the State, are for informational purposes only, and are subject to later written clarification. Should substantive issues be raised which cause changes to be made to the RFP, a written Amendment to the RFP will be issued. No changes to the RFP are effective unless contained in a written Amendment issued to all parties.

The Maryland State Lottery is a State Agency and is required to operate under all State of Maryland procurement laws, regulations, etc. Many of you have dealt with many other entities across the country and probably dealt with places that are private corporations or some quasi-state entity. I am sure the rules and regulations varied drastically across the different jurisdictions. We have the distinction in Maryland of having some of the most stringent requirements in the country. Some things you find in the documents may not make sense to you, but they are there for a reason. In many cases it is because that is what Maryland State Procurement law requires. The Minority Business Enterprise requirements are one of the most aggressive programs in the country. I will speak further on that subject. A number of questions have been received regard MBE. Our goal is to make this an open, fair procurement and to keep as many people in the competition as we can.

Mr. Howells said it was brought to the Commission's attention that the due date for this RFP was at the same time as the G2E expo convention and that most of the vendors present usually attend. We are going to extend this RFP due date by two weeks to December 9, 2009. An amendment will be issued noting this change.

Mr. Howells stated he would review each Section of the RFP, and to please feel free to ask any questions as we proceed.

SECTION I. INTRODUCTION/OBJECTIVE

Mr. Howells reviewed Section I and the following questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

QUESTION: The impression I am getting is that the facilities will be invited to nominate the types of machines they would like to purchase, but note that the manufacturers of machines are not generic. So a video machine from one company would be different from another company even though they are both video machines. Will they be able to specify by brand or not?

ANSWER: It is a combination. There are some machines that we understand are a licensed type game that only one company can provide.

QUESTION: I believe that our games are different from another company's games.

ANSWER: In that case, it would be similar to a sole source procurement. We go to the manufacturer that can provide that game. In other cases, there may be more than one manufacturer that makes a similar game and then we may go to several manufacturers that make those types of games. It depends on what the facility wants. It is a process that is going to evolve as we go forward. During the Master Contract phase, we are going to place everyone on the list then in the next phase when we buy the machines, we get into the details of what machines we are going to buy.

QUESTION: When you go to the second phase, are the prices modified at that point or are the prices what was submitted in the Master Contract?

ANSWER: The Master Contract prices will be the maximum prices that the State will pay. If we come to you with an actual order to buy, say, 5,000 machines, it would not be unreasonable to think that you might decide that your price would be a little better at that point.

QUESTION: So the Master Contract prices are the upper limit prices?

ANSWER: Yes, upper limit prices. One of the questions previously submitted pointed out that over a five year period of a contract prices might come down. You can always offer a better price when we place an order. We understand that we are asking you to enter into an arrangement with us when we do not know a lot of the things that you would like to know. We only have two facilities for which we know the number of machines they want and when they are going to open. The other two may be larger numbers of machines and have not been approved as yet.

QUESTION: In the case of Ocean Downs, they may be looking for games from a mix of manufacturers which is traditional and is consistent with the maximization of revenue. Are you going to limit the facility to just one manufacturer?

ANSWER: No. The facilities, in conjunction with the Commission, will select what they feel is the appropriate mix of machines for their location. If they want five machines out of 600 that are some sort of a license game that is only available from only one manufacturer then that would essentially be a sole source to that manufacturer for those five games, but not for the whole facility. The whole facility will have, we would presume, a typical mix of machines on the floor.

QUESTION: What you are saying is that the Commission would come back to the VLT manufacturers if they really are looking for an amount of 40 line penny games or this many two cents games, this many three reel dollars and so forth, then we would show you what we have available.

ANSWER: That is an example of how it could happen. The facilities are going to have input into this because it is their facility and they want to make money. It is going to be a give and take process all the way down the line.

QUESTION: Typically in the State process, the facility would come to the Commission saying they would like a percentage of this manufacturers and a percentage of that manufacturers and that decision would be made first. Then the second decision would be from that manufacturer as to how many lines with this denomination and so forth. Do you envision a similar two stage process in this direction on both phases of the process?

ANSWER: We do not know what the floor mix is. We do not know what Oceans Downs is going to want in the number of machines from each manufacturer. It is not a set amount. We will discuss with them what they want. At that time when we go into the secondary phase, we will put that information out. Let's just say for example they want the Wheel of Fortune machines. We will put out something that says we need this. If it is a poker machine, we may put it out as a generic and ask for the best prices for video poker machines or video blackjack machines. If it is electronic table games, we may ask for the best price for electronic table games.

QUESTION: Will the manufacturers be bidding against each other or share.

ANSWER: There is no share.

QUESTION: In the event the manufacturer decides at this point not to participate in the process, is there a vehicle to get on a Master Contract at some later date or is this the only chance in the program.

ANSWER: The Master Contract that we are currently working on will be the only means of procuring VLTs.

QUESTION: If the offering changes over the course of the term of the contract for a product that does not exist today, which is highly likely, what is the vehicle for introducing that product?

ANSWER: Section 4.57 Product Substitution and Addition provides a mechanism for Master Contractors that are on the Master Contract to add additional product lines. There is no mechanism to add new contractors. That would require a new procurement solicitation to be done. Once you are on the Master Contract, any new products can be added to the contract, but you have to get on the Master Contract now in order to be in the game.

QUESTION: Does the Master Contract have an exceed or not to exceed price?

ANSWER: For new equipment there would be a new cost submitted.

QUESTION: When you get to the new product which is more sophisticated, more technologically advanced, and more expensive, are you setting a new and higher number on that?

ANSWER: Part of the process for adding a new piece of equipment would be to add a new price structure for that equipment also. Remember the prices you are quoting to us are unit prices for a machine. If we add a new machine, then we can have a new price for that machine. You cannot exceed the price for the machines that you have already quoted.

QUESTION: I think there is some ambiguity in the text. My understanding is that you cannot increase the price even with new offerings.

ANSWER: That is not the intent and we will clarify that if needed. There are two different things in this Section and one is substitution that we received questions about. It is one of our standard State procurement clauses. For the case of additions, we will entertain new prices for that added item. If for some reason you were going to substitute a piece of equipment, you cannot charge more for that. If you read that section on product substitution, and we had a question on this, it says items may be substituted by the contractor. You have to ask us and we have to approve it. We are not forcing you to substitute equipment.

QUESTION: Basically, we can be on the Master Contract; however, if we choose not to submit for the first RFQ then we don't need to.

ANSWER: That is correct. If you choose for whatever reason not to submit a response because it is too many machines, beyond your capability, or you can't meet delivery date, we would expect you to respond with a letter and state the reasons why.

QUESTION: Does that take you off the Master Contract list?

ANSWER: No.

QUESTION: If you have institutional investors, do they file a waiver form as opposed to the principle entities?

ANSWER: They can fill out the waiver form and check that they are an institutional investor.

QUESTION: Are the MBEs required to submit the forms?

ANSWER: At the time you submit your proposal, we are not requiring applications from MBEs until we see what the MBE will be doing and understand what their roles are going to be. The MBE forms and identifications of the MBEs are going to be done at the time of the Request for Quotation. Also, the bonding will be addressed at that time.

QUESTION: Are the bonding requirements contained in the RFP indigenous to Maryland as part of the contract process. I don't recall seeing a four tier or five tier bond level.

ANSWER: It is typical for State of Maryland Lottery procurements. The amounts vary depending upon the volume and amount of the contract.

QUESTION: While I appreciate the intent of the clause, by virtue of the fact that the most of the people in this room are competitors, the anti-trust regulations that hold the State and Federal law, it is very difficult for us to answer that clause and give the benefits to the State of Maryland. Anyway to alleviate that.

ANSWER: Understood. Some of these things apply in many procurements and sometimes there is something a little different.

QUESTION: If the State decided to cancel this RFP as stated in Section 1.1.7, what would be our remedies in that situation?

ANSWER: None. If the RFP was cancelled, at that point there is no contractual relationship.

SECTION II. BACKGROUND OF VIDEO LOTTERY PROGRAM

Mr. Howells reviewed Section II. and no additional questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

SECTION III. GENERAL SOLICITATION TERMS AND CONDITIONS

Mr. Howells reviewed Section III and the following questions were asked. He also noted that questions previously submitted regarding this Section, included the MBE forms, the MBE goals and the Public Information Act, will be responded to in writing.

QUESTION: I want to be absolutely certain there is not a way under the Sunshine Law that someone could access anything that is on the application.

ANSWER: We would not release it. It would have to go to Court and have a Court Order issued in order to release that information.

QUESTION: Is there any way you could be more specific in the RFP as to how that information will be treated to the extent that you acknowledge the application?

ANSWER: We will respond to that in writing.

QUESTION: There is also a reference to license reciprocity in the RFP. When is the license application required and when do you assume the license reciprocities.

ANSWER: You would follow the manufacturer's waiver form. You would file where you had your latest licensing. The Commission will make a determination on whether or not we believe that their background investigation is sufficient for that process.

QUESTION: When will we know it is accepted?

ANSWER: You will not know until after the Commission has made its determination.

QUESTION: Do we have to submit both forms as it says in the RFP.

ANSWER: No. The changes have been made on the forms and they are on the website.

QUESTION: MBE Form D-1 references submission of Form D-1 and D-2 with the offer and D-3 within ten days of award.

ANSWER: We will address that issue in an amendment.

Mr. Howells introduced Mr. Wayne Frazier of the Maryland/Washington Minority Contractors Association.

QUESTION: Mr. Frazier asked if some Offerors come in with full MBE goals and others do not and they seek a waiver, how can you allow that waiver when others achieved the goals?

ANSWER: It is something we would take into consideration. If there are five potential Offerors and two request waivers and three indicate they can meet the goals with no problem, then we will have to look at the more closely. Part of the process is to see what efforts the company has made to meet the goal or have made the effort to comply with it.

QUESTION: Is there a process for doing that?

ANSWER: Yes. Part of the reason why we are doing this at a secondary level is because it is dependent on the nature of what we are ordering and the dollar volume that we are ordering.

QUESTION: The other portion of the question concerns anti-trust and problems with MBEs on multiple Offerorsølists.

ANSWER: We will look at the anti-trust information. In general, there has not been a problem with an MBE participating with one or more prime vendors.

QUESTION: Manufacturers that are capable of meeting the 25% MBE goal, is that determination going to be reviewed at the time of award. If two make the effort and meet the goal and three other do not make that effort and fall short, are you going to go with the two successful ones?

ANSWER: On the Master Contract list you are not going to be required to meet any MBE goals or submit any forms identifying MBEs. When an RFQ is issued, the MBE goal will be defined and also the criteria for selection. If a vendor says they need a waiver of the goal and they have not made a good faith effort, we can deny the waiver. Essentially you are disqualified at that point unless you can rethink your MBE participation and somehow comply with that. Those guidelines will be defined at the secondary competition level.

QUESTION: If the prime contractor supplying the VLTs requested a waiver and was granted the waiver, would that not position them for subsequent waivers on other RFQs as well since they were approved on the first one. Basically, if they are granted a waiver on the first RFQ, are they given a pass for the remainder of the five year period?

ANSWER: No, because each order would presumably be different. We are talking about different types of machines. I do not know at this point whether we are talking lease or purchase, what kind of maintenance, there are so many factors that could be involved on every particular RFQ that we could not speculate as to what would happen. To answer your question, the fact that somebody was granted an MBE waiver for one time would not give them a free pass from then forward. Every particular RFQ would be a stand-alone situation.

QUESTION: Would the waiver information be public information?

ANSWER: Yes.

QUESTION: Talking about MBE profit buying services, maintenance services, and multiple vendors, one of the complications is liquidated damages. Liquidated damages

on a machine time it is hard, you want someone who specifically services your machines so they don't have conflict between servicing this company's machines or that company's machines and you may want to reconsider having the appropriate liquidated damages.

ANSWER: We have a situation now where there is an MBE currently servicing certain machines that we have out in the field. He understands how that is handled and it is in place. The prime contractor's subcontractor handles maintenance.

QUESTION: It would be service from two different vendors. Whoever takes care of one? ?

ANSWER: It's between you and the subcontractors to figure out.

QUESTION: Is the 25% MBE goal based upon spending, cost of machines, how does one determine that?

ANSWER: That is what is in the RFP that is out now. We are having considerable review and internal discussions about the MBE requirements and going to the secondary level. We previously received a number of questions. Because again in this particular case an amount of these contracts is to purchase the machine and the hardware and it may not be realistic to try and impose an MBE goal on the purchase of the machines which are being manufactured by major manufacturers who are not MBEs. We may have to re-think the MBE goal at the RFQ level.

QUESTION: One solution is to allow vendors to reach out to the MBEs and the MBEs could arrange financing to take these machines down. Most of the MBEs are probably smaller in size and handicapped, but these institutions understand that you have stated funded backing so they will do that type of contract buying.

ANSWER: We are reviewing all of this and may have some further conversations with Mr. Frazier on this topic.

QUESTION: I have been a subcontractor for the Maryland State Lottery for 20 years and will the Lottery be informing the MBE community as to when these individual RFQs are issued to the prime contractors?

ANSWER: We would publish it and send it to GOMA and go through that process. He had not thought about that type of notification at the RFQ level. Good point and it is something we should do.

QUESTION: We have our product in Delaware and in that environment we actually subcontract for the purpose of maintenance of our machines. We provide, deliver and install machines and then there is maintenance that is actually subcontracted. As we go through this, it seems as though that is the major sustained target in terms of MBE participation. Within that envelope incorporate the MBE involvement, is there going to be MBE requirements outside of that scope?

ANSWER: The overall amount of the contract includes the purchase of the machines, and whether the MBE goal should somehow be separated out and the purchase of the machines excluded and then just have the goal apply to the other services that are being provided within the State, such as maintenance, possibly transportation, some of those other areas that might come into play.

QUESTION: Concerning liquidated damages and bonding and a whole host of other negotiations, what you are posing is wonderful but it has a whole host of pragmatic issues tied with it once you bring an MBE in as a "partnership" because it impacts our licensing in other jurisdictions. Though it sounds great here, it may not be practical in other states. Just wanted to point that out for your consideration.

ANSWER: Every situation is a little bit different and since we have these licensing requirements involved with this program there may be some other projects where we did not have that sort of requirement.

QUESTION: Is it feasible to understand the value of the MBE requirement assuming that no one meets the target or if one person does meet the target. We understand that it is not going to be at the Master Contract level, it is going to be at the RFQ level. For example, eight bidders at the RFQ level, where one of whom can hit the 25% MBE goal and the others do not. Does that mean those vendors qualify in some fashion or alternatively one bidder gets 17 the other gets 18, someone else gets five, how is that going to be rated by the State in terms of cost?

ANSWER: MBE participation is not an evaluatable criterion that an award is based on. We will define that at the RFQ level. If we set a goal, we expect it to be met except for a legitimate waiver request that we think is valid and we approve.

QUESTION: Will there be sub-goals associated to the overall 25% MBE goals?

ANSWER: No, not at this time, maybe when we do the RFQ. We will make that determination on a case by case basis.

QUESTION: To my knowledge, those are the reasons why sub-goals were established, to eliminate the offering of a single MBE entity and cut out all other elements.

ANSWER: We look at it from the standpoint of what is the availability of MBEs, and what categories are available to be used.

QUESTION: When you evaluate the participation of each individual RFQ, will you also be looking at the mix of that particular manufacturer.

ANSWER: Yes.

SECTION IV. MANDATORY CONTRACTUAL PROVISIONS - CONTRACT

Mr. Howells reviewed Section IV. and the following question was asked. He also noted that questions previously submitted regarding this Section, including property rights, intellectual property protection rights and products, substitution of personnel, and VLT play and prize payment restrictions, will be responded to in writing.

QUESTION: Can you explain the 90 minute down time.

ANSWER: We had some questions on that and will be responding in writing. We understand that 80% of the problems can be fixed within 90 minutes and we know there is another 20% that may take a little longer.

SECTION V. TECHNICAL SPECIFICATIONS/SCOPE OF WORK

Mr. Howells reviewed Section V. and the following questions were asked. He also noted that questions previously submitted regarding this Section, including performance reports, will be responded to in writing.

QUESTION: There are various features that are mentioned throughout Section V. that a machine may or may not offer, yet the section indicates it is a requirement. Would the lack of providing this prevent us from being accepted for the Master Contract? For example, a downloadable game that at the moment we do not anticipate having in the near future. Yet in Section V. it refers to downloadable ability. In our response it would indicate that we do not intend to support a downloadable game. Would that preclude us from consideration?

ANSWER: No. When you complete the checklist in Appendix N, there is a place on there to indicate if you do not provide a product and to tell us why. Let me emphasize that we are not looking to eliminate anybody. If we have a question, we will come back to you for clarification. Our intention is to keep as many in the group as possible and not to eliminate people.

QUESTION: Obviously the State is looking into a central monitoring system. Each property owner will also have its own GMU. Will that be particularly based upon the property once whatever company is managing it or is it something the State is going to operate?

ANSWER: The player tracking system will be owned by the facility.

QUESTION: The facility can chose whatever system they like?

ANSWER: Yes.

QUESTION: What about monitors and printers?

ANSWER: They will be in the machines as part of our purchase.

QUESTION: Where do progressive systems fit in?

ANSWER: It will be an option and we will be procuring that.

QUESTION: You are not assuming then that one vendor's progressive slots would be attached to another vendor's progressive controllers are you?

ANSWER: No.

QUESTION: In Section 7.3.5., on game specification are you looking for every title that we are going to offer or the box type itself?

ANSWER: We want the titles also because our facilities are going to have to see what the machines are doing out there.

QUESTION: Are you envisioning that we are not going to have any direct contact with the facilities? In other words if we put a price based on our box style and it is not complete enough.

ANSWER: We would also like to know the games. You could provide us a list.

QUESTION: That would also be repeated then and updated at time of RFQ?

ANSWER: Tear sheets, not complete specs, should be submitted with the proposal.

QUESTION: Ticket stock for printers, is that the site's responsibility?

ANSWER: It is the facility's responsibility.

QUESTION: Did you want the actual games list?

ANSWER: We want a list of game titles, box specs

SECTION VI. FINANCIAL PROPOSAL

This Section was reviewed and there were no additional questions.

Mr. Howells reviewed Section VI. and the following questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

We are going to review the Pricing Sheet and add a fourth column which basically asks if there are any other ways you think to price these machines.

QUESTION: What about game changes? Typically over the course of five or ten years a number games change, e.g., new software, theme changes.

ANSWER: We will respond to that question in writing.

QUESTION: Does the Lottery own the machines?

ANSWER: The law states specifically the Lottery may purchase or lease the machines.

SECTION VII. INFORMATION REQUIRED IN OFFEROR'S PROPOSAL

This Section was reviewed. Mr. Howells noted that questions were received on the format, process, procedure, and the forms that need to be included. We will respond to those questions in writing.

Mr. Howells reviewed Section VII. and the following questions were asked. He also noted that questions previously submitted regarding this Section, including performance reports, will be responded to in writing.

VIII. EVALUATION AND SELECTION PROCEDURE

Mr. Howells reviewed Section VIII. and no additional questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

IX. LICENSES-APPLICATION FORMS, REQUIREMENTS, AND FEES

Mr. Howells reviewed Section IX. and the following questions were asked.

QUESTION: On the license application, does that require us to disclose to our customers what our pricing is in other jurisdictions?

ANSWER: No, we are talking about what is in the RFP.

QUESTION: The only reason I bring this up is obviously you are going to be evaluating our proposals and we have customers in other lottery jurisdictions. I feel uncomfortable knowing you see how we price and to whom. There are some legal problems in that.

ANSWER: We will clarify this section. You are talking about Section VII. where we ask you to give us a sampling of your current clients. I think the word used there is

"billings" and that might not be a good terminology. What we are looking for is the magnitude of the account. Did you provide 1,000 machines or two machines to a customer.

QUESTION: In Section IX. there is ambiguity about who is a key employee and who is a principle employee.

ANSWER: The license application forms define who a key employee is.

Mr. Howells then provided the attendees with a final opportunity to ask any questions regarding the entire RFP or process. No additional questions were then asked.

In conclusion, Mr. Howells stated that a Summary of the Pre-Proposal Conference, the Questions & Answers, the Sign-in Sheet and any Amendments to the RFP, if necessary, will be sent to all parties as soon as possible. He also reminded the attendees that the Commission will accept additional questions after the Conference, up until such time as it becomes impractical to research and distribute the answers to all parties.

The Pre-Proposal Conference concluded at 12:02 p.m.

Summary prepared by:

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