

VIDEO LOTTERY OPERATION LICENSE IN PRINCE GEORGE'S COUNTY (#2013-0101)

RESPONSES TO WRITTEN QUESTIONS

April 19, 2013

This List of Questions and Responses #1 (Q&A#1) is being issued to clarify certain information contained in the above named RFP. The statements and interpretations of License requirements, which are stated in the following questions are not binding on the State, unless the State expressly amends the RFP. Nothing in the State's responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the entity asking the question as to what the License does or does not require. Some questions have been edited for brevity and clarity, and duplicate questions may have been combined or eliminated.

The following are questions submitted pursuant to the RFP and the Location Commission's responses to those questions:

1. **QUESTION:** Section 1.1.2 (Summary Statement): Doesn't the Commission's award under this RFP also include Table Games, not just VLTs?

ANSWER: The Commission awards a video lottery operation license for the operation of a specified number of VLTs. A person with a video lottery operation license may offer table games for public use in the State, but there is no specific numeric allocation for Table Games. The actual number of Table Games authorized for operation will be determined by the Lottery and Gaming Control Commission based on the Lottery and Gaming Control Commission's evaluation of the Awardee's submission of plans including gaming floor, minimum internal controls, and security and surveillance.

2. **QUESTION:** Section 1.1.3 (Summary Statement): If the Commission cancels the RFP, and such cancellation occurs after Applicants pay their initial license fee, when would the Initial license fee be returned?

ANSWER: In the event of a cancellation, in accordance with RFP Section 2.9.1.2, Initial License Fees would be refunded to Applicants within forty-five (45) days after cancellation of the RFP, provided there is no challenge of the cancellation.

3. **QUESTION:** Section 1.1.7: If the winning applicant is not able to commence VLT Facility operations within 30 months of being awarded the license or by July 1, 2016, will it be eligible to receive extension(s)? Will an extension be granted in the event of appeal(s) by an unsuccessful Applicant?

ANSWER: Pursuant to § 9-1A-11(b)(3) of the Gaming Law, the Lottery and Gaming Control Commission's authority to issue the video lottery operation license in Prince George's County is limited to a period that may not extend beyond 30 months after the license is awarded by the Location Commission. However, the Location Commission may in its discretion make the award of the license subject to specific contingencies, such as approval of zoning at the proposed facility site, which effectively extends the date of the award until the contingency is satisfied, thereby delaying the initiation of the 30 month period within which a License is issued by the Lottery and Gaming Control Commission.

4. **QUESTION:** Section 1.2.2.1 (Minimum Requirements): a) Will an Applicant be compliant with the RFP if its submission reflects fewer than or greater than 3,000 VLTs?

b) Is there a minimum number of Video Lottery Terminals (VLTs) that an Applicant must propose? Is 500 the minimum?

ANSWER: a) Yes. There is no statutory minimum or maximum number of VLTs that an Applicant must propose. An Applicant may propose more or fewer than 3,000 VLTs and its proposal will be evaluated by the Location Commission based on the actual number of VLTs proposed, provided the Applicant paid an Initial License Fee of \$3 million per 500 VLTs proposed. If the Applicant proposes and is awarded a License for fewer than 3,000 VLTs, the Applicant/Licensee has no assurance that additional VLTs will be available to be added to its License at a later date.

b) There is no minimum number of VLTs that must be proposed.

5. **QUESTION:** Section 1.2.2.4: Pursuant to Section 9-1A-27(a)(7)(i) of the Gaming Law, would an Applicant be eligible to receive 6% of VLT proceeds as a result of owning or leasing VLTs and associated equipment, in addition to up to 38% of VLT proceeds? For example, if an Applicant bids the maximum 38% of VLT proceeds, would the Applicant in actuality receive 44% of VLT proceeds as a result of owning/leasing VLTs?

ANSWER: No. Pursuant to § 9-1A-27(b)(3) of the Gaming Law, the maximum operator's share for the Prince George's County VLT Facility is 38% and the Licensee is responsible to obtain and maintain all VLTs and Table Games and associated hardware, software and equipment for the Facility. Section 9-1A-27(a)(7)(i) of the Gaming Law does not apply to the facility in Prince George's County.

6. **QUESTION:** Section 1.3 (Glossary): Does the definition of "proceeds" include free promotional play used by Players to bet on a Table Game?

ANSWER: The definition of “proceeds” in the Glossary comes from § 9-1A-01(u)(2)(ii) of the Gaming Law. The Legislature passed HB 1155 during the 2013 Session which, if signed by the Governor, would clarify this definition.

7. **QUESTION:** Section 2.3.2: a) Are the Applicant and representatives of the Applicant prohibited from talking to media about contents of the application?

b) Are the Applicant and representatives of the applicant prohibited from talking to Prince George's County staff and members of the Prince George's County Council about contents of the application?

c) Would you further elaborate on the definition of "any officer of the State of Maryland?" Does this apply to all members of the General Assembly?

d) Does the prohibition against speaking to “State officials” regarding one’s proposed construction and design plans extend beyond speaking to those with decision making authority as to the award?

ANSWER: a) RFP Section 2.3.2 does not specifically prohibit an Applicant or its representatives from talking to the media about the contents of the Application. However, an Applicant’s publication of the contents of its Application to the media may obviate the confidential nature of the contents and may render otherwise potentially confidential contents disclosable beyond the protections of RFP Section 2.18.

b) The prohibition that Applicants shall have no contact with State representatives and other interested parties imposed by RFP Section 2.3 applies to instances that are *without the prior approval of the Location Commission*. It is understood that throughout the evaluation process Applicants may have the need to contact various entities and the Location Commission will review those situations on a case-by-case basis. The purpose of the restrictions imposed by this Section is to avoid unauthorized or improper contacts.

c) Yes. “Any officer of the State of Maryland” includes any appointed or elected official of State government and all State employees.

d) Yes.

8. **QUESTION:** Section 2.8.3 (Proposal Format) and 3.1.2 (General Format of Technical Proposal): Are there any page limits applicable to the Proposal?

ANSWER: No. An Applicant should submit whatever information it deems necessary to best and fully respond to the requirements of the RFP.

9. **QUESTION:** Section 2.8.4: a) Please clarify if bids can or will be made public prior to license award.

b) Is the Commission allowed to notify one Applicant the contents of another Applicant's offer?

ANSWER: a) As stated in RFP Section 2.2.1, "Proposals shall be shown only to members of the Location Commission and State employees or other persons deemed to have a legitimate interest in them, and will not be open to public inspection until after a License is awarded and in accordance with State law." As stated in RFP Section 1.2.2.2, identifying information about an Applicant will be kept confidential until after the Deadline for submitting Proposals, when a Register of Proposals will be published. The Maryland Public Information Act ("PIA"), Title 10, Subtitle 6, Part III, State Government Article, Annotated Code of Maryland, governs responses to a request for information from a member of the public. The PIA allows for exempting certain information from disclosure, such as an individual's financial information (PIA § 10-617(f)), and licensing records, which are generally exempt from disclosure except as provided in § 10-617(h) of the PIA. As stated in RFP Section 2.18, after license award disclosure of Proposals will be in accordance with the Maryland Public Information Act.

b) No.

10. **QUESTION:** Section 2.9.1: a) Is there a formal policy on refund of the Initial License Fee if after license award, the successful Applicant is unable to earn County Zoning approval in spite of good faith efforts?

b) What actions from a VLT Applicant would constitute grounds for not refunding the initial license fee?

ANSWER: a) Section 2.9.1.2 Disposition – Refunds addresses the refund of the Initial License Fee to an unsuccessful Applicant or an Awardee who fails to be issued a License in spite of all good faith efforts.

b) If a successful Applicant did not fully comply with the requirements of the RFP, the promises made in the Applicant's Proposal, or conditions set forth in the award, as determined at the sole discretion of the Location Commission.

11. **QUESTION:** Section 2.9.1.2 (Disposition – Refunds): In the subparagraph on "Unsuccessful Applicants," please clarify the conditions under which the Initial License Fee will be refunded to an unsuccessful Applicant. Is refund of the Initial License Fee forfeited if the Applicant challenges the award of the License or is the refund simply delayed until a challenge, if any, is resolved?

ANSWER: The refund of the Initial License Fee would not be automatically forfeited if an unsuccessful Applicant challenges the award of the License, but the disposition of the refund would be delayed until the challenge is resolved as stated in RFP Section 2.2.3. The size of the refund could be diminished if the Location Commission made a claim against the Litigation/Protest Bond as stated in RFP Section 2.29 and the tribunal reviewing the challenge determined that the claim exceeds the amount of the Litigation/Protest Bond.

12. QUESTION: Section 2.9.1.2 (Disposition – Refunds): In the subparagraph on “Unsuccessful Applicants,” one of the conditions for return of the Initial License Fee is that the Applicant “has properly fulfilled all requirements of the RFP process.” Please explain the circumstances under which the Initial License Fee would not be returned due to a failure to meet RFP requirements. Are there specific RFP requirements that must be met in order to receive a refund of the Initial License Fee?

ANSWER: The disposition of the Initial License Fee including refunds and forfeitures is addressed in Sections 2.9.1.2 and 2.9.1.3, respectively. A determination that an Applicant has or has not fulfilled the requirements of the RFP would depend upon the specific circumstances and be at the sole discretion of the Location Commission.

13. QUESTION: Sections 2.9.1.2 (“Failure To Be Issued License”) and 2.9.1.3 (“Failure to Complete Licensure Process”): We are concerned that an Applicant could exercise “all good faith efforts” to compete and obtain a license, yet still not receive a refund of the Initial License Fee. Please explain the circumstances in which the Commission might use its discretion to deny a refund to an Awardee who, despite its good-faith efforts, is not issued a License. Also, we request that the term “sole discretion” in Section 2.9.1.2 be clarified to “reasonable discretion.”

ANSWER: The disposition of the Initial License Fee including refunds and forfeitures is addressed in Sections 2.9.1.2 and 2.9.1.3, respectively. The Commission respectfully declines to change this language as requested. A determination that an Applicant has or has not fulfilled the requirements of the RFP would depend upon the specific circumstances and be at the sole discretion of the Location Commission.

14. QUESTION: Sections 2.9.1.3 (Withdrawal of Proposal) and 2.8.4 (Actions After Deadline for Receipt of Proposals): We are concerned that there may be no opportunity for withdrawal of a proposal, and recovery of the Initial License Fee, even if the RFP is subsequently amended under Section 2.13 in a way that significantly affects the Applicant’s business case or economic feasibility of the project. We request that these sections be clarified to permit reasonable withdrawal of a proposal in response to a significant RFP amendment.

ANSWER: If the RFP is amended after the due date for submission of Proposals, and the Applicant declines to revise its Proposal and then withdraws its Proposal and acknowledges in writing that its Application is void and that the withdrawal extinguishes any and all rights as an unsuccessful Applicant, the Initial License Fee will be refunded to the Applicant.

Alternatively, if an Applicant declines to revise its Proposal, the Location Commission may either award the License or reject the Proposal. If the Commission rejects the Applicant’s Proposal, the Applicant will receive a refund of the Initial License fee as stated in RFP Section 2.9.1.2.

15. QUESTION: Sections 2.9.1.3 (Frivolous Litigation/Protest) and 2.29 (Litigation/Protest Bond): We understand the need to protect the Commission against litigation that is frivolous or brought in bad faith. We are concerned, however, by the potential forfeiture of a bond based on a finding that an action “was not based on reasonable grounds.” Parties may have non-frivolous, good-faith grounds for their positions, yet those positions ultimately could be deemed unreasonable by a tribunal. We request that the Commission limit the conditions for bond forfeiture to litigation that is frivolous or brought in bad faith.

ANSWER: The Commission is confident that review by the State Board of Contract Appeals and any subsequent review will not result in an arbitrary or capricious decision. Therefore the Commission respectfully declines to change this language as requested.

16. QUESTION: Section 2.9.1.4 (Disposition – Partial Forfeiture by Applicant): a) Can an Applicant apply for a minimum number of VLTs and then increase its requests after being awarded the License?

b) Would such an approach be deemed less advantageous to the State under Sections 5.3 (Factors for Evaluation) and 5.6.1 (Award of License)?

ANSWER: a) An Applicant may propose any number of VLTs and submit the required Initial License Fee. An Applicant/Licensee that is awarded or issued a License, and later requests additional VLTs, has no assurance that additional VLTs will be available to be added to its License at a later date.

b) An Applicant’s proposal will be evaluated by the Location Commission, and a decision to award a License will be based on the public interest and consistent with the Gaming Law.

17. QUESTION: Section 2.11: Please describe any known requirements and parameters for oral presentations (Examples: requirements around drawings, renderings, media, etc.).

ANSWER: Applicants will be required to make a public presentation which fully describes their proposed Facility. It is the Applicant’s responsibility to determine how to best present this information.

18. QUESTION: Section 2.18 (Public Information Act Notice): What confidentiality rules govern this submission?

ANSWER: As stated in RFP Section 2.2.1, “Proposals shall be shown only to members of the Location Commission and State employees or other persons deemed to have a legitimate interest in them, and will not be open to public inspection until after a License is awarded and in accordance with State law.” As

stated in RFP Section 1.2.2.2, identifying information about an Applicant will be kept confidential until after the Deadline for submitting Proposals, when a Register of Proposals will be published. The Maryland Public Information Act (“PIA”), Title 10, Subtitle 6, Part III, State Government Article, Annotated Code of Maryland, governs responses to a request for information from a member of the public. The PIA allows for exempting certain information from disclosure, such as an individual’s financial information (PIA § 10-617(f)), and licensing records, which are generally exempt from disclosure except as provided in § 10-617(h) of the PIA. As stated in RFP Section 2.18, after license award disclosure of Proposals will be in accordance with the Maryland Public Information Act.

19. **QUESTION:** Section 2.30.2 (Temporary Facility): Can VLTs be operational in a facility that partially existed before August 15, 2012?

ANSWER: No. Section 9-1A-11(c)(3) of the Gaming Law provides that “a video lottery facility in Prince George’s County may not begin video lottery terminal or table game operations in a temporary facility or in a structure, including a hotel or conference center, that exists on August 15, 2012.”

20. **QUESTION:** Section 3.1.6.1.G(1): Please define “facilities and equipment”. Please define “facilities for personnel”. For example, do we have to specifically label employee locker rooms, employee dining area or can all of these areas be generically labeled “facilities for personnel”. Please define “player facilities”. How do “player facilities” differ from “gaming floor”?

ANSWER: “Facilities and equipment” generally means a description of the room, such as an employee dining room, with a depiction of the equipment that would be contained therein, such as tables and buffet bar. “Facilities for personnel” and “facilities for players” are generally subsets of the general facilities and equipment, and Applicants should include in their description an indication as to whether the space is for use for personnel or players if this is not otherwise discernible. “Player facilities” may include a bus waiting area that is off the gaming floor.

21. **QUESTION:** Section 3.1.6.1.G(3)(b)(iii): Will an Applicant commitment to complying with ADA suffice for a response? Please identify any specific ADA design elements that must be shown.

ANSWER: Applicants are encouraged to demonstrate their understanding of ADA requirements and ensure that their Proposal reflects that understanding.

22. **QUESTION:** Section 3.1.6.1.H(1)(e): What constitutes a “concession area” and what are some examples? Would it be correct to assume that any non-gaming amenity that is revenue-generating is a concession area? What is the difference between a “concession area” and “Areas of the Facility that will not be used for VLTs/Table Games”?

ANSWER: A concession area is considered to be any area that is leased by the operator to a third party such as restaurant or retail shop, and is just one of the areas of the facility enumerated in 3.1.6.1H that will not be used for VLT or Table Game operations.

23. **QUESTION:** Section 3.1.6.1.H(2): a) Is the VLT Facility Operator required per statute to have lottery ticket sales terminals on the gaming floor?

b) Can a VLT also act as a point-of-sale for traditional lottery tickets?

ANSWER: a) The Lottery and Gaming Control Commission has promulgated regulations requiring that (1) A facility operator shall provide at least two locations at the facility for the sale of State Lottery games that are offered by or through the Commission; and (2) State Lottery game sales locations shall be situated as near as practicable to a cashiers' cage. COMAR 14.01.13.03B. (Note: the regulations of the Lottery and Gaming Control Commission at COMAR Title 14, Subtitle .01 are in the process of being repealed and recodified at COMAR Title 36, which, when final, will be available at <http://www.dsd.state.md.us/comar/>. The recodified version of COMAR 14.01.13.03B will be 36.03.11.03B). Also see RFP Section 4.3.

b) No.

24. **QUESTION:** Section 3.1.6.2: a) If the Applicant submits an initial license fee for any additional VLTs beyond the 3,000 machine count, and they are not allocated to the Applicant at the time of License Award, shall the initial license fee for the additional VLTs be refunded to a Winning Applicant?

b) What is the procedure if subsequent to being awarded a VLT License, the Applicant wishes to ultimately operate fewer or greater numbers of table games than are included in its RFP submission?

ANSWER: a) If the number of VLTs proposed by an Applicant is more than the number of VLTs that are awarded to the Applicant in the License Award, the initial license fee for the number of VLTs that were proposed but not awarded to the Applicant will be refunded.

b) The procedure is addressed in regulations proposed by the Lottery and Gaming Control Commission. COMAR 36.04.02.02 (Note: the Commission proposed this regulation at its December 2012 meeting; when final, it will be available at <http://www.dsd.state.md.us/comar/>). See also RFP Section 2.9.1.4.

25. **QUESTION:** Section 3.1.6.2: Does an Electronic Table Game that does not have any live dealer present at the game for the game to function qualify as a Table Game or as a Video Lottery Terminal? If a live dealer is present at the "Dealer

Controlled Electronic Table Game”, does it count as 1 table game regardless of the number of seats?

ANSWER: An Electronic Table Game that does not have a live dealer present qualifies as a VLT. The Lottery and Gaming Control Commission will establish a limit on player stations that can be connected to a “Dealer Controlled Electronic Table Game.” Although that limit has not yet been established, it is anticipated that the limit on player stations at each “Dealer Controlled Electronic Table Game” will be similar to the traditional limits on player positions for a particular table game.

26. **QUESTION:** Section 3.1.6.2(e): What is meant by “Schedule of Implementation”?

ANSWER: The Applicant’s proposed schedule for the full operation of all VLTs and Table Games proposed, including a schedule specifying the numbers of VLTs and Table Games to be implemented in any phases or “ramp-up” process.

27. **QUESTION:** Section 3.1.6.4.E: a) When is it anticipated that a final Title 36 will be available and would interested parties to the RFP process be allowed to discuss, provide feedback or seek clarifying statements to the draft regulations in Title 36?

b) Given the current proposed changes to regulations, please reference what minimum internal control standards should be referenced and where the minimum internal control standards can be obtained?

c) Of the following, what would constitute an acceptable narrative?

- 1) a summary narrative relating to an Applicant’s proposed system of internal control;
- 2) comprehensive set of minimum internal control standards;
- 3) an example of minimum internal control standards (system of internal control) used by the Applicant in another U.S. state;
- 4) a summary statement indicating a commitment to comply with the Maryland minimum control standards with rationale explaining Applicant’s experience in other U.S. states.

ANSWER: a) Subtitles .03, .04, and .05 of COMAR Title 36 became effective as emergency regulations on March 1, 2013. The final proposed regulations will be published and made available for public comment soon.

b) The minimum internal control standards for a VLT facility are found in the regulations of the Lottery and Gaming Control Commission at COMAR 14.01.14. As noted in the Answers to Questions 23 and 25, the regulations of the Lottery and Gaming Control Commission are in the process of being repealed from COMAR 14.01 and recodified at COMAR Title 36. The minimum internal controls regulations will be recodified at COMAR 36.03.10.

c) Applicants are encouraged to demonstrate their understanding of the minimum internal control requirements and ensure that their Proposal reflects that understanding.

28. **QUESTION:** Section 3.1.6.5 (Labor Relations, Employees and Non-Discrimination Policies): Is a labor peace agreement required with more than one union?

ANSWER: As stated in RFP Section 3.1.6.5 and SG § 9-1A-07(c)(7)(v), an Applicant “shall enter into a labor peace agreement with each labor organization that is actively engaged in representing or attempting to represent video lottery and hospitality workers in the State.”

29. **QUESTION:** Section 3.1.7.2: Define “performance” in the context of this section regarding Parent Guarantee?

ANSWER: The parent organizations need to provide a performance guarantee which covers the construction period and at least the first sixty (60) months of operations. During the construction phase and for the first sixty (60) months of operations, the parent company will absolutely guarantee the project will be financially solvent and successfully meet all of its financial, operational and regulatory obligations.

30. **QUESTION:** Section 3.1.7.3 (Background and Experience): This section requests information and references regarding “the Applicant” and its ability to perform the project. If the Applicant is a Joint Venture, will the Commission evaluate the background and experience of the JV’s constituent members? If the Applicant is a newly formed subsidiary, will the Commission evaluate the background and experience of the Applicant’s affiliated entities? Will Subcontractor’s capabilities and/or references be evaluated?

ANSWER: Yes, complete information must be submitted for evaluation by the Location Commission. Applicants should submit as much detailed information as possible about the JV company and the individual companies. The Application shall be evaluated on all information that is submitted.

31. **QUESTION:** Section 3.1.8(A2): a) For Applicants that are public companies or subsidiaries of public companies, in light of SEC reporting requirements and the public market nature of equity and debt securities, are there alternatives to the requirement of letters attesting to credit worthiness?

b) Would letters attesting to a public company’s ability to access the capital markets based on its current operational profile suffice?

ANSWER: a) No.

b) No.

32. QUESTION: Section 3.2.1 (Required Applications): a) Can you confirm that, in addition to the RFP response, the Applicant will also have to complete a Form 1001? Can you elaborate on which forms the Applicant's parent or intermediary entities would have to fill out? Would it just be Form 1006 and would just the ultimate parent have to complete this form or would separate forms 1006 have to be completed for any intermediary entities between the Applicant and the ultimate parent?

b) Can you confirm that, if the Applicant will contract out the management of the facility, a form 1020 would have to be completed for the proposed manager (or operator) of the facility? Can you elaborate on which forms the proposed manager's (or operator's) parent or intermediary entities would have to fill out? Would it just be Form 1006 and would just the ultimate parent of the proposed manager (or operator) have to complete this form or would separate forms 1006 have to be completed for any intermediary entities between the proposed manager (or operator) and the ultimate parent?

c) Can you provide clarification regarding who qualifies as a Principal Employee of the Applicant and who would qualify as a Principal Employee of the proposed manager (or operator)? For example does this include all senior executives and members of the Board of Directors (commonly referred to as key people) of the Applicant or manager even if they do not own 5% or more of the Applicant or its parent company? Will there be the opportunity to discuss with lottery staff, prior to the submission deadline, an Applicant's (or proposed manager's) specific organization to determine which individuals qualify as principal employees?

d) We are concerned about the public release of personal information on principal employees or key people. Is all information submitted by natural persons on forms 1004, 1006 or 1007 considered confidential and not subject in whole or in part to public disclosure? If certain information on natural persons is disclosable, can you elaborate on what is protected from disclosure and what is not?

e) If an entity that already operates a VLT facility in Maryland, and has been found suitable in Maryland, wants to be the manager (or operator) but not an owner of a proposed Prince George's facility, would any of the filing requirements of that entity and its principal employees be different since they have been previously found suitable?

ANSWER: a) As stated in RFP Section 3.2.1(A), an Applicant must complete and submit to the Lottery and Gaming Control Commission Form 1001 (Operation License Applicant Form). An entity that owns at least 5% of the Applicant must complete and submit to the Lottery and Gaming Control Commission Form 1006 (Principal Entity Disclosure Form). The Licensing Division of the Maryland Lottery and Gaming Control Agency will determine any additional filing requirements after review of the Applicant's organizational structure and discussion with the Applicant.

b) If an Applicant intends to contract out the management of a facility, the management company is considered a Contractor (see Answer to Question 36(b)) and Form 1020 (Contractor License Application) must be completed and submitted to the Lottery and Gaming Control Commission. An entity that owns at

least 5% of the Applicant must complete and submit to the Lottery and Gaming Control Commission Form 1006 (Principal Entity Disclosure Form). The Licensing Division of the Maryland Lottery and Gaming Control Agency will determine any additional filing requirements after review of the Applicant's organizational structure and discussion with the Applicant.

c) At its December 2012 meeting, the Lottery and Gaming Control Commission approved regulations that include the definition of "Principal" as: (a) An officer, director, or person who directly holds a beneficial interest in, or ownership of, the securities of an applicant or licensee; (b) A person who has a controlling interest in an applicant or licensee or has the ability to elect a majority of the board of directors of a licensee or to otherwise control a licensee; (c) A lender or other licensed financial institution of an applicant or licensee, other than a bank or lending institution which makes a loan or holds a mortgage or other lien acquired in the ordinary course of business; (d) An underwriter of an applicant or licensee; or (e) Another person or employee of an applicant or licensee deemed by the Commission to be a principal. COMAR 36.03.01.02B(24).

Also at its December 2012 meeting, the Lottery and Gaming Control Commission approved regulations that include the definition of "Principal Employee" as: (a) a video lottery employee who owns, controls or manages a licensee, or otherwise exercises control over a video lottery or table game function of a licensee; (b) including an employee of a contractor who performs any function described in § B(1) of this regulation; and (c) as not including a gaming employee. COMAR 36.03.01.02B(25). See, e.g., Answers to Questions 23, 24, 25 regarding effective date and availability of these regulations. Members of the Board of Directors and senior executives of the Applicant or the proposed manager are generally considered principals or principal employees. As stated in RFP Section 1.2.2.2, an Applicant may facilitate expediting the background application process by submitting Form 1001, and all required fees, prior to the Deadline for Receipt of Proposals. The Licensing Division of the Maryland Lottery and Gaming Control Agency will determine any filing requirements after review of the Applicant's organizational structure and discussion with the Applicant.

d) As stated in RFP Section 2.2.1, "Proposals shall be shown only to members of the Location Commission and State employees or other persons deemed to have a legitimate interest in them, and will not be open to public inspection until after a License is awarded and in accordance with State law." As stated in RFP Section 1.2.2.2, identifying information about an Applicant will be kept confidential until after the Deadline for submitting Proposals, when a Register of Proposals will be published. The Maryland Public Information Act ("PIA"), Title 10, Subtitle 6, Part III, State Government Article, Annotated Code of Maryland, governs responses to a request for information from a member of the public. The PIA allows for exempting certain information from disclosure, such as an individual's financial information (PIA § 10-617(f)), and licensing records, which are generally exempt from disclosure except as provided in § 10-617(h) of the PIA. As stated in RFP Section 2.18, after license award disclosure of Proposals will be in accordance with the Maryland Public Information Act.

e) It is possible that if an entity is already licensed in Maryland as an operator, and that entity applies to be licensed as a non-owner operator or manager of the Prince George's County facility, the entity may be subjected to a minimal or a limited investigation. The Lottery and Gaming Control Agency Licensing Staff would need to thoroughly review a proposal of this nature before determining the scope and scale of any additional investigation.

33. QUESTION: Section 5.4 (Discussions and Negotiations): a) If the Commission elects to conduct discussions or negotiations with one Applicant, will it also conduct discussions or negotiations with other qualified Applicants?

b) Similarly, if the Commission allows one qualified Applicant to submit a revised proposal, will it also afford other qualified Applicants the same opportunity?

ANSWER: a) As stated in RFP Section 5.4, "The Location Commission may engage in discussions and negotiations with some or all Applicants, at its sole discretion."

b) The Location Commission, in its discretion, may request a revised Proposal from one or more Applicants, or from all Applicants.

34. QUESTION: Section 6.6 (Contingent Fee Prohibition): Is there a particular definition of "bona fide" employee, agent, salesperson, or commercial selling agency that the Commission plans to follow for purposes of this requirement? Or should we just assume that Maryland law would control this issue?

ANSWER: As stated in RFP Section 6.4, Maryland law prevails.

35. QUESTION: Section 6.18 (Conflict of Interest): Is there a particular definition of "conflict of interest" that the Commission plans to follow for purposes of this requirement? Or should we just assume that Maryland law would control this issue?

ANSWER: As stated in RFP Section 6.4, Maryland law prevails.

36. QUESTION: Section 6.22.1 (Insurance – General Requirements):

a) Please describe the process or standards that the Commission will use for approving insurers.

b) What is the meaning of the term "contractor"? Is it purely for the construction phase or does it include any and all vendors working on the property during and after construction?

c) Certificates of insurance are issued by our insurance broker not the insurance companies. Can this section be amended to reflect this arrangement?

- d) The Commission cannot be added as an additional insured on the Licensee's Workers Compensation policy. Can this section be amended to reflect this exception?
- e) The 60-day notice of cancellation should be amended to reflect 10 days for non-payment of premium, which is industry standard. Insurers do not provide notices of "material modification" to the policies. Such requirement should be deleted or very specifically defined.
- f) With regard to the confirmation of premium payment, because we pay our premiums in installments or finance them, confirmation of premium payment will be limited to the installment schedule. Please confirm that this is acceptable.
- g) Please confirm that having a deductible or self-insured retention is not considered "self-insuring" for any of the coverages required.

ANSWER: a) Insurance companies shall be licensed or authorized to do business within the State.

b) "Contractor" is defined in regulations promulgated by the Lottery and Gaming Control Commission at COMAR 14.01.10.01. As noted in the Answers to Questions 23, 25, and 26, the regulations of the Lottery and Gaming Control Commission are in the process of being repealed from COMAR 14.01 and recodified at COMAR Title 36. The definition of "contractor" will be recodified at COMAR 36.03.01.02.

c) In this context, a common sense interpretation of "insurance company" includes an insurance broker.

d) RFP Section 6.22.4 does not contemplate that the Commission be an additional insured.

e) The Commission respectfully declines to change this language as requested.

f) This is acceptable evidence of a premium payment.

g) A reasonable deductible or self-insured retention would not be considered "self-insuring."

37. QUESTION: Section 6.22.2 (Property Insurance): Is there a particular definition of "extended coverage" that the Commission plans to follow for purposes of this requirement?

ANSWER: Coverage would be considered "extended" if it covers actual replacement costs, includes an All Risk Property Floater to insure personal property including contents, equipment, and mobile items, against losses including fire, collision, and covers all State-owned equipment located in the facility.

38. QUESTION: Section 6.22.3 (Liability Insurance): Liability policies have annual policy aggregates. Is the \$6,000,000 liability limit an annual policy aggregate? Also, policies provide liability coverage on a blanket basis covering all properties. Please confirm that the \$6,000,000 requirement can be provided on a blanket basis and covering all properties.

ANSWER: The Combined Single Limit for Bodily Injury and Property Damage \$6,000,000 is an annual aggregate. The \$6,000,000 is intended to cover an operator's Maryland property, rather than provide blanket coverage for multiple properties.

39. QUESTION: Section 6.23 (News/Press Releases): Public companies are required to make certain disclosures required by the SEC rules. Please clarify that such disclosures would not be prohibited by this requirement.

ANSWER: Correct. A disclosure required by law would be a permitted exception to this requirement. The Operation Licensee should provide notice to the Lottery and Gaming Control Commission if information disclosed was required by law.

40. QUESTION: Section 6.31 (License Revocable): This section provides the Commission with the ability to revoke the License if, among other things, the Licensee fails to maintain its "proper and continued qualification." Please clarify the lack of "qualification" that could trigger a revocation of the License prior to end of its term.

ANSWER: Throughout the entire term of its License, a Licensee must continue to meet all requirements of the License. Regulations promulgated by the Lottery and Gaming Control Commission at COMAR 14.01.11.06 imposes a continuing obligation for the Licensee to fulfill the requirements of the RFP and its license application, and that a failure to do so shall be grounds for sanctions up to and including revocation of the License. As noted in the Answers to Questions 23, 25 and 26, the regulations of the Lottery and Gaming Control Commission are in the process of being repealed from COMAR 14.01 and recodified at COMAR Title 36. The ongoing obligation provision will be recodified at COMAR 36.03.03.06.

41. QUESTION: Section 6.35 (Noninterference): Please confirm that, if an affiliate of an existing Licensee submits an application hereunder, the application of the affiliate would not be deemed to have violated this non-interference requirement.

ANSWER: The submission of such an application would not, in itself, be a violation of the provisions of RFP Section 6.35.

42. QUESTION: Is there anything that would prohibit Prince George's County government from reaching out to any interested applicant, before the bids are due and

after, to discuss working collaboratively to deliver a proposal with maximum benefit to the County and state?

ANSWER: No, and in fact the Commission encourages potential applicants to work with the County to identify and resolve potential issues prior to Proposal submission.

43. QUESTION: The professionals selected to provide the economic impact study have indicated that a portion of the study may only be completed after the response deadline. They stated that based on their experience with the Baltimore RFP this type of information could be supplemented. We have reviewed the RFP's language on supplementation and this seems acceptable. However, we were hoping to confirm that we would be able to supplement our response in this way.

ANSWER: Applicants should submit as complete and as much detailed information as possible with their Proposals. As stated in RFP Section 5.4, "The Location Commission may engage in discussions and negotiations with some or all Applicants, at its sole discretion." The Location Commission, in its discretion, may request a revised Proposal from one or more Applicants, or from all Applicants.

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