

**CENTRAL MONITOR AND CONTROL SYSTEM FOR A VIDEO LOTTERY
TERMINAL PROGRAM
(#2009-11)**

**RESPONSES TO WRITTEN QUESTIONS
September 1, 2009**

This list of questions and responses #2 (Q&A#2) is being issued to clarify certain information contained in the above named Request for Proposals (RFP). The statements and interpretations of Contract 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 Contract 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 Lottery Commission's responses to those questions:

2. **QUESTION:** Section 1.1.3, Page 1: Please clarify the number of VLTs anticipated at each of the five Facilities as their final number will/may impact costing?

ANSWER: The Maryland VLT Law authorizes the issuance of up to five (5) Licenses for the operation of a maximum of 15,000 VLTs distributed at VLT Facilities In Anne Arundel County (4,750), Baltimore City (3,750), Worcester County (2,500), Cecil County (2,500) and Allegany County (1,500). Applications are presently pending for Licenses for VLT Facilities in four (4) of these locations for the number of VLTs indicated below:

1. Anne Arundel County: PPE Casino Resorts Maryland, LLC; 4,750 VLTs
2. Baltimore City: Baltimore City Entertainment Group, LP; 500 VLTs
3. Worcester County: Ocean Enterprises, LLC; 800 VLTs
4. Cecil County: Penn Cecil Maryland, Inc.; 500 VLTs

Baltimore City Entertainment Group has indicated that it will increase the proposed number of VLTs from 500 to 3,750 in September 2009 and Penn Cecil Maryland has indicated that it will increase the proposed number of VLTs from 500 to 1,500 in the near future. The License review and award process is presently in progress for these proposed Facilities, and the number of VLTs stated above is the best information that the Commission can provide at this time. Offerors will be advised of any changes in these numbers as they occur. VLTs and Facilities up to the maximum allowed by the VLT Law may be phased in over time on a schedule which has not yet been determined.

3. **QUESTION:** Section 3.4, Page 18: a) Will the Commission consider amending

the Due Date for Receipt of Proposals from September 17, 2009 at 2:00 p.m. local time until October 1, 2009 at 2:00 p.m. local time? This added time will afford prospective proposers to (a) conduct thorough site-by-site evaluations of the five proposed video lottery venues; and (b) adequately attempt to meet the State's desired Minority Business Enterprise participation goals? b) Will the Commission also indicate the date of the award notification and the period for the contract negotiation?

ANSWER: a) No. The Commission will not amend the Due Date for Receipt of Proposals at this time.

b) The Commission anticipates at this time that a recommendation for contract award will be made in approximately late October/early November, but that date is subject to change. Offerors must express any concerns they may have with specific contract provisions before submitting their proposals. Negotiations or changes to the contract will not be permitted after a recommendation for contract award is made. In Maryland, after an agency makes a recommendation for contract award, consummation of the contract document is limited to a mechanical exercise of integrating the provisions of the RFP, any amendments, BAFO, etc. into a final written agreement.

4. **QUESTION:** Section 3.6 Questions, Pages 19-20: This Section states that questions submitted in a timely manner will also be accepted subsequent to the Pre-Proposal Conference. Will potential Offerors receive answers to these questions prior to submittal of the Technical and Financial Proposals?

ANSWER: The Commission will attempt to answer all questions received as quickly as possible. However, the Procurement Officer, based on when a question is received and the availability of time to research and communicate an answer before the Due Date for Receipt of Proposals, will decide whether an answer can be given before the Due Date for Receipt of Proposals.

5. **QUESTION:** Section 3.8 Oral Presentations/Site Visits During Evaluation, Pages 21-22: The RFP provides that "Significant representations made by an Offeror during oral presentations, discussions, demonstrations and site visit(s) shall be reduced to writing by the Offeror" and "will become part of the Offeror's Proposal and shall be binding if the Contract is awarded." What does the Commission consider to be a "significant representation" that would be required to be "reduced to writing"?

ANSWER: The Commission will inform an Offeror of any representation it considers "significant" at such time as the representation is made and provide instructions to the Offeror regarding any written confirmation deemed necessary.

6. **QUESTION:** Section 3.12 Non-Exclusive Rights, Page 23: Does the Commission intend to have more than one provider of a Central System for VLTs?

ANSWER: As stated in RFP Section 1.1.9, the Commission intends to make a single Contract award and procure a single provider of a Central System capable of supporting up to the maximum number of VLTs and Facilities authorized by the VLT Law. However, the State reserves the right to purchase such services in whole or in part from another source.

7. **QUESTION:** Section 3.19 Public Information Act Notice, Page 24: Please confirm that a statement of statutory exemption provides sufficient justification for non-disclosure.

ANSWER: Information that is claimed to be proprietary or confidential is to be labeled accordingly and is to be placed after the Title Page and before the Table of Contents in the Offeror's Technical Proposal, and if applicable, also in the Financial Proposal. (RFP Section 7.3.3)

Upon a request pursuant to the PIA from a third party for any information contained in the Offeror's proposal, the Procurement Officer is required by Maryland law to make an independent determination whether the information must be disclosed and will release information not deemed to contain trade secrets or confidential commercial or financial information. Any justification of why certain confidential information should not be disclosed that is provided by the Offeror will be considered by the Procurement Officer in making the required determination. Broad statements asserting overall confidentiality are generally not persuasive.

8. **QUESTION:** Section 3.27 paragraph 2 Reciprocal Preference-Resident Offeror, Page 31: This Section requires that "Nonresident offerors submitting a proposal ... shall include a copy of the current statute, policy, procedure or executive order of the resident state of the nonresident offeror that pertains to that state's treatment of nonresident offerors." Where in the Technical Proposal is this material to be placed since it is not explicitly specified in Section VII?

ANSWER: This information should be noted in the Transmittal Letter and attached thereto, and included with the original Technical proposal.

9. **QUESTION:** Section 4.3.3 Compensation and Method of Payment, Pages 37-38: This Section provides that the Commission may withhold and/or reduce payment for unsatisfactory performance; however, there is no reference as to how performance will be measured. It is requested that the Commission provide objective performance measurements as well as a reasonable cure period for unsatisfactory performance.

ANSWER: Performance will be measured in accordance with the contractor's compliance with the specifications contained in the Contract. A reasonable period to cure would depend on the circumstances and would be specified by the Procurement Officer as part of a notification of a reduction or withholding of payment.

10. **QUESTION:** Section 4.11 Termination for Default, Pages 41-42: It is requested that the Commission consider providing for a materiality threshold as a condition precedent to Contract termination. It is also requested that the Commission extend the ten (10) day cure period to thirty (30) days and confirms that such period will be extended an additional sixty (60) days provided that Offeror is diligently attempting to cure such default.

ANSWER: No. The Termination for Default provision is a mandatory requirement of State law and will not be changed.

11. **QUESTION:** Section 4.36 Confidentiality, Page 54: It is requested that a limited exception be made for disclosures which are required by applicable law.

ANSWER: A disclosure required by law would be a permitted exception to this requirement. The Contractor should provide notice to the Commission if information disclosed was required by law. This section will be amended. (See Amendment #1)

12. **QUESTION:** Section 4.45.1 Proposal Bond, Page 63: Is a letter of credit an acceptable form of security in lieu of a Bid Bond?

ANSWER: An Irrevocable Letter of Credit is an acceptable form of security as follows: In accordance with COMAR 21.06.07.01 B., "Acceptable security for bid, performance and payment bonds is limited to: (1) A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State; (2) A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account; (3) Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State; (4) An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer."

13. **QUESTION:** Section 4.45.1 Proposal Bond, Page 63: This Section states that the Proposal Bond needs to guarantee the bid for 180 days; however, the bond form found in Appendix I states 120 days. Please clarify which is correct.

ANSWER: Section 4.45.1 is correct. The bond form provided in Appendix I is incorrect and will be amended to specify 180 days. (See Amendment #1)

14. **QUESTION:** Section 4.45.2 Litigation/Protest Bond, Page 64: Is a letter of credit an acceptable form of security in lieu of a Litigation Bond?

ANSWER: See Answer to Question #12.

15. **QUESTION:** Section 4.45.2 Litigation/Protest Bond, Page 64: This Section states that the bond shall remain in effect for one (1) year; however, the bond form in Appendix H states that the bond will be in effect for two (2) years. Please clarify the term of the bond?

ANSWER: Section 4.45.2 is correct. The bond form provided in Appendix H is incorrect and will be amended to specify one (1) year. (See Amendment #1)

16. **QUESTION:** Section 4.45.4 Performance Bond, Pages 65-66: Will the Commission accept an industry standard bond form?

ANSWER: Use of the form provided in Appendix J is encouraged in order to avoid an Offeror's substitute form being determined to be unacceptable. However, a bond form containing all provisions of the form provided in Appendix J and underwritten by a surety company authorized to do business in the State may be acceptable, subject to the Commission's review and approval.

17. **QUESTION:** Section 4.47 Minority Business Enterprise Compliance, Page 69: The minority business enterprise (MBE) goal of 25% (twenty five percent) of the Contract Value, on a yearly basis, appears to be disproportionately high compared to other Lottery contracts. Please explain?

ANSWER: The 25% MBE participation goal is specified by Maryland law and is applicable statewide to all contracts. Individual contracts may have MBE participation requirements which are less than, or more than, the 25% goal if justified on a case-by-case basis. In its Proposal, an Offeror may seek a waiver of the MBE participation goal as described in RFP Section 3.22 paragraph 4, but, in the event of a situation where competing proposals are essentially equal, an agency may award a contract in order to obtain certified MBE participation. Offerors are encouraged to carefully review COMAR 21.11.03.

18. **QUESTION:** Section 4.47 Minority Business Enterprise Compliance, Page 69: Considering the majority of the goods/services to be provided under this contract is proprietary software developed and maintained by the Contractor, what goods/services does the Commission expect can be provided by MBEs, or any other subcontractor/supplier/vendor?

ANSWER: The Offeror must make an independent evaluation of all opportunities available for MBE subcontracting. If an Offeror believes a waiver of some or all of the MBE goal is necessary then the Offeror may request a waiver as described in RFP Section 3.22 paragraph 4. An Offeror requesting a waiver must demonstrate that reasonable good faith efforts have been made to meet the goal.

19. **QUESTION:** Section 5.9.1 General, Page 106: Elsewhere in the RFP, the

Commission asks to be notified of errors in the RFP, and so we take this opportunity to point out that referenced to Section 5.8.3 and 5.8.2 in RFP Section 5.9.1 should refer to Section 5.9.3 and 5.9.2 respectively.

ANSWER: Yes. This Section contains an error in the numbering only. No items have been omitted. The numbering will be corrected. (See Amendment #1)

20. **QUESTION:** Section 5.9.3.1 Project Manager, Page 108: Please clarify if the Project Manager assigned to the Ongoing Support Staff has to be PMP certified?

ANSWER: Yes, as stated in RFP Section 5.9.3.1, the Ongoing Support Staff Project Manager must be PMP certified.

21. **QUESTION:** Section 5.15 Deliverables, Pages 120-123: Must the Offeror's response include actual "NTP+x" dates/time periods (based upon data in the provided project plan) in place of the asterisks in the date cells of the deliverables table?

ANSWER: Yes. The Offeror's response must include actual dates expressed as "NTP + x", such as for example "NTP + 30". As stated in the "Note" following the Deliverable Table:

"An asterisk (*) denotes the dates submitted in the Contractor's Implementation Plan required by RFP Section 5.11.1. Because deliverable due dates are dependent upon the Commission's issuance of a Notice to Proceed ("NTP"), the timing shall be expressed in terms of NTP + X days."

22. **QUESTION:** Section 6.3, Page 125 and Appendix-F, Page 184: In Section 6.3 it is stated that " All prices must be recorded with five decimal places if a percentage (e.g. 0.00000) and with dollars and cents if a dollar amount (e.g. \$00.00)", however, in Appendix-F (Financial Proposal Sheet), there is no provision by the template that will allow the Offeror to offer a percentage base pricing.

a) Please clarify if either/both a percentage base and a dollar amount could be allowed in the Financial Proposal Sheet.

b) In case a percentage is proposed, please clarify if this percentage is applied on the Gross Terminal Income (as defined in the RFP).

c) Please establish and provide an estimated Gross Terminal Income (total or per each VLT Facility) for the contract period. This will enable the Commission to establish a common pricing evaluation procedure among the Offerors' responses in case of a percentage base pricing.

ANSWER: A proposed price based on a percentage of Gross Terminal Income is not being requested nor is it acceptable. RFP Section 6.3 provides basic instructions for completion of the Financial Proposal Sheet and is a standard RFP provision covering prices which may in various cases be

expressed as percentages or dollar amounts. This RFP requests that all proposed prices be stated in dollar amounts as specified on the Financial Proposal Sheet. Nowhere in the RFP is it indicated that the Commission is requesting a percentage fee or that a fee as a percent of Gross Terminal Income would be acceptable.

23. QUESTION: Section 7.2 paragraph 3, Page 126: This Section requires Volume I – Technical Proposal – be submitted electronically in MS Word format and Volume II – Financial Proposal – be submitted in MS Word or Excel format. Because of the large quantity of written material and graphics required to be submitted with the RFP response and the generation of large electronic files with a high potential for complications/problems when opened, is it acceptable to submit the electronic files in a PDF format?

ANSWER: Yes, PDF format is acceptable but must include the ability to search, copy and print selected pages and partial pages.

24. QUESTION: Section 7.2 paragraph 6, Page 126: This Section requires all pages in each proposal volume to be consecutively numbered. Does this also apply to completed RFP Appendices, VLT forms, etc. within the body of the proposal?

ANSWER: The main body of the Technical Proposal and Financial Proposal documents should be consecutively numbered. Appendices, VLT forms, etc. that are required to be submitted with the Technical Proposal or any other attachments that the Offeror may choose to submit need not be consecutively numbered, but should be individually numbered to insure that all pages are included.

25. QUESTION: Section 7.3.1 Transmittal Letter, Page 127; and Section 7.3.11 Required Submissions, Page 139: Section 7.3.1 states that the Checks for the Application and Background Investigation Fees are to be attached “to the Transmittal Letter (in) a separate sealed envelope” But 7.3.11 indicates that the Application Fees and Background Investigation Fees are also to be provided in the proposal section containing completed RFP appendices, forms, applications, etc. Are these checks are to be provided with the Transmittal Letter or in the response to RFP Section 7.3.11?

ANSWER: Section 7.3.11 is provided as a checklist to assist Offerors in submitting all required items. Checks for the Application and Background Investigation Fees are to be attached to the Transmittal Letter or submitted by wire/electronic transfer as indicated in Section 7.3.1.

26. QUESTION: Section 7.3.2 paragraph 3, Page 128; and Section 7.3.4 Executive Summary, Pages 128-129: Section 7.3.2.3 requires that the RFP “be organized and numbered in the same order as given in the RFP”, but several sections

are not referenced anywhere in RFP Sections 7.3.3 through 7.3.11, which is the outline of the Technical Proposal. Please confirm that:

- a) Responses to Sections I, II, VIII, and IX are not required since they are strictly informational.
- b) Responses to Section III, IV, and V are given in the Executive Summary (7.3.4) or Required Submissions (7.3.11.7) as compliance statements only.
- c) Response to Section VI only appears in the Financial Proposal.

ANSWER: a) Correct, except Section IX requires submission of the appropriate Applications and Fees for Background Investigations and Licenses.

b) Statements of Compliance for Sections III, IV and V are required to be provided in the Executive Summary and any exceptions taken to these Sections must be stated in the Executive Summary. Furthermore, a detailed response to Section V must be additionally provided in accordance with Sections 7.3.5 through 7.3.11.

c) Correct.

27. **QUESTION:** Section 7.3.2 paragraph 3, Page 128: This Section requires the RFP “be organized and numbered in the same order as given in the RFP, using the correct subsection and paragraph number for each specification. For example, Section 2.1 Para. 1; Section 3.2 Para 4, etc.”

Please confirm that vendors are not required to list and respond to each and every individual RFP paragraph? For example, although RFP Section 7.3.5 contains four paragraphs, please confirm that vendors do not have to break up the paragraphs and present the response as RFP Section 7.3.5, Para 1; Section 7.3.5. Para 2, etc., and that the entire response to RFP Section 7.3.5 would simply be numbered 7.3.5 along with the section title.

For numbered items, such as the request for “a brief history of the company” on RFP page 129, please confirm we can just number the response as 7.3.6.1.1.

ANSWER: The format outlined in the Question would be an acceptable format for response, provided that the Offeror’s response covers all of the RFP’s requirements.

28. **QUESTION:** Section 7.3.4 paragraph 5, Page 129, Section 7.3.4 paragraph 6, Page 129, and Section 7.3.11 Required Submissions, Page 139: Sections 7.3.4.5 and 7.3.4.6 require that the Offeror provide a statement of intent to comply with the terms, conditions and requirements of Sections III, IV, and V in the Executive Summary. Section 7.3.11, however, also requires this statement of intent to comply. Are these statements to be provided in the Executive Summary or in the response to RFP Section 7.3.11?

ANSWER: Section 7.3.11 is provided as a checklist to assist Offerors in submitting all required items. The Statements to Comply should be included in the Executive Summary in response to Section 7.3.4 as indicated in the RFP.

29. **QUESTION:** Section 7.3.5 Offeror Technical Response to RFP Requirements, Page 129; and Section 7.3.11 Required Submissions, Page 139: Section 7.3.5 requires that “the Offeror must submit a thoroughly completed Central System Requirements Checklist.” But 7.3.11 indicates that the Central System Requirements Checklist is also to be provided in the proposal section containing completed RFP appendices, forms, applications, etc. Is this Checklist to be provided in the response to RFP Section 7.3.5 or RFP Section 7.3.11?

ANSWER: Section 7.3.11 is provided as a checklist to assist Offerors in submitting all required items. The Central System Requirements Checklist should be included in the response to Section 7.3.5 as indicated in the RFP.

30. **QUESTION:** Section 7.3.7 paragraph 1.a, Page 136: The RFP states “a Vendor must submit “the last three (3) year end audited financial statements.” In order to save on paper and reduce the size of the submission, will the Commission permit this financial information to be provided on a CD?

ANSWER: Yes, a CD is an acceptable format.

31. **QUESTION:** Section 7.3.9 paragraph 4 Economic Benefit, Page 138: This Section provides that the Offeror should take into consideration the percentage of subcontractor dollars committed to Maryland small business and MBEs. Please clarify whether such MBEs must be incorporated in Maryland or whether the percentage of subcontractor dollars committed to *any* MBE should be considered with respect to the Offeror’s commitment? How will the use of a non-Maryland MBE be evaluated with respect to reaching the 25% MBE goal?

ANSWER: An “MBE” by definition (See Section 1.4) refers only to a business that has been certified by the Maryland Department of Transportation (“MDOT”) to be a Minority Business Enterprise. An MBE is not required to be incorporated in Maryland, but it must be certified by MDOT. Only MDOT certified MBEs may be utilized in order to meet the MBE subcontract participation goal.

32. **QUESTION:** Section 7.3.11 Required Submissions, Page 139; and Section 9.1 Manufacturer’s License Application and Disclosure Forms, Pages 144-145: We have been trying to obtain the necessary forms that have to be completed and submitted with the proposal, but have been unable to locate the forms on the Lottery’s website.

ANSWER: All necessary forms have now been posted on the Lottery's website. (www.mdlottery.com) Click on link at top of page "VIDEO LOTTERY TERMINALS – Click Here For RFP Information".

33. QUESTION: Section 8.4 Criteria for Technical Evaluation, Pages 141-142: Section 8.4 lists six (6) criteria that will be used by the Evaluation Committee for evaluation of the Technical Proposals and states that they are listed in descending order of importance. Please provide the weight percentage given to each criterion.

ANSWER: In accordance with COMAR 21.05.03.02 (2), the Request for Proposals shall include “The evaluation factors and an indication of the relative importance of each evaluation factor, including price.” As stated in Section 8.4 of the RFP “The criteria that will be used by the Evaluation Committee for evaluation of the Technical Proposals are listed below, in descending order of importance, i.e. criterion no. 1 is more important than criterion no. 2, criterion no. 2 is more important than criterion no. 3, etc.”

34. QUESTION: Section 8.4, Pages 141-142: Section 8.4 illustrates six technical criteria that the vendors will be evaluated on.

a) Please provide the total technical points as well as the itemized points allocated for each of the 6 technical criteria.

b) Please provide the total points attributed to the financial evaluation.

ANSWER: Numerical rating systems are not required by COMAR and the technical and financial evaluations will not be done on a points scale. In accordance with COMAR 21.05.03.02 (2), the Request for Proposals shall include “The evaluation factors and an indication of the relative importance of each evaluation factor, including price.” All qualified Offerors will be ranked from the lowest (best) price to the highest price, based on the Offeror’s “Total Estimated 5-Year Contract Price” as specified on the Financial Proposal Sheet (Summary) - Appendix F. (Section 8.5 of RFP) As stated in Section 8.8 of the RFP, “In making the most advantageous Offer determination, technical factors shall be given greater weight than price factors.”

35. QUESTION: Section 8.8 Final Ranking and Recommendation for Award, Page 143: Please confirm if any weight will be awarded during the evaluation process to distinguish entities that have already been found suitable and licensed by gaming regulators in a number of major gaming jurisdictions?

ANSWER: Licensure in another gaming jurisdiction is not one of the stated evaluation criteria and in itself has no weight for evaluation. However, it would be a factor to be considered as a part of evaluation criterion #3 "Offeror's Background, Experience and Financial Capability".

36. QUESTION: Section 8.8 Final Ranking and Recommendation for Award, Page 143: We understand that technical factors shall be given greater weight than price

factors. Out of 51%—99%, what is the exact total weighting to be given to technical factors?

ANSWER: In accordance with COMAR 21.05.03.02 (2), the Request for Proposals shall include “The evaluation factors and an indication of the relative importance of each evaluation factor, including price.” As stated in Section 8.8 of the RFP, “In making the most advantageous Offer determination, technical factors shall be given greater weight than price factors.”

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