

VIDEO LOTTERY OPERATION LICENSES (#2009-0101)

RESPONSES TO WRITTEN QUESTIONS January 16, 2009

This list of questions and responses #1 (Q&A#1) is being issued to clarify certain information contained in the above named request for proposal (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: Under Section 9-1A-07(C)(7)(v) of the Maryland Video Lottery Terminals Law ("VLT Law") applicants are required to produce evidence that required labor peace agreements with labor organizations have been entered into. However, this requirement is not addressed in the RFP or application materials.

A. Can video lottery operations license applicants with no current employees in the State of Maryland presume that this requirement is not applicable for the initial bid/proposal on 2/02/09?

B. Can Applicants also presume that this requirement is not applicable for the 4/15/09 Supplement to Proposal?

C. When is compliance with this requirement expected?

ANSWER: Section 7.3.5.6 of the RFP asks Applicants to explain their labor policies and any labor agreements. Applicants are expected to comply with every representation made in their proposals during the course of their operation.

2. QUESTION: Under Section 9-1A-16 of the VLT Law, if an applicant other than an Applicant for a video lottery terminal license holds a license in another state with comparable standards, the State Lottery Commission may waive some or all of the requirements applicable to these applicants.

A. Will any of the application requirements applicable to principals (e.g. investors, officers or directors) of an Applicant or a management company of an Applicant be abbreviated or waived for entities or persons that have active licenses in states like New Jersey, Nevada or Pennsylvania?

B. If a waiver applicable to the 2/02/09 submission is possible, what steps should be taken to seek a waiver?

ANSWER: A) No. The Law does not allow a waiver for an Operation License (9-1A-16).

B) Not applicable.

3. **QUESTION:** Can we wire the Initial License Fee and what are the wiring instructions?

ANSWER: Yes. The Initial License Fee may be sent by wire/electronic transfer. Applicant shall indicate in its Transmittal Letter submitted with the Proposal (see Section 7.3.1 of the RFP) that it has made the payment by wire. The RFP will be revised to allow wire/electronic transfer by a subsequent Amendment #1 and specific wiring instructions will be provided at a later time.

4. **QUESTION:** Section 9-1A-36(j) of the VLT Law requires that each bid “shall include an initial license fee in the bid” but does not specify in what form the initial license fee must be included. Section 3.10 of the RFP requires that the fee be paid through a certified check. Would the Location Commission consider accepting a letter of credit as fulfillment of the statutory requirement?

ANSWER: No. A letter of credit is not acceptable. The initial License Fee must be paid by certified check or electronic transfer.

5. **QUESTION:** Under Section 9-1A-27(a)(1) of the VLT Law, 2% of Proceeds is paid to the State Lottery Agency for “costs” as the term is defined in Section 9-1A-01 of the VLT Law. Section 9-1A-01(l) of the VLT Law defines “costs” to include “the costs of performing background investigations and other related activities.” These provisions appear to be mandatory, not discretionary. However, Section 5.2 of the RFP imposes application fees for background investigations on Applicants through a filing fee and subsequent incremental reimbursement. Section 3.8.2 of the RFP requires an Applicant to notify the Location Commission in writing if it discovers any conflict, discrepancy, omission or other error in this RFP.

A. Is the requirement in the RFP that Applicants pay for background investigations rather than recover those costs as provided for by Section 9-1A-27(a)(1) of the VLT Law a discrepancy or error in the RFP?

B. How will the general regulatory costs of the Location Commission and the Lottery Commission and any other state agencies associated with the VLT Law be recovered on an ongoing basis?

1. Will they be paid from the 2% of proceeds as provided for in Section 9- 1A-27(a) (1) of the VLT Law; or

2. Will they be recovered through some other mechanism outside of the Proceeds from the VLT Law?

ANSWER: A) No. It is not a discrepancy. The Lottery Commission may collect application, license, and other fees to cover the administrative costs of the Law related to licensing. (9-1A-04(A)(4))

B) Yes. Costs will be paid both from the 2% of proceeds and also from the State Budget. (9-1A-27(B))

6. **QUESTION:** Under Section 9-1A-01 of the VLT Law, the term “Video Lottery Terminal” is defined as “a machine or other device that ... in which the results, including the options available to the player, are randomly determined by the machine...” As a result of this definition, can Applicants safely presume that Class III terminals can be installed and operated in Maryland video lottery facilities?

ANSWER: Yes. The Law authorizes Class 3 VLTs and the Lottery Commission expects to procure Class 3 VLTs.

7. **QUESTION:** Will the Machines be total cashless or TITO?

ANSWER: The Location Commission cannot answer this question. This would be under the control of the Lottery Commission.

8. **QUESTION:** Can some of the Slot Machines be roulette, blackjack and poker?

ANSWER: Yes. Any VLT that conforms to the definition of "VLT" specified in the Law is allowable.

9. **QUESTION:** Under Section 9-1A-21(a) of the VLT Law, the (Lottery) Commission will own or lease and retain control of each video lottery terminal device, central monitor and control system and the associated equipment and software in each video lottery facility. Furthermore, under subsection (d), the Commission will establish a process enabling licensees to select video lottery terminal products. But finally, under Section 9-1A-01 of the VLT Law, the costs paid out of Proceeds includes the cost to repair and maintain the video lottery terminals, central monitoring control system and associated equipment and software.

A. Will the State own or lease and retain control of what is generally referred to as the slot monitoring system in addition to the central control system?

B. Will the State require the participation of the Licensee or its employees in fulfilling the repair and maintenance functions of the Central System and VLTs or in funding these activities?

C. Section 1.1.9 of the RFP provides that the Lottery Commission will own the VLTs and Central System. Can additional guidance be provided on how the State, in conjunction with the industry, will select and acquire terminals and systems, including decisions as to the ongoing change out of VLTs? In particular, can a specific description be provided of the level of industry input in participation in procurement process, is there a process for applicant/licensee input on the Central System selection and on the mix/location of VLTs?

ANSWER: A) No. A slot monitoring system or player tracking system will not be owned, leased or operated by the State. The State will control the Central Monitor and Control System.

B) No. The State will include maintenance in its contract(s) for the VLTs and Central System. This is included in the Law in the definition of "Costs" (9-1A-01(L)(2)). The Licensee's obligation will be to cooperate with those contractors to facilitate the repair and maintenance.

C) The Lottery Commission intends to procure a consultant to assist with the development of the RFPs for the Central System and VLTs. The procurements for the Central System and VLTs will be conducted solely by the Lottery Commission. The selection of specific types of VLTs to be located within each Facility would be anticipated to be conducted in consultation with the Licensee. (9-1A-21(D))

10. **QUESTION:** Would the state consider providing the licensee a portion of their collected tax revenue back in the form of co-operative marketing dollars?

ANSWER: No. That is not authorized by the Law.

11. **QUESTION:** Are their opportunities for the tax rate to be lowered to a more reasonable rate or changed to a sliding scale based upon revenues?

ANSWER: No. That is not authorized by the Law.

12. **QUESTION:** Under Section 6.6.3.4 of the RFP (p. 77) addressing the Baltimore City site, VLTs cannot be located on Site C. Would the Location Commission consider any waiver of this prohibition, assuming such utilization of Site C would only be for a temporary period (i.e. while permanent facility is under construction)?

ANSWER: The Location Commission cannot answer this question. This is a requirement of Baltimore City. Applicants are required to contact Baltimore City directly to negotiate the terms and conditions for the site.

13. **QUESTION:** Please provide any other design/build restrictions or inclusions to site development of the Rocky Gap Resort. (i.e. LEED certifications, or Set-backs)

ANSWER: The Location Commission cannot answer this question. This is site-specific information for which the Applicant must directly contact the Maryland Department of Natural Resources. The contact persons are Eric Schwaab (410) 260-8102 at DNR and Bob Brennan (410) 625-0051 at the Maryland Economic Development Corporation, or go to the following website <http://www.dnr.maryland.gov/dnrnews/pressrelease2009/010609a.html>.

14. **QUESTION:** Can the Rocky Gap Resort be placed anywhere within the designated area of the map of Exhibit A Page 2.

ANSWER: The Location Commission cannot answer this question. This is site-specific information for which the Applicant must directly contact the Maryland Department of Natural Resources. The contact persons are Eric Schwaab (410) 260-8102 at DNR and Bob Brennan (410) 625-0051 at the Maryland Economic Development Corporation, or go to the following website <http://www.dnr.maryland.gov/dnrnews/pressrelease2009/010609a.html>.

15. **QUESTION:** A. How can we receive a full size plat of Site A, Site B and Site C?
B. How much is yearly lease on Site A, B and C?
C. Would City and/or State participate in any costs for street improvements adjacent to property such as storm water, curbs, traffic lights and landscaping?
D. Are there adequate public sewer lines adjacent to property?
E. What are Water and Sewer hook-up fees, Impact Fees?
F. Is there any additional land adjacent to Site A and B?
G. Is there any other City Property available that meets requirements set forth by Location Commission?
H. Will a Marina be allowed at site?
I. Would Maryland Stadium Authority be willing to work out an agreement at a discounted price for sharing the parking lots of both stadiums on off days?

ANSWER: The Location Commission cannot answer these questions. This is site-specific information for which the Applicant must directly contact Baltimore City. Regarding question I, the Applicant may contact the following person at the Stadium Authority: James F. Slusser, Director of Security and Public Safety, 555 Russell Street, Suite A, Baltimore, MD 21230, phone: (410)576-0300; fax: (410)347-9318.

16. **QUESTION:** Are the costs for background investigations included in Initial License Fee or are there additional fees and what would be that amount?

ANSWER: No. The cost of background investigations is not included in the Initial License Fee, which accrues to the Education Trust Fund. Applicants shall submit Background Investigation Fees and pay additional costs and expenses incurred by the Lottery Commission in its processing and investigation of Applicants in accordance with Section 5.2 of the RFP.

17. **QUESTION:** If Licensee has VLT license revoked after operation is functional say 5 years, does Licensee have right to sell operation to another group pending their background investigation is approved?

ANSWER: No. The License may be transferred prior to revocation or suspension upon approval of the Lottery Commission. If the License is revoked or suspended, it reverts to the State (see 9-1A-18 & 19). A Licensee may sell its Facility, but not the License.

18. **QUESTION:** What is the minimal distance that the Anne Arundel site can be from the Baltimore City Site?

ANSWER: There is no minimum distance between the Anne Arundel County location and the Baltimore City location specified in the Law.

19. **QUESTION:** Are there any provisions in the regulations, RFP or enabling legislation which prohibit the submission of one application that contains an alternative location within the same zone by the same applicant?

ANSWER: No. There are no such prohibitions. An Applicant may submit a single Proposal for the Anne Arundel, Worcester or Cecil County locations that offers more than one site within the County. This would require a single Initial License Fee. An Applicant may also submit a Proposal for more than one of the five County/City locations. This would require multiple Initial License Fees. However, an Applicant may only be awarded and have an ownership interest in one License.

20. **QUESTION:** The Rules contain several definitions of ownership. For clarity, is a licensee permitted to have an ownership interest in a second license? If so, is there a limitation on the interest in the second license?

ANSWER: No. An individual or business entity may not own an interest in more than one Facility or License. (9-1A-05(D))

21. **QUESTION:** For clarity, will all the VLT and central system capital and ongoing costs be funded by the Lottery Commission with no chargebacks to the licensee? Are there any other chargebacks to the licensee that we should be aware of?

ANSWER: In addition to the Initial License Fee, Capital Investment requirement, Background Investigation costs and the \$425 annual fee for each VLT for the Problem Gaming Fund (see Section 1.1.8 of the RFP), there are no other such fees. Any other potential fees would be within the purview of the Lottery Commission.

22. **QUESTION:** Section 7.3.2 of the RFP refers to a parent guarantee. Under what circumstances is a parent guarantee of the Applicant required?

ANSWER: In all cases where the Applicant is a subsidiary, it must provide a parent guarantee (see Section 7.3.2 of the RFP).

23. **QUESTION:** The rules refer to a maximum number of VLTs in each zone. If an applicant contemplates phasing in the scope of their project and the amount of VLTs on the floor, how should the initial application be presented (phase 1 or multiple phases)?

ANSWER: The Initial License Fee must be paid in a single total payment with the Proposal. The Initial License Fee is based on the maximum number of VLTs being proposed by the Applicant, regardless of whether the Applicant is proposing to commence operation with the maximum number of VLTs or proposing to phase in the number of VLTs.

24. **QUESTION:** Pursuant to section 7.2 of the RFP document, applicants must submit an unbound original and twelve (12) paper copies of their proposal along with one electronic copy on CD. Should the 12 paper copies be bound?

ANSWER: The copies should be assembled in a manner that will insure all documents submitted will be maintained in a secure and orderly manner. Three-ring loose leaf binders are preferred to the extent possible.

25. **QUESTION:** The instructions for most of the required application forms as well as RFP Section 7.2 #5 require the submission of a single paper copy as well as one CD of the following completed forms and associated exhibits:

- Multi Jurisdictional Personal History Disclosure Form
- Maryland Supplement to Multi Jurisdictional Personal History Disclosure Form
- Application for Background Investigation of a Video Lottery Operation License Applicant (Video Lottery Facility Gaming Application)
- Principal Entity Disclosure Form.

Please confirm that only one paper copy (and one CD) of each of these forms is necessary for each person or entity filing? Should the paper copy be bound or unbound?

ANSWER: Yes. Submit one (1) paper copy and one (1) complete and exact electronic copy on CD in PDF format for each person or entity filing an Application. The paper copy should be unbound, but assembled in a manner that will insure all documents submitted will be maintained in a secure and orderly manner, such as with spring-type paper clamps or three-ring loose leaf binder.

26. **QUESTION:** We understand that only Appendices A, F, L, J, K, and K-1 must be submitted with the proposal on February 2 and that Appendices B, D (1-6), E, G, H are to be submitted at various later dates. Can you confirm that our understanding is correct? (*Note there is a typo in Section 3.24 of the RFP. This section references Appendix G when it appears the proper reference should be Appendix F*)

ANSWER: Yes. The submission requirements are correctly stated. Appendices A, F, J, K, K-1 and L must be submitted with the proposal on February 2nd. Appendices D-1 and D-2 must be submitted with the Supplement. The others are to be submitted at various later dates as indicated in the RFP.

The proper reference in Section 3.24 should be to Appendix F and will be corrected by a subsequent Amendment #1 to the RFP.

27. **QUESTION:** Section 5.4 (b)(5)(I) of the RFP document requires that an applicant for licensure shall be photographed and fingerprinted for identification and investigation purposes. Section 5.11 (d)(2)(i) indicates that three (3) complete sets of the Applicant's legible fingerprints must be submitted on "*forms approved by the director of the Central Repository and the Director of the Federal Bureau of Investigation*". In what format must the fingerprints be submitted? Is there a specific Maryland fingerprint card format or will the standard FBI fingerprint cards suffice?

ANSWER: Fingerprint cards do not need to be submitted with the Proposal. The RFP will be revised to so indicate by a subsequent Amendment #1 and specific instructions for submitting fingerprints will be provided.

28. **QUESTION:** Confidential treatment of the information contained in the Multi-Jurisdictional Personal History Disclosure Form is of paramount importance to the individual applicants, as it allows highly sensitive disclosures to be made only to the regulators who use it solely to investigate suitability. The Maryland form does not address whether the submission as a whole will be deemed confidential, and in fact, the instructions to the Maryland Supplement suggest that the applicant should be selective in requesting what should be deemed confidential. Considering the highly confidential, sensitive and personal nature of the disclosures requested (e.g. social security numbers, personal tax returns, home addresses, personal and family financial information, etc.), is there any reason why Maryland should not deem the entire Multi-Jurisdictional Personal History Disclosure Form and the Maryland Supplement confidential?

ANSWER: The Maryland Public Information Act allows for certain information to be exempt from disclosure, such as financial information. These forms will be deemed to be confidential and not subject to disclosure, unless otherwise required by law or court order.

29. **QUESTION:** The Applicant, will be completing the "Video Lottery Facility Gaming Application," and its parent company will be completing a "Principal Entity Disclosure Form." These forms also require information from both companies that is not publicly disclosed (e.g. tax returns, employee compensation, vendor contracts, litigation summaries, bank account numbers, etc.). Can we proceed with the assumption that all confidential business information (i.e. information that is otherwise not publicly available) will be kept confidential, and will not be disclosed to the public?

ANSWER: The Maryland Public Information Act allows for certain information to be exempt from disclosure, such as financial information. These forms will be deemed to be confidential and not subject to disclosure, unless otherwise required by law or court order.

30. QUESTION: Item 4.21 of the Maryland RFP describes a Licensee’s obligations with respect to confidential information obtained by it. Can you please clarify this section? Does it relate to confidential information obtained by the licensee from the State of Maryland in conjunction with applying for, and operating under, its gaming license? We do not understand the nature of the obligation or when this provision applies.

ANSWER: Yes. It is a standard State provision and relates to confidential information obtained by the licensee from the State in conjunction with applying for and operating under its license.

31. QUESTION: Items 9 (holders of long term debt), 10 (holders of other debt) and 11(Security Options holders) of the Video Lottery Facility Gaming Application contain the following parenthetical statement:

“(IMPORTANT: It is a requirement, as part of this application that a complete Multi-jurisdictional Personal History Disclosure Form and a Principal Employee Form – Maryland Supplement to the Multi-jurisdictional Personal History Disclosure Form or Principal Entity Disclosure form as the case may be.)”

This does not appear to be a complete sentence. We understand that certain owners of stock (or certain stock options) of the applicant as well as its key people may have to file disclosure forms. We do not, however, understand their inclusion here in reference to debt holders. The public debt of large corporations is owned by many people. The company would have little or no control of the purchase or sales of this debt in the public credit markets. Can you clarify what is meant by this provision?

ANSWER: The following words were omitted and should be inserted at the end of the statement "be submitted, if the Lottery Commission so requires". The RFP will be revised to so indicate by a subsequent Amendment #1.

32. QUESTION: In Exhibit L (Principal Entity Disclosure Form), it appears that Exhibit forms 8 & 9 are reversed such that they do not properly correspond to questions 8 & 9?

ANSWER: Yes. The Forms are reversed as indicated. The RFP will be revised to so indicate by a subsequent Amendment #1.

33. QUESTION: To whom should we direct any additional written questions that may come up after the Pre-Proposal Conference.

ANSWER: The sole point of contact throughout the entire RFP process remains the same and is specified in Section 3.1.1 of the RFP.

34. QUESTION: Please provide more detail on the following provisions of the Maryland VLT Act:

- a. Section 9-1A-24(F)(1) indicates that regulations are to be developed to “*limit the number and location of and maximum withdrawal amounts from automated teller machines*”. What is the anticipated nature of these regulations?
- b. Section 9-1A-24(F)(4) indicates that regulations are to be developed to “*limit the dollar amount that video lottery terminals will accept*”. What is the anticipated nature of these regulations?

ANSWER: The Location Commission cannot answer this question since it pertains to responsibilities of the Lottery Commission. The Lottery Commission has not yet issued regulations relative to these items.

35. QUESTION: Does the Commission plan to engage any consultants to assist them in the review process? If so, what will be the nature of the consultant’s review?

ANSWER: The Location Commission will be assisted with the evaluation of the Applicants’ proposals by a consultant obtained through the Department of Legislative Services. The Lottery Commission will obtain a consultant to assist with the background investigations of Applicants and a consultant to assist with the writing of the RFPs for the Central System and the VLTs.

36. QUESTION: Item 7.2(2) indicates that the proposal format must be in MS Word. Can we include non-text material such as drawings in .pdf format since these are often difficult or impossible to include in Word documents?

ANSWER: Yes. That is an acceptable format.

37. QUESTION: Item 7.3.5.3 (5 & 6) of the RFP references “*ancillary facilities*”. How are these defined?

ANSWER: Ancillary facilities encompass any facilities other than the Facility that actually contains the VLTs. Ancillary facilities being proposed by the Applicant are to be described in its Proposal and will be evaluated in the context of the Applicants complete Proposal.

38. QUESTION: Will the lottery provide timely feedback on the applicant’s initial proposal (e.g. building plans, specs, etc) so that such feedback may be considered when preparing the applicants supplemental proposal?

ANSWER: Communication between the Location Commission and the Applicant during this period, if any, is anticipated to be limited. If the Location Commission determines on a case-by-case basis that it has questions or would like additional information, it may contact an Applicant.

39. QUESTION: Item 7 on page 11 of the Video Lottery Operation License Application provides, in part, that:

"It is a requirement, as part of this application that a complete Multi-jurisdictional Personal History Disclosure Form and a Principal Employee Form – Maryland Supplement to the Multi-jurisdictional Personal History Disclosure Form or Principal Entity Disclosure form as the case may be. This form must be filled out and submitted for each individual, person or entity holding or having a beneficial interest in the voting or non-voting stock of the Applicant. This requirement includes non-public holding entities."

The term "Principal" is defined in the Video Lottery Operation License Application as, "an officer; director; person who directly holds a beneficial interest in or ownership of the securities of an applicant or licensee; 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 ..."

A. Given the foregoing, is it correct that only individuals and entities having a direct ownership interest of 2% or more in the Video Lottery Operation License Applicant are required to file the Multi-jurisdictional Personal History Disclosure Form (MJPHD) and a Principal Employee Form – Maryland Supplement to the Multi-jurisdictional Personal History Disclosure Form (Maryland Supplement) as part of the Video Lottery Operation License Application?

B. Please confirm that officers and directors of separate publicly-held parent companies that do not engage in the day-to-day management of the Applicant and do not have significant involvement with the Applicant and its business and operations do not have to complete Multi-Jurisdictional Forms and MD Supplements. Will there be provision for a waiver similar to that provided in Pennsylvania to account for this type of situation? See Attached Waiver Form from Pennsylvania.

C. Please confirm that separate publicly-held parent companies that do not engage in the day-to-day management of the Applicant and do not have significant involvement with the Applicant and its business and operations do not have to complete the Principal Entity Application form?

ANSWER: A) No. This is not correct. The forms must be submitted.

B) No. This is not correct. The forms must be submitted. (Note: No Waiver Form from Pennsylvania was attached to the question when submitted)

C) No. This is not correct. The form must be submitted.

40. **QUESTION:** In the Video Lottery Operator License Application, on page 4, the definition of a “controlling interest” provides that for a non-public entity the “holding of any security in the legal entity” is sufficient, in effect, to make the holder a ”Principal;” and for a publicly traded entity, ownership of 2% or more of the securities of the entity is sufficient, in effect, to make the holder a “Principal” – in either case, according to the definition, ”unless this presumption of control is rebutted by clear and convincing evidence.”

A. What type of evidence will be considered “clear and convincing”?

B. For example, assuming that the charter documents of the entity require a more than 50% ownership interest to elect or appoint one or more of members of the board of directors or other governing body, and assuming that there are no other facts indicating that a smaller percentage can effectively control the governing body, will that be sufficient to rebut the presumption? What other types of evidence will be considered in making the decision as to whether the presumption has been rebutted?

C. For a trust having beneficiaries who have no right to vote on or control any matter (other than possibly receiving certain distributions from the trust), will the Trustee or Trustees be deemed to have a “controlling interest” and therefore be deemed to be Principal(s), with no one beneficiary otherwise being deemed to have a “controlling interest”?

D. For a limited liability entity, will a non-managing partner having only an economic interest but having no ability to control the decisions of the entity be deemed nevertheless to have a “controlling interest”?

ANSWER: A) The responsibility of the Applicant/Licensee to meet the standard of "clear and convincing evidence" is established in the Law. (9-1A-07(C)). The Lottery Commission will review applications on a case-by-case basis in order to determine if the standard has been met.

B) The Location Commission is interested in full disclosure of ownership and will review each Applicant on a case-by-case basis. Anyone with a 2% interest must submit the required disclosure forms.

C) Yes The forms must be submitted.

D) Yes. The partner described is required to submit the required Application form.

41. **QUESTION:** Section 1.1.8 of the RFP provides that an annual fee of \$425.00 shall be paid by each Operation Licensee for each VLT operated, which funds shall be distributed to the Problem Gaming Fund. Can the Applicant presume that there will be no other annual or recurring operator license fees, levies or assessments during the 15 year term?

ANSWER: No. An Applicant/Licensee should not make such a presumption about unknown factors which may or may not occur in the future.

42. **QUESTION:** Section 1.2.2 of the RFP states that:

"A proposal submitted for an Operation License at a Facility Location shall:

- a. Provide for at least \$25,000,000 in direct investment by the Applicant in construction and related costs for each 500 VLTs contained in the proposal that shall be prorated based on the exact number of VLTs contained in the proposal."

Based on our understanding of the meaning and intent of HB 4 and SB 3 from the 2007 Special Session, the purpose of this 'investment' requirement is to ensure adequate investment by the Applicant in a VLT site that is an 'entertainment and tourist destination.' Please confirm then that the \$25M per 500 VLT investment requirement may be satisfied by investment in 'construction and related costs' associated with the entire site proposal of the Applicant, including associated entertainment and retail facilities, hotels and other commercial development, site infrastructure, demolition/replacement of existing buildings, land investment, in-kind contributed capital such as buildings and land, and other investments in construction and related costs occurring on the proposed site for the benefit of the proposed site even if these costs are not specifically incurred on the structure that houses the VLTs. Please also confirm that there is no express time requirement for these expenditures.

ANSWER: The Applicant's plan for expenditure of the capital investment and the proposed timeline for the expenditure as presented in its Proposal will be part of the evaluation of the entire Proposal. There is no time requirement for these expenditures specified in the law.

43. **QUESTION:** Section 1.3 of the RFP establishes the definition of the term "Own" as "having a beneficial or proprietary interest of at least 2% in the property or business of an Applicant or Licensee." Is it correct that the aforementioned definition does not extend to anyone having a 2% or greater interest in the Applicant's or Licensee's subsidiaries, holding companies, affiliates, partners, etc.?

ANSWER: No. That is an incorrect interpretation. The definition does extend to include the named entities.

44. **QUESTION:** Section 2.2 of the RFP references the requirement that VLT facilities shall comply with all applicable planning and zoning laws of local jurisdictions. Can the Applicant assume that compliance with all planning and zoning laws is not a prerequisite for award of the license, but must be obtained after the license is awarded, and before it is issued?

ANSWER: Yes. As stated in Section 8.6 of the RFP, the Location Commission may award a license subject to certain specified contingencies but the Lottery Commission may not issue the license until all contingencies have been fulfilled.

45. **QUESTION:** What is the interplay of confidentiality and disclosure of proposals under the RFP between the sealing of the proposal under Sec. 3.2; disclosure of information under Sec. 3.12; and confidentiality under Sec. 3.19? For example, can an applicant report to the public, to its shareholders, or to its lenders, or even issue press releases as to the basic facts of

its proposal? Also, what State information will be deemed confidential under Sec. 4.21, and/or 4.30?

ANSWER: The first part of the question refers to sections of the RFP contained in "Section III Request for Proposals Terms and Conditions". These sections cover the period during which the proposal submission and evaluation process is in progress, and the answer to this part of the question is "yes". The second part of the question refers to sections of the RFP in "Section IV Requirements of License and Licensee". These sections cover the period after the award of a License.

46. **QUESTION:** Section 4.16 of the RFP – Taxes – According to the RFP and based on our understanding of the meaning and intent of HB 4 and SB 3 of the 2007 Special Session, the State will own the VLTs and will exercise complete control over the operation and maintenance of the VLTs through its employees or contractors. The VLTs will not be leased to the Licensee and the Licensee will not have any legal interest in the VLTs whatsoever.

Please confirm that the Licensee will not be responsible for any taxes to state or local governments as a result of the VLTs' location on the Licensee's property, including real or personal property taxes, sales taxes, admission and amusement taxes, or any other fees, levies or assessments.

ANSWER: License will not be required to pay taxes on any State property that is located within its Facility.

47. **QUESTION:** Section 4.19 of the RFP addresses substitution of Key Personnel.

Will the Lottery Commission provide temporary credentials permitting proposed substitute Key Personnel to begin carrying out their function until they are licensed, or must all substitute Key Personnel be pre-approved before they can act in any capacity?

ANSWER: The Location Commission cannot answer this question and the Lottery Commission has not yet established relevant regulations. Licensees must follow the procedure specified in Section 4.19 of the RFP.

48. **QUESTION:** Section 5.12.1 of the RFP establishes certain procedures to be used by the Lottery Commission in connection with background investigations on entities and persons required to be qualified ("qualifiers") to be performed by the Department of State Police and/or an approved vendor.

A. What opportunity will qualifiers and/or applicants have to review the results of the Background Investigation produced by the Department of State Police and/or approved vendor before action is taken on the pending application(s) by the Lottery Commission?

B. What opportunity will qualifiers and/or applicants have to submit evidence in rebuttal and/or clarification of the results of the Background Investigation of the Department of State Police/and or approved vendor?

C. What opportunity will qualifiers and/or applicants have to request a hearing in connection with the results of the Background Investigation of the Department of State Police/and or approved vendor? Would such a hearing be a public or private hearing? Would the hearing be on the record and subject to the Administrative Procedures Act?

D. Under what circumstances would the Lottery Commission conduct a hearing before making a determination on a qualifier's and/or applicant's suitability for licensure? Would such a hearing be a public or private hearing?

E. What opportunity will qualifiers and/or applicants have to appeal the results of the Background Investigation of the Department of State Police/and or approved vendor and/or the Lottery Commission's determination of suitability? What would the process for taking such an appeal be? Would the application process be stayed during the course of any such appeal?

F. What opportunity would exist for an Applicant for a Video Lottery Operation License to exclude any affiliated person or entity found unsuitable for licensure before the Lottery Commission made a determination as to its suitability, or the license award?

ANSWER: A) As stated in 9-1A-20(D)(5), the subject of a criminal history records check may contest the contents of the printed statement issued by the Central repository as provided in §10-223 of the Criminal Procedure Article.

B) The communication process between the Lottery Commission and the Applicant is anticipated to be informal. If the Lottery Commission determines that a hearing is necessary, it will be a public hearing.

C) §10-223 of the Criminal Procedure Article would govern. It would be a public hearing, and the hearing would be on the record.

D) The Lottery Commission will determine on a case-by-case basis if a hearing is necessary. If the Lottery Commission determines that a hearing is necessary, it will be a public hearing.

E) §10-223 of the Criminal Procedure Article would govern. Criminal Procedure Article, § 10-227 provides for such appeal rights and Code of Maryland Regulations (COMAR) 12.15.01.06 provides the process for such appeals.

F) The Applicant would be provided such an opportunity by the Lottery Commission before denying a license.

49. QUESTION: Section 5.2 of the RFP provides for issuance of bi-weekly invoices for investigative costs.

A. How will these invoices be calculated?

B. Will Applicants have an opportunity to review and/or ask questions regarding the costs before the invoice is generated?

ANSWER: A) The Lottery Commission will calculate the invoice charges based on the actual time expended conducting investigation of the Applicant in accordance with its internal accounting procedures.

B) No. After the invoice is generated and the Applicant/Licensee receives the invoice and the supporting documentation, it may review and/or ask questions regarding the invoice.

50. QUESTION: Section 5.7 of the RFP provides for license reciprocity where Applicants or Licensees hold:

"A valid License in another State ... and the Lottery Commission determines that the licensing standards of the other state are comprehensive, thorough, and provide adequate safeguards to those provided in this State..."

A. Is it the case that where an Applicant, other than an Applicant for a Video Lottery Operation License, has a valid gaming license issued by another state having a comparable regulatory scheme that the Applicant does not have to file application forms?

B. Does the reciprocity extend to holders of gaming licenses issued by Tribal jurisdictions having a comparable regulatory scheme?

C. Does the reciprocity extend to holders of gaming licenses issued by foreign jurisdictions having a comparable regulatory scheme?

D. What opportunity does an Applicant have to obtain confirmation that its/his/her license issued by another gaming jurisdiction is eligible for reciprocity before the filing deadline of February 2, 2009?

ANSWER: A) No. The Applicant must file an Application. The exact process for establishing the reciprocity has not yet been established.

B) No, this is not allowed by the Law.

C) No, this is not allowed by the Law.

D) There will be no opportunity for such confirmation as this is not allowed by the Law.

51. QUESTION: Section 6.7.1 of the RFP – System of Record – states that:

"The Central System owned or leased by the Lottery Commission and under the control of the Lottery Commission shall be the "system of record". The Facility shall submit to the Lottery Commission a daily accounting of each VLT in operation on that given day."

Based on our understanding of the functionality of the Central System, and further based on the Licensee's lack of control over the operation of the VLTs, please explain why the Facility

should be submitting the following information – ‘a daily accounting of each VLT in operation on that given day’?

ANSWER: The Lottery Commission requires this information so it can reconcile the daily activity according to the Licensee's records with the records of the Central System.

52. **QUESTION:** Section 6.7.15 of RFP – Electronic Transfer of Proceeds – states that:

"All proceeds from the operation of VLTs shall be electronically transferred daily into the State Lottery Fund. On a properly approved transmittal prepared by the Lottery Commission, the Comptroller of Maryland shall pay from the proceeds of VLTs at each Facility the amounts as specified by the VLT law, to include payment to the Operation Licensee of the percentage amount stated in the accepted Proposal for the Facility, not to exceed 33%. Payment of proceeds to the Operation Licensee may take up to ten (10) days."

A. This provision is similar to Section 4.2 of the RFP. Based on the above, a Licensee will have a substantial cash outlay at initial startup. The Licensee will need to provide a starting bank for operations of \$x per 500 machines based on industry standards. The requirement to pay to the State 100% of the proceeds each day, and not receive any operating monies for up to 10 days, will cause an unnecessary burden on the Licensee. Would the State consider: (1) allowing the Licensee to net its operating share from the payments to the State; or (2) shortening the time for payment back to the Licensee to not more than 1 business day?

B. Does the initial cash commitment for start up operations count toward the investment requirement of \$25M per 500 VLTs?

ANSWER: A) 1) No. The Law does not permit the Licensee to net its operating share from the total VLT proceeds. 2) No. The time required to process payment through the State's accounting system as required by the Law will typically take up to ten (10) days.

B) No. Any initial cash commitment for start up operations does not count toward the direct investment requirement of \$25M per 500 VLTs.

53. **QUESTION:** Section 6.7.4 of the RFP – Facility Specifications – states that: “The Licensee shall: Provide all necessary bases and high-back chairs for each VLT”

A. Certain VLTs come with specially designed bases and chairs that are integrated with the VLTs themselves. It is our understanding that the Lottery would be providing for this equipment through its lease or purchase agreements for the VLTs. The costs for these unique chairs and bases cannot be separated from the VLT costs. Based upon our understanding of the meaning and intent of HB 4 and SB 3 from the 2007 Special Session, these costs were not assumed to be included in the maximum operator share and these costs were not assumed to be the operator’s burden. Please confirm that the Lottery intends to pay for this equipment.

B. Is an installer/manufacture of a VLT base or high – back chair deemed a VLT manufacturer for purposes of the licensing and regulatory requirements of this RFP, HB 4 and SB 3?

ANSWER: A) Bases and chairs which are integrated into the VLTs will be the responsibility of the Lottery Commission. Stand-alone bases and chairs will be the responsibility of the Licensee.

B) That has not yet been determined by the Lottery Commission.

54. QUESTION: Section 6.7.4 of the RFP – Facility Specifications – states that:

"The Licensee shall: Provide for the Central System contractor, at no cost: cable infrastructure access to VLT floor." In addition, the section states that the Licensee shall provide "all necessary wiring for gaming floor that is needed for the Licensee's operations, except for such wiring that may be performed by a contractor of the Lottery Commission."

A. Assuming a Licensee provides power to the VLT floor for the operation of the VLTs (including signage and displays) and provides space in conduit to the gaming floor for the central system contractor, is that all the Licensee is required to provide under this section? Can the conduit contain both the Licensee's connections for VLTs for player tracking purposes as well as the central system connections? Are any extra conduits, connections or equipment necessary for 'progressive games?'

ANSWER: A) 1) At this time, that may be the only item that needs to be provided. But as the RFP states "The Licensee shall work in cooperation with the VLT contractor(s), Central System contractor, and any other Lottery Commission or Lottery contractors to insure smooth implementation of all systems". 2) The conduit can contain both connections for the player tracking system and the Central System. 3) This question cannot be answered at this time.

55. QUESTION: Section 6.7.7 – Commencement of Operation, subsection 1 – states that:

"1. Permanent Facility

A. A Licensee shall commence operation of VLTs in a permanent facility at the location for which the Operation License has been issued within eighteen (18) months after the License is issued.

B. On determination by the Lottery Commission that extenuating circumstances exist that are beyond the control of a Licensee and have prevented the Licensee from complying with the requirements of paragraph A. above, the Lottery Commission:

(1) may allow the Licensee an extension of six (6) months to comply with the requirements, and

(2) may not grant more than two extensions to a Licensee under this paragraph.

C. If an Operation Licensee fails to comply with the requirements of this Section, the License issued to the Licensee shall be revoked and shall automatically revert to the State."

Based on the above section, please address the following questions:

A. Confirm that the 18 month time requirement is triggered upon date of 'issuance of license' rather than date of 'license award.' Further, please advise whether the Licensee will have the ability to take possession of the license upon a mutually acceptable time-table.

B. If a Licensee commences operation in a permanent facility within 18 months and puts 50% of its authorized VLTs in operation at that time, is there a date at which the Licensee shall place 100% of its authorized VLTs in operation?

C. If a Licensee is awarded the maximum number of VLTs, will it have flexibility to stagger the deployment of VLTs over time based on market conditions? If so, how does the investment requirement of \$25M per 500 VLTs correspond to this phase-in schedule?

ANSWER: A) The date of issuance of the License will be the effective date for calculation of the eighteen (18) month time requirement. No. The Lottery Commission will issue the License as soon as possible after the award of the License by the Location Commission, or as soon as possible after any specified contingencies are fulfilled.

B) The Licensee's proposed plan for operation of the Permanent Facility will be submitted with its Proposal and when accepted by the Location Commission shall become the basis for the Licensee's required performance. (see Section VII of the RFP)

C) The Licensee's proposed plan for the required capital investment will be submitted with its Proposal and when accepted by the Location Commission shall become the basis for the Licensee's required performance. (see Section 7.3.5.3 of the RFP)

56. **QUESTION:** Section 6.7.7 – Commencement of Operation, subsection 2. – states that:

"2. Temporary Facility

A. An Operation Licensee that is awarded a License may begin VLT operations in a temporary Facility that meets the minimum requirements established by the Lottery Commission. The minimum requirements shall include, but not be limited to, proper permits and adequate power and electric service, backup generator, wiring to operate the VLT system, HVAC, rest rooms, secure areas, surveillance area and system, level flooring, carpeting.

B. Notwithstanding the provisions of paragraph A. above, an Operation Licensee at a temporary Facility shall be operational in a permanent Facility no later than thirty (30) months after the issuance of the Operation License."

Based on the above subsections, please address the following:

A. Please confirm that the 30 month time requirement is triggered upon date of 'issuance of license' rather than date of 'license award.' Further, please advise whether the Licensee will have the ability to take possession of the license upon a mutually acceptable time-table.

B. If a Licensee commences operation in a temporary facility as described above and puts 50% of its authorized VLTs in operation in the temporary facility, is there a date at which the Licensee shall place 100% of its authorized VLTs in operation in the permanent facility? The 30 month requirement above merely states that the Licensee shall be 'operational in a permanent facility' - it does not indicate that all authorized VLTs shall be operational in 30 months. Please confirm that the Licensee has flexibility beyond the 30 month requirement to place 100% of its VLTs in operation.

C. Assuming the Licensee has flexibility to place its full allotment of VLTs in operation beyond the 30 month time requirement, how does the investment requirement of \$25M per 500 VLTs correspond to this flexibility?

ANSWER: A) The date of issuance of the License will be the effective date for calculation of the thirty (30) month time requirement. No. The Lottery Commission will issue the License as soon as possible after the award of the License by the Location Commission, or as soon as possible after any specified contingencies are fulfilled.

B) The Licensee's proposed plan for operation of the Temporary Facility, transition to the Permanent Facility and operation of the Permanent Facility will be submitted with its Proposal and when accepted by the Location Commission shall become the basis for the Licensee's required performance. (see Section VII of the RFP)

C) The Licensee's proposed plan for the required capital investment will be submitted with its Proposal and when accepted by the Location Commission shall become the basis for the Licensee's required performance. (see Section 7.3.5.3 of the RFP)

57. **QUESTION:** The following sections deal with the two-step submission process:

"7.1.1 The Applicant must submit its Proposal as described in Section 7.2 and 7.3 by the Deadline for Receipt time and date specified in Section 3.9 of this RFP. (February 2, 2009 by 2:00 p.m. Local Time)

In the Proposal, Applicant shall provide all information required in Section 7.3 below. The response to Section 7.3.5 should be as detailed as possible and include as much of the required supporting documentation (see Section 7.4) as possible. At minimum, this Section shall contain an overview of the Video Lottery Facility being proposed and a summary of the Applicant's proposed approach to its development. Supporting documentation that is not yet available may be submitted in the Supplement to the Proposal.

7.1.2 The Applicant must submit its Supplement to the Proposal as described in Section 7.2 and 7.4 by the Deadline for Receipt time and date specified in Section 3.9 of this RFP. (April 15, 2009 by 2:00 p.m. Local Time)

In the Supplement, Applicant shall provide a full detailed description of the Video Lottery Facility being proposed by expanding upon the information submitted with its Proposal in response to Section 7.3.5, and provide any and all of the supporting documentation outlined in Section 7.4 that was not previously submitted."

Based on the above, please address the following:

A. According to the two-step submission process outlined above, an Applicant may submit a detailed timeline for capital development as part of its Supplement to the Proposal. Since the detailed capital development timeline is necessarily dependent on and related to a detailed financing plan, please confirm that the detailed financing plan may also be submitted as part of the Applicant's Supplement to the Proposal (notwithstanding 7.3.7). Please confirm.

B. Section 7.1.1 above specifically provides that the 'response to Section 7.3.5 should be as detailed as possible and include as much of the required supporting documentation (see Section 7.4) as possible.' Should this phrase include Section 7.3.5 through 7.3.9 so as to clearly permit supporting documentation relating to all of these sections to be submitted with the Applicant's Supplement to the Proposal?

C. May an Applicant submit information contained in its Supplement to the Proposal, or portions thereof, to the Commission prior to the April 15, 2009 deadline?

ANSWER: Applicants are required to submit proposals that are as complete as possible on February 2nd. It is the Location Commission's preference that *all* information be submitted on February 2nd. However, recognizing the short timeline, the Location Commission has attempted to provide Applicants with some flexibility by allowing them to provide more detail in the Supplement and also to submit items that were unable to be obtained by February 2nd. Applicants should provide in their proposals a list of the items that are not being submitted and an explanation of why their submission is being deferred until the Supplement.

A) Yes. If necessary, the detailed financing plan may be submitted with the Supplement. However, in accordance with Section 7.3.7 of the RFP, the Applicant must submit evidence of financial capacity with the Proposal on February 2nd.

B) Yes. Any additional information that is available for any of the Sections 7.3.5 through 7.3.9 may be submitted with the Supplement.

C) Yes. The Location Commission will accept an Applicants Supplement prior to April 15, 2009. However, the Supplement must be a complete single submission of all additional materials and shall not be accepted on a piecemeal basis.

58. QUESTION: Section 7.4.2 of the RFP relates to the Supplement to the Proposal and provides:

"In the Supplement, the Applicant may expand upon the information previously submitted in response to Section 7.3.5 with its Proposal and submit any required information or supporting documentation that was not previously submitted with its Proposal. Information submitted in the Supplement may not deviate from that submitted in the original Proposal and changes to the Proposal shall not be permitted in the Supplement. Applicant shall provide a full detailed description of the Facility being proposed and all supporting documentation, to include but not limited to: [List not included]"

Is an Applicant permitted to "submit any required information or supporting documentation that was not previously submitted with its Proposal" even if that information or documentation relates to sections other than 7.3.5?

ANSWER: Yes. Any additional information that is available for any of the Sections 7.3.5 through 7.3.9 may be submitted with the Supplement. Applicant should provide an explanation of why the information was not previously available on February 2nd.

59. QUESTION: Section 7.3.6 of the RFP details the responses required for description of the Applicant's Organization, Background and Experience.

A. If an Applicant adds to its management team or ownership structure individuals and/or entities who are not part of the Applicant's organization as of the initial Proposal submission date, can the Applicant add these individuals and/or entities as part of the Applicant's Supplemental Submission?

B. If an Applicant has a publicly traded entity as part of its legal structure, how should an Applicant disclose/describe any material changes in the public entity that occur after the Applicant's initial Proposal Submission? Is it acceptable to describe such changes in the Applicant's legal structure as part of the Applicant's Supplemental Submission?

C. The same or similar question applies to RFP 7.3.8 regarding the Applicant's Key Personnel and to RFP 7.3.9 regarding Subcontractors.

D. If an Applicant changes Key Personnel or a major Subcontractor after submission of its initial Proposal, can the Applicant include such information in its Supplemental Submission? If the Subcontractor receives an ownership interest (in addition to a management fee or in lieu thereof) in excess of 2% of the Applicant, how should such information be submitted with the Supplemental Submission?

ANSWER: The changes referred to in this question could impact any Background Investigations that may be in progress and could result in additional costs.

A) Yes. That information may be submitted in the Supplement.

B) Yes. That information may be submitted in the Supplement.

C) Yes. That information may be submitted in the Supplement.

D) Yes. That information may be submitted in the Supplement.

60. QUESTION: Section 7.3.7 of the RFP relates to the Applicant's Financial Capability and provides:

"1. Applicants shall provide evidence of their financial capacity to provide the goods and services required by this RFP, to include:

a. A detailed explanation of how the proposed Facility is being financed and provide commitment letters from lenders. [additional text not included]"

A. The State is permitting Applicants to submit much of the detailed capital and operating information regarding the VLT facility and ancillary development in the Supplemental Submission. Accordingly, please confirm that the requirements in 7.3.7 above may be fulfilled in a similar two-step submission process.

B. If an applicant provides a 'detailed explanation of how the proposed Facility is being financed', can the Applicant demonstrate to the State that Applicant's capital program can obtain financing in lieu of submitting 'commitment letters from lenders'?

C. Does financing need to be demonstrated for the Applicant's ancillary capital development program?

D. If an Applicant has a corporate pledge for funding and/or financing from an entity that is not recognized as a traditional 'lender', how should that pledge be documented?

E. If an Applicant obtains more favorable financing commitments after submission of its initial Proposal Submission, can the Applicant provide this information in its Supplemental Submission even if the new information modifies or replaces the prior plan or commitment? What should the Applicant do if the more favorable financing is obtained after the Supplemental Submission but prior to award of the license by the Location Commission?

ANSWER: A) Yes. However, a commitment for financing in some form should be submitted with the proposal (e.g "Highly Confident" letter). The strength of the Applicant's financing commitment will be a factor evaluated by the Location Commission.

B) Yes.

C) Yes.

D) A commitment letter from the source of financing must be provided.

E) The Applicant should inform the Location Commission of any significant changes.

61. **QUESTION:** Section 7.3.7 of the RFP addresses the requirement that the Applicant provide evidence of its financial capacity to provide the goods and services required by the RFP.

Since it is difficult to obtain a full and binding commitment from a lender until an award is issued, as these commitments are generally conditioned to holding the license, can the Applicant presume a lender “highly confident” letter or other similar assurances will be acceptable?

ANSWER: A lender's commitment contingent only upon award of the License is acceptable. A commitment containing any other contingencies or a "highly confident" letter will be evaluated by the Location Commission in the context of the overall Proposal.

62. **QUESTION:** Section 7.3.5.3 of the RFP discusses the Capital Proposal requirement for the RFP response.

A. To what extent will the market value of real property, existing improvements and other currently-owned assets to be incorporated into the proposed VLT facility at the site be assessed in the calculation of the minimum required capital investment?

ANSWER: The stated factors will not be included in the calculation of the minimum required capital investment.

63. **QUESTION:** Is it correct that the submission of a problem gaming plan and exclusion program is not required to be filed by the proposal submission deadline of February 2, 2009, and may be filed by the deadline for filing supplements to proposals, April 15, 2009?

ANSWER: Yes. Applicants should submit as much information as possible on February 2nd. If necessary, the Problem Gaming Plan may be submitted with the Supplement.

64. **QUESTION:** Draft Lottery Regulations, COMAR Regs. 14.01.10.05, references background information, including criminal history, if any, that must be provided by Applicants. Is it the case that Applicants are not obliged to disclose information of convictions that have been expunged?

ANSWER: Criminal Procedure Article, §10-109(a)(1)(ii) provides that “[d]isclosure of expunged information about criminal charges in an application, interview, or other means may not be required ... by a unit, official or employee of the State or a political subdivision of the State of a person who applies for a license, permit, registration, or governmental service.”

65. **QUESTION:** The RFP for Video Lottery Operation Licenses is structured in a standard RFP format that is typically used for a services provider to the State of Maryland. In fact, the

RFP is largely similar to the Lottery Agency's RFP (and resulting contract) for its On-Line Lottery Games Vendor. As such, if awarded a VLT Operation License under this RFP, a gaming licensee under the Maryland VLT program would be treated as a mere contractor to the Lottery Commission and the Lottery Agency. This approach is inconsistent with the approach taken by our surrounding states and other states that have implemented video lottery gaming programs. The implications of being a mere contractor to the Lottery are unclear. However, certain provisions of the RFP (and eventual contract) contain standard terms and conditions that are typically found in the State of Maryland's contracts with its vendors. (See RFP Section IV for examples.) Some of these may make it more difficult to obtain financing for the VLT facility, to enter into day to day contracts with suppliers, to remain competitive and flexible in business operations, and other unintended consequences.

As an alternative, and consistent with both the language and intent of HB 4 and SB 3 of the 2007 Special Session as well as the standards of the gaming industry, the State should consider issuing a typical gaming license which permits the VLT licensee to engage in gaming activities according to the statutory and regulatory provisions of the State. For example, under current Lottery Agency procedures, lottery agents are authorized to sell lottery tickets and conduct keno gambling at their for-profit establishments using equipment provided by the State and under the regulatory provisions established by the Lottery Agency in rule and regulation. Under this scenario, lottery agents are not considered 'contractors' or 'vendors' to the State even though they receive "commissions" for this activity. Another example that is similar to the subject matter of this RFP regards the licensing of race tracks by the State Racing Commission which allows these entities to conduct pari-mutuel wagering in the State. None of these race track licensees is considered a 'contractor' or 'vendor' to the State.

The provisions of HB 4 and SB 3 of the 2007 Special Session required the Location Commission to conduct a selection process that was consistent with the 'competitive sealed proposal' approach found in Maryland's procurement law. It appears that the goal for this competitive selection process is accomplished by certain portions of the RFP that has been issued. However, it appears that other portions of the RFP, including the overall structure of the document that places the VLT Licensee in the position of a vendor to the State, is a new development that is not required under the VLT statute and may have consequences for Applicants desiring to respond to this RFP.

Please explain the rationale and justification for this new arrangement that appears to deviate so significantly from the standard in the gaming industry.

ANSWER: This is not a State contract. As required by the Law, the Location Commission will award Licenses through a competitive process consistent with the process for Competitive Sealed Proposals and the Law while taking into account the unique nature of this project.

66. **QUESTION:** In the event that there are differences and/or inconsistencies between terms defined in the RFP, the Application forms, the statute and/or regulations, which governs?

ANSWER: The defined terms are considered to be consistent throughout the documents. The question requires greater specificity.

67. **QUESTION:** There appears to be a typo in Section 7.3.2 page 91. The numbered items in the last paragraph of this section go 1-2-3-5. Should it be 1-2-3-4 or is something missing.

ANSWER: The numbering is incorrect and should be 1-2-3-4. Nothing is missing. The RFP will be revised to so indicate by a subsequent Amendment #1.

68. **QUESTION:** Does the License Fee count towards the capital investment requirement?

ANSWER: No. The Initial License Fee accrues to the Education trust Fund.

69. **QUESTION:** Are holding companies and/or intermediaries which do not conduct business but only hold equity for tax purposes required to submit Principal Entity/Personal History Disclosures or any other form to qualify for a Video Lottery Operation license? Specifically, in the Principal Entity Application materials, the definition of Principal Entity is an entity that meet the definition of principal "or is otherwise required to be licensed as a principal and is not an intermediary or holding company of an applicant or licensee." The last clause of this definition seems to indicate that holding companies and intermediaries are not "Principal Entities" and, therefore, would not be required to submit Principal Entity or Personal History Disclosures. In contrast, however, Section 5.1.5 of the RFP states that "all entities" having an interest of 2% or more are required to submit a Principal Entity Disclosure.

ANSWER: Yes. They need to complete the forms.

70. **QUESTION:** Section 4.24 of the RFP – Restriction on Playing of VLTs – provides that VLT facility employees and family members may not play any VLT at any facility in the State. This provision could negatively impact gross handle. Would the State consider removing this limitation?

ANSWER: The Location Commission cannot answer this question. This is a decision of the Lottery Commission, which has not yet promulgated regulations regarding this issue.