

VIDEO LOTTERY OPERATION LICENSES (#2009-0101)

RESPONSES TO WRITTEN QUESTIONS January 17, 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 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:

71. QUESTION: Section 3.2.2 of the RFP relates to Minority Business Enterprises and provides:

"For the construction and procurement related to the operation of VLTs, the Applicant or Licensee shall at a minimum meet the same requirements of a designated unit for the Minority Business Participation ("MBE") as described under Title 14, Subtitle 3 of the State Finance and Procurement Article. If the County in which a Video Lottery Facility will be located has higher minority business participation requirements than the State, the Applicant shall meet the County's minority business participation requirements to the extent possible."

Our reading of the above provision of the RFP appears to restate the statutory provisions contained in HB 4 and SB 3 of the Special Session of 2007. Our understanding of this requirement is that the Licensee will assume the role of a "designated unit" of State government and must comply with the provisions of Title 14, Subtitle 3 of the State Finance and Procurement Article ("State MBE Law"). Further, our understanding of the State MBE Law is that such "designated unit" should structure its procurement of goods and services in an effort to meet the goals outlined in the statute. "Procurement" as used in this section means the entering into contracts with third parties for the provision of goods and services (i.e., outsourced contracts). Accordingly, it is our understanding that, of the monies received by the Licensee pursuant to its "operator share" of VLT proceeds, the Licensee (acting as a "designated unit") should strive to meet the MBE goals for the portion of its operator share that is outsourced. A "designated unit" (or a licensee in this case) is not required to meet the same MBE goal in each of its outsourced contracts. In fact, in some cases, a "designated unit" might award a prime contract to an MBE firm. In other instances, the MBE goal may be less than 25-35% based on the types of services/ goods being procured. Section 3.21 appears to deviate from the "designated unit" procedure for MBE compliance and instead requires a Licensee to meet a minimum MBE expenditure goal of 25-35% based on its entire "operator share."

A Does the State intend to deviate from the provisions contained in HB 4 and SB 3 as they relate to MBE requirements?

B. Would the State accept, as is consistent with SB 3, the Applicant to submit a plan for complying with the MBE rules that are applicable to a State “designated unit”? Can the State provide a description of the MBE rules that apply to State “designated units”?

ANSWER: A) No. The Location Commission does not intend to deviate from the requirements of the law and applicable legal precedence.

B) Yes. The plan should meet the established MBE participation goals and the requirements of Title 14, Subtitle 3 of the State Finance and Procurement Article. As indicated in Section 3.21 of the RFP, Applicants may contact the Governor's Office of Minority Affairs for assistance with MBE issues.

72. QUESTION: Section 3.21.2 of the RFP establishes MBE participation goals for each of the five VLT locations.

For the two locations which are established at 35%, can the State provide a citation to the local governing statute, rule or regulation which sets the MBE participation goal at an amount that is higher than the State goal of 25%? If there is no local law or provision that establishes a higher goal, please explain the State’s rationale and justification for the increase for only certain of the locations?

ANSWER: The goal for the Baltimore City location has been set at 35% in accordance with the requirements of Baltimore City.

The goal for Anne Arundel County has been set at 35% by the Governor's Office of Minority Affairs based on the State's typical goal-setting process for reviewing MBE opportunities and establishing goals. Although the State has established a minimum overall MBE participation goal of 25%, a higher or lower goal may be established for a specific project as deemed appropriate by the State.

73. QUESTION: Section 8.3 of the RFP lists the factors for the evaluation of VLT proposals. Number 1.(VII) lists one of the factors as: “The percent of ownership by entities meeting the definition of Minority Business Enterprise under Title 14, Subtitle 3 of the State Finance and Procurement Article.” In order to have qualified MBE ownership interest for the purposes of the VLT evaluation process, must the proposed MBE participant meet the net worth requirements of applicable MBE statutory provisions?

ANSWER: Yes. In order to meet the definition of Minority Business Enterprise as required for certification by MDOT, the proposed MBE participant must meet the MBE statutory provisions for net worth requirements. However, Applicants should discuss any other minority ownership in their proposals.

74. **QUESTION:** Section 3.11 of the RFP indicates that all responses to the RFP are irrevocable for a period of 365 days.

A. What is the intended meaning of the term “irrevocable”?

B. Will Applicants be permitted to modify their bids either in the Supplement or at other points in the process if confronted with a material change in circumstances that could not have been foreseen or was not present at the time the bid was submitted?

ANSWER: A) Irrevocable means that a proposal cannot be withdrawn without forfeiting the Initial License Fee.

B) The Location Commission may consider such requests under extraordinary circumstances, in the Location Commission’s discretion.

75. **QUESTION:** There remains a great deal of uncertainty surrounding development of the projects subject to bid which have a material impact on the content of a bid. For example, as to the Baltimore City location, Applicants have no way of determining with any certainty the terms and conditions of a lease agreement with the City or site condition/development issues (e.g., environmental issues). Section 3.9.2 of the RFP seems to preclude modifications or withdrawal of bid proposals after the Deadline for Receipt.

A. Does the prohibition apply in the face of a change in material circumstances which could not have been foreseen or was not present at the time of submission of the bid proposal?

B. Do Applicants have the flexibility to substantially modify the terms of the original proposal in the Supplement in response to any and all developments between submission of the original bid proposal and submission of the Supplement?

C. If a withdrawal or substantial modification of a proposal is permitted under any circumstances, will the withdrawal or substantial modification result in a forfeiture of the Initial Licensing Fee?

ANSWER: A) The Location Commission may consider such requests under extraordinary circumstances, in the Location Commission’s discretion.

B) The overall concept of the proposed Facility must be consistent between the original Proposal and the Supplement. Any deviations should be noted in the Supplement and an explanation provided.

C) Withdrawal of a proposal will result in forfeiture of the Initial License Fee. The Location Commission may consider requests for modifications of a proposal under extraordinary circumstances, in the Location Commission’s discretion.

76. **QUESTION:** Item 7.4.2 of the RFP which concerns the submission of a supplement to the applicant’s original proposal reads that “*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?. Any large construction project encounters changes that have to be made as the design is finalized and as construction moves along. As long as the general scope of the project does not change, will we be able to make the necessary changes as the project moves along?

ANSWER: Section 7.4.2 concerns only the proposal phase between February 2, 2009 and April 15, 2009. The overall concept of the proposed Facility must be consistent between the original Proposal and the Supplement. Any deviations should be noted in the Supplement and an explanation provided. This Section does not anticipate nor allow for changes after the April 15, 2009 date for submission of the Supplement. The Location Commission may request Best and Final Offers (Section 8.5 of the RFP) from Applicants and reserves the right to allow an Applicant to modify its proposal if the Applicant has acted in good faith and demonstrates that extraordinary circumstances exist.

77. **QUESTION:** Certain VLT Facilities have to be within certain distances of designated roads. For example, the Anne Arundel facility has to be within 2 miles of Maryland Route 295. Does this mean that the whole gaming floor of the Facility has to be within the required distance or does only one part of the gaming floor of the Facility need to touch the required distance.

ANSWER: The entire gaming floor must be located within the statutorily designated area for each location. Ancillary facilities may be located outside the boundaries of the designated area.

78. **QUESTION:** VLT Allocations - If an Applicant proposes a less number of machines than is statutorily allowed in a jurisdiction, i.e. 1500 in the Cecil jurisdiction, what would be the process to apply for the rest of statutory allocation and would they have to pay a license fee?

ANSWER: The Applicant must pay an Initial License Fee of \$3 million per 500 VLTs based on the maximum number of VLTs contained in its Proposal, regardless of when the VLTs are actually allocated. If the Applicant proposes and is awarded a License for fewer VLTs than the maximum amount specified for a location, the Applicant/Licensee has no assurance that additional VLTs will be available or added to its License at a later date. If the State determined that it would award additional VLTs to the Licensee and the Licensee accepted the additional VLTs, the Licensee would be required to pay an additional License Fee at that time. The Law authorizes the Location Commission to award less than the 15,000 authorized VLTs initially. To the extent that occurs, the Location Commission may allocate additional VLTs and re-allocate VLTs through its expiration in January 2015. Following that date, the Lottery Commission has the authority to allocate and re-allocate VLTs every three years. The process for such requests has not yet been determined.

79. **QUESTION:** If an Applicant is awarded a license and then cannot get zoning for the property through no fault of the Applicant, will the Initial License Fee be refunded?

ANSWER: The Location Commission may consider such requests under extraordinary circumstances, in the Location Commission's discretion.

80. QUESTION: Food and Beverage - Can the operator give away free food and beverage as part of a player rewards program? A usual practice for this type of program is to award points to players for the amount of slots play at a facility. See section 9-1A-24 of the Law.

ANSWER: Player rewards programs must meet the statutory requirements in Section 9-1A-24. The Lottery Commission has not yet promulgated regulations regarding this provision of the Law.

81. QUESTION: Will the Location Commission allow representatives of Baltimore City and the Department of Natural Resources to review the Applicant's Proposals for the Baltimore and Rocky Gap locations?

ANSWER: Baltimore City and the Department of Natural Resources should work with the Applicants to obtain information about their proposals.