



**RFP: C202305 – Lottery Scratch-off Ticket Printing and Services**

**BIDDER ACKNOWLEDGEMENT OF AMENDMENT**

Amendment Number: One

Date Issued: October 16, 2023

Summary: Round One Questions and Answers Attached

In addition to amendments noted within the Answers here, please be advised that RFP Section 3.2.D.i is hereby amended as follows with deletions noted as ~~strikethroughs~~ and additions underlined:

1. RFP Section 3.2.D.i is hereby amended as follows:

**i. Scratch-off Ticket Testing and Quality Control**

Describe how the ~~Successful Bidder~~ will meet the requirements outlined in the RFP for the following: ~~for the following:~~

- i.** Quality control
- ii.** Non-conforming tickets
- iii.** Security Compliance Scratch-off games
- iv.** Omissions
- v.** Scratch-off ticket laboratory testing. Include recommended independent laboratory and their experience with testing Scratch-off ticket games. Multiple laboratories may be proposed.
- vi.** Testing protocols
- vii.** Guidelines for ticket testing
- viii.** Computer system compatibility
- ix.** High-tier winner validation media

2. Section 3.2.E.f is hereby amended as follows:

- f. Provide the name, title, and résumé of the Bidder’s support staff: Dedicated Project Coordinator, ~~Dedicated~~ Senior Account Manager or Director, and Senior Level Executive. Explain how the ~~Successful~~ Bidder envisions collaboration among these resources and with the Commission.

3. Section 4.5.B, Management Fee is hereby amended as follows:

- **Management Fee:** a maximum of 10 points will be awarded to the lowest estimated cost for Management Fee, as identified in Attachment 4 2 – Pricing Proposal Form.

4. Round One Questions and Answers follow.

By signing below, the bidder attests to receiving and responding to the amendment number indicated above.

FIRM NAME: \_\_\_\_\_

REPRESENTATIVE SIGNATURE: \_\_\_\_\_

**New York Lottery Scratch-off Ticket Printing and Services  
Question and Answer Summary – Amendment One  
Issued: October 16, 2023**

**Q.1: General**

The provided links for the RFP sections that we have listed below are not operational. We respectfully request that the Commission provide the working hyperlinks, or URLs.

- Section 2.2.H.x.ii
- Section 5.17 Ethics Requirements
- Section 6.16 Technology Provisions
- Section 7.3 New York State Vendor Responsibility Questionnaire
- Section 7.5 Electronic Payments
- Appendix E - NYS Vendor Responsibility Questionnaire
- Appendix I-3 - MWBE/SDVOB Utilization Plan Form
- Appendix M - Executive Order No. 16 Certification

**A.1: The hyperlinks that were broken have been restored to the file available at: [https://www.gaming.ny.gov/about/procurement\\_opp.current.php](https://www.gaming.ny.gov/about/procurement_opp.current.php)**

**Q.2: 1.7 Licensing**

Would the Commission please provide information on the applicable licensing process referenced in Section 1.7, Licensing?

**A.2: Each Successful Bidder will need to provide its contact information, a letter from a financial institution verifying the routing and account number that will be used by the Successful Bidder to receive payment, and the Substitute Form W-9 (Form AC 3237-S; “Request for Taxpayer Identification Number & Certification”) referenced in Section 7.4.**

**Q.3: Responsible Gaming Commitment**

Section 2.2.A notes that the Commission’s guidelines regarding responsible gaming must be followed. All potential Bidders in the industry have expressed strong responsible gaming commitments, but to ensure complete alignment, would the Commission please release its own guidelines to all Bidders?

In referring to responsible gaming guidelines, was the Commission referring to the NASPL Advertising Guidelines?

**A.3: Yes, the Commission was referring to the NASPL Advertising Guidelines in Section 2.2.A as guidelines to be followed. Please see [NASPL Advertising Guidelines: NASPL Advertising Guidelines \(approved March 19,- 2019\).pdf \(ny.gov\)](#)**

**Q.4: 2.2.G.c.v. Scratch-off Game Working Papers**

*Color version of entire ticket uncovered with a benday pattern*

Will the Commission please confirm that a “color version of the entire ticket uncovered with a benday pattern” is required within the new contract as a result of this RFP as this is not something that is currently provided.

**A.4: The Commission confirms that a color version of the entire ticket uncovered with a sample benday pattern is required.****Q.5: 2.2.H.cc. Production of Electronic Coupons**

*As a Specified Option, the Successful Bidder shall create and deliver secure electronic coupon files for any Lottery traditional game for distribution through Commission digital platforms. Coupon file requirements shall be determined by the Commission. Coupon files shall be developed using the same working paper process as is required for development and implementation of a Scratch-off game. Validation and inventory files shall be delivered to the Commission in a secure manner that is mutually agreed to by both parties.*

Does the Commission intend for coupons to be redeemed at retail? If so, how will the electronic coupon files integrate into the system in order to be identified?

**A.5: The Commission does intend for coupons to be redeemed at retail. Any file integration requirements will be discussed with the Successful Bidder.****Q.6: 2.2.H.cc, Production of Electronic Coupons**

*As a Specified Option, the Successful Bidder shall create and deliver secure electronic coupon files for any Lottery traditional game for distribution through Commission digital platforms. Coupon file requirements shall be determined by the Commission. Coupon files shall be developed using the same working paper process as is required for development and implementation of a Scratch-off game. Validation and inventory files shall be delivered to the Commission in a secure manner that is mutually agreed to by both parties.*

Will coupons be incorporated into the Commission’s current second-chance program?

**A.6: The Commission intends to incorporate electronic coupons into a second-chance and/or rewards program.****Q.7: 2.2.H.cc. Production of Electronic Coupon Files**

Would the Commission please provide sample requirements or working papers for the Electronic Coupon Files?

**A.7: The following outlines the requirements for Electronic Coupon Files:  
Test file and actual file will need three files each:**

- 1.) Low tier file
- 2.) Inventory file
- 3.) A 28 decimal digit PDF417 file as represented below:  
Each coupon will contain a PDF417 barcode. The PDF417 barcode must contain the relevant game number, pack number, ticket number, and validation number.

The specification for the PDF417 barcode is the IGT PDF Spec Revision Date July 17, 2008. The specification will be provided to Successful Bidders.

**Q.8: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please provide requirements and/or a sample of the Electronic Scratch-off Games?

**A.8: The requirement for Electronic Scratch-off Games is hereby stricken from the RFP. A revised Attachment 2 – Pricing Proposal is available at: [https://www.gaming.ny.gov/about/procurement\\_opp.current.php](https://www.gaming.ny.gov/about/procurement_opp.current.php)**

**Page 29 (2.2.H.dd) is hereby stricken and replaced:**

~~dd. Production of Electronic Scratch-off Games~~

~~As a **Specified Option**, the Successful Bidder shall propose the development and delivery of an electronic Scratch-off game to be distributed and played through Commission digital platforms. Such games shall be consistent with all production requirements contained within this RFP up to, but excluding, the physical production and delivery of the printed Scratch-off game tickets.~~

dd. [Reserved]

**Page 46 (2.2.M.c) is hereby stricken:**

~~e. Electronic Scratch-off Games~~

c. [Reserved]

**Page 53 (3.2.D.h.xxxi) is hereby stricken:**

~~xxxi. Production of electronic Scratch-off games~~

xxxi. [Reserved]

**Page 54 (3.2.D.m.iii) is hereby stricken:**

~~iii. Electronic Scratch-off games~~

iii. [Reserved]

**Q.9: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please specify the Player Account Management solution that the electronic Scratch-off games will integrate with?

**A.9: See response to Q.8.**

**Q.10: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please specify the number of games per year that it plans to deploy?

**A.10: See response to Q.8.**

**Q.11: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission confirm that these games will be separate and distinct from the Scratch-off games sold at retail, and not be linked to the same ticket pool?

**A.11: See response to Q.8.**

**Q.12: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please confirm that the provider of these electronic Scratch-off games is also to provide the Remote Games Server (RGS) for the games to operate on, as is typical in the industry?

Would the Commission please confirm that the deployment of the electronic Scratch-off games can be served via Cloud services outside the state of New York, as is traditional with RGSs for electronic Scratch-off games?

**A.12: See response to Q.8.**

**Q.13: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please share the capabilities of the portal and mobile solutions that will be integrated with the electronic Scratch-off games? Specifically, but not limited to, the vendor's experience with hosting transaction-based games, integrating with other gaming providers, and maintaining tech platforms that require the highest security and integrity standards.

**A.13: See response to Q.8.**

**Q.14: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission kindly specify the types of games (mechanics), price points, or any other desired game types it would like to receive?

Are there any styles or themes of games that the Commission would broadly prohibit?

**A.14: See response to Q.8.**

**Q.15: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission confirm if it would, additionally, like game portfolio services as part of the solution, for example, reporting and product-management consultative services as part of the offering?

**A.15: See response to Q.8.**

**Q.16: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please confirm if the games need to support multiple languages?

**A.16: See response to Q.8.**

**Q.17: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission specify the planned payout percentage for the electronic Scratch-off games? Additionally, will the payouts be more in-line with iLottery best practices, or will they align with retail Scratch-off payouts?

**A.17: See response to Q.8.**

**Q.18: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission clarify whether electronic Scratch-off games need to mirror retail Scratch-off games, or if the games could also be independent from retail, regarding themes, brands, and playstyles?

**A.18: See response to Q.8.**

**Q.19: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please provide projections on the number of players it expects to use this service?

**A.19: See response to Q.8.**

**Q.20: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission please confirm any regulatory requirements or certifications needed for the provision of electronic Scratch-off games?

**A.20: See response to Q.8.**

**Q.21: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission confirm if an RGS electronic Scratch-off server can run in a multi-tenant environment, i.e., concurrently hosting multiple lotteries at the same time, as is common in the industry?

**A.21: See response to Q.8.**

**Q.22: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission kindly confirm any reporting requirements and additional integration points other than the portal, mobile app, and Player Account Management system, for example, an Internal Control System (ICS)?

**A.22: See response to Q.8.**

**Q.23: 2.2.H.dd. Production of Electronic Scratch-off Games**

Would the Commission confirm any disaster recovery or Service Level Agreement (SLA)-related requirements, such as Recovery Time Objective (RTO)/Recovery Point Objective (RPO) or uptime of the platform?

**A.23: See response to Q.8.**

**Q.24: 2.2.H.dd. Production of Electronic Scratch-off Games**

*As a Specified Option, the Successful Bidder shall propose the development and delivery of an electronic Scratch-off game to be distributed and played through Commission digital platforms. Such games shall be consistent with all production requirements contained within this RFP up to, but excluding, the physical production and delivery of the printed Scratch-off game tickets.*

Does the Commission intend for every physical scratch game produced to have a digital version of the same game?

**A.24: See response to Q.8.**

**Q.25: 2.2.H.dd. Production of Electronic Scratch-off Games**

*As a Specified Option, the Successful Bidder shall propose the development and delivery of an electronic Scratch-off game to be distributed and played through Commission digital platforms. Such games shall be consistent with all production requirements contained within this RFP up to, but excluding, the physical production and delivery of the printed Scratch-off game tickets.*

Is it the intent of the Commission to provide electronic scratch-off games for demonstration purposes or as play for fun? Or is the intent for electronic scratch-off games to be played for money?



**A.25: See response to Q.8.**

**Q.26: 2.2.H.dd. Production of Electronic Scratch-off Games**

*As a Specified Option, the Successful Bidder shall propose the development and delivery of an electronic Scratch-off game to be distributed and played through Commission digital platforms. Such games shall be consistent with all production requirements contained within this RFP up to, but excluding, the physical production and delivery of the printed Scratch-off game tickets.*

Where and how will the electronic scratch-off games be hosted?

**A.26: See response to Q.8.**

**Q.27: 2.2.H.dd. Production of Electronic Scratch-off Games**

*As a Specified Option, the Successful Bidder shall propose the development and delivery of an electronic Scratch-off game to be distributed and played through Commission digital platforms. Such games shall be consistent with all production requirements contained within this RFP up to, but excluding, the physical production and delivery of the printed Scratch-off game tickets.*

What platform solution will the electronic scratch-off games be integrated into? Will the Commission provide any documentation or API information on the platform and integration process?

**A.27: See response to Q.8.**

**Q.28: 2.2.H.dd. Production of Electronic Scratch-off Games**

*As a Specified Option, the Successful Bidder shall propose the development and delivery of an electronic Scratch-off game to be distributed and played through Commission digital platforms. Such games shall be consistent with all production requirements contained within this RFP up to, but excluding, the physical production and delivery of the printed Scratch-off game tickets.*

Is a Player Account Management (PAM) solution required for the electronic scratch-off games? If so, is there an existing PAM for integration or would this be a separate PAM?

**A.28: See response to Q.8.**

**Q.29: 2.2.H.d.i.**

Would the Commission allow additional inks on the display printing side?

**A:29: No.**

**Q.30: 2.2.G.b. Scratch-off Ticket Design**

Specifies the availability of layered artwork file formats. Will the Commission please confirm that such files would be utilized for the creation of marketing collateral and not for modifications to Scratch-off ticket designs, the latter of which requires extensive knowledge of printing requirements and limitations?

**A.30: The Commission confirms that such files will be used for marketing collateral and not for modification to Scratch-off ticket designs.**

**Q.31: 2.2.G.c. Scratch-off Game Working Papers**

Specifies that the Commission may pay costs of up to \$10,000 per incident related to its right to cease production of any Scratch-off game that has yet printed. Will the Commission please confirm that these costs include programming costs that may be incurred if the cancellation by the Lottery occurs after game programming has commenced? If not, what (if any) additional costs would be acceptable to the Commission in such a scenario?

**A.31: The Commission confirms that the reimbursable costs in this section may include verified programming costs.**

**Q.32: 2.2.G.c.xxi. Scratch-off Game Working Papers ...**

includes "Press layout configuration" as part of the Working Papers. As part of our current contract with the Lottery, the press layout configuration is not required. Please confirm that this is a new requirement of the Lottery.

**A.32: The Commission confirms that this RFP requires press layout configuration be included in the working papers.**

**Q.33: 2.2.G.II.iv. Shipping Cartons**

In Section 2.2.G.II.iv, the Commission states, "Packing take shall not obscure the shipping label."

Would the Commission confirm that "Packing tape shall not obscure the shipping label"?

**A.33: Confirmed.**

**Q. 34: 2.2.H.a. Ticket Stock**

Will the Lottery please confirm that the 10-pt virgin recyclable stock that is currently provided by its instant ticket suppliers is permissible to the Lottery for the purposes of this RFP?

**A.34: The Commission confirms that 10-point virgin recyclable stock, coated two (2) sides, currently provided by its instant ticket suppliers is permissible stock for compliance with Attachment 2-A through 2-F – Pricing Proposal .**

**Q.35: 2.2.H.b. Tickets and Pack**

Specifies that one insert card shall be included in each shrink-wrapped pack of tickets. Will the Commission please provide a list of games, and their respective inserts, that were printed with specialty inks and/or holographic effects in the past three (3) years, along with physical samples of the inserts?

**A.35: The following thirty games, and their corresponding inserts, were printed with specialty inks and/or holographic effects over the past three years. The Commission does not have enough physical samples of such games to provide physical samples to potential bidders.**

Game_Name	Insert
\$1,000,000 Premium Play	Holographic Scratch FX
100X	Foil
20X	Foil
10X®	Foil
5X	Foil
50X	Foil
200X	Foil
50X 2nd Edition	Foil
\$5,000,000 Riches	Foil
\$10,000,000 Deluxe	Holographic
Holiday Magic	Foil
Holidays In New York	Holographic Scratch FX
Holiday Cash	Holographic
X SERIES: 50X	Foil
X SERIES: 20X	Foil
X SERIES: 10X®	Foil
X SERIES: 5X	Foil
X SERIES: 100X	Foil
X SERIES: 15X Cashword	Foil
X SERIES: 200X	Holographic
\$300,000,000 CASH PAYOUT	Foil
VIP MILLIONS	Holographic
CASH X50	Foil
CASH X20	Foil
CASH X10	Foil
CASH X5	Foil
CASH X100	Foil
Cashword X15	Foil
\$5,000,000 Cash Royale	Foil
Jackpot Fortune	Holographic

**Q.36: 2.2.H.bb. Production and Transfer of Game Production Data**

Will the Commission please define “production media”? In addition, will it please specify if “production media” includes a contract proof?

**A.36: “Production media” is defined as the game production data. “Production media” does not include contract proof.**

**Q.37: 2.2.H.dd. Production of Electronic Scratch-off Games (and M. Specified Options, c. Electronic Scratch-off Games:**

Will the Commission please define what it means by “electronic scratch-off game”?

**A.37: See response to Q.8.**

**Q.38: 2.2.H.ee. Scratch-off Game Play Demonstration File**

Will the Commission please provide a sample of this type of file?

**A.38: The Commission does not have a sample but is seeking a digital file that includes an image of a ticket with and without the latex so that the ticket can be scratched or rubbed virtually for demonstration purposes.**

**Q.39: 2.2.H.ee. Scratch-off Game Play Demonstration File**

*For each game produced, the Successful Bidder shall provide a play demonstration file, at no additional cost to the Commission, to be uploaded on the Commission’s Lottery website and mobile application. The file shall be provided in a format specified by the Commission and is intended to provide a visual representation of the game play.*

Does the Commission intend for the demonstration file to be for Electronic Scratch-off games or printed products only?

**A.39: The Commission intends for the demonstration file to be provided for printed Scratch-off games only. See also the answer to Q.8., above.**

**Q.40: 2.2.H.ee. Scratch-off Game Play Demonstration File**

*For each game produced, the Successful Bidder shall provide a play demonstration file, at no additional cost to the Commission, to be uploaded on the Commission’s Lottery website and mobile application. The file shall be provided in a format specified by the Commission and is intended to provide a visual representation of the game play.*

Will the Commission allow for the scratch-off game play demonstration file to be a Specified Option?

**A.40: No.**

**Q.41: 2.2.H.ee. Scratch-off Game Play Demonstration File**

*For each game produced, the Successful Bidder shall provide a play demonstration file, at no additional cost to the Commission, to be uploaded on the Commission's Lottery website and mobile application. The file shall be provided in a format specified by the Commission and is intended to provide a visual representation of the game play.*

What format will the Commission want the files to be delivered in? Additionally, is it the Commission's expectation that the successful Vendor(s) will provide the supported website or mobile app? Or will the demonstration file be placed on an existing website and mobile application?

**A.41: The images should be provided in a Portable Network Graphics (PNG) format. It is not the Commission's intent that the Successful Bidder will provide a supported website or mobile app. The demonstration file will be uploaded onto the Commission's Lottery website and mobile application.**

**Q.42: 2.2.H.ee. Scratch-off Game Play Demonstration File**

*For each game produced, the Successful Bidder shall provide a play demonstration file, at no additional cost to the Commission, to be uploaded on the Commission's Lottery website and mobile application. The file shall be provided in a format specified by the Commission and is intended to provide a visual representation of the game play.*

Besides a website, will the scratch-off games be illustrated through the play demonstration file provided through a player registration process?

**A.42: No.**

**Q.43: 2.2.H.ee. Scratch-off Game Play Demonstration File**

Would the Commission please provide requirements and/or a sample of the Scratch-off Game Play Demonstration File?

**A.43: See response to Q.38 and Q.41.**

**Q.44: 2.2.H.hh. Commission Testing Sample Packs**

Under our current contract with the Lottery, one pack of void tickets is required to be submitted to the Commission. Please confirm that the requirement for five (5) packs of void tickets per executed working papers applies to the primary Successful Bidder only or all Successful Bidders (that is, secondary and tertiary awards, as well).

**A.44: The Commission confirms that the requirement of five (5) packs of void tickets per executed working papers applies to all Successful Bidders.**

**Q.45: 2.2.H.kk. Shrink-Wrapping Section 3.2.D.h. Scratch-off Manufacturing and Support**

All items listed under 2.2.H, Scratch-off Manufacturing and Support, are also listed under Section 3.2.D.h, Scratch-off Manufacturing and Support, except for item 2.2.H.kk Shrink-Wrapping.

Would the Commission please confirm that “Shrink-Wrapping” should also be listed as a requirement under Section 3.2.D.h?

**A.45: The Commission confirms that Shrink-wrapping should be listed as a requirement under Section 3.2.D.h. Please see the amendment to Section 3.2.D.h. in response to Q. 63, below.**

**Q.46: 2.2.H.mm.ii. Skids**

Would the Commission please confirm our understanding, per the most recent contract, that the Successful Bidder will be required to have the following specific information on each skid label that is affixed to a skid?

- States Lottery
- Game number
- Skid number: XXXX
- Skid contents: XX Boxes
- Box Range: XXXXX - YYYYY
- Books/Packs: XXXXXXXX – YYYYYYYY

**A.46: The Commission confirms the following specific information shall appear on each skid label that is affixed to a skid. There must be four (4) labels, one on each side of each skid, on 8 ½-inch x 11-inch white paper, located at the bottom left corner of each side of the skid:**

- **New York Lottery**
- **Game number**
- **Pulse number clearly marked (if applicable)**
- **Skid number**
- **Skid contents: *Number of cartons on a skid***
- **Carton Range: *Carton numbers on skid, including omits***
- **Pack Range: *Pack range on skid, including omits***
- **QR code including skid contents information. QR code content and format to be specified by the Commission.**
- **“BOX CONTAINS MATERIAL THAT WILL BE VOIDED IF STOLEN” at the bottom of each skid label.**

**Q.47: 2.2.I.b.i. Incorrect Validation Media Prohibiting Validation of Game**

It is understood that the Commission may require the Successful Bidder to pay the Commission the amount of any prizes improperly paid by the Commission due to the non-conforming validation media. Would the Commission please confirm our understanding that the Commission will not pay out such prize amounts on tickets that do not validate as winners?

In the event that there is a problem identified in a game file that is subsequently corrected prior to a game being launched and without delaying the agreed schedule, our understanding is that no liquidated damages will apply. Is our understanding correct?

**A.47: The Commission confirms that it will not pay prize amounts on tickets that do not validate as winners from the validation media. In the event there is a problem identified in a game file that is subsequently corrected and complies with all testing requirements without delaying the originally agreed schedule, no liquidated damages will apply.**

**Q.48: 2.2.I.b.i. Incorrect Validation Media Prohibiting Validation of Game**

The liquidated damage amounts included in this section do not appear to be in line with industry standards or reasonably related to expected actual damages which will be readily ascertainable in the event of a failure of the type covered.

Would the Lottery consider negotiating these amounts in light of industry standards and reasonable expected damages?

**A.48: No.**

**Q.49: 2.2.I.b.ii. Non-conforming Delivered Scratch-off Tickets**

The liquidated damage amounts included in this section do not appear to be in line with industry standards or reasonably related to expected actual damages that will be readily ascertainable in the event of a failure of the type covered.

Would the Lottery consider negotiating these amounts in light of industry standards and reasonable expected damages?

**A.49: No.**

**Q.50: 2.2.I.b.ii. Non-conforming Delivered Scratch-off Tickets  
And 2.2.I.b.iv. Non-conforming Scratch-off Tickets Delivered to Licensed Lottery Sales Agents**

In the event the Commission determines that the entire game is non-conforming due to the same issue, would the Commission please confirm that liquidated damages would not be assessed under both sections (ii) and (iv)?

**A.50: Circumstances will dictate which section may apply. Section 2.2.I.b.iv is hereby amended as follows:**

**2.2.I.b.iv. Non-conforming Scratch-off Tickets Delivered to Licensed Lottery Sales Agents.**

If the Successful Bidder fails to comply with the requirements of this RFP so that Scratch-off tickets delivered to licensed Lottery sales agents are determined by the Commission to be non-conforming or defective may result in the Commission

assessing the full retail value per pack as against the Successful Bidder. In the event the Commission determines that the entire game is non-conforming, the Successful Bidder shall be responsible for the secure destruction of that game and shall be required to replace the non-conforming game with a conforming game approved by the Commission at no additional charge to the Commission. ~~In the event that the sale of the game is delayed,~~ The Commission may assess liquidated damages against the Successful Bidder in the amount of two hundred thousand dollars (\$200,000) per game per day from the day the Commission determines that the game is non-conforming to the day a comparable replacement game is released to the public, ~~from the scheduled launch date up to the date of launch,~~ not to exceed a maximum of ten million dollars (\$10,000,000) in liquidated damages per event. This paragraph is not intended to apply where the Successful Bidder discovers a manufacturing error post-production, reprints the game, and delivers the conforming tickets to the Lottery warehouse on or before the scheduled delivery date.

**Q.51: 2.2.I.b.ii. Non-conforming Delivered Scratch-off Tickets**

So that the Successful Bidder understands the applicable obligation and requirement,

- a.) would the Commission please specify the parameters for determining non-conforming or defective tickets and, also
- b.) confirm our understanding that the Successful Bidder would be given the opportunity to correct the issue prior to assessing liquidated damages as contemplated by this section for delivered packs in the amount of 30% of the full retail value per pack?
- c.) How would the Commission handle minor limited discrepancies of the type experienced on rare occasions by every vendor in the industry, such as issues with a limited range of packs requiring removal from distribution, typically due to a momentary manufacturing issue?
- d.) Would the Commission please reconsider the assessment of damages at full retail value per pack for tickets that are still in inventory as assessment of retail value at this stage does not reasonably relate to the damages incurred by the Commission?

**A.51:**

- a.) **Any condition that that the Commission determines could impact the integrity of the game and/or public perception may be determined by the Commission to be non-conforming or defective.**
- b.) **Depending on the circumstances, the Commission may give the Successful Bidder the opportunity to correct the issue prior to considering and/or implementing the assessment of liquidated damages.**
- c.) **The Commission will consider the variables in A.51 a. when determining its potential assessment of liquidated damages.**



**d.) The Commission will consider the variables in A.51 a. when determining its potential assessment of liquidated damages.**

**Q.52: 2.2.I.b.iii. Non-conforming Scratch-off Ticket Artwork**

The liquidated damage amounts included in this section do not appear to be in line with industry standards or reasonably related to expected actual damages which will be readily ascertainable in the event of a failure of the type covered.

Would the Lottery consider negotiating these amounts in light of industry standards and reasonable expected damages?

**A.52: No.**

**Q.53: 2.2.I.b.iii. Non-conforming Scratch-off Ticket Artwork**

Would the Commission please confirm that tickets assessed liquidated damages for non-conforming Scratch-off ticket artwork would not also be assessed liquidated damages for the same issue under Section ii. as non-conforming delivered scratch-off tickets?

**A.53: Circumstances will dictate which section(s) the Commission may apply.**

**Q.54: 2.2.I.b.iii. Non-conforming Scratch-off Ticket Artwork**

Would the Commission agree to revise this section to include a materiality threshold prior to exposing the Successful Bidder to the full range of liquidated damages available under this section in the exercise of its sole discretion not to distribute a game?

**A.54: No. The Commission will consider the variables in A.51 a. when determining its potential assessment of liquidated damages.**

**Q.55: 2.2.I.b.iv. Non-conforming Scratch-off Tickets Delivered to Licensed Lottery Sales Agents.**

The liquidated damage amounts included in this section do not appear to be in line with industry standards or reasonably related to expected actual damages which will be readily ascertainable in the event of a failure of the type covered.

Would the Lottery consider negotiating these amounts in light of industry standards and reasonable expected damages?

**A.55: No.**

**Q.56: 2.2.H.ee. Scratch-off Game Play Demonstration File**

Will the Commission please provide a sample of this type of file?

**A.56: See responses to Q.38 and Q.41.**

**Q.57: 2.2.I.e. Scratch-off Ticket Laboratory Testing**

Will the Commission please provide the names of the Commission-approved independent laboratories it currently contracts with?

**A.57: See 3.2.D.i.v. Each bidder is expected to include in the bidder's proposal the bidder's recommended independent laboratory and such laboratory's experience with testing Scratch-off ticket games. Multiple laboratories may be proposed.**

**Q.58: 2.2.M. Specified Options**

Will the Commission allow Bidders to provide other manufacturing options and proprietary print innovations for the Lottery's consideration in addition to items **a.** through **c.**? If so, as **Attachment 2\_Pricing Proposal** (Excel file) is locked, please specify where Bidders should include additional options in the response.

**A.58: No.**

**Q.59: 2.3.A.**

Section 2.3.A states that the Successful Primary Bidder shall serve as the Commission's strategic partner to provide consumer and product research.

Would the Commission please confirm that those services, when conducted by third parties, are reimbursable, as contemplated on page 77, Part Six – Provisions, 6.7.D?

**A.59: See section 2.3.B.c.**

**Q.60: 2.3.B.d Support Staff**

Would the Commission please confirm our understanding that consistent with Section 2.2.F Staff, the Successful Primary Bidder is required to designate 1) a Dedicated Project Coordinator assigned exclusively to the Lottery account and 2) a Dedicated Senior Account Manager or Director would be assigned to the Lottery account on a non-exclusive basis per standard industry practice?

**A.60: Section 2.3.B.d.ii. and iii. are hereby amended as follows:**

- ii. ~~Dedicated~~ Senior Account Manager or Director – This position shall provide senior level strategic planning and follow through on incidents. The individual in this role shall participate in monthly on-site or virtual strategic Scratch-off game planning sessions at the Commission's headquarters in Schenectady, or at another location determined by the Commission. The ~~Dedicated~~ Senior Account Manager or Director must have a minimum of seven years of Scratch-off game Manager or Director experience.
- iii. Senior Level Executive – This position shall ensure all contractual obligations are met and shall monitor and present lottery industry trends to the Commission. The ~~Dedicated Senior Account Manager or Director~~ Senior Level Executive must have a minimum of 10 years of Scratch-off game experience at the executive level.

**Q.61: 2.2.I.b.ii. Non-conforming Delivered Scratch-off Tickets. And 2.2.I.b.iii. Non-conforming Scratch-off Ticket Artwork. and 2.2.I.b.iv Non-conforming Scratch-off Tickets Delivered to Licensed Lottery Sales Agents.**

In the event the Commission determines that the entire game is non-conforming for a single issue related to the artwork as contemplated by Section 2.2 I (b)(iii), would the Commission please confirm that liquidated damages would not be assessed under sections (ii), (iii), and (iv)?

**A.61: Circumstances will dictate which section(s) the Commission may apply.**

**Q.62: 3.2.A.b Financial Viability**

Due to the potential volume and size of the financial statements, would the Commission please confirm if it is acceptable for Bidders to submit financial statements via a web link and only via a web link?

**A.62: The Commission will accept financial statement submissions via a web link. Please ensure that such files can be saved to the Commission's network and printed by the Commission if necessary.**

**Q.63: 3.2.D.h.v and 3.2.D.h.viii**

In Section 3.2.D.h, requirements v and viii both state "Scratch-off game numbers." Would the Commission please confirm if Bidders should remove the second reference and renumber the remaining requirements?

**A.63: Section 3.2.D.h is hereby amended as follows:**

Describe how the Bidder will securely manufacture Scratch-off games. Explain how the Bidder will provide the following requirements as outlined in this RFP:

- i. Ticket stock
- ii. Tickets and packs
- iii. Scratch-off ticket font generation
- iv. Imaged data
- v. Scratch-off game numbers
- vi. Scratch-off game pack numbers
- vii. Scratch-off game ticket numbers
- viii. ~~Scratch-off game numbers~~ [Reserved]
- ix. Validation number
- x. Validation algorithm and validation files
- xi. Scratch-off ticket barcodes
- xii. Sales agent validation prize codes
- xiii. Scratch-off coating
- xiv. Protective coating/seal coat

- xv. Display printing
- xvi. Overprint
- xvii. Ticket back printing
- xviii. Ink colors
- xix. Visible benday patterns
- xx. Security tint or primer
- xxi. Integrity of Scratch-off ticket design
- xxii. Randomization
- xxiii. GLEPS and the use of a range per pack for low-tier prizes
- xxiv. Prize guarantees
- xxv. General security provisions
- xxvi. Test game
- xxvii. Ticket reconstruction
- xxviii. Employee controls
- xxix. Production and transfer of game production data
- xxx. Production of electronic coupon files
- ~~xxxi. Production of electronic Scratch-off games [Reserved]~~
- xxxii. Scratch-off game play demonstration file
- xxxiii. Pre-production certification and color proof approval
- xxxiv. Production audit
- xxxv. Sample packs for Commission testing
- xxxvi. End of Production Prize Structure
- xxxvii. Packaging
- xxxviii. Shrink-wrapping
- xxxix. Shipping cartons
- xl. Skids
- xli. Delivery of games to the Commission's Lottery warehouse facilities
- xlii. Backup capabilities

**Q.64: 3.2.E.b. Account Management Work Plan**

Would the Commission please provide the most recent segmentation study report?

**A.64: The Commission will provide the most recent segmentation study report to the Successful Bidders.**

**Q.65: 3.3 Pricing Proposal**

Section 3.3 states, "*Base Ticket Requirements Pricing, For requirements, see RFP, 2.2(K).*"

Would the Commission please confirm that the requirements for Base Ticket pricing are in 2.2(L) and not 2.2(K)?

**A.65: Confirmed. Section 3.3 is hereby amended as follows:**

**3.3 Pricing Proposal**

Bidders shall complete the Pricing Proposal Forms, based on PART TWO - SCOPE OF WORK of the RFP. Bidders shall use Attachment 2 (A through F) - Pricing Proposal, for their Pricing Proposal.

Using Attachment 2-A through 2-F, the ~~Successful~~ Bidder shall provide pricing for the following:

#### BASE TICKET REQUIREMENTS PRICING

- For requirements, see RFP, 2.2(~~K~~L)
- For pricing, see Attachments 2-A through 2-F

Using Attachment 2-G, the ~~Successful~~ Bidder shall provide pricing for the following:

#### SPECIFIED OPTIONS PRICING

- For requirements, see RFP, 2.2(~~L~~M)
- For pricing, see Attachment 2-G

Using Attachment 2-H, the ~~Successful~~ Bidder may provide pricing for the following:

#### MANAGEMENT FEE PRICING

- For requirements, see RFP, 2.3(C)
- For pricing, see Attachment 2-H

The Bidder must use Attachment 2 for the Bidder's Pricing Proposal. Alternate forms will be considered nonresponsive.

#### Q.66: 3.3 Pricing Proposal

Section 3.3 states, "*Specified Options Pricing, For requirements, see RFP, 2.2(L).*"

Would the Commission please confirm that the requirements for Specified Options pricing are 2.2(M) and not 2.2(L)?

#### A.66: See answer to Q.65

#### Q.67: 3.3 Pricing Proposal

*Using Attachment 2-G, the Successful Bidder shall provide pricing for the following:*

#### *SPECIFIED OPTIONS PRICING*

- *For requirements, see RFP, 2.2(L)*
- *For pricing, see Attachment 2-G*

Many instant ticket product enhancements are available to the Commission in addition to

the options specified on form 2-G. Will the Commission allow vendors to submit pricing for these additional, offered options, on a separate Excel tab as part of the pricing response?

**A.67: No.**

**Q.68: Attachment 2-G, Pricing Schedule**

Pricing for electronic scratch-off games is typically done through a percentage of GGR, not a flat rate per game. Would the Commission consider a different pricing model for electronic scratch-off games?

**A.68: See response to Q.8.**

**Q.69: 4.5 Evaluation and Selection Criteria**

“Work Plan” is allotted a maximum 30 of the total 60 points of the Technical Proposal Evaluation. Please clarify if this is referring to 3.2.D. Work Plan or 3.2.E. Account Management Work Plan? Or a combination of both?

**A.69: The allocated points for “Work Plan” are a combination of both the Work Plan in Section 3.2.D. and the Account Management Work Plan in Section 3.2.E.**

**Q.70: 5.4.B. Proposal format**

Section 5.4.B, Proposal format, provides an outline of the contents Bidders are to follow for Technical Volume I.

Would the Commission please confirm where in this outline Bidders are to include Attachment 3 - Document Submittal Checklist?

**A.70: Attachment 3 - Document Submittal Checklist may be submitted with the Transmittal Letter.**

**Q.71: 5.4.B.x. Proposal format**

Section 5.4.B.x states that Bidders are to provide a “Response to specifications in the order provided for in this **Part Five – General Requirements for Proposals**, including technical documentation as appendices.”

Would the Commission please confirm that it is referring, rather, to the specifications in **Section 3.2, Technical Proposal**?

**A.71: Part Five – General Requirements for Proposals provides the order in which responses should be submitted; Section 3.2 Technical Proposal provides the substantive information required to be submitted within a Technical Proposal.**

**Q.72: 5.4.B. Proposal format, item ix. References  
3.2.A. Business Organization, Financial Viability, and References, item c.  
References**

Section 5.4.B states that Bidders are to include “References” as item “ix” in the outline of the Technical Proposal (Volume I).

Would the Commission confirm that Bidders are to provide a duplicate response to the Section 3.2.A.c., References, requirement?

**A.72: References only need to be provided once. The outline is provided as general guidance. As long as all required documents and information are included in the Proposal, the Commission will make a good faith effort to locate all information through the searchable PDF file. Bidders may choose to refer to a response elsewhere in a Proposal wherever such responsive information would have otherwise been repeated within or relevant to the Proposal.**

**Q.73: 5.4.B. Proposal format**

Are Bidders permitted to add an Executive Summary to the Volume I, Technical Proposal? If so, does the Commission have a preference as to the location? Perhaps, directly after the Transmittal Letter?

**A.73: An Executive Summary may be provided. The Commission does not have a preference as to its location in a proposal.**

**Q.74: 5.4.C. Proposal submission**

Section 5.4.C, Proposal submission, states, *“The electronic files shall include all Technical Proposal sections within a single file.”*

Bidders responses to this RFP will possibly exceed 100 Megabytes (MB) for the Technical Proposals. As a result, in our experience, it is extremely likely that the New York State Gaming Commission will not be able to successfully receive Bidders’ Technical Proposals via email since common email providers such as Microsoft and Google have send-and-receive limitations of 25MB.

As was permitted for the New York State Gaming Commission’s C202017 – New York Lottery Video Lottery Games RFP response, we respectfully request that the Commission allow alternative submission of the Technical Proposals, to include physical electronic or magnetic media, such as USB drives, or alternate electronic distribution via Secure File Transfer Protocol (SFTP) site.

**A.74: The Commission will accept only searchable PDF files up to 25mb each. This may be accomplished by breaking down the files and submitting multiple emails. Please identify your files as 1 of XX, 2 of XX, etc.**

**Q.75: 5.4.C. Proposal submission – Samples**

Section 5.4.C, Proposal submission, under the Samples heading, states “*Samples outlined in Section 3.2.D(m) shall be submitted...*”.

Would the Commission please confirm that the reference to 3.2.D(m) is a typo and should be changed to be 3.2.D.n?

**A.75: Confirmed, 3.2.D(n) is the correct reference. The first paragraph under the “Samples” heading in Section 5.4.C is hereby amended as follows:**

Samples outlined in Section 3.2.D(~~m~~n) shall be submitted as part of the Technical Proposal in a sealed box and contain the following identifying information on the outside of the package:

**Q.76: 5.7 Multiple Proposals from One Bidder Prohibited**

If providing options, solicited and unsolicited products, services, and features, should Bidders include the same in the Price Proposal Attachment 2 along with a price?

If yes, should Bidders create a separate tab within Attachment 2 or provide a separate addendum to Attachment 2 Pricing Proposal?

**A.76: The Commission may only consider Specified Options identified in the RFP. Any other vendor offerings will be for informational purposes only. Pricing must not be included for offerings other than the Specified Options identified in the Pricing Proposal.**

**Q.77: 5.7 Multiple Proposals from One Bidder Prohibited  
And 5.10 Extraneous Terms**

We understand that a single Bidder may include (for informational purposes only), in its single Proposal, and separate from the response to the requirements of this RFP, options, including solicited and unsolicited products, services, and features, absent of price, that the Bidder believes may be appealing and useful to the Commission and such information will not be considered material deviations rendering a Proposal unresponsive.

Would the Commission please confirm this understanding and further confirm that a Bidder may include all such information in (i) a separate appendix (included in the single PDF of the Volume I - Technical Proposal) or (ii) describe how the Bidder should include such information in its Proposal?

**A.77: Bidders may identify goods and services available that are not identified in the RFP but must label such goods and services as being available at an additional cost not included in the Pricing Proposal. Bidders shall not provide, disclose, or indicate the cost for those goods and services anywhere in the Proposal.**

**Q.78: 5.12 Disclosure and Investigations During Proposal Evaluation**



Section 5.12 does not appear to require a response, but it is included in the list of required documents in Volume 1 – Technical Proposal (in 5.4.B).

Would the Commission please confirm our understanding that a statement acknowledging this section (5.12) is what is required in Section 5.4.B, vi. Disclosure and Investigations During Proposal Evaluation, or please specify otherwise?

**A.78: Bidders do not need to include any response in their proposals to this post-proposal-submission evaluation, but acknowledge by submitting a proposal that they are subject to this evaluation process after proposal submission. If a Bidder does not participate in any such evaluation initiated by the Commission post-proposal-submission, the Commission may disqualify such Bidder's proposal.**

**Q.79: 5.26 Indemnification**

Would the Commission please consider revising this section to delete the obligation of the Successful Bidder to indemnify and hold harmless the Commission for the State of New York's and the Commission's own acts, as contemplated in Section 5.26.G i., or otherwise please confirm that the Successful Bidder is not responsible for the independent acts of the State of New York or the Commission?

**A.79: No. The indemnification requirement is already tempered by the list of contractual obligations and performances found in Section 5.26.G.**

**Q.80: 6.4 Transition**

While we understand the importance of transition obligations, would the Commission please confirm our understanding that the Successful Bidder will not be required to share the Successful Bidder's confidential information with any successor vendor?

**A.80: It is not anticipated that a Successful Bidder would be required to share its confidential information with a successor vendor. Should such disclosure be necessary for the successful completion of a transition under Section 6.4, however, disclosure would be required, but the Commission would also work in good faith with the Successful Bidder and the successor vendor to attempt to reach a confidentiality agreement for that limited purpose.**

**Q.81: 6.13 Intellectual Property**

Section 6.13 requires that any intellectual property developed or produced by the Successful Bidder for the Commission under this RFP and the resulting Contract shall be the property of the Commission as a work made for hire except for intellectual property rights in Contractor Tools. However, the definition of Contractor Tools in the section does not include some of a Bidder's most valuable intellectual property rights, which are the intellectual property rights (specifically patent, trademark, copyright and trade secrets) in its software, games, algorithms, printing technologies, and other Scratch-off ticket products and services.

Would the Commission please confirm that ownership of intellectual property developed or produced by the Successful Bidder for the Commission under this RFP or the resulting Contract shall be the property of the Commission only if it: (1) first originated under the RFP or resulting Contract; (2) was created exclusively for the Commission pursuant to the RFP or resulting Contract; (3) is unique to the Commission; and (4) was paid for by the Commission?

Section 6.13 also states that the Commission shall have ownership of intellectual property developed for the Commission under the Contract as works made for hire, but specifically provides for the Bidder retaining rights in Contractor Tools. However, the definition of Contract Tools includes analyses, know-how, tools, frameworks, models, and industry information and perspectives only if they are not works made for hire for the Commission. It is this Bidder's understanding that the intent of Section 6.13 is to provide for the Successful Bidder to retain ownership of any analyses, know-how, tools, frameworks, models, and industry information and perspectives provided by the Bidder even if it is a work made for hire.

Would the Commission please revise the definition of Contractor Tools to delete the following language "that are not part of the Successful Bidder's work made for hire for the Commission"?

**A:81: Q.81(#1): No revision will be made to this section. This Section states that "any intellectual property developed or produced by the Successful Bidder for the Commission under this RFP and the resulting Contract shall be the property of the Commission as a work made for hire", which addresses the statements in (1), (2) and (3) above. The Commission is paying for the contract, which addresses the statement in (4) above.**

**Q.81 (#2): No revision will be made to this section. The language speaks for itself that work made for hire is retained by the Commission.**

**Q.82: 6.13 Intellectual Property**

Would the Commission please clarify whether the definition of Contractor Tools includes intellectual property rights (specifically patent, trademark, copyright, and trade secrets) in Bidder owned or licensed software, games, algorithms, printing technologies, and other Scratch-off ticket products and services?

**A.82: If patent, trademark, copyright, and trade secrets are neither developed nor produced by the Successful Bidder for the Commission under this RFP and the resulting Contract, they would be included in the definition of "Contractor Tools".**

**Q.83: 6.15 Ownership of Proposal Contents, Materials and Intellectual Property**

Would the Commission please confirm our understanding that the works made for hire referred to do not incorporate and would be subject to any identified third-party intellectual property licenses?

Would the Commission please also confirm that Section 6.15 does not provide for the Commission having ownership of Bidder's, or third party, intellectual property that existed prior to submission of Bidder's Proposal or intellectual property developed or produced by the Bidder independent of the RFP or the Contract?

**A.83: Under Section 6.13, a work made for hire includes "any intellectual property developed or produced by the Successful Bidder for the Commission under this RFP and the resulting Contract".**

Q.84: **6.17.A.**

Would the Commission please confirm our understanding that the list of events following the words "but not limited to," in paragraph A is intended to be an illustrative list of potential force majeure events?

**A.84: Confirmed.**

Q.85: **7.16.A. Notification of Liquidated Damages Assessment**

Would the Commission allow the Successful Bidder to respond in writing with any mitigating circumstances for the Commission's consideration prior to finalizing any assessment of liquidated damages?

**A.85: The Commission may consider the Successful Bidder's written submission of mitigating circumstances prior to finalizing any assessment of liquidated damages if received prior to finalizing such assessment. If such written submission is received thereafter, the Commission may consider it for a possible reassessment of damages, in the Commission's discretion.**

Q.86: **7.16 Liquidated Damages**

It is understood that the liquidated damages are intended to address any breach by the Successful Bidder that causes delay and disrupts the Commission's operations and leads to damages. However, to avoid unreasonable penalties, in the event that the Successful Bidder can provide evidence that the actual damages are materially lower than the assessed liquidated damages, would the Commission consider such evidence on actual damages?

**A.86: The Commission may consider the Successful Bidder's written submission of proposed actual damages prior to finalizing any assessment of liquidated damages if received prior to finalizing such assessment. If such written submission is received thereafter, the Commission may consider it for a possible reassessment of damages, in the Commission's discretion.**

Q.87: **7.16 Liquidated Damages**

With respect to the assessment of liquidated damages specified in this section, would the Commission confirm our understanding that in the event that a specified failure or issue does not result in any loss or damages to the Commission, or results in losses or

damages that are significantly lower than the otherwise applicable liquidated damages amount, that liquidated damages would be reasonably pro-rated as determined in the Commission's reasonable discretion?

**A.87: See Answer to Q. 86, above.**

**Q.88: 7.16.F Applicability of Liquidated Damages**

Would the Commission consider revising this section to include the bolded text below?

The Successful Bidder shall not be required to pay liquidated damages for delays solely due to matters as enumerated in the section entitled "Force Majeure," or for time delays specifically due to, or approved by, the Commission **or due to the acts or omissions of third parties outside of the responsibility and control of the Successful Bidder?**

**A.88: Section 7.16.F. is hereby amended to read as follows:**

#### **F. APPLICABILITY OF LIQUIDATED DAMAGES**

**The Successful Bidder shall not be required to pay liquidated damages for delays solely due to matters as enumerated in the section entitled "Force Majeure," or for time delays specifically due to, or approved by, the Commission or due to the acts or omissions of third parties that are operating outside of the Successful Bidder's responsibility and/or control. To be clear, subcontracting entities on the RFP and Contract are operating under the Successful Bidder's responsibility and/or control.**

**Q.89: Appendix B Section 7 (a)**

In the event the Commission invokes its right to terminate for convenience, how will the Commission compensate Contractor for the expenditures made by Contractor prior to the effective date of termination for convenience?

**A.89: Compensation will be made pursuant to the terms of the RFP and Contract, up to the date of termination, based on services provided.**

**Q.90: Appendix B Section 7 (a) (vii)**

The nexus to the Contractor in this provision is missing. Would the Commission consider revising this provision to replace "person" with Contractor?

**A.90: Section 7.(a)(vii) is amended to read as follows:**

**(vii) upon the conviction of any ~~person~~ Contractor and/or any of its directors, officers, or employees of a crime defined in article two hundred or four hundred ninety-six or section 195.20 of New York State's Penal Law.**

**Q.91: Appendix B Section 7 (a) (vi)**

To the extent that a Successful Bidder cannot compel an individual to waive immunity and testify despite applicable Constitutional privilege, would the Commission revise this provision so that the Contract is not terminable in the case of any individual exercising their Constitutional right against self-incrimination or otherwise provide a reasonable cure provision that the Successful Bidder is capable of providing?

**A.91: No.**

**Q.92: Appendix B Section 7 (f)**

The Commission may terminate the Contract where the Contractor is determined by the Executive Director to be "non-responsible or nonresponsible."

Would the Commission please confirm our understanding that nonresponsible in this context means material uncured breach of the Contract, or please otherwise describe the condition for termination under this provision?

**A.92: The use of “non-responsible or nonresponsible” is pursuant to New York State’s State Finance Law §§ 139-j and 139-k.**

**Q.93: Appendix B Section 7 (g)**

Would the Commission agree to add a provision allowing the Contractor reasonable opportunity to be heard with appropriate Commission officials or staff prior to issuance of the notice of suspension to the extent possible to do so in the Commission's discretion and, in any case, after issuance of such notice?

**A.93: No. Section 7(g) in Appendix B is hereby amended as follows:**

(g) Upon written notice to the Contractor, and a reasonable opportunity to be heard by the Executive Director, the Contract may be suspended by the Executive Director at the Contractor’s expense when the Executive Director discovers information that calls into question the responsibility of the Contractor. Upon issuance of such suspension, the Contractor must comply with the terms of the suspension. Contract activity may resume if, and at such time as, the Executive Director issues a written notice authorizing a resumption of performance under the Contract.

**Q.94: Appendix B Section 9 Confidentiality and Non-Disclosure**

Would the Commission agree to make this section reciprocal to protect the Contractor's confidential trade secret information that is exempt from disclosure under FOIL, or otherwise please indicate how the Successful Bidder’s confidential information will be protected from disclosure?

**A.94: See Section 5.11, Designation of Proprietary Information (FOIL).**

**Q.95: Appendix I EEO, MWBE and SDVOB Programs**

MWBE/SDVOB Contract Goals are stated as:

13% MBE, 17% WBE, 6% SDVOB

Under what circumstances and parameters would the Commission assess Liquidated Damages under the EEO, MWBE and SDVOB Programs, as contemplated in Appendix I?

As stated in EEO, MWBE, and SDVOB Programs, liquidated damages will be assessed if the Commission decides the MWBE/SDVOB goals are not met.

Would the Primary/Secondary Successful Bidders be subject to liquidated damages if the 36% is achieved but all MWBE/SDVOB spend is with a WBE, for example?

**A.95: Liquidated damages can be assessed if the MWBE/SDVOB Contract Goals are not being met, and a Successful Bidder cannot demonstrate it engaged in good faith efforts to find and engage MWBEs or SDVOBs to meet/comply with such Contract Goals.**

**Q.96: Appendix I EEO, MWBE and SDVOB Programs**

A Bidder is required to show "good faith effort" to meet M/WBE and SDVOB goals.

If a Bidder has evaluated MWBE and SDVOB vendors but has been unable to qualify said vendors, how would the Commission evaluate the Bidder?

**A.96: The Commission will review any documented, but unsuccessful, good faith efforts as part of the evaluation process. All efforts must be made to try to reach the set contract goals. The proposed Utilization Plan is not considered for scoring/evaluation purposes.**

**Q.97: Appendix N Insurer Qualifications and Insurance Requirements General Conditions Section A.3 Certificates of Insurance/ Notices**

The second paragraph states that the policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior written notice to the Commission.

Insurers will provide notice for cancellation, not material change. Therefore, we respectfully request that the words "materially changed" be deleted from the above.

**A.97: No.**

**Q.98: Appendix N Insurer Qualifications and Insurance Requirements General Conditions Section A.3.b**

This section states that the Certificate of Insurance shall disclose any exclusion to the policy that materially changes the coverage required by the RFP and Contract.

This wording is vague. Would the Commission be more precise as to what specific exclusions are of concern to the Commission or otherwise strike the above wording?

**A.98: No. The Commission suggests that the Bidder disclose to the Commission any changes that the Bidder believes may change the coverage required by the RFP and Contract, if in doubt of whether such change is material.**

**Q.99: Appendix N Insurer Qualifications and Insurance Requirements Section B.1 General Liability**

The Personal and Advertising Injury coverage description (4<sup>th</sup> paragraph) and the bullets below it go well beyond what would typically be covered under an ISO form. Some of the wording, repeated below, is not industry standard. For instance, excluding “intentional acts” is a basic exclusion in the policy language.

- invasion of or interference with the right to privacy or publicity, including intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of names or likeness;
- negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
- piracy, plagiarism and misappropriation of ideas under implied contract; and
- infringement or dilution of intellectual property rights, copyright, title or slogan, trademark, trade name, trade dress, service mark, or service name

We respectfully request that the bullets above be stricken from the RFP or that these items can be discussed further at Contract negotiations.

**A.99: No.**

**Q.100: Appendix N Insurer Qualifications and Insurance Requirements Section B.1 General Liability**

This section states that *the following ISO forms must be endorsed to the CGL policy: CG 20 37 12 19 or the equivalent, CG 20 10 12 19 or the equivalent, CG 20 38 12 19 or the equivalent:*

CG 20 38 is not standard. Would the Commission accept CG 20 26 12 19 as equivalent?

**A.100: No.**

**Q.101: Appendix N Insurer Qualifications and Insurance Requirements Section B.2 Professional Errors and Omissions**

Would the Commission please amend Section B.2 to delete the non-standard language as shown below:

**Professional Errors and Omissions.** The Contractor shall procure and maintain during, and for a period of two years after completion of, the Contract, Professional Errors and Omissions Insurance in the amount of \$10,000,000 issued to and covering damage for liability imposed on the Contractor by this Contract or law arising out of any negligent act, error, or omission in the rendering of or failure to render services required by this Contract.

Said insurance shall provide coverage for damages arising from work and operations required by the Contract, including, but not limited to, errors, omissions, printing or production problems of any type caused by the Contractor ~~or its subcontractors,~~ regardless of negligence. ~~Claims against the insurance may be invoked when a game's prize redemption exceeds the number of prizes at any prize level in a game's End of Production Prize Structure. The insurance for such over redemption shall be enforced through thirteen (13) months following the official announced end of game for each game. The insurance policy shall include coverage for third-party fidelity including cyber theft, if such coverage is not provided for in a separate Data Breach and Privacy/Cyber Liability policy~~

**A.101: No.**

**Q.102: Appendix N Insurer Qualifications and Insurance Requirements Section B.5 Crime**

The Crime Insurance requires coverage from fraudulent or dishonest acts by "subcontractors" and "agents" or "any subcontractor" be covered under the Crime Insurance.

Crime Insurance is intended to cover an entity's own employees and coverage and is not extended to "agents and subcontractors."

Therefore, we respectfully request that the words "subcontractors" "agents" and "any subcontractor" be deleted from paragraph 3.

This may be covered by requiring the subcontractor or agent to provide proof of Crime coverage. As stated in A.7, this should be determined commensurate with the work of the subcontractor.

**A.102: No changes will be made to this section. The Commission may consider proof of such insurance from subcontractors and agents, as a possible supplement to the insurance portion of a Bidder's proposal.**

**Q.103: Appendix N Insurer Qualifications and Insurance Requirements B.7 Media Liability Insurance**

Would the Commission please amend Section B.7 to delete the non-standard language as shown below:



**Media Liability Insurance.** To the extent that Personal and Advertising Liability insurance is not available to, or excluded from coverage for, the Contractor under the CGL Policy because the Contractor is a business engaged in advertising, publishing, broadcasting, or similar activities, the Contractor must obtain separate Media Liability insurance coverage with a limit of not less than \$5,000,000 to cover claims arising from, but not limited to, occurrences committed by the Contractor such as:

- defamation, libel, slander, product disparagement or trade libel;
- invasion of or interference with the right to privacy or publicity, including intrusion upon seclusion, false light invasion of privacy, public disclosure of private facts and misappropriation of names or likeness;
- ~~negligent or intentional infliction of emotional distress, outrage or outrageous conduct;~~
- ~~false arrest, detention or imprisonment, or malicious prosecution;~~
- ~~trespass, wrongful entry or eviction;~~
- piracy, plagiarism and misappropriation of ideas under implied contract; and
- infringement or dilution of intellectual property rights, copyright, title or slogan, trademark, trade name, trade dress, service mark or service name.

**A.103: No.**

**Q.104: Appendix O Bond Requirements Litigation Bond**

It is a widely accepted to include a third condition that would need to be satisfied before the Litigation Bond may be drawn upon. We respectfully request that the sentence below be added to the end of the first paragraph:

***A court determines that the action or any portion thereof was frivolous, or was brought in bad faith, or was not brought upon reasonable grounds.***

**A.104: No changes will be made.**

**Q.105: Appendix O Bond Requirements Performance Bond – Successful Primary Bidder and Performance Bond – Successful Secondary and Tertiary Bidders**

Surety companies require that the Performance Bond be annually renewable and that an industry-standard bond form is used.

Would the Commission please confirm that the Performance Bond can be renewed on an annual basis and that an industry-standard bond form is acceptable?

**A.105: Confirmed, if compliant with terms of Appendix O.**

**Q.106: Appendix O Bond Requirements Performance Bond – Successful Primary Bidder and Performance Bond – Successful Secondary and Tertiary Bidders**

The last paragraph under “Performance Bond – Successful Primary Bidder” and “Performance Bond – Successful Secondary and Tertiary Bidders” states that a letter must be included from a qualified surety company stating that the Bidder is able to

secure a Performance Bond. There is also a requirement, earlier in Appendix O, for a \$500,000 Proposal Bond. The Proposal Bond guarantees the Performance Bond. In essence, this is a duplication.

Would the Commission agree to waive the requirement for the Surety Letter considering the requirement for the Proposal Bond?

**A.106: No. The Proposal Bond and Performance Bond serve different purposes, as explained in Appendix O.**

**Q.107: Attachment 2 Pricing Proposal**

Attachment 2 requires base price for 10 pt recycled, recyclable ticket stock, coated two (2) sides, in addition to the request for 10 pt recyclable ticket stock, coated two (2) sides.

Would the Commission please provide details on how many games and the type of games it intends to print on recycled stock vs. recyclable ticket stock?

**A.107: It is the Commission's intent to print 100% of games on recycled stock, if available.**

**Q.108: Attachment 3 - Document Submittal Checklist**

The Document Submittal Checklist lists "Executive Order No. 16 Certification" as Appendix **N**.

Would the Commission please confirm that the **N** is a typo and that the appendix designation should be changed to Appendix **M**?

**A.108: Confirmed. Attachment 3, Document Submittal Checklist is amended to reflect that Executive Order No. 16 Certification is found in Appendix M.**