



# Gaming Commission

## RFP: C202104 – General Banking Services

### BIDDER ACKNOWLEDGEMENT OF ADDENDUM

Amendment Number: Two  
Issued: July 15, 2021  
Summary: Questions and Answers

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

FIRM NAME	
REPRESENTATIVE SIGNATURE	

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**Q.40:** Termination – will a bid be disqualified if the bidder requires the right to terminate for cause? We require this as regulators look for banks to have the right to terminate for cause (gone are the days when banks can accept no termination rights whatsoever). If possible, we would like to know in advance Gaming’s position on this in order to avoid putting forth a proposal that is unacceptable to Gaming.

**A.40: A bidder’s inclusion of a requirement to be able to terminate for cause will not, itself, be a basis to disqualify such bidder’s bid, but the requirement will be considered and evaluated with the bids submitted.**

**Q.41:** What method of validation do you use before providing lottery winners with a check? Do you require they appear in person and present ID for example? Are checks mailed? Please describe the process.

**A.41: The process for claiming a prize can be found at <https://nylottery.ny.gov/how-to-claim>**

**Q.42:** How many instances of check fraud occurred in 2019, 2020 and YTD 2021? Bidders truly need this information to understand the work involved dealing with any fraudulently cashed checks.

**A.42: The Commission rejects several checks per month from positive pay exceptions. The Commission estimates that it files one affidavit of fraudulent transaction report per year with its current provider.**

**Q.43:** How quickly are checks cashed by lottery winners?

**A.43: The Commission does not track this information.**

**Q.44:** How many lottery winners with checks used the branch of the current bank provider for check cashing purposes in 2019, 2020 and YTD 2021? We are asking for several years as we can’t be certain what impact the pandemic has on activity in 2020 and 2021. 2019 will allow visibility into a more normal period of time. Bidders need this information in order to provide the bundled pricing you require. If you cannot provide it we strongly recommend you include a new line item for check cashing in branches which would apply only when the check casher themselves it not a bank customer. If you are trying the keep the number of pricing line items down, feel free to combing the 3 ACH related line items into one as banks will likely simply charge the same fee for each of those 3 line items.

**A.44: The Commission does not track this information.**

**Q.45:** We will be looking to cap liabilities and limit the scope of liabilities including 3<sup>rd</sup>

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party exposure (3<sup>rd</sup> party exposure must have been solely caused by Bidder and the scope must be well defined). We will put forth our recommendation for your consideration in a red-line of the Draft Contract. Is that acceptable?

**A.45: Please see Section 2.2 of the RFP for information regarding the Commission's preferred process for proposed modifications to the draft Contract in Appendix B of the RFP.**

**Q.46:** We note the new section in 2.23 Indemnification and Liability. It sounds as though Gaming wants the Bank to absorb the risk (you mention consequential, indirect, special) associated with sweeps from licensed agents to Gaming. As a Bank, we simply process transaction created and directed by our clients and as such we generally do not take on related 3<sup>rd</sup> party liability. Does Gaming have protections built into its contractual agreement with licensed agents to ensure Gaming is protected with respect to these sweeps? Can you describe the contractual protections please? We assume the only situation you are thinking of here where the Bank would be open to 3<sup>rd</sup> party liability is if the bank were to sweep out more money than Gaming directed. And perhaps the agent, as a result, incurs overdraft or late fees. Is that correct? If this is not correct, please provide specific examples of where you envision the Bank having 3<sup>rd</sup> party liability related to this topic.

**A.46: The Commission's contracts with licensed agents are not part of, nor incorporated within, the RFP.**

**Please see section 2.23(A) of the RFP regarding the Successful Bidder's obligations to indemnify, defend, and save harmless the Commission against third-party claims "which may be incurred, suffered, or required in whole or in part by an actual or alleged act or omission of: 1. the Successful Bidder, its officers, employees, agents, successors and assigns, and/or 2. any Subcontractor, its officers, employees, agents, successors and assigns."**

**Q.47:** We continue to be unable to allow clients to obtain or view "criminal history and or background investigations" of our employees. We have never agreed to such a term and would look forward to sharing how we vet our employees in accordance with law. Is this acceptable?

**A.47: Section 1.14 includes the potential for the Commission to initiate such investigations, but does not require it. Bidders may submit their individual vetting processes and compliance with relevant laws, for the Commission's consideration, to assist the Commission in determining if further investigation may be needed.**

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**Q.48:** Caveats and clarification we proposed during the failed bid will be, for the most part, repeated for this RFP unless the issue was addressed and we do see in some cases certain contract terms were changed. Based on our read of the RFP this approach will be acceptable as long as we red-line the Draft Contract. Is that correct?

**A.48:** Please see Section 2.2 of the RFP for information regarding the Commission's preferred process for proposed modifications to the draft Contract in Appendix B of the RFP.

**Q.49:** At this time, Gaming is requiring the Electronic Bill Payment & Presentment bidder to NOT process the credit card transactions but rather to pass them for processing purposes to Key Bank. Most bidders can process credit card transactions and prefer to not offer their Electronic Bill Payment & Presentment solution without also being the processor of the credit card payments. Would gaming consider: a) Allow bidders to process the credit card transactions? They would offer separate pricing for the credit card transaction processing outside of the bundled pricing grid; b) Allow bidders to submit proposal without the Electronic Bill Payment & Presentment solution? Gaming could choose to leave that with its current provider.

**A.49:** a) No  
b) No

**Q.50:** Given the long-term contract can you provide for a CPI-U adjustment beginning year 4 and each year thereafter please?

**A.50:** No.

**Q.51:** The Successful Bidder shall give the Commission immediate notice in writing of the initiation of any legal action or suit that relates in any way to a subcontract with a subcontractor, or that may affect the performance of the Successful Bidder's duties pursuant to the Agreement. To be consistent with the disclosure requirements applicable to the Bank, will the Commission modify this requirement to only require notice of legal actions that "may affect the performance"? (as opposed to the overly broad and vague "relates in any way")

**A.51:** No.

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