

**Attachment 1**



**RFP: C202017 – New York Lottery Video Lottery Games**

**BIDDER ACKNOWLEDGEMENT OF ADDENDUM**

Amendment Number: Two

Date Issued: March 1, 2021

Summary:

**Questions and answers are attached.**

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

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

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



**REQUEST FOR PROPOSALS FOR  
NEW YORK LOTTERY VIDEO LOTTERY GAMES**

**C202017**

**Round 2 - Questions and Answers**

**General Questions**

Q.280: When can a Successful Bidder expect to be notified regarding the winners of Lot 1 and acceptance of Lot 2 proposals?

**A.280: The Commission anticipates making preliminary awards on or about April 14, 2021, with final award contingent upon approval by the N.Y.S. Office of the State Comptroller.**

Q.281: How much revenue is generated by the ETGs since that could also restrict our available revenue opportunity?

**A.281: In calendar year 2019, revenue derived from ETGs totaled 20.62 percent of overall VLT revenue.**

Q.282: How much revenue is generated by the ETGs since that could also restrict our available revenue opportunity

**A.282: See answer to Question 281.**

Q.283: What is the total ETG device allocation number today, by location and manufacturer?

**A.283: Please see chart below:**

Manufacturer	Video Lottery Gaming Facility			
	Jake's 58	MGM Yonkers	Resorts World	Saratoga
IGT/Spielo	10	128	300	3
Interblock	86	190	873	10
Shuffle Master	25	117	229	46

Q.284: In the scenario where a Primary Supplier is an existing supplier and their existing VLTs remain on the floor does the Gaming Facility have the authority to move those machines to other locations on the Gaming Floor and replace the VLTs

in specific floor locations with VLTs from other successful bidders?

**A.284: Yes, a Primary Supplier will not maintain any rights to Gaming Floor location awarded under a previous contract.**

Q.285: Will the Gaming Facilities have the authority to move or place new VLTs on their Gaming Floors at any time at their sole discretion?

**A.285: Yes.**

Q.286: What is the cumulative net win generated by ETGs in each of the last three years?

**A.286: Please see chart below:**

Year	Net ETG Revenue
2018	\$411,505,024.26
2019	\$434,214,233.86
2020	\$195,474,580.15

Q.287: Question and Answer 37 illustrates there were 16,821 VLTs in play as of February 15, 2021. Question and Answer 126 illustrates there were 2,017 ETGs as of February 1, 2021. Does this mean that the total number of active non-ETG VLTs in February was approximately 14,804?

**A.287: Yes.**

Q.288: Question and Answer 31 seems to state that once a single property has ordered the requisite number of VLTs, that a Successful Bidder would be required to fulfill and then service a single unit order from any other property. Would the Commission consider allowing a reasonable per-property minimum order requirement to support logical investment?

**A.288: No, participation in the New York Video Lottery Gaming program requires a Successful Bidder to supply product to all gaming floors. The inability to place ETGs within the exclusivity zone of the Seneca Nation of Indians remain.**

Q.289. Where may I find a map of the Seneca Nation of Indian exclusivity zone?

**A.289. The Seneca Nation exclusivity zone is the area to the west of the pink shaded region, as detailed on the map found at the following link: <https://www.gaming.ny.gov/images/Region%20Map.jpg>.**

Q.290: Will the Commission be publishing an updated RFP document to reflect all amendments? If not, how should a Bidder respond when answering the relevant section of the RFP document?

**A.290: No, the Bidder should respond by substituting out the original language with the amended language contained in the most recent applicable amendment to the RFP.**

### **Part 1, General Information**

Q.291: Section 1.1.A: Question and Answer 131 implies ETGs are a part of VLT allocation. Is that accurate?

**A.291: The allocation awarded through Lots 1, 2 and 3 comprise the total allocation of terminals on each Gaming Floor. The total allocation of VLTs includes both standard devices and ETGs.**

Q.292: Section 1.14: The Commission's answer to Question and Answer 67 suggested that Bidders are required to re-submit a "Supplier Responsibility Questionnaire" that was recently submitted as part of a contract extension. However, there is no such "Supplier Responsibility Questionnaire." Therefore, we assume that the Vendor Responsibility Questionnaire referenced in Section 1.14 and attached as Appendix E is not required to be resubmitted if it was previously submitted less than one year ago in connection with another State contract, and there are no material changes to that questionnaire. Would the Commission please confirm this assumption?

**A.292: The Commission interprets this question to referring to the Vendor Responsibility Questionnaire, which was included as RFP Appendix E. Appendix E – Vendor Responsibility Questionnaire is not required if it was previously submitted less than one year ago in connection with another contract with the Commission, or if filed online and a the certification is current.**

Q.293: Section 1.29(L):

a. Is the "% of net machine income" included in items that may be requested in Section 1.29(L) referring to a "request Best and Final Offers"?

b. If so, is the Commission planning to or has it historically countered submitted bids with a request for lowered pricing?

**A.293:**

**a. Yes.**

**b. If the Commission requires submission of Best and Final Offers, the RFP will be amended as such and the opportunity will be communicated to all Bidders. Pursuant to Section 1.29(K), the Commission may, and has historically, negotiate with the Successful Bidder within the scope of the RFP in the best interests of the State.**

**Part 2, Provisions**

Q.294: Section 2.11: Questions on average base compensation rate:

a. Section 2.11 states that the average base compensation rate is calculated weekly. Does that mean that the reimbursement rate that the Gaming Facility is responsible for may change on a weekly basis?

b. If so, that seems burdensome and likely to increase the barriers for Lot 2 vendors to clear in order for Gaming Facilities to choose a Lot 2 vendor due to additional accounting reconciliations required.

c. Section 2.11 does not state whether the average base compensation rate is the same across all properties or if it is unique to each property. Can you please clarify?

d. It seems as though there is a plausible scenario in which a Lot 2 vendor could offer the same or lower price than one of the Lot 1 vendors and still the facility would be required to reimburse the delta between the Lot 2 vendor's price and the average base compensation rate. An example to illustrate this: The average base compensation rate is B (a number  $>A$  and less than C). If a Lot 2 Vendor bids a number D, which is less than C but greater than B, it seems as though the facility would be responsible for the delta between D and B. Please confirm if this scenario is feasible and would the Commission consider waiving additional charges to the facility if such a condition were to happen.

**A.294:**

**a. Yes.**

**b. Reconciliation is performed by the Commission and the Central System provider, not the Gaming Facility.**

**c. The rate will be calculated for each Gaming Facility's floor.**

**d. The reimbursement will be based upon the average of the entire Gaming Floor, not based on individual machine results.**

Q.295: In Question and Answer 78, it says that "Flexibility in pricing for Lot 2 and Lot 3 is afforded."

- a. Does that mean that minimum fee per days is allowed in Lot 2 but not in Lot 1?
- b. If not, what parameters does "flexibility" refer to?

**A.295:**

**a. While a percentage of New Machine Income is the preferred method of pricing for Lot 2 and Lot 3, a Lot 2 or Lot 3 Bidder may propose a minimum fee per day or other structure of their choice. However, in determining pricing structure, the Lot 2 and Lot 3 Bidder should take into consideration that the structure may impact a Gaming Facility's determination to select such Successful Bidder's product and the Gaming Facility must take financial responsibility for all costs resulting from an overage from the average base compensation rate as a result of the Successful Bidder's pricing structure.**

**b. Not applicable.**

Q.296: Question and Answer 76 refers to ticket printer paper cost. What is the average cost per machine per year?

**A.296: The Commission does not possess this data point.**

Q.297: Section 2.3: Will temporary license or full licensure be required for personnel that will be on site infrequently such as Project Managers and those personnel who will not be involved in any floor work/game and equipment touches?

**A.297: Key licensee applications will be considered for temporary license while the application is being assessed and processed. Technicians and persons that will need access, whether remote or physical, to New York VLTs will require a non-key gaming license. No temporary licenses are awarded or necessary for non-key gaming level licenses.**

Q.298: Section 2.33(I)(2)(c):

- a. Please provide additional guidance for "Any software" released to the Commission that is required to undergo application vulnerability scanning and penetration testing.

b. Does this include vulnerability scanning and penetration testing for all software (games, platforms, etc.) that are tested by an independent testing laboratory and sent to the Commission for approval?

**A.298:**

**a. The Commission requires a security review for all software provided by the Successful Bidder to meet contract requirements.**

**b. The Commission requires a security review as outlined in Section 2.33(I)(2). An independent testing laboratory will be required to perform the review, as specified.**

Q.299: Section 2.33(I)(2)(c):

a. Please provide additional guidance on “written documentation” of the results of vulnerability scans and penetration tests provided to the Commission software released to the Commission.

b. Is the Commission expecting these to be third party/independent reports, or will the Bidder’s internal testing reports be acceptable?

**A.299:**

**a. The Commission requires a written report detailing the means used to conduct the vulnerability scan and penetration test, what was tested, and the results. A mitigation plan must be included to remediate any issues found as a result. The requirements outlined in Section 2.33 (I)(2)(a)-(e) must be followed.**

**b. The Commission requires an and independent third-party to perform the security review.**

Q.300: Section 2.33(I)(2)(c): Bidder understands that downloads are not currently required.

a. In the case that a vendor chooses the option to download software through the central system, can the Commission provide additional guidance on the software download requirements for validation and security?

b. Specifically, can the vendor rely on existing central system protocol to provide that transfer, security, and validation of the software downloaded?

**A.300:**

**a. Any new software must be tested as outlined in Section 2.33 (I)(2)(a)-(e) prior to release.**

**b. Through testing as outlined in Section 2.33 (I)(2) must occur prior to reliance on an existing protocol.**

Q.301: Section 2.5(B): Will the Commission please specify the nature of the internal control audit that must be completed annually by an independent Certified Public Accountant firm? Typically, SSAE 18 audits are related to internal controls over information systems involved in financial reporting. Based on the nature of the services contemplated within the RFP, it is unclear what services are subject to the annual audit requirement, as the Successful Bidder will not be providing an information system involved in financial reporting.

**A.301: The Commission will review the standard required. The intent is to receive assurance that proper internal controls are in place to secure source code and code in development while in possession of the Successful Vendor.**

Q.302: Section 2.17(A)(3): Section 2.17(A)(3) provides that Liquidated Damages are assessable in instances in which the Contractor fails to fulfill its contractual obligations. Would the Commission please confirm that, to the extent that the Liquidated Damages result from the actions or omissions of third parties not under the direction and control of Contractor (e.g., items not accessible or maintained by Contractor, such as the cash box), then Liquidated Damages shall not be assessed in such instance.

**A.302: The Commission will not impose Liquidated Damages due to circumstance outside the control of the Successful Bidder.**

Q.303: Section 2.22: Would third parties who provide ancillary maintenance and support for various VLT components at licensed gaming facilities (e.g., signage repair, monitor repair, chair repair) be considered subcontractors?

**A.303: This would depend on the specific relationship with a Successful Bidder.**

**Part 3, Scope of Work**

Q.304: In response to Question and Answer 183, the Commission indicated that “Section 3.4(A)(2) applies to Qualified Suppliers.” However, there is no section numbered “3.4(A)(2)”. Can the Commission confirm that this answer referred to the

second (unnumbered) paragraph of Section 3.4(A)?

**A.304: Section 3.4(A)(2) applies to Qualified Suppliers.**

Q.305: Question and Answer 125 refers to page 53 of the RFP for the total allocation of VLTs.

a. Why is Monticello still being included in the numbers since it hasn't been active in more than a year?

b. Is there a plan for it to be re-opened or for those units to be re-allocated to other locations?

**A.305:**

**a. As noted in the footnote to the table in Section 3.0, Chapter 39 of the Laws of 2019 authorized the re-establishment of the Monticello Gaming Facility in Orange County. Should the owner of Monticello Raceway exercise the right authorized and relocate the facility in Orange County, the Lot 1 Successful Bidders would be required to provide product to this Gaming Facility and Lot 2 and Lot 3 would have the opportunity to be selected to provide product.**

**b. See answer to Question 305 a.**

Q.306:

a. When the Monticello Raceway Casino ceased operations in 2019, what happened to the approximately 1,000 machines that were located there?

b. Were they re-distributed to other properties for installation in new or expanded areas?

c. Were they returned to the vendors to enable the vendors to re-deploy those machines outside the VLT market?

d. Would the process utilized for Monticello's closure be the planned approach for a property becoming a commercial casino?

**A.306:**

**a. The VLTs remained the property of the game vendors. It is our understanding that some were placed in other State-based locations and some were retained by the relevant game vendor.**

**b. See answer to Question 306 a.**

**c. See answer to Question 306 a.**

**d. The Commission does not understand the question posed.**

Q.307: Section 3.1(C): Please confirm if the ETG allotment is separate from VLT allotment.

**A.307: Except for within the exclusivity zone of the Seneca Nation of Indians where ETG are not permitted, utilization of ETGs as part of the allocation is at the discretion of the Gaming Facility. Gaming Facilities are expected to allocate the distribution between standard device VLTs and ETG to maximize performance of the gaming floor.**

Q.308: Section 3.2(C):

a. In answer to Question and Answer 19, the Commission stated that, if a location closes, whether temporarily or permanently, for any reason, no further fees would accrue. This is inconsistent with Section 3.2(C), which provides that Bidders may specify a minimum duration that a machine must remain in service on the gaming floor once placed into service, and there is a fee schedule that the licensed gaming facility shall be solely responsible for if the machine is removed from service prior to the minimum time required and is inconsistent with the Commission's answers to Question and Answer 156, 158 and 159, which confirm that the Term of Placement fee is payable on both VLTs and ETGs if the Gaming Facility converts to a commercial casino. Would the Commission please confirm who (the Commission or the Gaming Facility) is responsible for the Term of Placement fee payable upon conversion of a Gaming Facility to a commercial casino, as well as upon permanent closures of a Gaming Facility for other reasons?

b. We also understand that the Term of Placement fee will not be triggered due to a temporary closure due to weather, act of God or a force majeure event. Will the Commission please add back the period of time of temporary closure due to such events once the venue re-opens?

c. If the number of VLTs on the floor at a Gaming Facility is reduced (e.g., due to a reduction in floor space), will the reduction be equitably borne by the Primary and Qualified Suppliers?

**A.308:**

**a. The Gaming Facility is solely responsible for payment of this fee in**

**applicable circumstances.**

**b. The Commission may grant an extension for a prolonged event, provided, however, no extension may cause an extension beyond the term of the contract under this RFP.**

**c. Identification of machines to be removed due to a reduction in the gaming floor shall be at the discretion of the Gaming Facility.**

Q.309: Question and Answer 153 and 156: In Section 3.2 C, with regards to the new Terms of Placement, it states: "The licensed Video Lottery Gaming Facility shall be solely responsible for this fee, if the facility, at its discretion, removes the machine prior to the minimum time." The Commission confirmed that the Gaming Facility is responsible for this fee if the Facility converts over to a commercial facility.

a. Would the Commission please clarify how this process will work?

b. Would the Commission also please clarify in what instances the Commission itself would be responsible for this fee?

**A.309:**

**a. The Successful Bidder shall obtain written acknowledgement from the Gaming Facility of their financial responsibility to pay such fee prior to delivery of the product to the Gaming Facility. The Successful Bidder may negotiate terms of fee payment in that acknowledgement.**

**b. Under no circumstances shall the Commission be responsible for the fee.**

Q.310: Section 3.5: Who is responsible for installing player tracking equipment installation?

**A.310: This remains the responsibility of the Gaming Facility.**

Q.311: Section 3.5(C): Question and Answer 185 declares the Commission will not be making request for "specific variations or pay tables". Can the requirement be amended to reflect this please?

Q.185: Section 3.5(C): If the Commission requests the introduction of specific variations or pay tables, how will the supplier be compensated for the development and implementation process?

**A.185: The Commission will not be making such requests**

**A.311: This is unnecessary as by terms of the RFP all Answers to Questions**

**posed are incorporated as part of the RFP.**

Q.312: Section 3.5(C): If the Commission requests the introduction of specific variations or pay tables, how will the supplier be compensated for the development and implementation process?

**A.312: The Commission will not be making such a request.**

Q.313: Section 3.5(C):

- a. Will the Commission be requiring the introduction of new games?
- b. If so, how will the supplier be compensated for the development and implementation process?
- c. If not, can this requirement be amended please?

**A.313:**

**a. No, the introduction of new games is a likely expectation of the Gaming Facility, so their facility can remain competitive in the general gaming market.**

**b. Product development is the responsibility of a Successful Bidder.**

**c. No.**

Q.314: Section 3.5(D)(2): Question and Answer 190 seems to imply that progressive and non-progressive games are not interdependent. What is the intent of this question, or if it no longer applies, can the requirement be amended to remove this please?

Q.190: Section 3.5(D)(2): It's not expected that progressive games interplay with non-progressive games - can this section be expanded further as we are not clear on the intent?

**A.190: The progressive and non-progressive games are not interdependent. Individual game codes would be contained in the XLDF.**

**A.314: The Commission seeks an understanding whether a Bidder will offer identical themes that contribute to progressive play and allow non-progressive game play.**

Q.315: Section 3.6: This appears to be a Central System requirement. How should Qualified Suppliers (VLT) bidders respond to this requirement?

**A.315: See answer to Question 199.**

Q.316: Section 3.6(D): Please confirm if Question and Answer 194 applies to the requirement in Section 3.6(D).

Q.194: Section 3.6: Are physical stickers required on each VLT or embedded in the software?

**A.194: For VLTs, this information is embedded in the software. For ETG's, with the exception of Blackjack, physical stickers are required.**

**A.316: Yes.**

Q.317: Section 3.6(R): Question and Answer 221 declares download support not current required.

- a. Can the requirement in Section 3.6(R) be amended to reflect this please?
- b. If not, how should a Bidder respond to Section 3.6(R)?

**A.317:**

a. No.

**b. As the Commission indicated in Question and Answer 222, software downloads are not required; however, software downloads such as images and algorithm files are available as an option to game vendors through the Central System. As such the course of action rests with the Bidder.**

Q.318: Section 3.6(R): Question and Answer 224 declares credit balance transfer support not current required and will be phased in over time.

- a. Can the requirement in Section 3.6(R) be amended to reflect this please?
- b. If not, how should a bidder respond to Section 3.6(R)?

**A.318: This is unnecessary as by terms of the RFP all Answers to Questions posed are incorporated as part of the RFP.**

Q.319: Section 3.6(AA): Please clarify this requirement. The Everi Central System Protocol specifies that a progressive award can only be paid to the credit meter if a non-limited voucher response, and the Central System specifies the exact amount awarded to maintain the session balance.

**A.319: Correct, a progressive award can only be paid to the credit meter if it is a non-limited voucher response and the Central System has verified**

**the exact amount.**

Q.320: Section 3.6(HH): This appears to be a Central System requirement, as the host Management Terminal allows for remote commands to be sent to the VLT. How should VLT bidders respond to this requirement?

**A.320: To clarify, only the Central System is authorized to communicate with VLTs. No outside sources are permitted without the Commission's written approval.**

Q.321: Please refer to Section 3.6(HH)(1). This appears to be a Central System requirement, as the host Management Terminal allows for remote commands to be sent to the VLT as part of the Everi Interface Control Document. How should a VLT bidder address this?

Q.199: Section 3.6: This appears to be a Central System requirement, as the host Management Terminal allows for remote commands to be sent to the VLT - how should potential Suppliers answer this?

**A.199: The Commission does not understand the question and requests a pinpoint citation within Section 3.6.**

**A.321: See answer to Question 320.**

Q.322: Section 3.6(NN): Please clarify or amend. Some of the sections in this requirement seem to conflict with the Central System protocol document. For example, the information that goes on the ticket comes via text fields in a message from the Central System, and these field values are not generated or controlled by the VLT software. In cases where the requirement here conflicts with the protocol, the VLT must obey the protocol, and cannot change field values to satisfy the requirement. As an example, the requirement states "b. Time of day the ticket was printed in twenty-four (24) hour format reflecting hours and minutes;", however VLTs tickets are printed with 12hr format as this is in the message from the central system. Furthermore, there is no mechanism for the VLT to "provide the same data to the Central System for each redemption ticket printed", as all this information comes from the central system, and the VLT simply sends a message to the central system indicating a voucher was printed, which only includes the barcode.

In order to expedite the RFP review, can a Supplier respond "the VLT complies with the Central system voucher specifications", as otherwise a supplier must submit an answer in conflict with these requirements?

**A.322: Confirmed. For VLTs, devices should use all information provided from the Central System.**

Q.323: Section 3.6(NN)(3): Please clarify the intent. The host system controls the

validation of vouchers - the VLT passes up the barcode and the host controls redemption or rejection. How should a VLT Supplier answer this requirement?

**A.323: Subparagraph 3 of Section 3.6(NN) provides:**

3. Validation. A Commission-approved system shall be used to validate the redemption ticket. Ticket information recorded by the Central System shall be retained for at least as long as the ticket is valid at that location, or as otherwise required by the Commission.

**This subparagraph does not apply to VLTs and may be disregarded. A Bidder may make reference to this answer in response.**

Q.324: Section 3.6(W): Question and Answer 202 b. implies this section does not apply to an ETG device. If so, can the requirement be amended to reflect this please?

Q.202: Section 3.6: There is no specific notification in the Everi Interface Control Document for when a threshold amount is won, as the Central System draws the prize amount, and sends a limited voucher response to the VLT.

- a. Please clarify the intent of this statement "or a threshold amount has been won".
- b. Does this apply to ETG devices only?

**A.202:**

- a. **Tower Lights should illuminate if a VLT is locked due to a threshold win requiring attendant service.**
- b. **No**

**A.324: To reiterate the answer to Question 202 b., Tower Lights are unnecessary on ETGs. It is unnecessary to amend the RFP to reflect this answer as, by terms of the RFP, all Answers to Questions posed are incorporated as part of the RFP.**

**Part 5, Evaluation and Selection**

Q.325: Section 5.5(B): Please clarify - does this only apply to a successful Lot 1 Bidder - for example, if a Lot 1 Bidder submits a low price, but is not awarded Lot 1, will their bid price affect the scoring of successful Lot 1 Bidders?

**A.325: All Lot 1 bids will be used to score the Pricing Evaluation. Awards to Successful Bidders are made at the conclusion of scoring.**

Q.326: Section 5.5(B): Please clarify.

- a. Does this only apply to a successful Lot 1 Bidder?
- b. If a non-Lot 1 Bidder submits the lowest bid price, will that affect Lot 1 Bidder scores?

**A.326:**

- a. The Pricing Evaluation is applicable to Lot 1 only.**
- b. Pricing submitted in Lots 2 and 3 are not relevant to Lot 1 scoring.**

Q.327: Section 5.5(B):

- a. Please clarify the definition of Price.
- b. Where are estimated net revenues derived from?

**A.327:**

- a. Price is the percentage of Net Machine Income submitted by the Bidder on the Pricing Proposal multiplied by the estimated annual Net Machine Income.**
- b. Twenty-five (25) percent of the Estimated Net Machine income for the first twelve (12) months of the contract period. The same Net Machine Income will be applied to each Bidder.**

**Appendix E, New York State Vendor Responsibility Questionnaire**

Q.328: In the Vendor Questionnaire bidders are asked to disclose any “formal unsatisfactory performance assessment(s) from any government entity on any contract.” Can you please define what is meant by an “unsatisfactory performance assessment?”

It is very common for gaming manufacturers and suppliers to work with their customers to remedy any warranty claims or initial dissatisfaction with products and, to fully and accurately answer Question 8.0 of the Vendor Questionnaire, we require further guidance.

**A.328: A formal unsatisfactory performance assessment could include written notices such as agency complaints, reports of contract deviation, poor contract performance, disputes concerning Bidder’s failure to provide commodities or services, written evaluations or surveys (exit or**

**otherwise) indicating poor performance, or other formal assessments.**

Q.329: Please confirm that the disclosure of “formal unsatisfactory performance assessments from any government entity on any contract” does not include product warranty claims.

**A.329: A formal unsatisfactory performance assessment could include complaints arising out of the Bidder’s failure to properly pursue or handle product warranty claims, or a product warranty claim, itself, if the Bidder is responsible for the product warranted.**

### **Appendix J, EEO and M/WBE Program**

Q.330: A Bidder is required to show "good faith effort" to meet M/WBE and SDVOB goals.

- a. If a Bidder does not intend to utilize any subcontractors, would Bidder's qualification as a WBE satisfy the "good faith effort" threshold?
- b. How does a Bidder show "good faith effort" if no subcontractors are utilized?

**A.330:**

**a. Once M/WBE and SDVOB goals have been assigned to a contract, a contractor-requested goal reduction in the M/WBE and/or the SDVOB goal must be made on a waiver request form and provide a narrative explanation. Upon receipt of the request, the Commission will assess the contractor’s expressed Good Faith Efforts in trying to meet the original goal.**

**b. Good Faith Efforts are actions all contractors must demonstrate via appropriate documentation to illustrate they have performed their due diligence to solicit M/WBE and SDVOB participation in support of their MWBE and SDVOB contract goals. See 5 NYCRR § 142.8.**

### **Appendix S, Video Lottery Gaming Application for Agent/Vendor**

Q.331: In response to Question and Answer 21: Please clarify if this request is applicable to Lot 2 Bidders, since the request would encompass virtually every contract we have ... including almost every sales agreement with our other customers, every executive/senior director employment agreement, a vast majority of our vendor/supplier agreements, and all of our professional services agreements, etc. Compounding this is the fact that many of these agreements have confidentiality provisions in them which prohibit such disclosure to 3rd parties.

How should we respond in light of the above?

A.331: Question and Answer 21 has been replicated in full below:

Q.21:

a. Please confirm that two or more Successful Bidders and Central System provider are not prohibited from jointly contracting, jointly providing or agreeing to provide on behalf of one another, maintenance to video lottery gaming facilities as required pursuant to the RFP and such arrangements shall not violate the anti-collusion provisions of the RFP.

b. Please confirm that conversations with the central system provider and other bidders are permitted during the response period in order to form a response to maintenance questions.

A.21:

a. Confirmed, such will not violate the anti-collusion provisions of the RFP.

b. Confirmed, such will not violate the anti-collusion provisions of the RFP.

**The Commission does not understand the question posed as it appears unrelated to Question and Answer 21.**

Q.332: In response to Question and Answer 33: Could the Commission confirm if this item is applicable for a Lot 2 Bidder, or only for the facilities operator?

A.332: Question and Answer 33 has been replicated in full below:

Q.33: It is common for vendor to market its products to key customers months in advance of launch and to solicit feedback and recommendations from customers on what products will be most desired. Are there any rules that would prohibit the vendor from making such marketing presentations to the properties who would likely be interested in our products?

**A.33: A Bidder may have conversations with Gaming Facilities regarding potential products and the interests of the Gaming Facilities. However, a Successful Bidder shall not discuss any terms or requirements of the RFP or make any representation of an ability to supply a product before receipt of an award as a Successful Bidder.**

**The Commission does not understand the question posed as it appears unrelated to Question and Answer 33.**

Q.333: Appendix S, at Question 33 a., requests “A certified copy of the applicant’s license to engage in pari-mutuel wagering activities issued by the New York State Gaming Commission”.

a. Could the Commission clarify what license this is and the process to obtain it?

b. Can a Bidder submit an application for this license during the bidding process, or only after an award is made?

**A.333: This question applies to applicants for Video Lottery Gaming Agent licensure and is not applicable to Bidders under this RFP. This license is not necessary to respond to the RFP.**

###