



REQUEST

FOR

PROPOSALS

FOR

**Development and Operation of a Video Lottery
Facility at Aqueduct Racetrack**

May 11, 2010

PART 1 – GENERAL INFORMATION

1.1 INTRODUCTION

The New York State Division of Lottery (the “Lottery”), on behalf of the State of New York, is issuing this Request for Proposals (“RFP”) to solicit Proposals from Vendors seeking the award of a Video Lottery License to develop and operate a Video Lottery Facility at Aqueduct Racetrack (“Aqueduct”) in the Borough of Queens in the City of New York (“Video Lottery Facility”).

The Lottery is the only office authorized to clarify, modify, amend, alter or withdraw the provisions of this RFP. Every Vendor responding to this RFP must include in its Proposal a signed Memorandum of Understanding (“MOU”), Assignment and Assumption of Facilities Ground Lease (“Ground Lease”), and Sublease in the forms attached as **Exhibits A, B and C** to this RFP. The Lottery will select one Vendor from among the respondents submitting Proposals and recommend that the State accept that Vendor’s Proposal. This RFP has been approved in advance by the Governor. The Governor intends to accept the Lottery’s recommendation of a selected Vendor and to recommend that the Temporary President of the Senate and the Speaker of the Assembly join in approving the Lottery’s recommendation. Upon unanimous approval by the Governor, the Temporary President of the Senate and the Speaker of the Assembly, the MOU submitted by the selected Vendor will be signed by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly. The contents of this RFP, any modifications to this RFP, and the Vendor’s Proposal will all be incorporated into the approved MOU as contractual provisions binding on the State and the selected Vendor.

1.2 BACKGROUND INFORMATION

New York’s video lottery program is administered and operated by the Lottery in accordance with section 9 of Article 1 of the New York State Constitution, which permits only lotteries operated by the State, and pursuant to sections 1612 and 1617-A of the New York State Lottery for Education Law (Tax Law Article 34), which authorize the Lottery to license video lottery agents to assist in the operation of video lottery gaming in video lottery facilities located at designated racetracks.

All video lottery games are strictly controlled by the Lottery. Video lottery terminals approved and provided by the Lottery are connected to a centralized control system operated by the Lottery. Games offered on video lottery terminals remain the property of and are maintained by licensed vendors under contracts with the Lottery. Licensed video lottery agents are entitled to a fee determined by a percentage of video lottery revenues and are permitted to carry out only the duties authorized by the Lottery, which are generally limited to the construction and operation of a video lottery facility, the collection of video lottery revenues on behalf of the Lottery, the payment of lottery prizes and the redemption of video lottery vouchers, and other customer service activities. This RFP is intended to

enable the State to select a video lottery agent to carry out those duties at the Aqueduct Video Lottery Facility.

Licensed video lottery agents are subject to all rules and regulations adopted by the Lottery pursuant to Section 1617-a of the Tax Law, including, without limitation, regulations related to licensing of employees, hours of operation, and compliance with applicable labor laws. Licensed video lottery agents must follow the instructions of the Lottery, including, but not limited to, Video Lottery Gaming Bulletins, Operation Procedures, and Minimum Internal Control Standards, which are attached as **Exhibit E**.

Pursuant to subdivision (e) of Section 1612 of the Tax Law, the Governor and Legislative leaders have decided to seek Proposals from experienced gaming operators and developers (“Vendor” or “Vendors”) to serve as a licensed video lottery agent for the development and operation of a Video Lottery Facility at Aqueduct Racetrack in the Borough of Queens in the City of New York.

The MOU attached to this RFP must be completed, signed, and submitted as part of any Proposal submitted in response to this RFP. The upfront licensing fee specified in the selected Vendor’s Proposal must be paid to the State without conditions within ten (10) business days after the signed MOU included in the Vendor’s Proposal is approved, signed and delivered to the Vendor by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly.

This RFP requires a minimum upfront licensing fee of \$300 million. Each Vendor responding to this RFP must specify in its Proposal the amount the Vendor offers to pay as an upfront licensing fee, which may be greater than the required minimum, and the amount offered by each Vendor will be evaluated on a competitive basis as part of the overall evaluation of competing Proposals. By way of example, but not as a requirement, Vendors should be aware that previous offers of an upfront licensing fee for the Aqueduct Video Lottery Facility have ranged as high as \$370 million.

Each Vendor intending to compete for selection as the developer and operator of the Aqueduct Video Lottery Facility must pay a \$1 million entry fee to enter the competition. The entry fee will be payable, and may be refunded, as explained in section 1.4 of this RFP.

As detailed in the MOU, the structure of the transaction will be as follows: Upon selection of the winning Vendor, the State will accept the Vendor’s offer by signing the MOU included in the Vendor’s Proposal, and the winning Vendor will pay the nonrefundable upfront licensing fee to the State. The New York State Urban Development Corporation d/b/a the Empire State Development Corporation (ESDC) will issue personal income tax bonds in the amount of \$250 million plus issuance costs. The \$250 million net proceeds of such bonds shall fund a \$250

million capital construction grant to be disbursed by ESDC to the winning Vendor to pay eligible capital construction costs actually incurred by the Vendor for construction of the Aqueduct Video Lottery Facility, except that the Capital Construction Grant may be reduced by the amount(s) approved by the New York State Franchise Oversight Board as advance payments to NYRA to enable NYRA to maintain racing operations until such time as Video Lottery revenues become available to NYRA pursuant to Tax Law Section 1612 (b)(3).

1.3 MINIMUM QUALIFICATIONS & PRE-QUALIFICATION REVIEW

Licensing: Through the Lottery, the State will conduct a pre-qualification review of all Vendors that respond to this RFP. The purpose of the review will be to determine whether each potential Vendor, including any associated entities and principal and key individuals, meets the Lottery's standards for a Video Lottery License. The review will concentrate on the skills, experience and financial resources each entity proposes to employ at the Aqueduct Video Lottery facility, as well as the reputation of each entity and individual for honesty and integrity. The review also will give due consideration to evidence of any violation of the Labor Law or Workers' Compensation Law. As a condition of a Video Lottery License, the Vendor that is awarded a license shall agree to abide by all applicable laws and regulations. A completed Video Lottery License application must be included in each Proposal for each entity and individual a Vendor proposes to include in the equity financing, development, and operation of the Aqueduct Video Lottery Facility.

Blank license application forms are available on the Lottery's website at http://nylottery.org/ny/nyStore/cgi-bin/ProdSubEV_Cat_350_NavRoot_304.htm?

For licensing purposes, this RFP requires each Proposal to include a completed video lottery license application for every principal, key individual or direct investor. Since potential bidder consortiums may be comprised of different types of investors and investment vehicles, applications are required according to the following guidelines:

- Any individual with a direct personal investment in the consortium;
- For a publicly traded company, every individual or entity with beneficial ownership of more than 5% of the company's common, preferred or convertible stock, and every officer and member of the Board of Directors;
- For a privately held company, any entity or individual with beneficial ownership of more than 1% of the company;
- For a private equity or similar investment firm, every principal, key manager, officer, partner, general partner, limited partner and/or member of the boards of the firm itself. Also, within the firm's specific fund making the investment in the overall bidder consortium, any individual or entity with an investment that comprises more than 1% of the invested capital of that fund;

- Debt financing obtained from a publicly regulated bank will not require licensing of the bank.

A passive investor who is a minor with 5% or less of the beneficial ownership of a company's common, preferred or convertible stock is not required to submit a completed video lottery license application as part of a Proposal, but after initial review of the Proposal the Lottery may require the submission of a license application by such minor or the minor's trustee or other representative. **The Lottery reserves the right to require the submission of additional license applications from any entity or individual related to a Vendor, beyond these guidelines, after the submission of a Proposal.**

A Vendor may be excused from the requirement of filing a video lottery license application for any entity or individual by (i) showing that such individual or entity previously submitted a video lottery license application to the Lottery less than one (1) year before the submission of the Vendor's Proposal in response to this RFP, and (ii) submitting such additional information as may be necessary to bring the previously filed application up to date.

Gaming Experience: A proposer (or a joint proposer) must have experience operating a gaming facility with Video Lottery Terminals or slot machines.

1.4 ENTRY FEE

To help defray the State's expenses in evaluating and selecting a video lottery agent for the Aqueduct Video Lottery Facility, each Vendor must pay an entry fee in the amount of \$1 million to attend the mandatory bidders conference described in section 1.11 of this RFP. The entry fee must be submitted at least five (5) business days before the date of the mandatory bidders conference to the Contracting Officer identified in section 1.8 of this RFP. This fee will only be refunded to a Vendor if that Vendor does not submit a Proposal in response to this RFP or if that Vendor is not selected to develop and operate the Aqueduct Video Lottery Facility as a result of this RFP.

The entry fee shall be paid by electronic funds transfer to an account designated by the Lottery. Transfer instructions will be made available by the Contracting Officer or Finance Officer identified in section 1.8 of this RFP.

1.5 SCHEDULE

The following dates are established for informational and planning purposes. The Lottery reserves the right to change any of the dates.

RFP Issued	May 11, 2010
First Vendors' Questions Due – 4:00 pm	May 18, 2010
Lottery Responses to First Questions	May 25, 2010

Entry Fee Due	June 1, 2010
Mandatory Bidders Conference – 12 noon	June 8, 2010
Second Vendors' Questions Due - 4:00 pm	June 15, 2010
Lottery Responses to Second Questions	June 22, 2010
Vendor Proposals Due - 4:00 pm	June 29, 2010
Apparent Winning Proposal Announced	August 3, 2010

1.6 VENDOR/CONTRACTOR DIFFERENTIATION

Throughout this RFP the terms "vendor," "proposer," "bidder," and "offerer" may be used interchangeably in reference to the preparation and submission of the Proposal and any requirements preceding the award of a Video Lottery license. In describing post-license award requirements, an effort is made to use the terms "Agent" or "Licensee."

1.7 HEADINGS

The headings used in this RFP are for convenience only and shall not affect the interpretation of any of the provisions hereof.

1.8 PERMISSIBLE CONTACTS

Consistent with the public policy established by the Procurement Lobbying Law, described below, the Contracting Officer, Finance Officer and Licensing unit designated below are the only points of contact with regard to all matters relating to the services described in this RFP, unless additional points of contact are designated by the Contracting or Finance Officer or the Licensing Unit.

ALL VENDORS RESPONDING TO THIS RFP AND ALL COMMUNICATIONS CONCERNING THIS COMPETITION MUST BE ADDRESSED IN WRITING TO THE CONTRACTING OFFICER OR FINANCE OFFICER IDENTIFIED BELOW, EXCEPT FOR LICENSING RELATED COMMUNICATIONS WHICH MUST BE ADDRESSED IN WRITING TO THE LICENSING UNIT IDENTIFIED BELOW:

New York State Division of Lottery
 Finance Office
 One Broadway Center
 Schenectady, NY 12305

Gail P. Thorpe, Contracting Officer
gthorpe@lottery.state.ny.us
 (518) 388-3329

or

Deborah L. Martino, Finance Officer
dmartino@lottery.state.ny.us
 (518) 388-3325

or

Licensing Unit
videogaminglicensing@lottery.state.ny.us
(518) 388-3470

1.9 PROCUREMENT LOBBYING RESTRICTIONS

Pursuant to New York State Finance Law Sections 139-j and 139-k, this RFP includes and imposes certain restrictions on communications between the Lottery and a proposer during the procurement process. A proposer is restricted from making contacts from the issuance of this RFP through the resulting selection by the Lottery and the approval of the Lottery's recommendation by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly ("restricted period") to other than designated staff members unless the contact is permitted by the statutory exceptions set forth in New York State Finance Law Section 139-j (3) (a). Designated staff members are identified in Section 1.8 of this RFP. Lottery employees are required to obtain certain information when contacted during the "restricted period" and to make a determination of the responsibility of the proposer/bidder pursuant to Sections 139-j and 139-k. A violation can result in a determination of non-responsibility, which can result in disqualification for selection. In the event of two determinations of non-responsibility within a four-year period, an offeror will be debarred for a period of four years from obtaining a governmental procurement contract award. Further information about these requirements can be found at:

<http://www.ogs.state.ny.us/aboutOgs/regulations/defaultAdvisoryCouncil.html>.

The Lottery reserves the right to suspend or revoke any license in the event that the Lottery determines that the certification filed by the proposer in accordance with New York State Finance Law 139-k was intentionally false or intentionally incomplete. Upon such determination, the Lottery may exercise its suspension or revocation authority by providing written notification to the proposer in accordance with 21 NYCRR 2836-15.

The BIDDER DISCLOSURE/CERTIFICATION FORM, included with this RFP as Appendix B, must be completed and submitted with the Proposal.

1.10 RESTRICTIONS ON COMMUNICATIONS WITH LOTTERY STAFF

Questions or comments concerning this procurement must be addressed in writing to the Contracting or Finance Officer or the Licensing Unit, as directed below and as provided in Section 1.8 of this RFP. Lottery employees are permitted to communicate with Vendors concerning this RFP only under circumstances described in the New York State Procurement Lobbying Law. Any Vendor causing or attempting to cause a violation or circumvention of these requirements may be

disqualified from further consideration for selection. Inquiries related to eligibility for a Video Lottery License or submission of licensing applications or other required information must be addressed to the Lottery's Licensing Unit in writing and shall not be considered a violation of the communication restrictions.

1.11 MANDATORY BIDDERS CONFERENCE

A mandatory bidders conference will be held at the Aqueduct Racetrack on June 8, 2010 at 12 noon, Eastern Time. To attend the bidders conference, a Vendor must have already paid the \$1 million entry fee as required by section 1.4 of this RFP. Proposals will only be accepted from Vendors who attend the mandatory bidders conference.

1.12 QUESTIONS AND INQUIRIES

Questions from Vendors regarding this RFP must be submitted in writing. Questions may be delivered by e-mail, United States Postal Service, courier, or in person and must be delivered to the Contracting or Finance Officer no later than the date and time specified in section 1.5 of this RFP. **Neither faxed questions nor telephone questions are acceptable.** Written responses to all questions will be provided to all prospective bidders. Since the Lottery expects to use email to respond to questions, Vendors must include with their questions an email address to which responses can be directed.

Vendors are cautioned that an RFP inquiry shall be written in generic terms and must not contain information indicating the amount of the upfront licensing fee or other financial considerations a Vendor intends to offer. The inclusion of specific financial considerations in an inquiry may result in the Vendor's disqualification from further consideration.

Any changes to the RFP resulting from such questions will be communicated via published addenda, which will be posted on the Lottery's website (www.nylottery.org) and sent to every Vendor that attends the mandatory bidders conference. Written acknowledgement of all addenda issued prior to the Proposal due date shall become part of the Vendor's Proposal reply. A form for such acknowledgement will be provided with each addendum; such form is incorporated into this RFP as **Attachment 1**.

1.13 NON-COLLUSIVE BIDDING REQUIREMENT

In accordance with Section 139-d of the New York State Finance Law, each Vendor must warrant, under penalty of perjury, that its Proposal was arrived at independently and without collusion aimed at restricting competition. Each Vendor further warrants that, at the time the Vendor submitted its Proposal, an authorized and responsible person executed and delivered to the Lottery a Non-Collusive Bidding Certification on the Vendor's behalf.

The Non-Collusive Bidding Certification Form, included in this RFP as Appendix C, must be completed and submitted with the Proposal.

1.14 FREEDOM OF INFORMATION LAW (FOIL)

During the evaluation process, the content of each Proposal will be held in confidence and details of any Proposal will not be revealed (except as may be required under the New York State Freedom of Information Law or other law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause substantial injury to the competitive position of a commercial enterprise. This exception applies both during and after the evaluation process. **If you believe your Proposal contains any such trade secrets or other confidential or proprietary information, you must submit a request with your Proposal to exempt such information from disclosure.** Such request must be in writing, must state the reasons why the information should be exempted from public disclosure and must be provided at the time of submission of the subject information. Requests for exemption of the entire contents of a Proposal from disclosure have generally not been found meritorious and are discouraged. Please limit any requests for exemption of information from disclosure to bona fide trade secrets or specific information, the disclosure of which would cause a substantial injury to the competitive position of your firm. **The amount of the upfront licensing fee or other financial considerations offered in the Proposal may not be designated as proprietary or confidential.**

A separate document, which identifies the proprietary portions of the Proposal must accompany the Technical Proposal.

1.15 PROPOSALS

Vendors must submit a complete Proposal as described below. A Proposal that does not comply with these requirements may be deemed non-responsive. The Proposal must be separated into two (2) volumes as defined below in Item D – Proposal Format.

A. Form of Proposals:

The Proposal must be prepared on 8-1/2" x 11" paper stock and appropriate electronic medium. The preferred electronic medium is a data CD or DVD, with the Proposal content in a searchable Microsoft Word format.

B. Proposal Contents:

Each Vendor is expected to provide the Lottery with information, evidence and demonstrations that will make possible a license award that best serves the interests of the State.

There is no limit on the number of pages; however, Vendors should prepare their Proposals simply and economically, providing a straightforward and concise description of their abilities to satisfy the requirements of this RFP. Proposals that are of excessive length, or contain a preponderance of boilerplate text, are discouraged. Special bindings, colored displays, promotional material, etc., will receive no additional evaluation credit. Emphasis in each Proposal should be on completeness and clarity of content.

Failure by a Vendor to provide the appropriate information or materials in response to each stated requirement or request for information may result in lower scores in the competitive evaluation or in a determination that a Proposal is non-responsive. Responses to complex RFP requirements that are stated in a form semantically equivalent to "Vendor agrees to comply" may be rejected for non-responsiveness at the discretion of the Lottery.

C. Material Deviations:

Material requirements of this RFP are those designated as mandatory, without which an adequate analysis and comparison of Proposals is impossible, or those that affect the competitiveness of Proposals, or the costs to the Lottery.

Proposals that do not meet all material requirements of this RFP or that fail to provide all required and mandatory information, documents, or supporting materials, or include language that is conditional or contrary to terms, conditions, and requirements, may be rejected as non-responsive.

The Lottery, in its sole discretion, reserves the right to determine whether a Proposal meets the material requirements of the RFP.

D. Proposal Format:

Each Vendor must submit a complete Technical and Financial Proposal in the format described below and in response to the requirements described in Part 3 – Scope of Work and Deliverables and Part 4 – Information Required from Vendors - Proposal.

The Proposal must be submitted in two (2) separate (Technical and Financial) volumes as defined below, and both the technical Proposal and the financial Proposal must be signed by an official authorized to bind the

Vendor to its provisions and must include a statement as to the period during which the entire Proposal remains valid. This period must be at least 180 days from the due date for responses to this RFP.

Volume I – Technical Proposal:

The Technical Proposal shall include descriptive and technical matter only and must be appropriately labeled on the outside of the enclosure with the Vendor's name and address and the word "Aqueduct."

Each section of the Proposal must be clearly identified with appropriate headings, and responses should be separated by tabs in the order specified below. Ensure that each Proposal is complete, including signatures and attachments as required throughout this RFP.

One original and eight copies of the Technical Proposal must be delivered to the Lottery's Contracting Officer. In addition, one electronic version of the Technical Proposal must be submitted on CD or DVD using a Microsoft Word or PDF file. **The electronic version must include all Proposal sections within a single file to facilitate searches for terms across the breadth of the Proposal. If there are any differences between the hard copy and electronic versions of the Technical Proposal, the hard copy version will be given priority.**

The contents of the technical volume must follow this outline, employing divider pages with tabs to separate the response sections:

1. Transmittal Letter: The transmittal letter shall contain names, addresses, and telephone numbers of individuals who are authorized by the Vendor to address matters related to the Proposal including, but not limited to, contractual, technical, site visit, and background investigation issues.
2. Acknowledgement of all RFP addenda in the form provided in **Attachment 1**.
3. A statement confirming that the Entry Fee was paid prior to the mandatory bidders conference (see section 1.4) and that the Vendor attended the mandatory bidders conference (see section 1.11).
4. Disclosure of Litigation and Other Information (see Section 1.19).
5. Response to specifications and in the order specified in Part 4 – Information Required from Vendors - Proposal, including technical documentation as appendices if necessary.

6. Designation of proprietary information in the form described in Section 1.14 of this RFP.
7. One original completed set of video lottery license applications (see section 1.3) must be included in the original Proposal. License applications need not be included in the copies of the Proposal.
8. Submission of certifications and representations as required by this RFP. To assist Vendors in completion and submittal of the required forms, a Document Submittal Checklist is incorporated into this RFP as **Attachment 3**. A completed Checklist must be included with the Vendor's Technical Proposal.

Volume II – Financial Proposal (Licensing Fee):

The Financial Proposal must be prepared in the form specified in **Attachment 2** of this RFP. In the Financial Proposal, each Vendor must specify the amount that the Vendor will pay to the State of New York as an upfront licensing fee. If the Vendor is awarded a license, the licensing fee is due within ten (10) business days after the MOU is signed and delivered to the Vendor by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly and shall not be subject to any conditions.

One original and one copy of the Financial Proposal must be submitted to the Lottery's Contracting Officer. One copy of the Financial Proposal in the form of a CD or DVD, or other approved electronic media, must also be provided. **If there are any differences between the hard copy and electronic versions of the Financial Proposal, the hard copy version will be given priority.**

The contents of the Financial Proposal volume must follow this outline:

1. Signed Transmittal letter.
2. The proposed licensing fee in the format prescribed as **Attachment 2** of this RFP.

E. Proposal Submission:

Both the Technical and the Financial Proposals must be submitted to the Lottery as described below, and be received by the date and time specified in Section 1.5 - Schedule. Originals should be clearly marked so as to differentiate from the copies.

VENDORS ARE RESPONSIBLE FOR ASSURING THAT THE FOLLOWING IDENTIFYING INFORMATION APPEARS ON THE OUTSIDE OF EACH ENVELOPE:

“Sealed Proposal” label, “Technical Proposal,” “Financial Proposal,” as applicable, the word “Aqueduct,” company or organization name, due date and time. If a delivery service is used which prohibits such markings on the envelope or package, this information must be placed on the outside of an interior envelope or package.

The Finance Office address for Proposals submitted by contract carrier, courier delivery, personal delivery or by United States Postal Service is:

Gail P. Thorpe, Contracting Officer
New York State Division of the Lottery
Finance Office
One Broadway Center
Schenectady, NY 12305

Fax or e-mail submissions are not acceptable and will not be considered.

F. Proposal Receipt and Opening:

If Proposals are to be delivered by a method other than United States Postal Service, the bidder should contact the Contracting or Finance Officer prior to delivery to assure proper receipt of the Proposal. If hand delivered, the Lottery will provide a time stamped receipt indicating when the Proposal was received at the Lottery Finance Office at One Broadway Center. This will be the official time of receipt. If delivered by other than hand delivery, the Lottery will send an e-mail to confirm receipt of a Proposal.

Upon receipt of the Proposal, the Financial Proposal will be secured by the Lottery’s Internal Auditor and will not be opened until after the Technical Evaluation process is complete. Technical Proposals will be distributed to the Evaluation Committee members at the start of the evaluation process. Following the completion of the evaluation of Technical Proposals, the Financial Proposals will be opened by a representative of the Lottery Finance Office.

G. Late Proposals:

Proposals must be received by the Lottery Finance Office on or before the due date and time specified. Vendors are responsible for timely receipt of their Proposals and should plan for delivery accordingly. Failure of a

Vendor to submit a Proposal by the specified time may result in rejection or disqualification of the Proposal. Proposals rejected or disqualified for lateness may be returned unopened to the Vendor.

H. Joint Proposals:

Two or more firms may join together to submit a Proposal in response to this RFP. If a joint Proposal is submitted, the Proposal shall define the responsibilities that each firm is proposing to undertake. Of the firms submitting a joint Proposal, one must be designated as the primary Vendor. Any award issued as a result of a joint submission will be made exclusively to the primary Vendor. The Proposal must designate a single authorized official from one of the joint firms to serve as the sole point of contact between the Lottery and the joint responding firms.

I. Multiple Proposals from one Vendor Prohibited:

A Vendor shall submit a single Proposal only.

J. Costs Associated with Preparation of Proposals:

The State shall not be liable for any of the costs incurred by a Vendor in preparing or submitting a Proposal. The State assumes no responsibility or liability for costs incurred by a Vendor prior to the issuance of a license and approval of the MOU. The only obligations of the State are as specified in the MOU.

1.16 CLARIFICATION PROCESS

The Lottery may request clarification from a Vendor for the purpose of resolving ambiguities or questioning information presented in a Proposal. Clarifications are an opportunity to explain, but not to enhance, a Proposal. The Lottery may request clarifications at any time throughout the Proposal evaluation process. Clarification responses shall be in writing and shall address only the information requested. Responses shall be submitted to the Lottery within the time specified at the time of the request. As applicable, clarifications will be treated as addendums to the Vendor's Proposal.

1.17 SITE VISITS

The Lottery may visit any site where the Vendor conducts, or has conducted, operations similar to the development and operation of the Aqueduct Video Lottery Facility. The Vendor shall cooperate in arranging and coordinating such site visits, but the Vendor shall not be permitted to pay for any travel, accommodations, or other expenses of such site visits, except that the Lottery

may use the Entry Fee required by section 1.4, or a portion thereof, to defray such expenses.

1.18 DISCLOSURE AND INVESTIGATIONS DURING THE PROPOSAL EVALUATION

The Lottery will conduct investigations into the backgrounds of the Vendor and individuals or entities related to any officers, directors, members, principals, investors, owners, subcontractors, employees, or any other individuals or entities related to the Vendor, as deemed appropriate, unless such Vendor is already licensed by the Lottery. Such background investigations may include fingerprint identification by the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI), and such additional investigation as may be required.

Each entity and individual related to such entity pursuant to 21 NYCRR 2836-4 must complete and submit a license application with the Proposal, unless already licensed by the Lottery, or unless the entity or individual is excused from the requirement (see section 1.3). License applications may be found at: http://nylottery.org/ny/nyStore/cgi-bin/ProdSubEV_Cat_350_NavRoot_304.htm?

Each Vendor must include in its Proposal a **list of all investors** in every entity described in the Proposal as a participant in any aspect of developing or operating the Aqueduct Video Lottery Facility, except that no list of investors will be required for an entity that is publicly traded and makes public disclosures by filings with the United States Securities and Exchange Commission or a comparable national or local regulatory body. The required list of investors must show each investor's name, address, and proportionate share of the entity's ownership. An investor identified on the required list shall not be required to submit a video lottery license application unless otherwise required to do so according to the provisions of section 1.3 or unless the Lottery requires further information after submission of a Proposal.

The Lottery may reject a Proposal based upon the results of these background checks. Vendors are advised that any person who knowingly provides false or intentionally misleading information in connection with any investigation by the Lottery may cause the Proposal to be rejected, or a license to be suspended or revoked.

If a Vendor or a subcontractor or associated entity is a subsidiary of a parent entity, the Lottery may require the above disclosures not only from the Vendor or the subcontractor or associated entity but also from the parent of the Vendor or the subcontractor or associated entity.

1.19 DISCLOSURE OF LITIGATION AND OTHER INFORMATION

The Lottery requires that each Vendor submit a list and summary description of pending or threatened litigation, administrative or regulatory proceedings or similar matters that could materially affect the Vendor. As part of this disclosure requirement, Vendors must state whether they or any owners, officers, directors, or partners have ever been convicted of a felony or any other criminal offense involving gaming violations, fraud, larceny of any sort, theft, misappropriation or conversion of funds, or tax evasion. Failure to disclose such matters may result in rejection of the Proposal or suspension or revocation of a license. Such disclosures must be included in the Proposal.

This is a continuing disclosure requirement. Any such matter commencing after submission of a Proposal and, with respect to the successful Vendor after the approval of the MOU, must be disclosed in a timely manner in a written statement to the Lottery's Licensing unit pursuant to 21 NYCRR 2836-3.1, 3.3, and 3.11.

1.20 CHANGE IN FINANCIAL CONDITION

If a Vendor who has submitted a Proposal in response to this RFP experiences a substantial change in financial condition prior to the issuance of a license pursuant to this RFP, or if a successful Vendor experiences a substantial change in financial condition during the term of the MOU or its license, the Lottery must be notified in writing at the time the change occurs or is identified pursuant to 21 NYCRR 2836-5. Failure to notify the Lottery of such a change may result in rejection of Vendor's Proposal or suspension or revocation of a video lottery license.

1.21 CHANGES IN COMPOSITION OR OWNERSHIP

If a Vendor makes any material change in the composition of the members of the team identified in the Vendor's Proposal or in the ownership of any entity included in the Vendor's Proposal prior to approval of the MOU or after a license is awarded, the Lottery's Licensing unit must be notified in writing at the time the change occurs or is identified pursuant to 21 NYCRR 2836-16. For the purposes of this requirement, "a material change" is any change of an individual in a principal or key role, as defined in 21 NYCRR 2836-1.2, or any change of more than 5% of the equitable ownership interest of an entity. Failure to notify the Lottery of such a change may result in the rejection of a Vendor's Proposal or suspension or revocation of a video lottery license. The Lottery reserves the right, based on its assessment of a material change in ownership, to reject the Vendor's Proposal or suspend or revoke a video lottery license. Any material change by a Vendor between the time when the Lottery recommends the acceptance and approval of the Vendor's Proposal and the time when the Governor, the Temporary President of the Senate, and the Speaker of the Assembly sign the MOU shall be subject to the unanimous approval of the

Governor, the Temporary President of the Senate, and the Speaker of the Assembly.

1.22 NEWS RELEASES

A Vendor may not issue a news release pertaining to this RFP or the services, evaluation, or project to which it relates without prior written Lottery approval, and then only in accordance with express written instructions from the Lottery.

1.23 ADVERTISING

Each respondent agrees not to use the New York Lottery's name, logos, images, nor any data or results arising from this procurement or MOU as part of any commercial advertising without prior written approval by the Lottery, and then only in cooperation with the Lottery.

1.24 AWARD

In determination of award, the qualifications of the bidder, the conformity with the specifications of services to be supplied and the performance or completion terms will be considered. The Lottery's recommendation to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly will be based on "Best Value," the evaluation method for awarding a license to the Vendor whose Proposal optimizes quality, cost, and efficiency among responsible offers. The determination will be based on a scoring of Technical and Financial Proposals as described in Part 5.

1.25 STATE'S RESERVED AUTHORITY

In addition to any authority stated elsewhere in this RFP, the Lottery reserves the authority to:

- A. Award a License for all, part or none of the services requested by this RFP;
- B. Waive any informality or technical defect if in the Lottery's judgment, the best interest of the State will be so served;
- C. Eliminate any non-material mandatory specification(s) that cannot be complied with by any of the prospective bidders;
- D. Amend the RFP and direct bidders to submit Proposal modifications accordingly;
- E. Change any of the scheduled dates stated herein;
- F. Reject any or all Proposals received in response to this RFP, and reissue a modified version of this RFP;

- G. Withdraw the RFP at any time, at its sole discretion;
- H. Seek clarifications and revisions to Proposals;
- I. Use Proposal information obtained through site visits, management interviews and the State's investigation of a bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the bidder in response to the Lottery's request for clarifying information in the course of evaluation and/or selection under this RFP;
- J. Disqualify any bidder whose conduct or Proposal fail to conform to the requirements of the RFP;
- K. Set aside the original successful offeror if it is determined that the offeror is non-responsible or unsuitable. The Lottery may then award a license to the responsible offeror with the next highest total combined score;
- L. Set aside the award to the successful offeror should the Lottery be unsuccessful in finalizing this procurement with that offeror within a time frame acceptable to the Lottery; such time frame is to be determined solely by the Lottery based on the best interests of the State. The Lottery may then award a license to the offeror with the next highest total combined score.

1.26 RFP EXHIBITS

The following documents are attached as exhibits to this RFP:

- A. MOU
- B. Ground Lease
- C. Sublease
- D. March 10, 2004 Environmental Assessment Form and accompanying Negative Declaration
- E. Lottery Rules and Regulations, Video Lottery Gaming Bulletins, Video Lottery Gaming Operation Procedures, and Minimum Internal Control Standards

1.27 COMMUNITY INVOLVEMENT

- Observation by Community Board 10. Members of Community Board 10 ("CB 10") will be invited to observe pre-proposal proceedings to which any or all bidders are invited, including but not limited to mandatory bidder conferences and all site walk-throughs required or authorized under the RFP. Representatives of the Division of the Lottery ("Lottery") will answer questions and will share with CB 10 information Lottery has provided to prospective bidders.

- Public Hearing in Community. After the proposal submission deadline, CB 10 may invite any or all bidders to make presentations to CB 10, at a time and location jointly determined to promote public participation, at which bidders may answer questions and the public will have a right to be heard about the proposals. At such meeting, bidders may volunteer any and all information about their proposals they deem fit, however, the Lottery will only consider information included in the proposals submitted in response to the RFP.
- Community Advisory Committee. If authorized by an act of the Legislature, there shall be established a Community Advisory Committee (“CAC”) consisting of no less than five members appointed by the Governor with the advice and consent of the Senate, of whom two shall be appointed on the recommendation of CB 10, one shall be appointed on the recommendation of the Senator representing the Senate district in which Aqueduct is located, one shall be appointed on the recommendation of the Member of the Assembly representing the Assembly district in which Aqueduct is located, and one or more shall be appointed without the requirement of any recommendation. Members of the CAC shall be appointed no later than 30 days after the Governor, the Temporary President of the Senate, and the Speaker of the Assembly sign a Memorandum of Understanding with the successful competitor for selection as the Aqueduct Video Lottery Agent, or the enactment of legislation authorizing the establishment of a CAC, whichever is later. No person shall be permitted to serve as a member of the CAC until such person has submitted a completed video lottery license application to the Lottery and been determined by the Lottery to be eligible for the award of a video lottery license. The RFP shall provide that, if authorized by an act of the Legislature, (1) the successful competitor for selection as the Aqueduct Video Lottery Agent shall convene the CAC no less than quarterly at the Aqueduct Video Lottery Facility or another proximate location as the CAC and successful bidder jointly may determine; (2) the successful competitor for selection as the Aqueduct Video Lottery Agent shall keep the CAC informed about major project decisions and project progress, and timely solicit CAC input prior to project developments likely to affect the community, including, but not limited to, Aqueduct Video Lottery Facility-related employment training and opportunities, and construction mitigation; and (3) the CAC shall continuously solicit community input and transmit the same to the selected Aqueduct Video Lottery Agent for the duration of the construction phase. The CAC will dissolve one year after the opening of the Aqueduct Video Lottery facility, or at such other time as prescribed by law.

PART 2 – CONTRACTUAL PROVISIONS

2.1 **GOVERNING LAW**

The Proposal process, the award procedure, any MOU and any license resulting from this RFP shall be governed by the laws of the State of New York and shall be interpreted according to New York law. Any and all litigation arising under this RFP or any award resulting hereunder shall be instituted in the appropriate court of the State of New York; and, by submitting a Proposal, a Vendor is deemed to waive access to any other court which may have concurrent jurisdiction within or outside New York State.

2.2 **STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS**

Appendix A, a listing of the State of New York Standard Contract Clauses is attached. **Appendix A** becomes part of all New York State contracts. By submitting a Proposal a Vendor agrees to be bound by all provisions of **Appendix A**.

2.3 **BASIS FOR PAYMENT**

The proposer awarded a license shall receive a Vendor fee for its services as a Video Lottery Agent pursuant to Section 1612 of the Tax Law.

2.4 **TERM OF MOU**

The State will enter into a Video Lottery development agreement and a Video Lottery facility ground lease, as well as other transaction documents, for a specified period of 30 years, with a possible 10-year extension, as provided in the MOU. The ground lease will provide that the State or a State agency will own all improvements constructed on the site.

2.5 **NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE**

Vendor agrees to fully and accurately complete the NYS Standard Vendor Responsibility Questionnaire, which is attached **to this RFP** (hereinafter the "Questionnaire"). The Vendor acknowledges that the State's approval of the MOU will be contingent upon the Lottery's determination that the Vendor is responsible and suitable, and that the Lottery will be relying upon the Vendor's responses to the Questionnaire, among other things, in making that determination. The Lottery reserves the right to require the submission of a completed Questionnaire by any subcontractor, supplier, or other individual or entity related to the Vendor.

The NYS STANDARD VENDOR RESPONSIBILITY QUESTIONNAIRE, included in this RFP as Appendix F, must be completed and submitted with the Proposal.

2.6 STIPULATION REGARDING NORTHERN IRELAND

In compliance with Section 174-b of the New York State Finance Law, the Vendor must stipulate that the Vendor and any legal entity in which the Vendor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Vendor either (i) has no business operations in Northern Ireland; or (ii) shall take lawful steps in good faith to conduct any business operations such person or persons has or have in Northern Ireland in accordance with the MacBride Fair Employment Principles (as set forth in Section 174-b of the New York State Finance Law) and shall permit independent monitoring of compliance with such principles.

The NORTHERN IRELAND STIPULATION FORM, included in this RFP as Appendix G, must be completed and submitted with the proposal.

2.7 TAX LAW SECTION 5-A

The Vendor awarded a video lottery license pursuant to this RFP must comply with the requirements of Tax Law section 5-a, which requires persons awarded contracts valued at more than \$100,000 with state agencies, public authorities or public benefit corporations to certify that they, their affiliates, their subcontractors, and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. A contractor, affiliate, subcontractor, or affiliate of a subcontractor must be certified as having a valid certificate of authority if such person has made sales delivered within New York State of more than \$300,000 during the relevant period. The Office of the State Comptroller (OSC) or other responsible approver cannot approve the contract unless the contractor is registered with the New York State Tax Department to collect sales and compensating use taxes. The forms listed below must be filed in compliance with Tax Law Section 5-a. Contractors can visit the New York State Department of Taxation and Finance website to obtain more information:

http://www.tax.state.ny.us/pdf/publications/sales/pub223_606.pdf.

Appendix H – ST-220-TD

http://www.tax.state.ny.us/pdf/2006/fillin/st/st220td_606_fill_in.pdf

Appendix H – ST-220-CA

http://www.tax.state.ny.us/pdf/2006/fillin/st/st220ca_606_fill_in.pdf

NOTE: ST-220-TD is to be filed directly with the Tax Department at the address provided on the form; ST-220-CA is to be filed with the Lottery as part of the Vendor's Proposal submission.

2.8 OMNIBUS PROCUREMENT ACT COMPLIANCE

By entering into the MOU the Vendor agrees (i) to make reasonable efforts to encourage the participation of New York State business enterprises as subcontractors and suppliers and retain documentation of such efforts to be provided to the State upon request; (ii) to comply with the federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (iii) to make reasonable efforts to provide notification to New York State residents of employment opportunities on the contract through listing any such positions with the Job Service Division of the New York State Department of Labor or providing such notification in such a manner as is consistent with existing collective bargaining contracts or agreements and to retain documentation of such efforts to be provided to the State upon request; and (iv) to cooperate with the State of New York in seeking to obtain offset credits from foreign countries as a result of the contract.

2.9 VENDOR REQUIREMENTS AND PROCEDURES FOR EQUAL EMPLOYMENT AND BUSINESS PARTICIPATION OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND NEW YORK STATE CERTIFIED MINORITY/WOMEN-OWNED BUSINESSES.

In accordance with Article 15-a of the New York State Executive Law (Participation by Minority Group Members and Women with Respect to State Contracts) and in conformance with the Regulations promulgated by the Minority and Women's Business Development Division of the New York State Department of Economic Development set forth at 5 NYCRR Parts 140-144, the offeror/contractor agrees to be bound by the following provisions to promote equality of economic opportunity for minority group members and women, and the facilitation of minority and women-owned business enterprise participation.

A. EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION REQUIREMENTS

By submission of a bid or Proposal in response to this solicitation, the offeror agrees with all of the terms and conditions of Clause 12 of Appendix A – Equal Employment Opportunities for Minorities and Women. In addition, as part of the Proposal, each respondent must submit a copy of the respondent's Equal Employment Opportunity ("EEO") Policy. If the respondent does not already have an EEO Policy in effect, then an EEO Policy must be adopted and a copy of the new policy must be submitted.

Proposal and contract requirements:

1. Each Proposal must include a Staffing Plan (**Appendix D-2**) describing the work force expected to be used on the project. **Appendix D-1** provides Instructions for completion of the Staffing Plan. If it is impossible

to describe the portion(s) of the respondent's work force that will be devoted to performing the contract, then the staffing plan must describe the respondent's total work force. The staffing plan must show the ethnic backgrounds, gender, and federal occupational categories of the members of the work force. Each Proposal must demonstrate the proposer's experience working with MBE/WBE businesses and its positive record of meeting or exceeding participation goals.

2. During the term of the MOU, the successful Vendor will be required to submit periodically, as defined below, to the Lottery a **Work Force Utilization Report (Appendix D-3)** showing the work force actually used in performing the contract, categorized by ethnic background, gender, and Federal occupational categories.

If the Staffing Plan provides for only the work force devoted to this project, quarterly reporting is required. If the Staffing Plan includes the respondent's total work force, semi-annual reporting is required.

3. All of the foregoing equal employment and affirmative action requirements are applicable to all contracts and subcontracts related to this project. The successful Vendor shall include in every contract and subcontract in connection with this project the requirement that contractors and subcontractors shall undertake or continue existing programs of affirmative action and, when requested, provide to the Vendor information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on this project.
4. The Vendor will be required to follow the EEO Policy throughout the term of the MOU.

As a precondition to license award, the Vendor's EEO Policy must contain a statement agreeing to comply, during the performance of this contract, with the requirements of Appendix A, Clause 12 and the elements listed above.

To enable the Lottery to evaluate the Vendor's ability to successfully administer the proposed Staffing Plan, each Proposal must include documentary evidence demonstrating the Vendor's experience and history of successful Equal Employment Opportunity and Affirmative Action programs. Such evidence should identify the specific projects and their locations where the Vendor successfully employed such programs, and include copies of Work Force Utilization Reports or comparable documents for such projects.

B. MINORITY/WOMEN-OWNED BUSINESS PARTICIPATION

It is the policy of New York State to maximize the opportunities for the participation of New York State business enterprises, including minority and women owned business enterprises, as offerors, subcontractors and suppliers for its procurements. Information on the availability of New York State contractors and suppliers can be found in the Directory of Certified Minority and Women-Owned Business Enterprises available from the New York State Department of Economic Development, http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp

In accordance with Article 15-A of the New York State Executive Law and Subtitle N of 9 NYCRR 540 et seq., the Lottery has established the following participation goals for utilization of New York State Certified Minority/Women Owned Businesses: The MBE/WBE plan must be designed to achieve (i) not less than twenty-five percent (25%) minority/women-owned business enterprise contractor and/or subcontractor participation for the development of the Video Lottery Facility, which includes the design, preconstruction, construction, operation, and maintenance phases; and (ii) an overall goal of twenty-five percent (25%) minority and female workforce participation for the construction and operation of the Video Lottery Facility. Attached to this RFP is a copy of the Minority and Women Owned Business Utilization Plan Form (**Appendix E-2**) which must be completed as directed below.

Proposal and contract requirements:

1. Each proposer must include a summary of its MBE/WBE utilization plans in its Proposals as required by Section 4.8 of this RFP. **The utilization plans must describe anticipated participation of Certified Minority and Women Owned Business Enterprises during (1) construction of the Video Lottery Facility at Aqueduct, and (2) operation of the facility following construction.** The plans shall include the business name of the supplier/sub-contractor, a description of the proposed products or services to be provided, contact information for a representative of the supplier/sub-contractor, and the estimated value of the payments over the term of this contract. The MBE/WBE utilization plans will be evaluated as part of the Technical Proposal. **To enable the Lottery to evaluate the Vendor's ability to successfully administer the proposed MBE/WBE utilization plans, each Proposal must include documentary evidence demonstrating the Vendor's experience and history of successful MBE/WBE utilization. Such evidence should identify the specific projects and their location, include the names of the MBEs and WBEs involved, the nature of the MBE/WBE participation, and the financial value of the MBE/WBE participation.**

2. The successful Vendor must submit the completed Utilization Plan within fourteen (14) days after notification of the contract award for review and acceptance by the Lottery. **Instructions for completing the Utilization Form are contained in Appendix E-1.**
3. The contact information for the designated officer who will be assigned the responsibility and authority to monitor the MWBE program for this contract shall be provided in **Appendix E-1.**
4. Any modifications or changes to the agreed participation by certified Minority or Women-Owned Business Enterprises (MWBEs), over the term of the contract, must be reported on a revised Utilization Plan.
5. During the term of the MOU, the successful Vendor will be required to submit to the Lottery a **Quarterly Activity Report (Appendix E-3, Parts 1 & 2)** showing MWBE's actually used in performing the contract; this information shall be broken down by subcontractor/supplier and dollar amount of purchase/service. **The Quarterly Activity Report must be received by the Lottery 10 calendar days following the end of the previous quarter. The State's fiscal year is April 1 through March 31; the quarterly end dates are: June 30, September 30, December 31, and March 31.**

MWBE Compliance Review Committee. If authorized by an act of the Legislature, there shall be established a five-member MWBE Compliance Review Committee to monitor MWBE goal compliance for the Aqueduct Video Lottery Facility. The Governor shall appoint the members of such committee with the advice and consent of the Senate; one of the members of such committee shall be appointed on the recommendation of the Temporary President of the Senate, one on the recommendation of the Speaker of the Assembly, one on the recommendation of CB 10, and two without the requirement of a recommendation. No person shall be permitted to serve as a member of the MWBE Compliance Review Committee until such person has submitted a completed video lottery license application to the Division of the Lottery and been determined by the Division of the Lottery to be eligible for the award of a video lottery license. No later than five days after Lottery receipt of each MWBE Quarterly Report from the Aqueduct Video Lottery Agent, and if authorized by an act of the Legislature, the Lottery shall forward a copy of such report to each member of such Committee. The Committee and each member thereof may make comment thereon to the Governor and the Temporary President of the Senate and the Speaker of the Assembly. If required or permitted by an act of the Legislature, before any other public report by the Governor or any executive-branch agency in relation to Aqueduct MWBE performance, the Governor or such agency, as the case may be, shall give the Committee a draft of such report or portion thereof relevant to this project and shall provide the Committee no less than five days to respond to such draft.

2.10 SUCCESSFUL VENDOR RESPONSIBILITIES AS VIDEO LOTTERY AGENT

The successful Vendor will assume sole responsibility and liability for development, construction, and operation of the Aqueduct Video Lottery Facility pursuant to the transaction documents specified in the attached MOU, the Lottery's Rules and Regulations and Instructions, and the law.

The successful Vendor may have subcontractors; however, the successful Vendor must accept full responsibility for and will be strictly liable to the Lottery for any such subcontractor's performance. The Lottery will consider the successful Vendor to be the sole point of contact with regard to all licensed activities.

2.11 WORKERS' COMPENSATION REQUIREMENTS

PROOF of COMPLIANCE WITH WORKERS' COMPENSATION COVERAGE REQUIREMENTS: (**ACORD forms** are **NOT** acceptable proof of workers' compensation coverage.)

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, contractors shall:

A) Be legally exempt from obtaining workers' compensation insurance coverage; or

B) Obtain such coverage from insurance carriers; or

C) Be a Board-approved self-insured employer or participate in an authorized self-insurance plan. Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Lottery** at the time of Proposal submission:

1) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); or

2) *Certificate of Workers' Compensation Insurance:*

3) **Form C-105.2 (9/07)** if coverage is provided by the contractor's insurance carrier, **contractor must request its carrier** to send this form to the Lottery; or

4) **Form U-26.3** if coverage is provided by the State Insurance Fund, contractor must request that the State Insurance Fund send this form to the Lottery; *or*

5) *Certificate of Workers' Compensation Self-Insurance - Form SI-12*, available from the New York State Workers' Compensation Board's Self-Insurance Office; *or*

6) *Certificate of Participation in Workers' Compensation Group Self-Insurance Form GSI-105.2*, available from the contractor's Group Self-Insurance Administrator. **All forms must name THE NEW YORK STATE FRANCHISE OVERSIGHT BOARD, c/o Executive Chamber, The Capitol, Albany, New York 12224, Attn: Chairman, as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

PROOF of COMPLIANCE WITH DISABILITY BENEFITS COVERAGE REQUIREMENTS:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, contractors shall:

- A) Be legally exempt from obtaining disability benefits coverage; *or*
- B) Obtain such coverage from insurance carriers; *or*
- C) Be a Board-approved self-insured employer.

Contractors seeking to enter into contracts with the State of New York **shall provide one of the following forms to the Lottery** at the time of bid submission or shortly after the opening of bids:

A) **Form CE-200**, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required* which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); *or*

B) **Form DB-120.1**, *Certificate of Disability Benefits Insurance*. Contractor must request its business insurance carrier to send this form to the Lottery; *or*

C) **Form DB-155**, *Certificate of Disability Benefits Self-Insurance*. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form. **All forms must name THE NEW YORK STATE FRANCHISE OVERSIGHT BOARD, c/o Executive Chamber, The Capitol, Albany, New York 12224, Attn: Chairman as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).**

2.12 PROOF OF INSURABILITY

Each Proposal must include proof of insurance or insurability for all the insurance coverages required for the video lottery agent by the MOU, the Ground Lease, and the Sublease.

2.13 PROJECT LABOR AGREEMENT

The development of the Aqueduct Video Lottery Facility shall be subject to the Project Labor Agreement provisions of section 213 of the Racing, Pari-mutuel Wagering and Breeding Law.

2.14 INFORMATION SECURITY BREACH AND NOTIFICATION ACT

Section 208 of the New York State Technology Law (STL) and Section 899-aa of the New York State General Business Law (GBL) require that State entities and persons or businesses conducting business in New York who own or license computerized data which includes private information including an individual's unencrypted personal information plus one or more of the following: social security number, driver's license number or non-driver ID, account number, credit or debit card number plus security code, access code or password which permits access to an individual's financial account, must disclose to a New York resident when their private information was, or is reasonably believed to have been, acquired by a person without valid authorization. Notification of breach of the security of that private information to all individuals affected or potentially affected must occur in the most expedient time possible without unreasonable delay, after necessary measures to determine the scope of the breach and to restore integrity, but with delay if a law enforcement agency determines that notification would impede a criminal investigation. When notification is necessary, the State entity or person or business conducting business in New York must also notify the following New York State agencies: the Attorney General, the Office of Cyber Security & Critical Infrastructure Coordination (CSCIC) and the Consumer Protection Board (CPB). Information about the law and the notification process is available at: <http://www.cscic.state.ny.us/security/securitybreach/>.

2.15 FORM OF CONTRACTUAL AGREEMENT

As part of its Proposal, each Vendor must include a signed MOU, Ground Lease and Sublease in the form attached to this RFP. The State does not intend to negotiate any changes in the provisions of the MOU, Ground Lease or Sublease subsequent to the submission of Proposals. **Any question or suggestion about the form of the MOU, Ground Lease or Sublease must be raised in a Vendor question submitted to the Lottery pursuant to the schedule set forth in Section 1.5 of this RFP and in accordance with Section 1.10 of this RFP. If the Lottery decides to make any change in the MOU, Ground Lease**

or Sublease, the change will be announced in an addendum to this RFP and the addendum will be published on the Lottery's website and will be sent to all Vendors that have paid the required entry fee and attended the mandatory bidders conference. A signed MOU, Ground Lease and Sublease must be included in the Proposal.

2.16 CONTRACT ELEMENTS

The MOU resulting from this RFP will include the following parts:

- Appendix A – Standard Terms for all New York State Contracts
- Addendums to the MOU
- MOU
- Clarifications and Addendums to the RFP
- RFP
- Clarifications to the Vendor's Proposal
- Vendor's Proposal

In the event of a conflict in the provisions of these documents, the order of precedence shall be as listed above from the highest to the lowest.

2.17 SEVERABILITY

If a court of competent jurisdiction determines any portion of the MOU to be invalid, it shall be severed and the remaining portion of the MOU shall remain in effect.

PART 3- SCOPE OF WORK AND DELIVERABLES

3.1 WORK AND DELIVERABLES

The successful Vendor shall provide deliverables, services, staff, and all other things necessary to complete the requirements of the MOU and to carry out the duties of a Licensed Video Lottery Agent.

3.2 SCOPE

The Video Lottery Facility will be constructed by the successful Vendor, which will be solely responsible for construction of the facility pursuant to the plans approved by the State and subject to the provisions of the MOU and applicable laws and regulations. Except for the \$250 million capital construction grant, neither ESDC nor the State will be responsible for any of the Vendor's costs or expenses whatsoever, including without limitation, the costs and expenses for preparing the response to this solicitation; planning; negotiating transaction documentation; conducting due diligence, investigation or environmental review; demolition; remediation; construction (including permitting and code compliance); utility connections; or cost overruns. The burden of construction and development expenses associated with development of the Aqueduct Video Lottery Facility is to be borne solely by the Vendor, provided that the capital construction grant will be made available, as provided in Section 1.2 of this RFP.

Construction will begin as soon as possible after execution of the transaction documents as provided in the MOU. The Vendor is permitted to spend more than the amount of the said ESDC capital construction grant in constructing the Video Lottery Facility, and the total capital plan will be an integral element of the Lottery's evaluation process.

As set forth in the MOU, the Vendor selected by the State shall be responsible for all costs and expenses of the State, including ESDC, associated with the development and implementation of the project, not-to-exceed \$3 million. That responsibility is in addition to the \$1 million entry fee required by this RFP.

3.3 VIDEO LOTTERY AGENT RESPONSIBILITIES

The Video Lottery agent will be required to assume responsibility for all contractual activities offered in the Proposal whether or not the agent performs such activities. Further, the Lottery will consider the agent to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the MOU. If any part of the work is to be subcontracted, responses to this RFP must include a list of subcontractors, as defined in Part 4 of this RFP.

The agent shall be required to operate the Video Lottery Facility as approved or instructed by the Lottery.

3.4 LOTTERY RESPONSIBILITY

The Lottery will provide the video lottery central system and associated network infrastructure, video lottery terminals, chairs, bases, basic game signage, any other gaming devices connected to the video lottery central system, and associated software, equipment, maintenance and repair services at the Lottery's expense. The Lottery will not provide separate network connectivity from a player tracking system to each video lottery terminal. The video lottery agent may be required to pay additional fees for certain premium and licensed theme video lottery games and specified items, including, but not limited to, electronic table games and random number generating games. The Lottery will not provide the surveillance and security systems for the Aqueduct Video Lottery Facility; those systems are required and will be the responsibility of the selected Video Lottery Agent.

3.5 PROJECT CONTROL

The agent will carry out this project under the direction and control of the Director of Video Lottery Gaming.

3.6 REPORTS

The agent will provide regular status reports sufficiently detailed as required by the Lottery.

PART – 4 INFORMATION REQUIRED FROM VENDORS - PROPOSAL

In preparation of their Proposals, Vendors should pay special attention to the requirements and information being requested in order to respond fully to the RFP. Proposals found to be incomplete or imposing conditions on the responses to RFP requirements may be deemed non-responsive and removed from further consideration.

4.1 BUSINESS ORGANIZATION

- A. State the full name and address of your organization and, if applicable, any branch office or other subordinate element that will perform or assist in the performance of the work hereunder. Indicate whether it operates as an individual, partnership, corporation, joint venture, or other specified form of business organization. Proposers must state whether they are qualified and/or registered to do business in the State of New York.
- B. Indicate the name, street address, email address, and telephone number of the individual from your organization that is authorized to enter into and bind the organization to the terms and conditions of your Proposal.

4.2 FINANCIAL VIABILITY

In order to determine the Vendor's financial ability to construct and operate the Aqueduct Video Lottery Facility, the Lottery requires each Vendor to provide **audited** financial statements for the last three (3) years (most recent and two prior fiscal years). If the Vendor is a subsidiary of another corporation, the financial statements of the Vendor, as well as the consolidated financial statement of the parent company, must be submitted. If the vendor is a newly formed entity or consortium, financial statements must be submitted for all members of the entity or consortium. If the Vendor is a parent corporation, parent-only financial statements, if available, and statements for the operating division that will perform these services must be submitted. These statements must be prepared in accordance with generally accepted accounting principles and must have been audited by a certified public accountant licensed to do business in the state in which the Vendor's principal place of business is located.

4.3 EXPERIENCE OF THE VENDOR'S ORGANIZATION

General Requirements:

The Vendor must demonstrate in its Proposal that its organization is of sufficient size and has the qualifications required to perform the requested services as defined in this RFP. The Proposal must include the following information:

- Thorough description of the organization, including employee capacity to undertake and successfully carry out the proposed services.

- Resumes of the managing partner(s) describing relevant education, knowledge, training, and experience. The State expects that the same managing partner(s) will have overall responsibility for all projects conducted pursuant to this RFP. Exceptions may be made only with the approval of the State.
- Description of how the organization's quality assurance program will be applied to this Proposal, including, but not limited to, the Vendor's experience with, and plans to use, effective methods to assure compliance with approved construction standards, customer service standards, and ongoing staff training standards.

Experience:

The organization must describe its experience in operating a gaming facility with Video Lottery Terminals or slot machines. Also, the organization must describe the employees it would use to provide the services described in this RFP and the experience such employees have in performing such work.

References:

The Proposal must include references relevant to the work to be performed under the MOU, including at least three references for the Vendor's work in development and construction and at least three references for the Vendor's work in the operation of a gaming facility. References must include company name, contact person (name, title, telephone number, email address, and mailing address). Also include a general statement of the type of work performed for this reference. References will be used to substantiate the Technical Proposal.

4.4 LEADERSHIP/MANAGEMENT

Provide an organization chart and the names of all officers, directors, Board members, partners, principal management employees and any other person or entity to exert decision making control for the Video Lottery Agent.

4.5 CAPITAL PLAN

Vendors must provide a detailed capital plan with specific costs estimates, which must include the following components:

- Provide comprehensive plans for construction of the Aqueduct Video Lottery Facility, including drawings, floor plans, and architectural and landscaping site changes. Such plans should be at least 30% complete and must, at a minimum, provide schematic representations and preliminary concept drawings with sufficient detail to enable the Lottery to evaluate and compare competing Proposals and, if necessary, to require

Vendors to submit clarifications. Such plans must also be sufficient to demonstrate compliance with all applicable building codes. Such plans must be consistent with or comparable to the project description for a video lottery facility at Aqueduct that was reviewed pursuant to the State Environmental Quality Review Act wherein a Negative Declaration was issued by the Lottery on March 10, 2004. A copy of the March 10, 2004 Environmental Assessment Form containing the Negative Declaration is attached to this RFP as **Exhibit D**.

- The plans must provide for a Video Lottery Facility within the existing interior space of the current Aqueduct racetrack Grandstand and Clubhouse specifically designated and dedicated to house 4,500 VLTs and must include interior space for immediately ancillary or complementary activities such as are commonly located in comparable facilities, food and beverage services, and retail uses.
- The plans must also provide for (a) a newly constructed entry lobby of approximately 10,000 square feet; (b) a newly constructed porte cochere of approximately 20,000 square feet providing six lanes of traffic; (c) renovated premises of not less than 275,000 square feet within the Clubhouse and Grandstand including interconnections with the premises to be occupied by NYRA; (d) construction of a parking structure containing not less than 2,000 parking spaces; (e) construction of a covered walkway from the Aqueduct subway station to the Video Lottery Facility; and (d) such other anticipated improvements as were identified in the Environmental Assessment Form accompanying the 2004 Negative Declaration (including entrances to Aqueduct, parking lot repaving and restriping, lane widening, landscaping, tree planting, etc.).
- Subject to Lottery approval and compliance with applicable building and safety codes, the plans must provide for a Video Lottery Facility that is constructed, completed and furnished in a manner comparable to or exceeding the architecture, construction quality and level of finishes in the existing video lottery facilities located at Empire City Casino at Yonkers Raceway in Yonkers, New York ("**Empire City**") and the 2007 expansion (northern section) of Saratoga Gaming and Raceway in Saratoga Springs, New York ("**Saratoga**").
- Provide a construction timeline that describes each phase of construction, including any preliminary opening of the facility to the public. The construction timeline must specify the number of months required to complete the construction of the Video Lottery Facility (not limited to preliminary opening of the facility) following issuance of the necessary permits. The construction timeline must also specify the number of months required to complete the construction of the parking facility following issuance of necessary permit(s). The speed of construction of

the Video Lottery Facility, the parking facility and the connector to the subway station will be considered during the evaluation process. Temporary structures or the use of a portion of the facility that will not be a part of the final gaming floor are strongly discouraged. Preliminary use of part of the final video lottery facility that will be included in the final configuration is acceptable.

- Describe any capital improvements and renovations that are planned for the Video Lottery Facility following initial construction. The plan should describe annual expenditures and include long term projections.
- Describe the quality of the “fit and finish” and aesthetic positioning of the facility.

4.6 MARKETING PLAN

Each Vendor must provide a detailed marketing plan, which must include the components listed below.

- Planned spending on marketing, by components, such as advertising, promotion, free play, entertainment, etc., in dollars and as a percentage of net win.
- The “Brand” under which you intend to conduct business and the “market positioning” you envision.
- Amenities that will be offered at the Video Lottery Facility.
- Describe how anticipated capital spending will promote or encourage increased attendance at the Video Lottery Facility and generate more revenue for the State.

4.7 FINANCING PLAN

Each Vendor must provide a detailed financing plan that describes how the upfront licensing fee and all aspects of the Capital Plan and the Marketing Plan and all other operations will be financed. Vendors must identify the sources of all financing, including equity contributions. The financing plan shall be set forth in sufficient detail and with documented commitments from financing sources to demonstrate the Vendor’s ability to complete the plans described in the Proposal. The financing plan will be evaluated as part of the Technical Proposal.

4.8 MBE/WBE PLAN

As further specified in Section 2.9 of this RFP, each Vendor must provide a utilization plan that describes anticipated participation of Certified Minority and

Women Owned Business Enterprises during (1) construction of the Video Lottery Facility at Aqueduct, and (2) operation of the facility following construction. Vendors must also describe past use of minority and women owned business enterprises and demonstrate a commitment to maximizing the opportunities for minority and women owned business enterprises.

4.9 FINANCIAL PROPOSAL (UPFRONT LICENSING FEE)

The Vendor must specify the amount that the Vendor offers to pay to the State of New York as an upfront licensing fee. If the Vendor is awarded a video lottery license, the licensing fee is due within ten (10) business days after the MOU is signed and delivered to the Vendor by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly and shall not be subject to any conditions.

Note: as required by Section 1.15 (E) of this RFP, the Financial Proposal must be submitted in a separately sealed envelope from the Technical Proposal.

4.10 SUBCONTRACTORS

If applicable, list all subcontractors, including firm name and address, contact person, and a complete description of work to be subcontracted. Include descriptive information relative to the subcontractor's organization and capabilities. If the Vendor does not intend to utilize subcontractors, that should be indicated in the technical Proposal response.

4.11 COMPLIANCE WITH REQUIREMENTS

Each proposer must state compliance with the requirements outlined in the RFP and submit completed forms as required.

4.12 ADDITIONAL INFORMATION AND COMMENTS

Include any other information that is believed to be pertinent but not specifically asked for elsewhere.

PART 5 – EVALUATION AND SELECTION

5.1 INTRODUCTION

This section describes the evaluation process that will be used to determine which Proposal provides the greatest overall benefits to the State. The ability of the Lottery to evaluate a Vendor's Proposal is dependent upon the completeness and proper submission of the Proposal. The failure of a Vendor to provide information requested by this RFP, to submit the Proposal according to the required format, or to respond appropriately to a clarification request or demonstration request, may result in rejection of the Vendor's Proposal or reduction in scoring during the evaluation.

5.2 EVALUATION METHODOLOGY

The Lottery will conduct a comprehensive, fair, and impartial evaluation of Proposals received in response to this RFP. In making a selection the Lottery will be represented by an Evaluation Committee composed of Lottery staff members and other professionals from the Office of General Services, the Division of the Budget, and the Empire State Development Corporation. The Lottery reserves the right to make changes in the Committee's membership as necessary.

The Lottery may retain the services of an independent Financial Advisor to review the finances of the competing Vendors. If a Financial Advisor is retained, the results of the Financial Advisor's review may be used by the Evaluation Committee as part of its technical evaluation; but the Financial Advisor will not participate in the scoring of Proposals.

Scoring of the technical Proposals will be by consensus of the Evaluation Committee. Financial Proposals will be scored by one or more individuals from the Finance Office designated by the Evaluation Committee and will be based on a pre-determined formula as defined further in this Part. The relative weight of technical to financial will be: Technical, 90%; Financial, 10%.

5.3 EVALUATION STEPS

The evaluation and award process will be comprised of all of the following:

- A. Pass/Fail evaluation of minimum qualifying requirements of the Vendor as provided for in Section 1.3 of the RFP.
- B. Review of Proposals to assess compliance with Proposal submission requirements, including responsiveness to terms, conditions and requirements;
- C. Detailed evaluation of proposed functions, features, services, and references, using the requirements and criteria defined in this RFP;

D. Proposal clarifications;

E. Scoring of Technical Proposals by the Evaluation Committee;

F. Assessment and Scoring of Financial Proposals after finalization of the technical scoring process and by one or more individuals from the Finance Office designated by the Evaluation Committee;

G. Compilation by the Contracting Officer or Finance Officer of Technical scores and Financial score into a summary score sheet;

H. Public Announcement of recommendation of award to the Governor, the Temporary President of the Senate, and the Speaker of the Assembly by the Lottery;

I. Final acceptance and approval by signing of the MOU by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly.

5.4 INFORMATION FROM OTHER SOURCES

The Lottery reserves the right to obtain from sources other than the Vendor, information concerning a Vendor, the Vendor's offerings and capabilities, and the Vendor's performance, that the Lottery deems pertinent to this RFP and to consider such information in evaluating the Vendor's Proposal. This may include, but is not limited to, the Chairperson of the Evaluation Committee engaging consultants and additional experts from outside the Evaluation Committee to better inform the Evaluation Committee's findings, as well as references from other lotteries and gaming jurisdictions.

In addition, as provided in section 4.3, references will be checked regarding the Vendor's past experience. The Evaluation Committee will select an equal number of current or previous references for each Vendor. The Lottery reserves the right to contact references as many times as is necessary and to contact as many references as is necessary to obtain a complete understanding of the Vendor's performance and experience.

5.5 EVALUATION & SELECTION CRITERIA

Proposals determined to comply with the requirements set forth in this RFP and submission requirements outlined in Part 4 – Information Required from Vendors – of this RFP will be evaluated based on the following criteria:

A. Technical Evaluation (90%)

As described throughout the RFP the following components will be considered in the scoring of the Technical Proposal:

- Management/Experience (25 points)
 - Gaming
 - Construction
 - Hospitality
 - Marketing Plan (20 points)
 - Spending
 - Strategic Fit
 - Brand
 - Speed to Market (16 points)
 - Deal consummation
 - Construction
 - Capital Plan (12 points)
 - Spending
 - Quality of Facility
 - Financing Plan/Access to Capital (12 points)
 - MWBE Plan/Experience (5 points)
- B. Financial Evaluation (10%) (10 points)

The Proposal that offers the highest Upfront Licensing Fee will be awarded the full points allocated to Financial. The score for each of the remaining Proposals will be proportionate to the highest commitment.

Payment of the non-refundable Upfront Licensing Fee is required, without conditions, within ten (10) business days after the MOU is signed and delivered to the Vendor by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly.

5.6 FINAL COMPOSITE SCORE

The technical and financial scores will be combined to determine the final composite score for each Vendor. The Lottery will recommend an award be made to the Vendor who achieves the highest composite score and who is deemed financially viable and responsible.

5.7 NOTICE OF AWARD

The final ranking and the findings of the Evaluation Committee will be publicly announced by the Lottery and recommended to the Governor, the Temporary

President of the Senate, and the Speaker of the Assembly for consideration. If they concur with the process and its results, they will approve the award recommendation of the Evaluation Committee. Upon final approval of the award recommendation, the Governor, the Temporary President of the Senate, and the Speaker of the Assembly will sign the MOU submitted by the selected Vendor, and formal notice of the award will be provided to the competing Vendors.

5.8 DEBRIEFINGS

Debriefings will be held as requested by proposers to discuss the scoring of their Proposals. Information relative to other Vendor Proposals and agency scoring of those Proposals is subject to the Freedom of Information Law (Article 6 of the Public Officers Law).

Vendor Acknowledgement of Addendum

RFP: Development and Operation of a Video Lottery Facility at Aqueduct Racetrack

Amendment Number: _____

Date Issued: _____

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

Bidder Name: _____

Company: _____

**Development and Operation of a Video Lottery
Facility at Aqueduct Racetrack**

**Financial Proposal Form
(Licensing Fee)**

Licensing Fee: As and for consideration to State for being selected by State as the preferred bidder for development of the VLT Facility, Vendor shall pay to State the sum of \$_____ (minimum \$300 million), (the "**Licensing Fee**"), which Vendor shall pay within ten (10) business days after the MOU is signed and delivered to the Vendor by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly. Execution of the MOU shall be deemed to be a contractual commitment by the Vendor to pay the Licensing Fee.

Bidder Name: _____

Company: _____

DOCUMENT SUBMITTAL CHECKLIST

Description of Document	Section of RFP	Filing Requirements	Checklist
MOU, Ground Lease, Sublease	§1.1	With Proposal	
License Application	§1.3	With Proposal	
Procurement Lobbying: Bidder/Offeror Disclosure/Certification Form (Appendix B)	§1.9	With Proposal	
Non-Collusive Bidding Certificate (Appendix C)	§1.13	With Proposal	
Freedom of Information Law - Designation of Proprietary Information Separate document identifying each designation.	§1.14	With Proposal	
NYS Vendor Responsibility Questionnaire (Appendix F)	§2.5	With Proposal	
MacBride Fair Employment Principals (Northern Ireland Stipulation Form) (Appendix G)	§2.6	With Proposal	
Sales & Use Tax (Appendix H) <ul style="list-style-type: none"> • ST220-CA (submit to Lottery) • ST220-TD (submit to DTF) 	§2.7	With Proposal At time of Proposal	
Equal Employment Opportunity (EEO) Policy Statement (Appendix D) <ul style="list-style-type: none"> • Staffing Plan (D-2) 	§2.9	With Proposal	
Minority and Women-Owned Business Enterprise Program (Appendix E) <ul style="list-style-type: none"> • Summary of MBE/WBE Utilization Plan • Experience (meeting or exceeding MWBE goals) 	§2.9	With Proposal	

NOTE: Vendors should include this completed checklist with their technical Proposal responses.