

**VIDEO LOTTERY OPERATION LICENSE IN
BALTIMORE CITY
(#2012-0101)**

**RESPONSES TO WRITTEN QUESTIONS
June 7, 2011**

This List of Questions and Responses #1 (Q&A#1) is being issued to clarify certain information contained in the above named RFP. The statements and interpretations of License requirements, which are stated in the following questions are not binding on the State, unless the State expressly amends the RFP. Nothing in the State's responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the entity asking the question as to what the License does or does not require. Some questions have been edited for brevity and clarity, and duplicate questions may have been combined or eliminated.

The following are questions submitted pursuant to the RFP and the Location Commission's responses to those questions:

1. **QUESTION:** Section 1.1.7: indicates the Operation License will have an initial 15 year term within the last year of which the Licensee may reapply for a License with an additional 10 year term.
 - a) The standard Baltimore City MOU specifies a minimum 50 year ground lease with lease payments based on a percentage of VLT proceeds, but not less than a minimum payment of \$14 million annually for the fifth year of operation and beyond. Because the Baltimore City MOU limits the permitted use of the leased premises to the operation of VLTs, the Licensee would be in an obviously untenable position if the License to operate VLTs expired during the term of the ground lease. How will these conflicting requirements be resolved?
 - b) After the initial 15 year term, are the requirements for approval of the Licensee's reapplication based on suitability of the Licensee or may the state offer the License to other parties?
 - c) Is there any procedure whereby a Licensee may renew the License at the end of 25 years and if so what are the requirements to renew the license?

ANSWER: a) The MOU does not specify a minimum 50 year ground lease. The MOU specifies that "The initial term of the Ground Lease will not exceed fifty (50) years.....". The requirements are not in conflict. A ground

lease term that is longer than the original license term will benefit the Licensee if it obtains a renewal of the license. Also, if it does not obtain the license renewal, it will be able to sell its interest in the ground lease to the new licensee, who will then have 35 years of an assured lease term in which to operate.

b) That process has not yet been determined.

c) That process has not yet been determined.

2. **QUESTION:** Section 1.1.7: States that the renewal License fee is to be established by statute.

a) Will the Lottery Commission seek legislation to limit the Licensee's renewal License fee to the reasonable expenses incurred in processing that renewal?

b) If so, what is the expected timing of the Commission's request for such legislation?

c) Have any assurances been provided to current operators or previous applicants regarding any aspect of the renewal License process, the renewal License fee and/or expenses, and/or the renewal of a License after 25 years?

d) Would an exception to the terms and conditions of the RFP related to the need for assurances related to the term of the License or any renewal thereof result in the Proposal being deemed unacceptable subjecting the Applicant to a forfeiture of the Initial License Fee or would the Initial License Fee be promptly refundable if such assurances are not provided?

ANSWER: a) That is unknown at this time.

b) That is unknown at this time.

c) No.

d) A License may not be awarded to any Applicant taking exception to a requirement of the RFP, unless that exception has been removed or resolved during the discussion and negotiation process.

3. **QUESTION:** Section 1.1.8: Is there other funding for Problem Gambling, or does the \$425/machine/year cover all of it?

ANSWER: No. The \$425 annual fee for each VLT as described in Section 1.1.8 is the only amount assessed to the Licensee for the Problem Gambling Fund.

4. **QUESTION:** Section 1.1.9: Please confirm all Video Lottery Terminals will be provided to Licensee at the sole cost and expense of the Maryland State Lottery (“Lottery”). In addition, please provide detail with regard to expenses covered by the Lottery (i.e. slot tickets, slot seats, bases, maintenance costs, etc.).

ANSWER: The Lottery Commission is required by Law to either own or lease all VLTs, and to provide maintenance of those VLTs. Bases and chairs which are integrated into the VLTs will be provided by the Lottery Commission. Stand-alone bases and chairs shall be the responsibility of the Licensee. (see RFP Section 4.4)

5. **QUESTION:** Section 1.1.9: Please confirm whether or not the Lottery provides Ticket Redemption Units (“TRUs”) and whether or not ATM functionality may be combined with the TRUs?

ANSWER: No, the Lottery Commission does not provide Ticket Redemption Units ("TRU"). Combining ATM functionality with the TRUs would be the Licensee's decision, provided that the ATM/TRU unit complies with all regulations, specifically the regulations governing ATMs (14.01.11.07 and 14.01.14.33).

6. **QUESTION:** Section 1.2.2.1: a) Is Letter of Credit (“LOC”) an acceptable format for Initial License Fee submitted with application? B) If yes on a), can partial deposit in form of LOC from multiple participants in a JV bid team be provided?

ANSWER: No. A letter of credit is not acceptable. The Initial License Fee must be paid by certified check or electronic transfer.

7. **QUESTION:** Section 2.2: It is noted that the applicant’s RFP will remain confidential until all bids are opened, and at that point, minimal information will be provided publicly. However, it is necessary for any applicant to sign the MOU with the City, or negotiate a similar MOU with the City. Will the City keep all information and discussions with applicants confidential?

ANSWER: Baltimore City is required to comply with the requirements of the Location Commission as specified in the RFP. As stated in Section 4.2.3.2, the Location Commission's point of contact will arrange meetings

between Applicants and the City and the Location Commission will oversee that process.

The MOU approved by the City Board of Estimates ("BOE") contained in the RFP contains the minimum terms acceptable to the City and is a public document. Any supplement to the MOU that may be negotiated between the Applicant and the City must pertain to terms already contained in the MOU and can only contain more favorable terms to the City. The BOE has delegated authority to the Director of Finance to execute any supplement. Therefore, it need not be submitted to the BOE for approval until after License award. Since the Applicant would submit the supplement as part of its Proposal, the supplement would be treated in the same confidential manner as the Proposal.

8. **QUESTION:** Section 2.2.1: Would these "oral presentations" be accessible to public?

ANSWER: As stated in Section 2.2.1, "The Location Commission may hold open meetings for Applicants to make oral presentations regarding their Proposals. However, the evaluation process shall be conducted in a confidential manner in closed session of the Location Commission."

9. **QUESTION:** Section 2.5: What is the anticipated decision making timeframe after submission of proposals?

ANSWER: As stated in Section 2.5, it is anticipated that Oral Presentations will be conducted between August – October 2011, and the Anticipated Award Date is December 2011.

10. **QUESTION:** Section 2.10: a) If an Applicant is awarded a license and then cannot get final zoning or land use or other approvals for the property through no fault of the Applicant, will the License Fee be refunded?

b) What is the process for returning the Initial License Fee to bidders not selected?

ANSWER: a) and b) Section 2.10.1.2 Disposition – Refunds addresses the refund of the Initial License Fee to an unsuccessful Applicant or an Awardee who fails to be issued a License in spite of all good faith efforts.

11. **QUESTION:** Section 2.11: indicates that all proposals in response to the RFP are "irrevocable" for a period of 365 days.

- a) What is the intended meaning of the term “irrevocable”?
- b) Will Applicants be permitted to modify their bids either in the Supplement or at other points in the process if confronted with a material change in circumstances that could not have been foreseen or was not present at the time the bid was submitted?
- c) What if legislative or municipal changes occur that change the material benefits anticipated by an applicant? Can those be the basis of a withdrawal and return of fees?

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

b) There is no "Supplement" to Proposals permitted in this RFP process. It would be part of the discussion/negotiation process specified in Section 5.4, and the Location Commission may consider such requests under extraordinary circumstances, in the sole discretion of the Location Commission, or as provided in Section 2.9.4.

c) It would be part of the discussion/negotiation process specified in Section 5.4, and the Location Commission may consider such requests under extraordinary circumstances, in the Location Commission’s discretion. The Disposition of the Initial License Fee including Refunds and Forfeiture is addressed in Sections 2.10.1.2 and 2.10.1.3, respectively.

12. **QUESTION:** Section 2.14: If an amendment is made to the RFP after the Deadline of Receipt of Proposals, will the Applicant still have the option of withdrawing (based on the change) and not forfeit the Initial License Fee (§ 2.10.1.3)?

ANSWER: Such a situation is not anticipated and a circumstance cannot be foreseen where this would apply, but the Applicant's request would be considered under extraordinary circumstances, in the sole discretion of the Location Commission.

13. **QUESTION:** Section 2.19: Please confirm that, notwithstanding the notation of confidential that may be placed on certain application pages, all personal background information about an applicant that is a natural person, or any private entity in the chain of ownership, will remain confidential, aside from basic name and interest.

ANSWER: The Maryland Public Information Act allows for certain information to be exempt from disclosure, such as the financial information

of an individual. License Application forms are confidential and not subject to disclosure, unless otherwise required by law or court order.

14. QUESTION: Section 2.21: If a minority or woman-owned business enterprise otherwise qualifies for State MBE certification but has been newly-formed to apply for an Operator or other license and therefore lacks the required time in business for certification, may it nevertheless describe itself as an MBE for purposes of the application?

ANSWER: Yes, as to minority ownership; No, as to compliance with the MBE subcontract participation goal.

A minority business may meet both the State and City requirements, if qualified.

15. QUESTION: Section 2.28: Can individuals participate in multiple proposals as Principal on different teams?

ANSWER: Yes.

16. QUESTION: Section 2.31.1: and COMAR section 14.01.15.06 require the permanent facility to be operational within eighteen (18) months after the License is awarded, and allow up to two (2) six (6) month extensions, for a total possible period of thirty (30) months. The Baltimore City MOU requires at least 3,750 VLTs to be in operation within a twenty-four (24) month period and do not provide for any extension.

a) If both six (6) month extensions are granted pursuant to the RFP. the permanent facility will not be operational within the twenty-four (24) month period required by the Baltimore City MOU. Please address this apparent conflict.

b) Please clarify whether either time requirement is tolled in the event litigation by a third party delays financing and/or construction of the project through no fault of the Licensee.

c) Will these periods be tolled for any other conditions including, but not limited to, force majeure?

ANSWER: a) As stated in the MOU within 24 months after License award the Facility must have at least 3,750 VLTs in operation. Any additional VLTs up to the statutory limit of 4,750 requested by the Applicant could be phased in based upon a schedule in the Proposal not to exceed 30 months.

The MOU does not specify whether the Licensee must be operating in a temporary or permanent Facility.

b) Yes, depending upon the circumstances and at the discretion of the Location Commission.

c) Yes, depending upon the circumstances and at the discretion of the Location Commission.

17. QUESTION: Section 3.1.5: Exceptions to requirements of the RFP or other attachments may be taken at the risk of having the Proposal deemed unacceptable. If a Proposal is deemed unacceptable because of exceptions to requirements of the RFP, pursuant to Section 2.17 the Location Commission reserves the right to accept or reject Proposals "in whole or in part" with a possibility of revised Proposals thereafter.

a) If the Commission exercises its right to accept or reject in part, will the Commission recognize the Applicant's contract law rights to treat that partial acceptance or rejection as a counter-offer, which the Applicant in turn may accept, reject, or counter-offer?

b) If so, will the Commission promptly refund the initial License Fee to an Applicant who rejects the Commission's counter-offer and wishes to withdraw a partially accepted Proposal?

c) In any event, if a Proposal is deemed unacceptable because of exceptions to the requirements of the RFP, will the Applicant receive a prompt refund of the initial License Fee?

ANSWER: a) No.

b) and c) The disposition of the Initial License Fee including refunds and forfeitures is addressed in Sections 2.10.1.2 and 2.10.1.3, respectively.

18. QUESTION: Section 3.1.6.5: Labor Peace Agreements are required or an affidavit that such agreements will be entered is required.

a) Is there any information that can be provided at this time of any labor unions that currently wish to represent workers so that preliminary discussions can take place?

b) How can applicants obtain drafts to the required labor peace agreements?

ANSWER: a) The Location Commission does not have any such information and does not maintain any such list.

b) Submit a request to the Location Commission's Point of Contact. (see Section 2.1.1)

19. QUESTION: Section 3.1.7.2: a) Do the shareholder entities (parent organizations) need to guarantee performance?

b) Please provide more clarity on what you mean by parent performance guarantees on construction and at least the first 18 months of operation?

ANSWER: a) Yes, the parent organizations need to provide a performance guarantee which covers the construction period and the first 18 months of operations.

b) During the construction phase and for the first 18 months of operations, the parent company will provide a guarantee so that the project will be solvent and successfully meet all of its financial, operational and regulatory obligations.

20. QUESTION: Section 3.1.7.3: Can applicants submitting under JV company names reference their experience as individual companies for consideration by Location Commission?

ANSWER: Yes, such information may be submitted for evaluation by the Location Commission. Applicants should submit as much detailed information as possible about the JV company and the individual companies.

21. QUESTION: Section 3.1.8.A(1): Are binding commitments required as evidence of Lender interest?

ANSWER: It would be best to have a binding commitment letter in place. However, in the absence of a gaming license award, it may be difficult to obtain a binding commitment. A lender's commitment contingent only upon award of the License is acceptable. A commitment containing any other contingencies or a "highly confident" letter will be evaluated by the Location Commission in the context of the overall Proposal.

22. QUESTION: Section 3.2.2: Is there a cap on the costs that could be incurred per background check by Location Commission?

ANSWER: No. Background investigations are conducted on a case-by-case basis and the cost is dependent upon the complexity of the

investigation that is required. The Lottery Commission will calculate the invoice charges based on the actual time expended conducting investigation of the Applicant in accordance with its internal accounting procedures. After the invoice is generated and the Applicant/Licensee receives the invoice and the supporting documentation, it may review and/or ask questions regarding the invoice.

23. QUESTION: Section 3.2: Please provide a list of any and all states determined by the Lottery Commission to have or not to have licensing standards which are "comprehensive, thorough and provide similar adequate safeguards to those provided in the State of Maryland" pursuant to COMAR sections 14.01.10.12 and 14.01.10.16 and for purposes of Principal Entity and Principal Employee waivers on forms VLT-1007 and VLT-1008. If no such list is available, please advise if the Lottery Commission has made determinations with regard to the casino occupational licenses, principal, key employee, affiliate or comparable licenses issued by the following state agencies:

Pennsylvania Gaming Control Board;
New Jersey Gaming Control Commission;
Connecticut Division of Special Revenue;
Delaware Gaming Control Board;
West Virginia Lottery Commission;
Nevada Gaming Control Board;
New York State Racing and Wagering Board.

ANSWER: The Maryland State Lottery Commission Alternative Licensing Standards Approval States are:

Arkansas
Illinois
Kansas
Louisiana
Mississippi
Missouri
Nevada
New Jersey
New York
Pennsylvania
Rhode Island
Wisconsin

It should be noted that the Alternative Licensing Standards regulations (COMAR 14.01.10.12A) do not apply to an Operation License. Therefore, individuals and entities that would be characterized as "owners" of the VLT Facility under State Government Article 9-1A-01 (5) would be unlikely to qualify for the abbreviated licensing process.

24. QUESTION: Section 3.2: In connection with prior RFP #2009-0101 a number of written answers to questions were provided. Those answers pre-dated SB 822 and no formal procedures existed at the time equivalent to the Principal Employee and Principal Entity waivers now available pursuant to Forms 1007 and 1008, respectively. Many new defined terms have been added and it would appear that under certain circumstances persons your prior answers indicated were not exempt from full disclosure may be eligible for a waiver.

a) Is it accurate to say the answers to Questions 39 and 84 should be disregarded with respect to this RFP?

b) If any portion of the answers to Questions 39 and 84 continue to be correct for this RFP please describe those portions.

ANSWER: RFP #2009-0101 is closed and is not applicable to this RFP. Applicants should rely only upon this RFP, the current VLT Law (Title 9, Subtitle 1A, State Government Article, Annotated Code of Maryland), and current Lottery regulations contained in the Code of Maryland Regulations (Title 14, Subtitle 01).

25. QUESTION: Section 4.2.3.1: a) Are these the only parcels eligible for VLT location?

b) What parcels can be purchased? Is the ground lease for all parcels denoted with letters "A – M"?

c) The ground lease and property taxes are essentially fixed (2.99%, or the minimum per year), yet this remains constant regardless of the parcels ("A – M") included in the plan?

ANSWER: a) Yes, each City-owned lot which is available for use for the VLT Facility is identified in Exhibit 4A.

b) The land on which the VLT Facility is located must be ground leased from Baltimore City. Any of the remaining Site lots A – M can be purchased from the City for ancillary uses. Lots for ancillary uses cannot be ground leased and must be acquired by purchase.

c) Yes, that is correct.

26. QUESTION: Section 4.3.4: Is there limits on the cost of environmental remediation?

ANSWER: No.

27. **QUESTION:** Section 4.3.5: What level of green certification is required Baltimore City Green Building Law?

ANSWER: The Applicant/Licensee is required to comply with the Baltimore City Green Buildings Law, Chapter 37, Building, Fire and Related Codes – 2010 Edition, as stated in the MOU (#11).

28. **QUESTION:** Section 5.4: The last round of applications indicated that the Location Commission may request “Best and Final Offers” from Applicants and reserves the right to allow an Applicant to modify its proposal if the Applicant has acted in good faith and demonstrates that extraordinary circumstances exist. Does this still apply for this RFP?

ANSWER: RFP #2009-0101 is closed and is not applicable to this RFP. Applicants should rely only upon this RFP, the current VLT Law (Title 9, Subtitle 1A, State Government Article, Annotated Code of Maryland), and current Lottery regulations contained in the Code of Maryland Regulations (Title 14, Subtitle 01). In RFP#2012-0101 Section 5.4 "Discussions and Negotiations" the applicable process for conducting discussions and negotiations with an Applicant is described and, when deemed in the best interest of the State, the Location Commission may permit a qualified Applicant to submit a revised Proposal.

29. **QUESTION:** Section 6.14: Please confirm that the VLT Licensee is not responsible for any property, sales or use or other taxes (including but not limited to personal property taxes) on (a) the video lottery terminals, (b) the Central Monitor and Control System and (c) the Associated Equipment and software provided by the Lottery.

ANSWER: Consistent with Tax - Property Article §7-244, the Licensee will not be required to pay property tax on any State property that is located within its Facility.

30. **QUESTION:** Appendix I: Will terms of MOU with City represent a point of differentiation in evaluation of RFP responses?

ANSWER: The Location Commission will conduct its evaluation based on the Evaluation Criteria specified in Section 5.3 and may award a Video Lottery Operation License to the qualified Applicant whose Proposal is determined to be the most advantageous to the State.

31. **QUESTION:** Appendix I: Who absorbs the costs of infrastructure type improvements for access to the site, utilities, traffic and related? Is this an after the fact negotiation with the City?

ANSWER: The Applicant/Licensee is responsible for all such costs (see MOU #5)

32. **QUESTION:** Appendix I: a) Will the phase I and phase II environmental reports prepared by KCI be available to potential applicants?

b) Will potential applicants have access to the land to perform their own environmental tests?

ANSWER: a) Yes, the Phase I and II environmental reports have been posted on the Commission's website.

b) Yes, right of entry will be provided by the City upon request submitted through the Commission.