

AMENDMENT #1 – August 22, 2011

REQUEST FOR PROPOSALS (RFP)

VIDEO LOTTERY OPERATION LICENSE IN ALLEGANY COUNTY (#2012-0102)

This Amendment #1 is being issued to amend and clarify certain information contained in the above referenced RFP. All information contained herein is binding on all Applicants who respond to this RFP. Specific parts of the RFP have been amended. The following changes/additions are listed below; new language has been double underlined and marked in bold (i.e., **word**), and language deleted has been marked with a strikeout (i.e., ~~word~~).

1. REVISE: KEY INFORMATION SUMMARY SHEET.

MBE Ownership and Participation Goals: See Sections 2.21 and 5.3 of this RFP for further information. ~~As part of its required evaluation criteria for business and market factors, the Location Commission will consider the percent of Applicant ownership by entities meeting the MBE definition under State law. In addition, a MBE subcontracting goal of a minimum of 25% has been established for the License resulting from this RFP (see Section 2.21).~~

2. REVISE: SECTION 2.2 PROCEDURE FOR CONDUCTING THE REQUEST FOR PROPOSALS, sub-paragraph 2.2.2.

For the construction and procurement related to the operation of the VLTs Facilities, the Applicant or Licensee shall ~~at a minimum~~ meet the same requirements of a designated unit goals (including any sub-goals) to be established by the Lottery Commission for Minority Business Enterprise (MBE) Participation ~~(MBE)~~ as described under Title 14, Subtitle 3 of the State Finance and Procurement Article, unless a waiver is granted. See Section 2.21 for further details.

~~If Allegany County sets higher minority business participation requirements than the State, the Applicant shall meet the County's minority business participation requirements to the extent possible.~~

3. REVISE: SECTION 2.21 MINORITY BUSINESS ENTERPRISE (MBE) SUBCONTRACT PARTICIPATION GOAL.

~~Minority Business Enterprises~~ **MBEs** are encouraged to respond to this RFP.

In this section, Awardee and Licensee are used interchangeably.

2.21.1 The Awardee/Licensee will be closely scrutinized and monitored for Minority Business Enterprise (MBE) compliance. The Governor's Office of Minority Affairs ("GOMA") shall monitor compliance with all MBE requirements and the Lottery Commission shall ensure that an Operation Licensee complies with the requirements of this Section as a condition of holding the Operation License.

2.21.2 For the construction and other procurements related to the development, management and operation of ~~VLTs~~ **Video Lottery Facilities**, the Licensee shall ~~at a minimum meet the requirements~~ **goals (including sub-goals where the Lottery Commission determines that they are appropriate)** for MBE participation as described under Title 14, Subtitle 3 of the State Finance and Procurement Article.

~~A minimum certified MBE participation goal of 25% has been established for the expenditures related to the Operation License issued as a result of this RFP, including but not limited to design, construction, development and operational expenditures.~~

~~Chapters 252 and 253 of 2011 repeal provisions of law related to minimum sub-goals for African American-owned MBEs and Women-owned MBEs and instead require GOMA to establish guidelines to determine whether sub-goals for minority groups should be set.~~

The Lottery Commission will set goals for each Awardee/Licensee based on the actual work proposed and the availability of MBEs to perform the work. Waivers will be available for instances in which the Awardee/Licensee is unable to meet the goals after making good faith efforts. The waiver process is described in Section 6.27.2.

By submitting a Proposal in response to this RFP, the Applicant/Licensee agrees to meet ~~or exceed the overall goal and any sub-goals~~ **goals** established in the License with the participation of Maryland Department of Transportation ("MDOT") certified MBEs **or seek and obtain a waiver after demonstrating good faith efforts to meet the goals.**

2.21.3 Under the VLT Law (SG § 9-1A-10), if Allegany County sets a higher minority business participation requirement than the State, the Licensee shall meet Allegany County's minority business participation requirements to the extent possible. **The Lottery Commission will work with Allegany County, GOMA, and other State agencies, as appropriate, in establishing the Awardee/Licensee goals based on scope of work and availability of MBEs, as described in Section 2.21.2.**

2.21.4 Any collective bargaining agreement or agreements, including a project labor agreement or a neutrality agreement, entered into by an Applicant/Licensee may not negate these requirements.

2.21.5 MBE forms are contained in Appendix D: Minority Business Enterprise (MBE) Instructions/Forms.

Each Applicant shall complete, sign and include with its Proposal submitted to the Location Commission in response to this RFP **Revised** Appendix D-1 – Applicant’s Acknowledgement of MBE Requirements. (Note: If the Applicant fails to submit **Revised** Appendix D-1 at the time of submittal of its Proposal as required, the Location Commission may determine that the Proposal is not acceptable)

Submission of **Revised** Appendix D-1 is the only MBE requirement at the time of submission of a Proposal in response to this RFP. All other forms are included herein for informational purposes, shall be submitted by the Awardee/Licensee directly to GOMA at a later date as directed by GOMA, and are subject to revision by GOMA.

4. REVISE: SECTION 3.1.1 Required Submissions with Proposal, sub-paragraph D.

Applicants must submit the following items #A through #H with the Proposal.

- D. A completed Applicant’s Acknowledgment of MBE Requirements **as revised by Amendment #1 to this RFP (Revised Appendix D-1).**

5. REVISE: SECTION 3.1.6.1 Site and Facility, sub-paragraph D (2) (f).

(f) The Maryland Environmental Service (MES) manages the operation and maintenance of the existing water and wastewater treatment facilities serving the Park, Lodge and the Leased Area. MES is currently evaluating **planning for** the relocation and upgrade of the water plant that is currently located in the campground area. Because the water line runs under the lake to the main water storage tank, MES wants to relocate it along Pleasant Valley Road. **The existing wastewater treatment facility is also scheduled for replacement. Both replacement facilities will be funded by the State and will be built to accommodate existing capacity, but will allow room for expansion of capacity to serve the VLT facility when these utilities are needed.** ~~The Licensee shall be responsible for the prorata share of the capital construction costs of a replacement facility serving the Lodge and Resort. Any The water and wastewater treatment plant expansions or upgrades necessary for the VLT facility are the **sole** responsibility of the~~

Awardee/Licensee, including the design and capital construction costs, and shall be coordinated through MES and DNR.

6. REVISE: SECTION 3.1.6.4 Business Plan and Economic Impact, sub-paragraph B.

- B. Plan for securing MBE participation: Provide a plan to ~~meet or exceed the minimum MBE subcontracting goal of 25%~~ include MBE participation in contracting.

7. REVISE: SECTION 6.27 MINORITY BUSINESS ENTERPRISE (MBE) SUBCONTRACT PARTICIPATION, sub-paragraphs 6.27.1, 6.27.2 and 6.27.3.

In this section Awardee and Licensee are used interchangeably.

6.27.1 General Requirements

- A. All MBE firms proposed must be certified by MDOT in order to be counted, ~~except as set forth in Section 2.21.3 of the RFP~~. The spirit and intent of the State of Maryland is to afford MBEs the opportunity to perform viable and meaningful services in a teaming effort ~~on its contracts~~. It is the desire of the State to maximize notice, and the opportunity to participate in the procurement process, to a diverse and broad range of MBEs.

A Contractor — including an MBE prime Contractor or a prime Contractor comprising a joint venture that includes MBE partner(s) — must accomplish an amount of work not less than the MBE subcontract participation goal with MDOT certified MBE subcontractors, unless it has requested and been granted a waiver. An MBE prime cannot subcontract to itself; a prime joint venture with MBE partners cannot subcontract to its MBE partners.

- B. Assistance in locating certified MBEs may be obtained by contacting:

The Governor's Office of Minority Affairs
6 Saint Paul Center, #1502
William Donald Schaefer Tower
Baltimore, Maryland 21202
410-767-8232

A Maryland certified MBE Directory is published by:

Maryland Department of Transportation
Office of Minority Business Enterprise and Equal Opportunity
P.O. Box 8755
Baltimore-Washington International Airport
Linthicum, Maryland 21240-0753
800-544-6056 or 410-865-1269

and is available on the MDOT website at www.mdot.state.md.us.

- C. ~~To achieve the result specified in Sections 2.21.2 and 2.21.3 of the RFP, the~~ **The** Awardee/Licensee shall conduct the contractor/subcontractor solicitation process in such a manner as to not place MBE contractors or subcontractors at a disadvantage. In this process, the Awardee/Licensee shall:
1. Identify specific and meaningful work categories within the solicitation's scope of work that are appropriate for contracting and subcontracting;
 2. Solicit diverse certified MBEs through **timely** written notice, describing the identified work categories under item (1) above and providing detailed instructions on how to submit a bid for the contracts or subcontracts (Make sure the MBEs are certified in the work category for which they are being solicited – carefully check the NAICS code);
 3. Attempt to make personal contact with the certified MBEs solicited in item (2) above and document these attempts;
 4. Assist certified MBEs to fulfill bonding requirements or to obtain a waiver of those requirements; and,
 5. In order to publicize subcontracting opportunities to certified MBEs, conduct **timely** pre-Proposal conferences. Notify and encourage those MBEs solicited to attend the pre-Proposal conference.

6.27.2 Waiver

- A. If the Awardee believes a waiver of some or all of the **an** MBE goal is necessary, including any sub-goal, then the Awardee must request a waiver by ~~completing~~ **submitting** all documentation as directed by GOMA **the Lottery Commission**. The waiver request must clearly indicate what portion of the established goal the Awardee intends to meet. Documentation supporting any waiver request shall include, at minimum:
1. A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBEs in order to increase the likelihood of achieving the stated goal;
 2. A detailed statement of the efforts made to contact and negotiate with certified MBEs including the names, addresses, dates, and telephone numbers of the certified MBEs contacted and a description of the information provided to the certified MBEs regarding plans, specifications, and anticipated time schedule for portions of the work to be performed;

3. As to each certified MBE that placed a quotation or offer that the Awardee considered not to be acceptable, a detailed statement of the reasons for this conclusion; and,
 4. In the event certified minority subcontractors are found to be unavailable, a signed and notarized MBE Statement of Unavailability must be prepared by the Awardee, to include the names, addresses, dates, times, and telephone numbers of the certified MBEs contacted and the reason each MBE is unavailable.
- B. An Awardee requesting a waiver must demonstrate reasonable good faith efforts to meet the goal, and a waiver of any portion of the MBE goal shall be granted only upon reasonable demonstration by the Awardee that (1) certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price, and or (2) if ~~GOMA, in consultation with~~ the Lottery Commission, determines that the public interest is served by a waiver.
- C. The documentation shall be furnished within the time specified by the ~~GOMA~~ Lottery Commission. If ~~GOMA~~ the Lottery Commission determines that the Awardee has not complied with the certified MBE subcontract participation contract goal, has not obtained a waiver as required, fails to submit the documentation required by the solicitation, or fails to comply in good faith with outreach efforts, the Lottery Commission, in consultation with GOMA and upon review by the Office of the Attorney General, may determine not to issue the Operation License.

6.27.3 Amendment for Unforeseen Circumstances

If, at any time after award of the Operation License, the Awardee, or Licensee determines that a certified MBE listed on the MBE Participation Schedule (Appendix D-2) has become or will become unavailable or is ineligible to perform the work, then the Awardee or Licensee shall notify ~~GOMA~~ the Lottery Commission within 72 hours of making the determination, as required by Chapter 254 of 2011. The notification shall indicate the Awardee's/Licensee's efforts to substitute another certified MBE subcontractor to perform the work. Within ~~ten (10)~~ five (5) working days from notification to ~~GOMA~~ the Lottery Commission, the Awardee/Licensee may request and submit an amendment to the MBE Participation Schedule (Appendix D-2) if applicable, and new Subcontractor Project Participation Statement (Appendix D-4) signed by both the Awardee/Licensee and the newly proposed certified MBE(s), which must be approved by ~~GOMA~~ the Lottery Commission. In the event that the Awardee/Licensee is unable to find one or more MBE replacements, the Awardee/Licensee shall document and submit in writing all good faith efforts to ~~find such replacements~~ substitute another MBE to perform the work that the unavailable or ineligible MBE would have performed, including but not limited to seeking assistance from GOMA.

23. REVISE: SECTION 7 APPENDICES

See attached revised Section 7 including revised Appendix D-1.

SECTION 7. APPENDICES

APPENDIX D – Minority Business Enterprise (MBE) Instructions/Forms

APPENDIX D-1 – Revised - Applicant's Acknowledgement of MBE Requirements Affidavit *This is the only form in Appendix D that must be completed and submitted with the Applicant's Proposal.*

APPENDIX D-2 – MBE Participation Schedule

APPENDIX D-3 – Outreach Efforts Compliance Statement

APPENDIX D-4 – Subcontractor Project Participation Statement

APPENDIX D-5 – Contractor's MBE Monthly Payment Progress Report

APPENDIX D-5a – Prime Contractor Unpaid MBE Invoice Report

APPENDIX D-6 – Subcontractor Payment Report

REVISED APPENDIX D

MINORITY BUSINESS ENTERPRISE (MBE) INSTRUCTIONS/FORMS

PURPOSE

Awardee/Licensee shall structure its procedures for the performance of the work required by this License to attempt to achieve the Minority Business Enterprise (MBE) goals **established by the Lottery Commission** stated in the Request for Proposals. MBE performance must be in accordance with this Appendix, as authorized by Code of Maryland Regulations (COMAR) 21.11.03. **Awardee**/Licensee agrees to exercise all good faith efforts to carry out the requirements set forth in this Appendix.

FORMS AND SUBMISSION REQUIREMENTS DURING RFP PROCESS

- ◆ An Applicant must include with its Proposal:
 - (1) A completed Applicant's Acknowledgement of MBE Requirements (**Revised Appendix Attachment D-1**) whereby the Applicant acknowledges **that the Lottery Commission will establish the certified MBE participation goals (including any sub-goals) based on the work to be performed and the availability of MBEs to perform the work**, commits to make a good faith effort to achieve the goals, and affirms that MBE contractors and subcontractors will be treated fairly in the solicitation process.

If an Applicant fails to submit Revised Appendix D-1 at the time of submittal of the Proposal as required, the Location Commission may deem the Proposal to be unacceptable.

- ◆ Within ten (10) working days from the date of the License award, or other date specified by GOMA, the Awardee must provide the following documentation to GOMA:
 - (1) completed MBE Participation Schedule (Appendix D-2) whereby the Awardee responds to the expected degree of Minority Business Enterprise participation as **established by the Lottery Commission** stated in the RFP, by identifying the specific commitment of certified Minority Business Enterprises. The Awardee shall specify the price and/or the percentage of License value associated with each MBE subcontractor identified on the MBE Participation Schedule.
 - (2) Outreach Efforts Compliance Statement (Appendix D-3)
 - (3) Subcontractor Project Participation Certification (Appendix D-4)
 - (4) If the Awardee has requested a waiver (in whole or in part) of any the overall MBE goal or of any subgoal, it must submit documentation supporting the waiver request that complies with COMAR 21.11.03.11 **and this RFP**.
 - (5) Any other documentation required by GOMA to ascertain the Awardee's responsibility in connection with the certified MBE participation goals.

If the Awardee fails to return each completed document within the required time, the Lottery Commission GOMA in consultation with GOMA the Lottery Commission, may determine that the Awardee is not eligible for issuance of a License.

- Forms D-5, D-5a & D-6 are used for monthly reporting to GOMA after License award and will not be completed or submitted by the Applicant at this time. GOMA will notify Awardee/Licensee when to begin submitting these monthly reports.

LICENSE ADMINISTRATION REQUIREMENTS

The Awardee/Licensee shall:

1. Submit monthly to GOMA a report listing any unpaid invoices, over 30 days old, received from any certified MBE contractor or subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE contractors and subcontractors a requirement that those contractors submit monthly to GOMA a report that identifies the prime contract and lists all payments received from Licensee in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority contractors and subcontractors employed under the License, the type of work performed by each, and the actual dollar value of work performed. Agreements documenting the work performed by all MBE participants must be retained by the Licensee and furnished to GOMA on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Licensee must retain all records concerning MBE participation and make them available for State inspection for three (3) years after final completion of the License.
5. At the option of GOMA, upon completion of the License and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE contractors and subcontractors.

REVISED APPENDIX D-1

APPLICANT'S ACKNOWLEDGEMENT OF MBE REQUIREMENTS

This document shall be completed and included with the submittal of the Proposal. If the Applicant fails to submit this form with the Proposal as required, the Location Commission may deem the Proposal to be unacceptable.

In conjunction with the Proposal submitted in response to RFP No. 2012-0102, I affirm the following:

1. I acknowledge **that the Lottery Commission will establish** ~~the overall~~ certified Minority Business Enterprise (MBE) participation goals, **which may include sub-goals, based on the work to be performed and the availability of MBEs to perform the work** ~~of 25% percent established~~ for the Operation License to be awarded as a result of this RFP.
2. If I am awarded a License, I commit to making a good faith effort to achieve the established MBE goals.
3. I understand that if I am notified that I am the apparent Awardee, I must submit all additional documentation as required by GOMA within ten (10) working days, or other time period specified by GOMA, of receiving notice of the potential award.
4. I acknowledge that if I fail to return each completed document within the required time, the Lottery Commission in consultation with GOMA may determine that I am not eligible for issuance of a License.
5. In the solicitation of contract/subcontract quotations or offers, MBE contractors/subcontractors shall be provided not less than the same information and amount of time to respond as are non-MBE contractors/subcontractors.
6. The solicitation process shall be conducted in such a manner so as to otherwise not place MBE contractors/subcontractors at a competitive disadvantage to non-MBE contractors/subcontractors.

I solemnly affirm under the penalties of perjury that the contents of this Affidavit are true to the best of my knowledge, information, and belief.

Applicant Name

Signature of Affiant

Address

Printed Name, Title

Date

Except as expressly amended herein, all other terms, provisions and conditions in the RFP remain unchanged and in full effect.