

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

RESPONSES TO WRITTEN QUESTIONS

August 2, 2011

This List of Questions and Responses #2 (Q&A#2) 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:

2. **QUESTION:** Key Information Summary Sheet: Provides in part that the "Location Commission will consider the percent of Applicant ownership by entities meeting the MBE definition under State law". Will Minority Business Enterprises be given automatic preference in the case of two otherwise equivalent proposals?

ANSWER: No. The percent of ownership by entities meeting the definition of Minority Business Enterprise is one of nine Business and Market Factors that will be used by the Location Commission in evaluating Proposals as stated in Section 5.3.

3. **QUESTION:** Section 1.1.2: Are there any assurances that the Lottery will not authorize another license in an area/market that competes with the license being awarded pursuant to this RFP?

ANSWER: The Lottery is not authorized to do this. The five locations available for a VLT license are established by the Maryland Constitution and any change would require legislative action and approval in a Statewide referendum.

4. **QUESTION:** Section 1.2.2.3: Can the costs of the upgrades to and relocation of the water plant or any other infrastructure improvements count towards the \$25 million investment requirement?

ANSWER: Yes, subject to Commission approval. The Applicant's proposed plan for the required capital investment will be submitted with its Proposal and when accepted by the Location Commission shall become the basis for the Applicant/Licensee's required performance. (see Section 3.1.6.3 of the RFP).

5. **QUESTION:** Section 2.21.3: Are there any Allegany County MBE requirements?

ANSWER: Allegany County has not adopted any MBE requirement.

6. **QUESTION:** Section 3.1.6.5: Provides in part that the "Applicant is required to produce evidence that it has entered into required labor peace agreements".

a) Which unions are currently contemplated to be covered by the labor peace agreement?

b) Will the Location Commission provide a list of "each labor organization that is actively engaged in representing or attempting to represent video lottery and hospitality workers in the State of Maryland" ?

c) Is a "template" or "standard" form of the peace agreement available from the Location Commission or the labor organizations?

ANSWER: a) The unions that have had contact with the existing VLT Facilities are: Unite Here Local 7; International Brotherhood of Teamsters, Local 355, Joint Council 62; International Union of Operating Engineers, Local 37; and the Seafarers Union.

b) The Commission does not maintain any such list.

c) A sample format Labor Peace Agreement has been posted on the Location Commission's website.

7. **QUESTION:** Section 4.2.3.2: Provides in part that "[c]ontact with any interested party without the prior approval of the Location Commission is grounds for rejection of an Applicant's Proposal." "Interested Party" includes MEDCO Bondholders. Does this mean that Prospective Applicants are prohibited from contacting the existing Bondholders for the purpose of negotiating a purchase of the

outstanding bonds?

ANSWER: Applicants shall have no contact with any interested party *without the prior approval of the Location Commission*. As stated in Section 4.2.3.2, "Applicants should contact the Location Commission's point of contact specified in Section 2.1.1 to make arrangements to meet with DNR, MEDCO, and other interested parties, including MEDCO Bondholders."

8. **QUESTION:** Section 4.2.3.5: Requires the Applicant to describe the proposed VLT Facility within the lodge or separate building within the 18 acre area approved by the Board of Public Works, yet the ground lease map depicting the 18 acres excludes the current lodge. Please explain this discrepancy?

ANSWER: The present lease that MEDCO has for the entire Lodge, including the golf course, covers 260 acres out of the total State Park which encompasses 3,500 acres. The 18 acre map designates the footprint that is acceptable for a building location if the VLT Facility is not placed within the Lodge or if replacement conference space needs to be built by the Licensee.

9. **QUESTION:** Section 4.2.3.6.1 of the RFP provides in part that the Proposal must include an Agreement to pay the Maryland Department of Natural Resources "annual ground rent to be paid to DNR (minimum of \$275,000)".

a) Will any Proposal that provides for "annual ground rent" in an amount less than \$275,000 be automatically rejected?

b) Does the ground lease payment for 15 years count towards the \$25 million capital investment requirement?

ANSWER: a) It would not be "automatically" rejected. However, it would be considered to be an Exception to the requirements (see Section 3.1.5 C.). A License may not be awarded to an Applicant taking exception to a requirement of the RFP, unless that exception has been removed or resolved during the discussion and negotiation process.

b) Yes. An Applicant should submit in its Proposal a calculation of the estimate of value over the License term and the methodology used by the Applicant in determining that calculation.

10. **QUESTION:** Section 4.2.3.6.2:

a) With which party will an Applicant need to negotiate for the ground lease?

b) Will the golf course be subject to a separate ground lease?

ANSWER: a) DNR is the owner of the property. The ground lease terms will be negotiated with DNR as part of the Location Commission's Discussion/Negotiation process. Depending upon the Applicant's Proposal, amendments to the current Ground Lease and/or a new Ground Lease will be agreed upon among the appropriate parties prior to License Award, subject to Board of Public Works approval after License award.

b) The current Ground Lease terms relate to the Lodge and golf course together as one lease. If the Applicant intends to separate these entities, the information should be provided as suggested amendments to the lease structure as part of the overall Proposal submission.

11. **QUESTION:** Section 4.2.3.7: While the current signage and directional information for the Rocky Gap Lodge appears to be appropriate for the existing facility, in general, a casino will have more prominent signage with lighting. Item #3, states that DNR shall review and approve all external signage on the premises and outside of the leasehold premises. To what extent will the DNR exhibit some flexibility and allow for a reasonable accommodation for commercially appropriate signage?

ANSWER: DNR will work in cooperation with the selected applicant to agree on a design that is commercially appropriate but also in balance with the overall park entrance and aesthetics.

12. **QUESTION:** Section 4.3: Will the Licensee be allowed to install a player database or "players club", and, if so, will it be the owner of the data?

ANSWER: Yes, the Licensee may select a player and employee tracking system of its choice and it will own the data. The Licensee will be responsible for notifying the VLT Manufacturer of the player and employee tracking system selected and coordinating in advance with the manufacturer for preparation of the VLT during manufacture for installation of the selected system. The Licensee will be responsible to pay the cost of all such preparation and related hardware and services related to its selected player and employee tracking system.

13. **QUESTION:** Section 6.2.1: Seems to assert that the VLT's will be "dropped" on a daily basis with all of the resulting cash being transferred to the State. Some of the other States operating VLTs have adopted payment procedures where the State is reimbursed the correct tax value on a weekly or even monthly basis. This allows the operator to utilize part of the daily cash flow for working capital in the business.

a) Is it the intent of the Maryland Lottery Commission that the operator will be responsible for creating the necessary cash flow for the cage operation?

b) Is this daily drop and payment procedure presently being utilized for the Perryville and Ocean Downs Casinos?

c) Will the Maryland State Lottery Agency be receptive to a proposal to only perform a "drop" once or twice a week for a smaller gaming operation at the Rocky Gap Resort?

ANSWER: a) Yes. The operator is responsible to create the necessary cash flow for its operation. The VLT Law (9-1A-26, Annotated Code of Maryland) requires that .."all proceeds from the operation of video lottery terminals shall be electronically transferred daily into the State Lottery Fund..."

b) Perryville and Ocean Downs transfer all of the proceeds to the Lottery Commission on a daily basis as described in a) above. Regarding the drop, Perryville and Ocean Downs are dropping their floor based on a drop schedule that was approved by the Lottery Commission. See c) below for more information concerning the approval of the drop schedule.

c) COMAR 14.01.14.44 states in part: "At least 30 days before video lottery terminal operations are to commence, a facility operator shall submit to the Commission in writing a drop schedule setting forth:

(1) Specific pickup days and times for collection of cash storage boxes;

(2) Specifications as to what areas of the gaming floor will be covered on each pickup day; and

(3) Specific transportation routes to be utilized from the gaming floor to the count room on each pickup day."

14. QUESTION: Section 6.19 and 6.23: Require that the Licensee keep confidential all information in connection with the License and the performance thereunder. Please confirm that the Licensee will be permitted to make such disclosures (and press releases) as may be required by any securities regulatory body or exchange?

ANSWER: Yes. A disclosure required by law would be a permitted exception to this requirement. The Contractor should provide notice to the Lottery if information disclosed was required by law.

15. QUESTION: Section 6.28: Do "unclaimed winnings" get treated as proceeds with a portion going back to the Licensee?

ANSWER: Yes, unclaimed jackpots are accounted for as a cost in determining Proceeds.

16. **QUESTION:** Potential Gaming Market - Can the Maryland State Lottery Agency provide the sales figures for all lottery game products sold in the State for the last three State fiscal years on a County by County basis along with per capita sales by County and point of sales location by County?

ANSWER: Unaudited sales by county for the years 2008, 2009 and 2010 have been posted on the Location Commission's website. 2011 is not yet completed. Information by sales location or per capita sales is not readily available, but breakdown by percentage of population can be found starting on page 81 of the Lottery's CAFR which can be found at: <http://cdn.mdlottery.com/wp-content/uploads/2011/02/CAFR-2010.pdf>.