Maryland Logo

STATE LOTTERY AND GAMING

CONTROL AGENCY (MLGCA)

Request for Proposals (RFP)

INSTANT TICKET GAMES AND RELATED SERVICES

(#2019-05)

Issue date: January 22, 2020

DUE DATE: March 4, 2020

NOTICE

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace Advantage (eMMA) https://procurement.maryland.gov should register on eMMA. See **Section 4.2**.

Minority Business Enterprises Are Encouraged to Respond to this RFP

**VENDOR FEEDBACK FORM**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this RFP, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet for contact information).

**Title: INSTANT TICKET GAMES AND RELATED SERVICES**

**RFP No: 2019-05**

1. If you have chosen not to respond to this RFP, please indicate the reason(s) below:

* Other commitments preclude our participation at this time
* The subject of the solicitation is not something we ordinarily provide
* We are inexperienced in the work/commodities required
* Specifications are unclear, too restrictive, etc. (Explain in REMARKS section)
* The scope of work is beyond our present capacity
* Doing business with the State is simply too complicated (Explain in REMARKS section)
* We cannot be competitive (Explain in REMARKS section)
* Time allotted for completion of the Proposal is insufficient
* Start-up time is insufficient
* Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
* Proposal requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
* MBE or VSBE requirements (Explain in REMARKS section)
* Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
* Payment schedule too slow
* Other: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. If you have submitted a response to this RFP, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

REMARKS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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State of Maryland

STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA)

Key Information Summary Sheet

|  |  |
| --- | --- |
| **Request for Proposals** | Services - **INSTANT TICKET GAMES AND RELATED SERVICES** |
| **RFP Number:** | **2019-05** |
| **RFP Issue Date:** | January 22, 2020 |
| **RFP Issuing Office:** | STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA) |
| **Procurement Officer:** | Robert W. Howells  Montgomery Park Business Center, 1800 Washington Blvd., Suite 330, Baltimore, Maryland 21230 |
| **e-mail:**  **Office Phone:** | Robert.Howells@Maryland.gov  410-230-8789 |
| **Proposals are to be sent to:** | Robert W. Howells, Procurement Officer  Montgomery Park Business Center  1800 Washington Blvd., Suite 330  Baltimore, Maryland 21230 |
| **Pre-Proposal Conference:** | **February 5, 2020 at 11:00 a.m. Local Time**  Montgomery Park Business Center, 1800 Washington Blvd., Suite 330, Baltimore, Maryland 21230  See **Attachment A** for directions and instructions. |
| **Questions Due Date and Time** | February 26, 2020 Local Time |
| **Proposal Due (Closing) Date and Time:** | **March 4, 2020 by 2:00 p.m. Local Time**  Offerors are reminded that a completed Vendor Feedback Form is requested if a no-bid decision is made (see **page ii**). |
| **MBE Subcontracting Goal:** | 10.0 % (Primary Contractor Only)  (with no subgoals) |
| **VSBE Subcontracting Goal:** | 1. % (Primary Contractor Only) |
| **Contract Type:** | The Primary Contract that results from this RFP will be an Indefinite Quantity Contract with Firm, Fixed Unit Prices (Firm, Fixed dollar amount per square inch of Instant Ticket area/1000 and Firm, Fixed Dollar amount per delivery of Instant Ticket orders and POS materials to Retailers) as described in COMAR 21.06.03.02 & 21.06.03.06. The Alternate Contract(s) will be an Indefinite Quantity Contract with Firm, Fixed Unit Prices (Firm, Fixed dollar amount per square inch of Instant Ticket area/1000) as described in COMAR 21.06.03.02 & 21.06.03.06. |
| **Contract Duration:** | The Contract(s) awarded as a result of this RFP will be for an initial term of approximately four (4) years tentatively beginning on or about September 1, 2020 and extending through August 31, 2024. The MLGCA, at its sole option, shall have the unilateral right to extend the Contract for one (1) additional three (3) year renewal period, for a total contract term of seven (7) years.  The MLGCA’s existing contract for Instant Ticket Games and Related Services (#2013-01) expires on August 31, 2020. |
| **Primary Place of Performance:** | As proposed by Offeror |
| **SBR Designation:** | No |
| **Federal Funding:** | No |

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# Minimum Qualifications

## Offeror Minimum Qualifications

To be considered reasonably susceptible of being selected for award, the Offeror must document in its Proposal that, within the last seven (7) years, the following Minimum Qualifications have been met:

North American State or Provincial Lottery (NASPL) Experience: The Offeror shall have a minimum of five (5) years experience immediately preceding the date of this RFP in producing Instant Ticket Games for at least one (1) or more NASPL” lotteries.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal a list of customers from the past five years that collectively demonstrate the Offeror’s required years of experience in providing Instant Ticket Games.

Production Facility: The Offeror shall, at the time of proposal submission, have a production facility located in North America possessing the capacity to produce the quality and quantity of games required by this RFP.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal a description of its production facility and verification of its production capacity in terms of quantity and quality.

Capacity (Applicable to the Primary Contractor Only): An Offeror for the Primary Contract shall have a minimum capacity of producing at least 175 million Instant Tickets per year.

Required Documentation: As proof of meeting this requirement, the Offeror shall provide with its Proposal verification of its capacity to produce a minimum of 175 million tickets per year for each year of the contract term.

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# Contractor Requirements: Scope of Work

## Summary Statement

The Maryland Lottery and Gaming Control Agency (MLGCA) is issuing this Request for Proposals (RFP) in order to invite qualified Offerors to submit proposals to provide Instant Ticket Games and Related Services, to include but not limited to: Instant Ticket design, planning, production, security and delivery of all orders to the MLGCA’s warehouse and Retailers; and marketing and sales support for Instant Ticket Games as more fully described in this RFP. Further, the MLGCA may also seek such items and services as set forth as Additional Tasks herein.

It is the State’s intention to obtain goods and services, as specified in this RFP, from a Contract(s) between the selected Offeror(s) and the State.

The MLGCA may make multiple contract awards as a result of this RFP – a single Primary Contract and possible multiple Alternate Contract(s) - to any other Offerors that are determined by the MLGCA to be qualified. See RFP **Section 4.9 Award Basis** for more Contract award information.

The Primary Contractor will be the principal supplier of Instant Ticket Games and Related Services for the MLGCA. In addition to the production of Instant Ticket Games, the Primary Contractor will assist the MLGCA with the overall operation of its Instant Ticket program with the goal of increasing revenue by providing a Dedicated Account Representative, delivery services to the MLGCA’s Retailers and services such as marketing, research and training support. The Primary Contractor will be paid based on a firm, fixed dollar amount per square inch of Instant Ticket area that it produces and a firm, fixed dollar amount per delivery of Instant Ticket orders and POS materials to Retailers. The Primary Contractor will also be eligible for a Contractor Incentive Program (“CIP”) as described in **Attachment M** – Contract, paragraph 4.6.

The Alternate Contractor(s), if any, will provide Instant Ticket Games and Related Services for selected games as determined by the MLGCA on an as-needed basis. The MLGCA shall have the sole discretion and the unilateral right to assign specific Instant Ticket Game orders to an Alternate Contractor (Section 2.7). The Alternate Contractor(s) will serve as a strategic consultant and be a producer of Instant Ticket Games for the MLGCA, and will be paid based on a firm, fixed dollar amount per square inch of Instant Ticket area that it produces.

Neither the Primary Contractor nor Alternate Contractor(s) is guaranteed any minimum amount of work. However, the Primary Contractor will be guaranteed to be assigned at least 67% of the total number of Instant Ticket Games which are procured each Fiscal Year under this Contract and it is anticipated that up to 33% of the total number of Instant Ticket Games per Fiscal Year will be assigned to the Alternate Contractor(s). Historical data stated in this RFP regarding quantities of Instant Tickets printed, amount of sales, and number of deliveries to Retailers is for informational purposes only and is not a guarantee of any minimum or maximum quantities under this Contract.

Offerors may submit proposals for the Primary Contract, an Alternate Contract, or both. However, the Offeror awarded the Primary Contract will be ineligible for award of an Alternate Contract. Offerors for the Primary and Alternate Contracts shall meet all requirements stated in this RFP, except for those requirements specifically stated as being applicable only to the Primary Contract.

The MLGCA anticipates ordering a total of approximately 211,200,000 Instant Tickets per contract year under the Contract(s) resulting from this RFP, with an average of approximately 3,772,000 Instant Tickets per game. The MLGCA anticipates shipping a total of approximately 186,000 Instant Ticket orders per contract year to its statewide network of Retailers. These amounts are estimates only and are not a guarantee of any minimum or maximum total amounts or amounts to any single Contractor under this Contract(s).

Instant Ticket Warehousing, Tel-Sell and Picking/Packing services are not required by this RFP and will be performed by the MLGCA as is presently done.

An Offeror, either directly or through its subcontractor(s), must be able to provide all goods and services and meet all of the requirements of this RFP and the successful Offeror (the Contractor) shall remain responsible for Contract performance regardless of subcontractor participation in the work.

The Procurement Officer may issue a Notice to Proceed (NTP) for any of the priced deliverable Additional Tasks identified in this RFP (Section 2.4.8, #33 and 34). It is anticipated that the MLGCA will issue multiple Notices to Proceed over the Contract term, or any extension thereof. However, the MLGCA may not proceed with any of the Additional Tasks identified herein and the Contractor shall not perform such Additional Tasks unless a written NTP is issued by the MLGCA.

## Background and Purpose

### Objectives

The MLGCA has the following objectives for issuing this RFP and entering into a Contract(s) for Instant Ticket Games and Related Services:

1. To maximize Net Revenue from Instant Ticket Games for the benefit of the State;
2. To obtain Instant Ticket Games and related services that will meet the lottery product needs of the MLGCA for the term of the Contract and that is sufficiently flexible to meet the MLGCA's evolving requirements;
3. By contracting with multiple vendors (Primary and Alternate contractors), to a) take maximum advantage of the design and production capabilities, implementation knowledge, and operational knowledge available in the marketplace, b) ensure sufficient product mix and product availability, and c) provide specialty games or other proprietary games as needed.
4. To obtain Instant Ticket Games and related services that are operationally sound, incorporate the highest level of integrity and security, and minimize risk for the MLGCA;
5. To obtain Instant Ticket Games that will lead to high Retailer and player satisfaction for quality and performance;
6. To ensure that Instant Ticket Games and related services are available to the MLGCA and fully operational by the contract start date as specified on the Key Information Summary Sheet; and
7. To engage with a Contractor(s) who will over the term of the Contract maintain creativity thereby assisting the MLGCA to maintain a competitive position with other providers of entertainment.

### MLGCA Background

The information provided in this section is for background and informational purposes only. Offerors should not rely on information in this section for the preparation of their Proposal.

#### **MLGCA Organization in Direct Support of Instant Tickets**

#### The Product Development Division is responsible for the overall development, maintenance and analysis of the MLGCA’s Draw and Instant Game products. Draw Games currently include the Pick 3, Pick 4, Bonus Match 5, 5 Card Cash, Multi-Match, Mega Millions, Powerball, Keno, Racetrax, and Cash4Life; Fast Play is scheduled to be added in early calendar year 2020. Instant Ticket products include scratch-off games. During FY 2019, the MLGCA launched 50 new Instant Games. In addition to game development, this Division plans promotions to enhance sales.

The Creative Services Division manages the MLGCA’s Marketing Services Contracts and staff of this Division are the primary contacts for all advertising related issues. Key Division responsibilities include:

• Developing the MLGCA’s overall advertising strategy to support the MLGCA’s sales and revenue objectives.

• Planning and implementing the purchase of advertising time and space in order to deliver the MLGCA’s communications messages (e.g., jackpot announcements, new product introductions, promotions, winner awareness, etc.). In doing so, the Division is charged with maximizing audience delivery in the most efficient way by evaluating reach, frequency, gross impressions and other criteria.

• Managing the development and production of advertising communication materials for television, radio, print, out of home, digital, social media, point of sale and internal communication platforms that are utilized to inform consumers about MLGCA products, promotions and programs.

• Managing the development and implementation of all web, digital and social media tools utilized by the MLGCA, including maintaining four websites, and several robust social media platforms.

• Developing merchandising strategies and tactics for implementation at all MLGCA Retail locations and managing creative for the Sales Improvement Program – a specific merchandising makeover program designed to increase scratch product sales at target locations.

• Managing the MLGCA’s research program. Marketing and organizational research that assesses consumer and organizational needs is conducted and analyzed. The marketing research program currently includes a player based tracking study; the organizational research component includes annual Retailer tracking studies.

To meet these responsibilities, the MLGCA relies upon the strategic guidance and assistance of its Marketing Services Contractors. In addition, Contractors can expect to have some interaction with other MLGCA Departments, and Contractors.

#### **Instant Ticket Games**

The MLGCA offers a wide variety of Instant Games for sale. Each of these games may be thematically different, but play styles and prize structures for many of them will be similar. A player, for example, removes the latex surface or lifts the flap(s) on the Instant Ticket to determine if and how much the player has won. Prizes in Instant Games range from $1 up to $2 million (annuity).

The MLGCA conducts Instant Ticket inventory management, distribution, validating and accounting via its Lottery Central Monitoring & Control System (LCMCS).

Currently, the MLGCA is introducing new Instant Games approximately every month resulting in the number of new games per year shown in the tables below. The MLGCA may be increasing the number of Instant Games launched.

The historical data provided by the MLGCA in the tables below and elsewhere in this RFP is for informational purposes only. Such data is not a guarantee of any future work to be performed and may not be indicative of future initiatives that the MLGCA may implement during the term of the Contract, or any extension thereto. **All data provided in the tables below refers to INSTANT TICKETS.**

**QUANTITY OF GAMES LAUNCHED BY PRICE POINT FY 2013 – FY 2019**

FY'13 = 54 (9X$1, 11X$2, 7X$3, 16X$5, 8X$10, 3X$20)

FY'14 = 55 (10X$1, 11X$2, 7X$3, 15X$5, 9X$10, 3X$20)

FY'15 = 54 (10X$1, 12X$2, 6X$3, 14X$5, 8X$10, 4X$20)

FY'16 = 52 (9X$1, 8X$2, 5X$3, 15X$5, 11X$10, 4X$20)

FY'17 = 55 (7X$1, 12X$2, 6X$3, 15X$5, 11X$10, 3X$20, 1X$30)

FY'18 = 54 (9X$1, 10X$2, 7X$3, 14X$5, 10X$10, 3X$20, 1X$30)

FY'19 = 50 (8X$1, 8X$2, 4X$3, 14X$5, 12X$10, 3X$20, 1X$30)







**QUANTITY BY SIZE FOR FY 2019**

2.5” x 4” = 50.1 million

4” x 4” = 18.3 million

4” x 6” = 52.9 million

4” x 8” = 56.1 million

4” x 10” = 5.4 million

4” x 11” = 3.48 million

Total number of Instant Tickets printed in FY19 = 186,360,000

**QUANTITY OF ADDITIONAL TASKS USED IN FY 2019 (IN MILLIONS)\***



\*Feature usage is consistent year to year on average

**CURRENT INSTANT PRODUCT GUIDELINES**



#### **MLGCA Retailers**

#### The MLGCA’s LCMCS currently supports approximately 5,000 Retailer operated Terminals and over 1,000 Player Activated High Definition (PHD) machines located at approximately 4,500 Retailers throughout the State. These amounts are expected to grow during the Contract term.

#### **MLGCA Sales**

The MLGCA’s sales have grown significantly over the last five years; gross Sales in excess of $2.2 billion in FY 2019 marked the 5th consecutive year of increasing sales.



## Scope of Work – Requirements and Tasks

The following sections describe the Scope of Work for the providing of Instant Ticket Games and Related Services. The Contractor shall deliver all requirements and shall be responsible for all technical functionality and business support.

The Scope of Work is divided into Section 2.4 – Services Required: Both Primary and Alternate Contractors, Section 2.5 – Additional Services Required: Primary Contractor only, and Section 2.6 – Delivery Services to Retailers: Primary Contractor only.

The Contract also includes Additional Tasks as listed in Section 2.4.8, #33 & #34 below. The Additional Tasks may be required at any time in the sole and unilateral discretion of the MLGCA pursuant to a Notice to Proceed (NTP). The Contractor must submit pricing for the Additional Tasks as specified in Attachment B-2: Financial Proposal Form. The Contractor shall not perform any Additional Task unless it receives a written NTP from the MLGCA. The Contractor acknowledges and understands that the MLGCA may choose not to proceed with any Additional Task.

## Services Required: Both Primary and Alternate Contractors

The Primary Contractor and Alternate Contractor(s) shall perform all requirements specified in this Section 2.4. Only the Primary Contractor shall in addition perform all requirements specified in Sections 2.5 and 2.6 below.

**2.4.1 Non-Disclosure of the MLGCA’s Plans**

The Contractor shall assure that the details of the games planned by the MLGCA are not disclosed to persons or organizations other than the personnel and agents and subcontractors of the Contractor whose assistance in the production of the games is necessary, until the MLGCA announces the game.

**2.4.2 Site Visits for Game Production/Press Check**

The MLGCA may conduct a maximum of six (6) site visits during each Contract year to the Contractor’s facility or facilities to conduct press checks. (Note: For an Alternate Contractor, this is applicable only during each contract year in which the Contractor produces Instant Tickets under this Contract). The number of site visits may be less.

The Offeror shall provide travel, lodging, meals and related expenses both to and from the site visit(s) for up to ten (10) representatives of the MLGCA.  To the extent practicable, the State’s Standard Travel Regulations (COMAR 23.02.01) shall be followed.

The selection of individuals to attend site visits shall be determined in the sole discretion of the Director or the Director’s designee.  Airline and rail transportation shall be purchased by the Offeror, utilizing the lowest logical air or rail fares available.  Ground shuttle transportation may be purchased by the Offeror or reimbursed to State representatives using the State’s Standard Travel Regulations.  Lodging accommodations shall be purchased by the Offeror, utilizing where practicable only those properties that would provide a government rate to Maryland State employee(s) on government business.

Meals and reimbursable expenses other transportation and lodging shall be reimbursed to the State after the State representative submits itemized receipted bills and other supporting documentation as required by the State’s Standard Travel Regulations.  Expenses made by representatives in excess of those permitted under the State’s Standard Travel Regulations shall be reimbursed by neither the State nor the Offeror.

A modest working lunch during site visits may be provided at the Offeror’s expense if the Offeror’s representatives are present at the same time and if leaving the site would be counterproductive and inefficient.

The MLGCA may conduct unannounced site visits to ensure security and compliance with Contract requirements.

**2.4.3 Staffing**

The Contractor shall assign an experienced account team with at least two (2) primary day-to-day contacts, who shall have sufficient knowledge and expertise in Instant Ticket printing services and shall:

a. Provide strategy and game planning recommendations as well as assistance in development of game concept/design, Instant Ticket designs, and prize structure development;

b. Provide marketing assistance as desired by the MLGCA;

c. Be the point of contact concerning the performance of the development, printing, and marketing of Instant Tickets and payment for those services performed; and

d. Attend MLGCA meetings and present to MLGCA personnel as required by the MLGCA to include but not limited to: State of the State and Business Review presentations; Management and Product Development; Product Plan recommendations and industry case studies, presented to Product Development in working sessions.

Personnel assigned by the Contractor to service this Contract shall be approved in advance by the MLGCA in accordance with Section 3.12.

**2.4.4 Ticket Support**

The Contractor shall provide ongoing assistance in the support of Instant Game products and shall provide:

1. Product Planning Support – The Contractor shall provide the MLGCA with product plan recommendations for twenty four (24) months within thirty (30) days of the start of this Contract, with rolling updates provided quarterly. Plan shall include price point and game theme mix, special initiatives and marketing initiatives. The MLGCA has sole discretion regarding game assignment for printing, regardless of which vendor made the recommendation.
2. Game Designs – The Contractor shall provide the MLGCA with Instant Ticket artwork at least thirty (30) days prior to Working Paper development, which are to include prize structures, potential pricing for instant ticket printing and play styles for each instant game.

3. Trademark and Service Mark Search and Registration – The Contractor or competent outside trademark counsel hired by the Contractor at Contractor’s expense shall conduct all appropriate trademark, service mark, trade name and trade design searches for all game names used during the term of the Contract and provide to the MLGCA a written legal opinion that meets the MLGCA’s approval (including but not limited to the scope and terms of the opinion) as to the permissible use of each game name based upon a search of registrations and applications for registration filed with the United States Patent and Trademark office, applicable state agencies and other appropriate sources and outside trademark counsel’s expertise. At the request of the MLGCA, the Contractor or its outside trademark counsel shall also conduct all appropriate intellectual property searches regarding any artwork, any design, and any other aspect of the Instant Ticket. The written legal opinion shall also address whether use of the name, and any other requested aspect of the Instant Ticket, is permissible in second chance games and other promotions by the MLGCA. The Contractor must submit that opinion to the MLGCA prior to the completion of any working papers. If determined necessary by the MLGCA, Contractor shall provide an updated opinion at any time prior to the actual use of the name or other aspect of the Instant Ticket. If the name or design (or other aspect of the Instant Ticket) is currently in use or subject to a trademark or other intellectual property right, the Contractor or its trademark counsel shall, at the request of the MLGCA, use reasonable efforts to obtain the consent of the trademark or other intellectual property right owner to use by the MLGCA. If the Contractor is unable to obtain the consent of the owner, the parties shall designate a substitute game name or names acceptable to the MLGCA, for which Contractor or Contractor’s outside trademark counsel shall conduct further searches as provided in this Section. The services required by this section shall be provided by the Contractor at no additional cost to the MLGCA. (Note: Any trademarks and service marks owned by the MLGCA need not be searched.) Pursuant to Attachment M – Contract, Paragraphs #49, #50 and #51, new trademarks and service marks developed for the MLGCA shall be the property of the MLGCA and will be registered by the Contractor in the name of the MLGCA at its direction. Contractor must obtain written approval from the MLGCA prior to incurring any registration cost. The Contractor shall keep all marks current, active, and protected during the term of Contract and any extension thereof. Nothing in this paragraph shall diminish the warranty or limit the liability of the Contractor as otherwise provided herein.

3. Licensing Agreements – The Contractor, when required by the MLGCA, shall obtain and be responsible for any licensing agreement whenever necessary for any game to be printed during the term of the Contract. The Contractor shall obtain approval of any licensing fee prior to incurring any licensing fee to be paid by the MLGCA, and shall submit such a fee to the MLGCA for payment. There shall be no additional charge to the MLGCA by the Contractor for services rendered to obtain the licensing agreement.

4. Meetings – The Contractor shall participate, as required by the MLGCA, in various planning meetings with MLGCA staff and/or other MLGCA contractors.

5. Proprietary and Patented Processes – The Contractor shall make available for use by the MLGCA, and include in the base price for Instant Tickets, all currently held proprietary and/or patented printing and production processes, patented game plays or ink technologies, and copyrights, service marks or trademarks owned by the Contractor. If any proprietary and/or patented printing and production processes, patented game plays or ink technologies, and copyrights, service marks or trademarks are developed or acquired by the Contractor during the term of this Contract, then these items also shall be made available to the MLGCA. The MLGCA’s first use of any proprietary and/or patented printing and/or production process, patented game play, ink technology, and/or copyright developed or acquired by the Contractor during the term of this Contract shall be within the base Instant Ticket price; the process and materials for each first use shall be included within the base Instant Ticket price. The MLGCA shall have the right to acquire licensed properties from sources other than Contractor for incorporation into Instant Ticket Games produced by the Contractor, and Contractor shall willingly print Instant Tickets and conduct trademark and service mark searches and offer opinions with those licensed properties.

**2.4.5 Ticket Artwork**

A minimum of thirty (30) days before Working Paper development begins, the Contractor shall provide to the MLGCA for approval a conceptual art design for the front and back of Instant Tickets. These designs shall be vetted by Contractor’s programmers and production staff to identify and remedy any potential production issues (bleed, border registration, trimming etc.) prior to distribution to the MLGCA. The conceptual artwork shall be supplied by email to MLGCA in the following fashion and format: Instant Ticket front (covered and un-covered versions) and Instant Ticket back in "Read Only" .PDF format. If the MLGCA runs into difficulty receiving or opening these files via e-mail, the contractor shall send artwork on CD-ROM or flash drive via overnight delivery. Additionally, the Contractor shall provide to the MLGCA:

1. A color key (proof) made from the mechanical artwork; and

2 Instant Ticket artwork in BMP format, 8-bit color, screen resolution of 96 dpi; for the MLGCA’s Self-Service Vending Equipment (“PHD”) provided by the MLGCA’s LCMCS Contractor. Additional standards, if necessary, will be supplied to the Contractor.

1. Potential Pricing: Based on the pricing specified in this Contract, Contractor shall provide potential pricing in an editable spreadsheet, including base price (based on appropriate quantity) and any print features or additional costs, so the MLGCA may completely evaluate any potential design.

**2.4.6 Prize Structure(s)**

The Contractor shall recommend the best possible prize structures to maximize Instant Ticket Game sales and revenue. The Contractor shall guarantee that each Book of Instant Tickets is produced based on randomization of all prizes. The Contractor shall propose the various levels of prizes and the combination of wins available in the game, the probability of winning prizes, the numbers of winners, and the cost of such prizes. The prize structure shall include, but not be limited to, the following:

1. Game name, number, date and version;
2. Ticket price point;
3. Production quantity;
4. Revenue anticipated (potential);
5. Percent of prize payout, overall and per way of winning a prize or win type;
6. Each tier level for prizes and play action indicating how each tier is won;
7. Overall probability of winning any prize in the game and consolidated probability if there is more than one way to win a prize;
8. Probability of winning each prize amount;
9. Average winners per Book, and average targeted prize;
10. Number of winners per Book;
11. Prize cost and percent of prize fund dedicated to each prize level, subtotaled by Low, Mid, and High Tier Prizes as indicated in the Working Papers;
12. Book size;
13. Total number of Books; and
14. Ticket size.

The prize structure shall be submitted to the MLGCA electronically in Excel format (which will be able to be changed/revised by the MLGCA) and shall be accompanied by an explanation regarding the various details of running the game. The MLGCA shall review the proposed prize structure and may indicate changes or instructions. The Contractor shall then produce the game in accordance with this approved prize structure.

**2.4.7 Game Design Selection**

The MLGCA will observe all existing federal and state copyrights and trademarks. However, the MLGCA shall have the right to select game designs that have been, in whole or in part, originated by the MLGCA, originated by another lottery, originated by the Contractor, or originated by another vendor. If the MLGCA chooses a particular game and the Contractor identifies that game as one subject to copyright or trademark by another vendor or state prior to the execution of Working Papers, then the Contractor will, at the MLGCA’s discretion, either negotiate an appropriate fee, or change the game. However, this provision does not diminish the Contractor’s responsibility for any copyright, other intellectual property right, or infringement claims which arise.

Additionally, the Contractor shall offer games in its gaming menu which have themes that are indicative of the Maryland region.

**2.4.8 Instant Ticket Requirements for All Games**

Specifications for the Instant Tickets and requirements of the work to be performed are detailed below:

1. Instant Ticket Quality

The MLGCA, as a State agency dealing with independent Retailers and the consuming public, requires a product of exceptionally high quality. Instant Tickets will be inspected by the MLGCA upon delivery. The MLGCA shall have the right to inspect up to one hundred percent (100%) of the Instant Tickets for compliance with the specifications herein. However, inspection by the MLGCA does not relieve the Contractor of its responsibility to meet all Contract requirements.

All Instant Tickets shall meet the following minimum quality standards:

a. No scratches across the latex covering of the Instant Tickets;

b. No uneven, rough latex coverings;

c. No holes in the latex coverings exposing portions of the hidden symbols;

d. No latex coverings “dripping” on the design printing;

e. No latex coverings that smear, leave behind any residue or fail to come off when rubbed with standard pressure;

f. No overprint and display designs that are unclear or not crisply printed;

g. No Instant Tickets out of order within a book;

h. No symbols that are chopped or incomplete;

i. No foil coating that rips away when the Instant Ticket is rubbed, if the Instant Ticket has a foil coating;

j. No miscounted number of Instant Tickets in a book;

k. No perforations that allow Instant Tickets to fall out of books without pre-fold;

l. No tears in foil, if applicable;

m. No delamination of foil from paper stock, if applicable;

n. No inks offset on latex coverings from one ticket to another;

o. No off-register latex coverings or overprint designs;

p. No symbols not totally covered by the latex covering;

q. No symbols that smear under normal handling or with slight moisture;

r. No unevenly trimmed Instant Tickets;

s. No foil shaving within books, if foil is used; and

t. Any additional commonly accepted industry standards that may apply.

2. Stock

Instant Tickets shall be printed on ten (10) point or heavier virgin card stock white coated on one (1) side, which shall be fully recyclable. The MLGCA shall have the right to utilize other Instant Ticket stock types offered by the Contractor.

3. Inks

Inks shall not smear, run, or stain under normal handling or use by consumers, nor shall they be chemically or dermatologically irritating under normal handling and use by consumers. Inks shall be resistant to water and other common solvents. Inks shall be of such a nature that there is no “offsetting” from the front of Instant Tickets to the back of Instant Tickets on an adjacent page and vice versa.

4. Front Display Printing

The front of the Instant Ticket shall be printed in up to six (6) graphic colors (not including black and white) which at the option of the MLGCA may include full bleed. The MLGCA may request certain games to be printed in four (4) color process. State of the art printing methods may be substituted or recommended for substitution with the MLGCA’s approval, as long as they meet or exceed four (4) color process.

5. Ticket Patterns and Pick-Out

No winning or losing game Instant Tickets shall be recognizable from any characteristics of the game tickets or ticket patterns other than the symbols concealed by the rub-off material. It shall not be possible to ascertain whether an Instant Ticket is a winning or non-winning ticket, using any practical or economical technique, unless the application of the technique renders the Instant Ticket unsalable to the public or easily recognizable as having been tampered with.

6. Bar Code

The Contractor shall facilitate interleaved two (2) of five (5) Bar Code symbology.  The three (3) digit game code, six (6) digit book number, three (3) digit ticket sequence, first six (6) digits of the ticket verification number, and a two (2) digit check digit shall be encoded in the Bar Code, for a total of twenty (20) digits.

The Contractor shall produce standard Bar Codes of commercial quality that meet current American National Standards Institute/International Organization for Standardization (ANSI/ISO) standards.  Additionally, the Contractor(s) must continually meet ANSI/ISO standards as updated throughout the term of the Contract, as directed by MLGCA.

All variances shall be in accordance with the American National Standard Institute (ANSI).  A first pass read rate of ninety-five percent (95%) or more is required.  The Contractor shall have the ability to print the Bar Code on the front or back of the Instant Ticket in the location specified by the MLGCA, at the option of the MLGCA.

The Contractor shall be capable of providing any Bar Code technology solutions certified by NASPL at no additional cost to the MLGCA. A NASPL Standards Initiative (NSI) certified solution is one that has achieved certification against the then current version of the NSI Bar Code Technical Standard (*Bar Codes for Instant Tickets in the Lottery Industry*) in accordance with the NSI Certification Policy, including the NSI Certification Policy Supplement for Bar Code Technology Certification.

Contractor shall provide a Keyless Validation Bar Code on the front of each ticket, under the scratchable area, to operate in conjunction with FailSafe® provided by the MLGCA’s LCMCS Contractor.  This Bar Code allows Retailers and players to check and/or validate winning tickets at Retailer locations, using a Retailer-operated or self-serve terminal or ticket checker, or remotely using the Lottery’s mobile application.

7. Universal Product Code

A Universal Product Code (UPC) shall be printed on the back of all Instant Tickets. The MLGCA reserves the right to change the placement of the UPC. The UPC shall not be too close to the Instant Ticket Bar Code and shall not interfere with Bar Code scanning.

8. Game Play Symbols

The game play symbols shall be legible and uniformly positioned and aligned on the Instant Tickets. Symbols shall be easily readable by the public and meet industry standards for height, depending on the particular game design and ticket layout chosen by the MLGCA. The Contractor shall be able to supply a variety of type styles, sizes, and colors. Application of the game play symbols shall be performed in a random manner.

9. Captions

To provide redundancy for security reasons and to prevent consumer disputes, each game play symbol shall be accompanied by a caption that spells out the game play symbol in type smaller than the symbol itself.

10. Protective Coating

The symbols located under the rub-off shall be covered with a transparent protective coating so that the symbols are protected when the consumer rubs off the opaque covering.

11. Rub-Off Material

The rub-off coating material shall be opaque (unless meant to be translucent for specific game play styles) and of such quality as to maintain the security of each of the Instant Ticket’s game play symbols. The rub-off material shall appear and feel “smooth and regular to the touch” and shall fragment when so removed without causing dusting. The rub-off material shall not be chemically or dermatologically irritating or cause harm to clothing when removed. Instant Tickets shall remain readable and able to be rubbed easily, but not so easily as to be affected by heat, cold or friction between Instant Tickets, for a minimum of two (2) years from delivery date to the MLGCA. The rub-off material shall be completely removable by scraping with a coin or other object. There shall be no visible removal of rub-off material upon one (1) rub using the edge of a penny at twenty-five (25) grams pressure. The rub-off material shall break at no more than seventy-five (75) grams pressure unless otherwise specified by the MLGCA.

12. Overprint

Exceptional standards are expected in the production of Instant Ticket Games to assure that they are both visually appealing and secure. The rub-off material used for printing the overprint shall include up to four (4) overprint colors. An overprint shall be an artistic design that reflects the overall theme of that Instant Ticket. The overprint, which covers the variable game data, shall be clearly printed, un-blurred and sharp in order to facilitate detection of tampering.

13. Back Display Printing

The back of the Instant Ticket shall be printed in up to two (2) colors. Each Instant Ticket shall contain reference to the applicability of the MLGCA regulations and State law and shall contain wording approved by the MLGCA.

14. Validation Number (VIRN Number)

The MLGCA requires a secure traceable Instant Ticket. Every Instant Ticket shall contain a game-wide unique 13-digit Validation Number on a light colored Security Varnish background that will appear in the game play area on the front of the Instant Ticket and will be randomized over the whole range of the game. The last five digits of the Validation Number will be an underlined 5-digit pin number. This 5-digit pin number must be entered manually when validating the Instant Ticket. Special attention must be given to the font design for the numbers 3, 5, 6 and 8, so they will be readily distinguishable. Also the print size of the pin number will be large enough to be easily readable by Retailers, since this is an integral part of the entry specs for validation.

15. Void Tickets

There shall not be any “void” or “dead” Instant Tickets in a Book.

16. Perforations

The perforations between Instant Tickets shall allow Instant Tickets to be separated from each other, after one (1) pre-fold, but should not break apart in normal transit and handling. All perforations should comply with MLGCA’s LCMCS Contractor’s “Specification – Instant Tickets Compatible with PlayCentral Vending Machines” Version 1.3, dated May 11, 2017.

17. Book Size

The consistency of the correctness of the count of Instant Tickets in a Book is of extreme importance to the MLGCA. The MLGCA shall have the right to determine Book sizes by game and/or price point.

18. Ticket Numbers

Each Instant Ticket shall bear an individual consecutive number starting with 001 within each Book. The MLGCA requires that a check digit be associated with the ticket number. Each Instant Ticket shall bear a Book number. Book numbers shall be consecutive (except for omissions) and non-duplicating in the game. The Contractor shall have procedures to assure that the same Book number is on all Instant Tickets in the Book Each Instant Ticket shall also bear a game identifier. All Instant Ticket identification numbers and letters shall, at the discretion of the MLGCA, be Bar Coded and OCR readable.

19. Omissions/Balancing

The MLGCA allows omissions for quality control and prize balancing and does not require the re-printing of those omitted Books. In final balancing, the MLGCA requires that Low and Mid Tier Prizes shall be within a tolerance of +/- 2% of the prize structure and the print quantity shall be within +50,000/-150,000 of the quantity specified in the working papers. High Tier Prizes shall be exact and guaranteed based on the prize structure and print quantity specified in the working papers, +50,000/-150,000. (See Section 2.4.8, # 29, Over/Under Allowance.)

20. Reorders/Reprints

The MLGCA may choose to reorder an existing game, utilizing the game number of the existing game. End of production prize structures must balance to the second decimal place (third decimal place may not force a rounding error).

21. Book Packaging

Each Book shall be shrink wrapped so that the Book number is visible. The MLGCA shall have the right to use pouch game packaging or other special packaging. Shrink wrap must be tight to Book with minimal extra plastic material and wrinkling to avoid misreads on the warehouse sorting equipment.

22. Shipping Box

All Books shall be packed into a sealed 275 pound (minimum) test shipping box. Each box shall be clearly marked in bold type on the outside with the range of Book numbers contained therein, less any Books omitted in production. Books shall be packed sequentially within each shipping box.

23. Skids

Shipping boxes shall be packed in sequential order, low number top left to high number in right bottom on skids with a maximum size of 38” wide x 36” long x 45” high. Skids shall be constructed with a 4” minimum inside clearance to accommodate a pallet lift jack truck. The loaded skid shall be plastic wrapped and shall not exceed 50” in height including the height of the skid. The MLGCA shall have the right to alter the skid size used in order to maximize warehouse space.

24. Transportation

The Contractor shall transport Instant Tickets to the MLGCA’s warehouse, or other locations designated by the MLGCA, in locked and sealed trucks, unless the MLGCA requests a different method. These trucks shall not contain any item(s) other than MLGCA Instant Tickets or other MLGCA related items during delivery. Trucks shall be unlocked and opened only upon arrival at the MLGCA’s warehouse and only by the MLGCA staff, or as required by law.

The MLGCA “signs-off” on the Working Papers by signing and sending the Approval page to the Contractor. Contractor shall deliver Instant Tickets to the MLGCA within a maximum of twenty eight (28) Working Days from the date that the MLGCA “signs-off” on the Working Papers, unless the MLGCA requests a different delivery timeframe.

On each carton of Instant Tickets the Contractor shall include a Bar Code which identifies the contents of the carton, so that the MLGCA can scan an entire carton of Instant Tickets at one time for assignment to a Retailer or a MLGCA sales representative.

25. Shipping Manifest and Omissions List

At the time of the delivery, the Contractor shall provide the MLGCA with a list of Books delivered and omitted from being delivered. Omitted Books shall be listed by the MLGCA as ineligible to win any prize and shall not be considered as valid Instant Tickets in the game. The MLGCA shall not be billed for such omitted Books of Instant Tickets, but only for the Books of Instant Tickets actually delivered.

26. Instant Ticket/Book Reconstruction

The Contractor shall reconstruct Instant Tickets on an as needed basis only as requested by authorized representatives of the MLGCA. The MLGCA will supply the Contractor with a list of persons authorized to request Instant Ticket reconstructions. By the end of the first week of every month, the Contractor shall provide the designated MLGCA representative with a listing of all tickets reconstructed during the previous month. This listing shall include, at a minimum, the following information: date of reconstruction, validation number, book and ticket number, MLGCA requestors, and MLGCA approver.

The Contractor shall retain reconstruction records for three (3) years following the announced end of each affected game.

27. Accountants Review

The Contractor shall engage an independent Certified Public Accountant experienced in lottery operations and acceptable to the MLGCA to review the procedures and controls employed by the Contractor during the production of each Instant Ticket Game. The Certified Public Accountant shall provide directly to the MLGCA a secure PDF electronic report, which shall state the tests performed on the Contractor’s production procedures and the related findings. These tests shall include, but not be limited to, a review of the controls on the computer tapes or other methods of seeding used in producing High Tier, Mid Tier and Low Tier Prize winners, and non-winners in accordance with the final approved prize structure.

28. Validation Algorithm, Hash Files and Other Computer Information

The Contractor shall supply the MLGCA’s LCMCS Contractor, or any other company designated by the MLGCA, with the algorithm and all related computer coded information needed to validate MLGCA Instant Tickets. This algorithm information shall be provided in the media/file format required by the LCMCS Contractor.

The Contractor shall work cooperatively with the MLGCA and LCMCS Contractor to get the algorithm and all related computer coded information successfully installed on the LCMCS and tested through completion on all aspects of LCMCS processing, reporting and Instant Ticket recreation prior to acceptance and use of the algorithm.

Hash files shall be sent to the LCMCS Contractor for every game – this cost shall be included in the base price.

Contractor shall provide Instant Ticket pack specifications for every game, including weight, height, etc., information for Instant Ticket Books to be used by the MLGCA in the preparation of shipping documents and to prepare the warehouse sorting equipment for that game.

The Contractor shall consult with the MLGCA and LCMCS Contractor on an ongoing basis and provide any technical assistance required to successfully implement and maintain the algorithm.

29. Over/Under Allowance

The MLGCA shall not accept over/under amounts in excess of plus fifty thousand (50,000) / minus one hundred fifty thousand (150,000) Instant Tickets from the amount specified in the Working Papers, unless written approval is provided by the Director of Product Development.

30. Ticket Compatibility

All Instant Tickets shall be compatible with all ticket dispensing systems (for example, but not limited to, PHD, acrylic dispensers) utilized by the MLGCA during the term of the Contract. The dispensing systems presently in use or presently scheduled to be placed into use are PHD.

31. Required Standard Ticket Features

The Contractor shall provide the following Standard Ticket Features for all Instant Tickets, which shall be included in the base price specified in Attachment B-2: Financial Proposal Form.

1. Ten (10) point or heavier virgin card stock white coated on one (1) side, fully recyclable
2. UV High Gloss Coat
3. 4-Color Process, or, 6-Graphic colors not including black & white
4. 2-color Instant Ticket back
5. Multiple Scratch-Off areas, when required by design
6. Multiple Full Bleed, when required by design
7. Unusual Shaped scratch-off areas, when required by design
8. Custom imaging symbols, when required by design
9. Integrated Overprinting, when required by design
10. Different pack sizes (Instant Ticket quantities) for each price point
11. Insert Cards – one inserted in each Book, with the following specifications:

4 inches x 7 inches, 10 point white cardstock

Front: 4-color process, varnish, full bleed

Back: Black, border to bleed, with game name, game number, price, Instant Ticket length in inches as a decimal (2.5, 4.0, 6.0, 8.0, 11.0), and quantity of Instant Tickets per Book. All inserts will have two score marks located 4 inches from the top and 6 inches from the top. When inserted and before shrink wrapping, it is necessary that the inserts do not cover the Instant Ticket bar code, so 4x6 and 4x8 inch Instant Tickets may require that the inserts are folded once to assure clear bar code scanability.

1. Digital graphics for PHDs and digital menu boards may mirror Insert Cards, or may be unique designs. 96dpi files are required.

32. Additional Tasks - Optional Ticket Features

The MLGCA may request customized Instant Ticket Games that include Optional Ticket Features in addition to the Required Standard Ticket Features specified in paragraph #31 above. The Contractor shall provide, only upon Notice to Proceed from the MLGCA, the Additional Tasks (Optional Ticket Features) for Instant Ticket Games as specified in **Attachment B-2**: Financial Proposal Form., paragraph A.3 and B.2.

**2.4.9 Inventory Control**

The Contractor shall maintain logs of Instant Ticket Game inventory between all points of production and the delivery to the Lottery. The Contractor shall also maintain logs of all destroyed Instant Ticket stock and Instant Ticket Games. The Contractor shall collect the above data in a timely manner.

**2.4.10 Quality Control**

The Contractor shall employ quality control procedures to ensure that all Instant Tickets delivered meet all specifications and requirements of the MLGCA. The MLGCA may require the Contractor to submit Instant Tickets from time to time to an outside independent laboratory selected by the MLGCA for testing at no additional cost to the MLGCA.

**2.4.11 End of Production Prize Structure**

After all Instant Tickets have been produced, the Contractor shall promptly provide the MLGCA with an “end of production” prize structure which accurately states the total number of Instant Tickets delivered and the actual number of winners. Multiple tiers of the same prize value shall be consolidated on a separate report.

**2.4.12 Attainment of Prize Structure**

The only variance between the “end of production” prize structure and the final approved prize structure to be tolerated will be that which occurs in the omitted Books. If the number of voided Books alters High Tier Prizes, the MLGCA may request the reprint of all voided Books. High Tier Prizes are all prizes of $601 or more and shall be exact to the approved prize structure. Prizes of $600 or less shall be within a 2.0% variation unless the game is an exact reprint (using the existing game number), in which case each prize tier must balance exactly to the original game.

**2.4.13 Validation Assistance**

The Contractor shall provide reconstruction of Instant Tickets/Books within five (5) Working Days of the date of request by the MLGCA, or other time period specified by the MLGCA, in accordance with the MLGCA’s required procedures.

**2.4.14 High Tier Validation Disk/Tape and Other Disk/Tape**

The Contractor shall provide to the MLGCA, no later than four (4) Working Days prior to the delivery of Instant Tickets, a computer file of all High Tier Prize winners for the game. The file shall contain the validation number, lottery symbols, and prize value of each winner and shall be accessible via the VIRN number only, and shall be provided via secure FTP.

The Contractor shall also provide winning and non-winning data files to support My Lottery Rewards™ loyalty club, second chance contests and/or Instant Ticket promotions designed to improve the sale of Instant Tickets at no additional cost to the MLGCA.

**2.4.15 Computer Systems Software and Accounting**

The Contractor’s accounting methods shall be compatible with the MLGCA’s accounting procedures and methods and the Instant Ticket Validation and Accounting System (ITVAS) that is provided by the MLGCA’s LCMCS Contractor.

**2.4.16 Problem Tracing**

The Contractor shall build into its system of game construction the ability to trace the extent of any problem in printing, etc., which may be discovered while a game is in operation.

**2.4.17 Nonconforming Tickets**

Nonconforming Instant Tickets (any Instant Ticket which deviates from any specification) may be rejected by the MLGCA. If the number of such Instant Tickets rejected is more than one percent (1%) of the ordered quantity of Instant Tickets, the Contractor shall replace such Instant Tickets within thirty (30) days, at no additional cost to the MLGCA. If the quantity of Instant Tickets rejected is less than the above percent for such game, the Contractor need not replace nonconforming Instant Tickets but shall issue a refund or credit for the Instant Tickets to the MLGCA. This remedy is in addition to any other remedy provided for in this Contract or any other remedy provided by law.

**2.4.18 Sample Tickets for Retailers**

The Contractor shall provide to the MLGCA fifty (50) Books of actual-sized sample Instant Tickets for each standard game and one hundred (100) Books of actual-sized sample Instant Tickets for each specialty game, such as high initiative or licensed properties that will likely be launched quarterly. These samples shall be non-winning Instant Tickets and shall bear the words “SAMPLE” on the back. There will be no additional compensation to the Contractor for these sample Instant Tickets.

The Contractor shall pull from production-ready inventory, one (1) “live” Book, with a hole drilled through without compromising any game data, to be delivered to MLGCA.

The specified samples and drilled live Instant Tickets shall be delivered along with, or before, the initial Instant Ticket shipment for each game.

**2.4.19 Working Papers**

The Contractor will provide project management software to manage the Working Papers and review process. After the MLGCA approves the conceptual art design (2.4.5), the Contractor shall provide for the MLGCA’s approval two stages of Working Papers. The purpose of the first stage shall be to provide preliminary review of the Instant Ticket art and basic game development. Working Papers, at a minimum, shall include the following:

1. Detailed Instant Ticket description and artwork, including a color version of Instant Ticket covered and uncovered (100%) with indication of “press side”, and Instant Ticket back (100%) including placement of Bar Code and UPC code on Instant Ticket;

2. Detailed game specifications including print features, itemized print pricing, prize structure and programming parameters;

3. Complete set of game rules, and game symbols and fonts;

4. Production, packaging and shipping information;

5. Production timeline to include:

1. Working Papers signed date;
2. Approximate printing date;
3. Approximate delivery date to distribution warehouse; and
4. Game launch date.

6. Deliverables schedule to include:

1. File containing symbols;
2. Color draw downs and color composites;
3. Validation files (FTP);
4. Book files (FTP); and
5. Maryland Lottery and Gaming Commission items for New Game Financial approvals (20 color copies of covered, uncovered and ticket back art – labeled DRAFT. Covered and uncovered should appear side by side with ticket back on the back of that printed page when possible).

The Contractor shall not begin production of an Instant Ticket until the MLGCA has approved that Instant Ticket’s Working Papers. The MLGCA shall have no liability or responsibility for costs to the Contractor for work performed until formal execution of the Working Papers.

**2.4.20 Standard Game Specifications**

Within the first Contract year, the Contractor shall provide to the MLGCA for approval standard Instant Ticket Game specifications, which will be used as a way to streamline the Instant Ticket Working Papers review process. The standard Instant Ticket Game specifications will include standard language that is consistent in every set of Working Papers the Contractor provides to the MLGCA. The purpose of the standard Instant Ticket Game specifications is to provide a way to make the review of each individual set of Instant Ticket Game Working Papers more effective and efficient.

**2.4.21 Software Programming Errors**

The Contractor shall be responsible to the MLGCA for all costs incurred arising out of any software programming errors which may occur under this Contract.

**2.4.22 Additional Business Enhancements**

The Contractor shall provide Additional Business Enhancements that it has specified and described in Section 5.3.3.10, each of which may be individually selected by the MLGCA. Additional Business Enhancements may include, but are not limited to, Merchandising/Retail tools/services, dispensers or items used at point of purchase to increase instant ticket visibility and sales.

## Additional Services Required: Primary Contractor Only

The Primary Contractor shall perform all requirements specified in this Section 2.5 in addition to all requirements specified in Section 2.4 above.

**2.5.1 Dedicated Account Representative**

A. Prior to the Contract start date the Contractor shall assign a Dedicated Account Representative to service this Contract who shall be approved in advance by the MLGCA. The Dedicated Account Representative shall have no real or perceived conflict of interest with the MLGCA which shall make the final determination as to whether any activity constitutes a conflict of interest pursuant to this provision. The MLGCA’s decision shall be final and without recourse; however, it will not make any such determination without providing the Contractor with an opportunity to present comments.

B. The Dedicated Account Representative, in the performance of this Contract, will be an employee of the Contractor and will not be acting for any purposes whatsoever in the capacity of an agent or employee of the MLGCA or the State. The MLGCA/State will assume no liability for any injury or death to any employee, agent or subcontractors of the Contractor.

C. The Dedicated Account Representative shall:

1. Be 100% devoted to the MLGCA’s Instant Ticket Games account;
2. Be located full-time on-site at the MLGCA’s headquarters and be available to the MLGCA for 40 hours per week minimum. (The MLGCA will provide office space for the Dedicated Account Representative);
3. Have at least 5 years Instant Ticket lottery experience or other relevant experience;
4. Have a Bachelor’s degree at minimum; exceptions and substitutions may be made at the MLGCA’s discretion;
5. Have good communication skills and be proficient in standard office computer software;
6. Be provided by the Contractor with equipment to be used in the development, review and approval of Instant Tickets prior to production (Section 2.5.3);
7. Provide assistance in development of Instant Game concept/design, Instant Ticket designs, and prize structure development;
8. Provide marketing assistance as requested by the MLGCA;
9. Coordinate with the Contractor’s production/printing facilities to assure timely production of the MLGCA’s games;
10. Be the point of contact for day-to-day issues concerning development, scheduling, production, printing, shipping and delivery, inventory management, security, validation files and marketing of Instant Tickets and payment for those services performed;
11. Be responsible for all customer satisfaction issues;
12. As required by the MLGCA, attend informational, Retailer, Sales, and Commission meetings; and
13. Provide sales analyses and reports as directed by MLGCA.

**2.5.2 Required Marketing Support**

The Contractor shall provide ongoing assistance in the marketing of Instant Game products and shall provide:

A. Product Plan – The Contractor shall develop a comprehensive Product Plan Recommendation for Instant Game launches and submit to the MLGCA for consideration. The Plan shall be provided as 24 months initially (30 days from Contract start date), with rolling quarterly updates, 18 months ahead of market introduction. The Plan shall include a proposed game schedule for the upcoming period modeled against lottery sales goals and objectives with sales and revenue forecasts for each game and shall include, but not be limited to, price points, top prizes, prize payout, play styles, game themes, the quantity of Instant Tickets for each game, game and printing features. The Contractor shall participate in ongoing evaluations of the Product Plan, at MLGCA’s discretion.

Within the first thirty (30) days of Contract award, the Product Plan submitted by the Contractor with its proposal (Section 5.3.3.7) shall be revised/finalized for the first Contract year and submitted to the MLGCA for approval. For succeeding contract years, the Contractor shall develop the Product Plan in partnership with the MLGCA and its other contractors.

B. Development, Maintenance and Distribution of Printing and Production Schedule – The Contractor shall provide written weekly updates of all Instant Ticket development milestones in the form of printing and production workback schedules. Milestones shall be mutually agreed upon by MLGCA and Contractor and may include, but not be limited to, Instant Ticket design, Working Papers comment due dates, Working Papers execution dates, Commission Meeting deliverables, prize structure distribution and approval, press dates and delivery dates to the MLGCA’s warehouse and Retailers.

C. Strategy Meetings – As required by the MLGCA, the Contractor shall participate in meetings at the MLGCA’s headquarters to discuss and to make oral or written presentations regarding products, promotions, sales, etc. Topics may include, but not be limited to, game themes, prize structures, promotional strategies, marketing ideas, analysis of products used in other jurisdictions, and sale analysis. Meeting examples: Quarterly Reviews, Annual Business Reviews, State of the State, Industry strategy round-up presentations.

D. Sales Analysis - The Contractor shall provide index reports (monthly) and instant ticket sales tracker (weekly). A database of Industry game and sales data is preferable.

### Contractor Furnished Equipment (CFE) and Technical Support Services

1. The Contractor shall provide equipment at the MLGCA’s headquarters for use by the MLGCA’s Product Development staff and the Dedicated Account Representative (Section 2.5.1) in the development, review and approval of Instant Tickets prior to production. This equipment shall include printers and technical support, specifically to include one (1) high quality color laser printer. This equipment shall have document scanning functionality, high resolution copier abilities and furnish clear, sharp images to permit the MLGCA to inspect Instant Ticket art and text; provide color and graphics quality comparable to that of the Contractor’s equipment to allow press approvals; and, optimize multi-tasking within various software programs.
2. The color laser printer shall be approved by the MLGCA and shall be at least equivalent to Konica Minolta bizhub C352. The color laser printer and scanner shall be networked between the desktop computers of the Dedicated Account Representative and MLGCA Product Development team, as designated by the MLGCA, to allow electronic review of scanned documents.
3. The above CFE shall be upgraded throughout the term of the Contract to reflect current State-of-the-Art technology and minimally at the time of the Contract renewal. Contractor shall be responsible for insuring/replacing any lost, damaged or stolen CFE during the term of the Contract. CFE shall be removed by Contractor at termination of the Contract.
4. Hardware and software repair and support services, to include all consumable supplies, shall be provided by the Contractor. The Contractor shall provide no less than next Working Day service to make any necessary repairs or to install loaner equipment temporarily pending repair or replacement of the original equipment if it cannot be repaired.
5. Software shall be provided for all Contractor employees working on the Account as well as MLGCA personnel as designated by MLGCA, and includes but is not limited to Microsoft suite of products, Premium Adobe, Photoshop etc.

**2.5.4 Warehousing**

In the event that the MLGCA’s warehouse is at full capacity, the Contractor shall provide secured warehouse facilities to store Instant Games for the MLGCA until such time that it can accept delivery. Delivery dates and times will be negotiated between the MLGCA and the Contractor for these stored games. The MLGCA shall have the right to split delivery of games.

**2.5.5 Instant Ticket Shredding**

The Contractor shall be responsible for providing a solution for the shredding of tickets from closed Instant Ticket Games. This solution can include but is not limited to: providing for use by the MLGCA at its headquarters a commercial grade shredding machine that is rated to shred boxes of Instant Tickets covered with shrink-wrap without unpacking the tickets; or, picking up inventory of closed games to transport for shredding.

**2.5.6 Research, Marketing and Training Support**

During the term of the Contract or any extensions thereof, the Contractor shall provide an annual budget to be used for research, marketing and training support activities as required and directed by the MLGCA. The budget amount for each Contract year shall be Two Hundred Fifty Thousand Dollars ($250,000). Any unused portion of this budget amount shall be rolled over for use in subsequent years or credited to the MLGCA at the end of the Contract.

A. Research Activities

Contractor shall submit an annual research recommendation to MLGCA, to include recommended research projects (identify objectives of research as well as how learnings can be applied). Activities that the Contractor may be required to perform in the research area include, but are not limited to, Instant Ticket research projects designed to learn more about emerging markets, uncover new product opportunities, provide feedback on specific Instant Ticket concepts and designs, Secret Shopper/Retail Audits to evaluate instant ticket placement, display maintenance by Retailers, merchandising efficacy, etc. The types of research include, but are not limited to, focus groups, internet based research and tracking studies.

 B. Marketing Activities

The Contractor may be required to assist the MLGCA with the marketing of certain Instant Ticket Games. Types of activities the Contractor may be required to provide include, but are not limited to, assisting with all aspects of Retailer meetings and special events, developing advertising flyers, procuring items to award as (second-chance) prizes, producing promotional items, providing industry and/or motivational speakers, and assisting in the development of other marketing projects designed to increase both short and long term Instant Ticket sales.

C. Training Activities

The Contractor may be required to provide Instant Ticket Game training to Retailers and MLGCA Sales and other administrative staff members. Such activities include, but are not limited to, training about new products and technologies, informing Retailers about lottery products and marketing plans, and discussing the benefits of becoming a MLGCA Retailer, and strategies. Activities could also be a forum for soliciting Retailer comments and feedback. Related activities may include, but are not limited to, providing guest speakers, presentation materials, premium items, site rental and food expenses, as requested by the MLGCA.

**2.5.7 Licensed Properties**

The Contractor shall as directed by the MLGCA provide one (1) licensed game from Contractor’s entire portfolio, including all available licensed properties without exception, of the MLGCA’s choosing during each Contract year at no additional cost to the MLGCA.

**2.5.8 Compliance Games**

At the MLGCA’s discretion, the Contractor shall be required to print and deliver up to two (2) Compliance Games during each Contract year at no additional cost to the MLGCA. These games, as determined by the MLGCA, will consist of extremely small print runs of 900 to 5,000 Instant Tickets per order and will mimic an Instant Ticket Game that is already planned for production, in all ways except prize structure – this game will exclusively feature High Tier Prize winning tickets. The Contractor shall hand deliver these games directly to the MLGCA as directed, or make arrangements for MLGCA Security personnel to pick up directly from the printing facility.

## Delivery Services to Retailers: Primary Contractor Only

The Primary Contractor shall perform all requirements specified in this Section 2.6 in addition to all requirements specified in Sections 2.4 & 2.5 above. The Contractor may subcontract with another company(ies) to provide these delivery services, including a third-party common carrier, but the Contractor shall be totally responsible for all work and services performed by its subcontractor(s). UPS is the common carrier currently used to deliver to Retailers.

**2.6.1** The Contractor shall be responsible for the delivery of all Instant Ticket shipments, either directly or through a subcontractor, to MLGCA Retailers located throughout the State, including Instant Tickets printed by the Primary Contractor and Alternate Contractor(s). At the MLGCA’s discretion, the Contractor shall be required to also deliver POS materials to Retailers along with the Instant Ticket orders.

**2.6.2** Currently there are approximately 4,500 Retailers located throughout the State. The number of Retailers may increase during the term of the Contract. Each Retailer currently receives a delivery of Instant Tickets once per week based on a distribution schedule. The MLGCA estimates that approximately 186,000 orders of Instant Ticket orders were shipped to Retailers during FY 2019. These amounts are estimates only and are not a guarantee of any minimum or maximum amounts under this Contract.

**2.6.3** The MLGCA’s Instant Ticket delivery system is based on a telemarketing ordering function provided by its LCMCS Contractor.

**2.6.4** The Contractor shall work with the LCMCS Contractor to incorporate its shipping labels into the LCMCS System or any other system designated by the MLGCA so that shipping labels are automatically generated when the orders are completed for packing.

**2.6.5** The Contractor shall pick up packed Instant Ticket orders and any corresponding POS materials from the MLGCA’s warehouse, currently located at 980 South Monroe Street, Baltimore, Maryland, 21230, at 5:00 p.m. each Working Day. Pick up times shall remain at 5:00 p.m. unless otherwise approved by the MLGCA.

**2.6.6** The Contractor shall deliver all packages on the next Working Day after the tickets are picked up from the MLGCA’s warehouse.

**2.6.7** The Contractor shall return to the MLGCA’s warehouse all packages that are undeliverable or damaged.

**2.6.8** The Contractor shall provide the MLGCA with an automated system that tracks the status of the deliveries. At a minimum, this tracking system shall generate a daily report of all previous orders that have not been delivered as well as a report of all refusals and the reason for the refusal. The MLGCA may choose to use delivery status reports generated by the LCMCS, and not rely on reports provided by the Contractor. The Contractor shall work with the LCMCS Contractor or any other contractor designated by the MLGCA to provide a hyperlink to its website so that delivery status of all orders can be viewed by the MLGCA.

**2.6.9** The Contractor shall have in operation one or more secure distribution facilities that will be used to sort, store for shipping, and ship MLGCA packages containing Instant Tickets.

**2.6.10** The Contractor shall obtain all statutorily required approvals from the Public Service Commission or other entities to operate in Baltimore City and all 23 counties in the State.

**2.6.11** The Contractor shall have in operation a fleet of vehicles and sufficient personnel to operate the fleet to perform all required MLGCA services.

**2.6.12** The Contractor shall supply to the MLGCA a sufficient number of bulk containers to transport packages containing Instant Tickets from the MLGCA’s warehouse to the Contractor’s warehouse and distribution facility. The Contractor shall return empty containers to the MLGCA’s warehouse on a regular basis so that the MLGCA shall always have the required supply of bulk containers on hand.

**2.6.13** The Contractor shall provide the MLGCA with all supplies and equipment needed to pack Instant Ticket orders. The shipping bags, at a minimum, shall be made of polyethylene film and contain tamper evident adhesive on the flap. The MLGCA anticipates utilizing, at a minimum, two different color bags: one color for the initial distribution of new games and one color for reorders and several different sizes of each. The MLGCA also anticipates that the boxes will have certain identifying information on them. The necessary artwork for the bags and boxes will be provided to the Contractor by the MLGCA.

The Contractor shall also provide the MLGCA with heavy duty packing tape to be used to seal the boxes. The MLGCA anticipates utilizing two different colors of tape to distinguish deliveries between new games and reorders. The colors will be determined by the MLGCA at a later date and provided to the Contractor.

The Contractor shall provide all of the above packing materials to the MLGCA at least thirty (30) days prior to the Contract start date.

**2.6.14** Each Instant Ticket delivery will consist of one sealed package containing Books of Instant Tickets and a detailed manifest printed by the LCMCS. Large orders may be separated into two separate shipments, each with a manifest identifying the books included.

**2.6.15** The Contractor shall maintain all Instant Tickets and Instant Ticket delivery information in a secure manner at all times. The MLGCA shall have the right to inspect any part of the Contractor’s warehouse facility and distribution system.

**2.6.16** Any information regarding lost, stolen or missing Instant Tickets shall be immediately reported by the Contractor to the MLGCA Security department. The Contractor shall file a police report within twenty-four (24) hours of reporting any thefts.

**2.6.17** The Contractor shall provide throughout the Contract term a Delivery Point-of-Contact person who shall be knowledgeable about the Instant Ticket delivery services, provide technical assistance regarding the delivery system, and attend related meetings as required by the MLGCA. The Point-of-Contact shall answer questions regarding the location of packages not yet delivered to Retailers and any problems or concerns relating to all delivery services under the Contract.

**2.6.18** Each of the Contractor’s employees making deliveries to MLGCA Retailers shall display proper identification and have dress and appearance appropriate for the purpose of making deliveries to Retailers and present a positive image of the MLGCA, as determined acceptable by the MLGCA.

## Required Project Policies, Guidelines and Methodologies

The Contractor shall be required to comply with all applicable laws, regulations, policies, standards and guidelines affecting Information Technology projects, which may be created or changed periodically. Offeror is required to review all applicable links provided below and state compliance in its response.

It is the responsibility of the Contractor to ensure adherence and to remain abreast of new or revised laws, regulations, policies, standards and guidelines affecting project execution. These include, but are not limited to:

1. The State of Maryland System Development Life Cycle (SDLC) methodology at: http://doit.maryland.gov/SDLC/Pages/agile-sdlc.aspx ;;
2. The State of Maryland Information Technology Security Policy and Standards at: <http://www.DoIT.maryland.gov>- keyword: Security Policy;
3. The State of Maryland Information Technology Non-Visual Standards at: <http://doit.maryland.gov/policies/Pages/ContractPolicies.aspx>;

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# Contractor Requirements: General

## Contract Initiation Requirements

Contractor shall schedule and hold a kickoff meeting with the MLGCA within 10 Working Days of NTP Date. At the kickoff meeting, the Contractor shall present and review the Product Plan for Maryland (Section 5.3.3.7) and any other activities necessary for the Contractor, MLGCA or and third parties for fully transitioning to the new Contract.

## End of Contract Transition

### The Contractor shall provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to 90 days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:

1. Provide additional services and support as requested to successfully complete the transition;
2. Maintain the services called for by the Contract at the required level of proficiency;

### The Contractor shall work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.

### The Contractor shall ensure that all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party, as directed by the Contract Monitor.

### The Contractor shall support end-of-Contract transition efforts with technical and project support to include but not be limited to providing a draft Transition-Out plan 60 days in advance of Contract end date.

## Invoicing

### General

1. The Contractor shall submit the original of each invoice and signed authorization to invoice to the Contract Monitor, or designee.
2. All invoices for services shall be verified by the Contractor as accurate at the time of submission.
3. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
   1. Contractor name and address;
   2. Remittance address;
   3. Federal taxpayer identification (FEIN) number or social security number, as appropriate;
   4. Invoice period (i.e. time period during which services covered by invoice were performed);
   5. Invoice date;
   6. Invoice number;
   7. State assigned Contract number;
   8. State assigned (Blanket) Purchase Order number(s);
   9. Goods or services provided;
   10. Amount due; and
   11. Any additional documentation required by regulation or the Contract.
4. The MLGCA reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the MLGCA with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
5. The MLGCA shall make payment no later than thirty (30) days after receipt of proper invoice(s) from the Contractor in accordance with standard State procedures. The MLGCA may withhold and/or reduce payment for unsatisfactory performance, as well as for set-off, counterclaim, liquidated damages, or any other legally permitted deduction. The MLGCA shall have the right to adjust future invoices based on the results of monthly independent audits.
6. Any action on the part of the MLGCA, or dispute of action by the Contractor, shall be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
7. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
8. Invoices for final payment shall be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event shall any invoice be submitted later than 60 calendar days from the Contract termination date.

### Invoice Submission

1. Upon the commencement of the Contract, the Contractor will begin to accrue earnings in accordance with the unit prices set forth in **Attachment B-2**: Financial Proposal Form, which are stated as dollars per square inch of Instant Ticket area (per 1,000 Instant Tickets) for Instant Tickets printed by the Contractor and, for the Primary Contractor only, dollars per delivery of Instant Ticket orders and POS materials to Retailers.
2. The Primary Contractor shall submit two (2) separate invoices for these charges to the MLGCA on a monthly basis. One invoice shall be for the Instant Tickets provided by Primary Contractor and will be based on a monthly statement of Instant Tickets printed by Contractor, to be provided not later than the fifteenth (15th) day of the month following the month of Instant Ticket Game production and delivery. The second invoice shall be for delivery services and the Contractor shall itemize the actual deliveries made during the billing period, separating initial allocation orders from replenishment orders. A separate third invoice shall be provided for POS and other deliveries, when those services are exercised.
3. An Alternate Contractor shall submit a single invoice to the MLGCA on a monthly basis. The invoice shall be for the Instant Tickets provided by Alternate Contractor and will be based on a monthly statement of Instant Tickets printed by Contractor, to be provided not later than the fifteenth (15th) day of the month following the month of Instant Ticket Game production and delivery.

### For the purposes of the Contract, an amount will not be deemed due and payable if:

1. The amount invoiced is inconsistent with the Contract;
2. The proper invoice has not been received by the party or office specified in the Contract;
3. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
4. The item or services have not been accepted;
5. The quantity of items delivered is less than the quantity ordered;
6. The items or services do not meet the quality requirements of the Contract;
7. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
8. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
9. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

### Travel Reimbursement

The Contractor will not be reimbursed for travel under this RFP.

## Liquidated Damages – MBE

MBE liquidated damages are identified in Attachment M. (Primary Contractor Only)

## Liquidated Damages - Other Than MBE

### General

### It is agreed by the Contractor and MLGCA that:

1. If the Contractor does not provide or perform the requirements referred to or listed in this provision, damage(s) to the MLGCA will result.
2. Proving such damage(s) will be costly, difficult, and time consuming.
3. The damage figures listed below represent a good faith effort to quantify the range of harm that could reasonably be anticipated at the time of the making of the Contract and may not be considered a penalty.
4. Liquidated damages shall become due within thirty (30) calendar days after written notification by the MLGCA. The MLGCA may, at its sole discretion, deduct Liquidated Damages from payments due to the Contractor. The Contractor’s surety shall be liable under the Performance Bond for all Liquidated Damages assessed against the Contractor.
5. Nothing in this provision shall be construed as relieving the Contractor from performing all Contract requirements whether listed herein or not, nor is the MLGCA’s right to enforce or to seek other remedies from failure to perform any other Contract duty hereby diminished.
6. Remedies of the MLGCA specified in this section or elsewhere in the Contract for breach or failure of performance by the Contractor shall in no way limit any other remedies available to the MLGCA under the Contract; under any statute or regulation; or at law or in equity including, without limitation, all remedies of a buyer under the Uniform Commercial Code. All rights, powers and remedies shall be cumulative and concurrent. Any failure of the MLGCA to exercise a remedy shall not be a waiver of any breach or non-performance by the Contractor nor shall it prevent the MLGCA from later exercising that or any other remedy.
7. The Contract will be used by the MLGCA to monitor Contractor performance and will provide the basis for determining Liquidated Damages.

### Liquidated Damages Assessment: Collections, Withholdings

1. Once the MLGCA has determined that liquidated damages are to be assessed, the Director shall notify the Contractor of the assessment (or assessments). At the Director’s discretion, the assessment notice may direct payment of the assessment by the Contractor. If payment is thus directed, the Contractor shall pay the assessment within thirty (30) calendar days of receipt of the assessment notice unless directed otherwise by the Director. If the Director determines that any damage was caused in part by the MLGCA, the Director shall reduce the assessment against the Contractor proportionately.
2. Any Liquidated Damages assessment may also be collected, at the Director’s discretion, by withholding the funds from any payment (or payments) due the Contractor after the date of assessment.

### Conditions for Termination of Liquidated Damages

Unless waived by the Director, no Liquidated Damages imposed on the Contractor shall be terminated or suspended until the Contractor issues a written notice of correction to the Director verifying the correction of condition(s) for which Liquidated Damages were imposed, and all the Contractor corrections have been subjected to system testing or other verification at the discretion of the Director.

### Severability of Individual Liquidated Damages Clauses

If any portion of any provision on Liquidated Damages in this Contract is determined to be unenforceable in one or more of its applications, the remaining portion remains in effect in all applications not determined to be invalid that are severable from the invalid applications. If any portion of this Liquidated Damages provision is determined to be unenforceable in total, the other portions shall remain in full force and effect.

### Damages Imposed

1. Late Reports, Tapes and Information

In the event the Contractor fails to provide any report, tape or information in accordance with the schedule specified in the Working Papers, the Director may impose Liquidated Damages in the amount of One Thousand Dollars ($1,000) per day, per tape, report or information until correct, complete and usable reports or information are provided.

1. Faulty Reports and Information

In the event the Contractor provides reports or information agreed to in the Working Papers that are incorrect, incomplete or unusable, the Director may impose Liquidated Damages in the amount of One Thousand Dollars ($1,000) per day for each until correct, complete and usable reports or information are provided.

1. Retrieval of Unusable Games

If the MLGCA, at its sole discretion, determines that a game is unusable and must be retrieved from Retailers because of concerns about, for example, security and/or integrity of the game play data, quality of the product, trademark issues or the ability to validate, the Director may impose Liquidated Damages in the amount of Ten Dollars ($10) per Retailer location from which the unusable Instant Tickets must be retrieved.

1. Incorrect Game Programming Software

Incorrect Game Programming Software Prohibiting Game Sales – If the game programming software supplied by the Contractor does not conform to the specifications set forth in the Working Papers and any modifications to them, and the MLGCA is unable to activate or distribute game Instant Tickets as result thereof, the Director may impose Liquidated Damages in the amount of Fifteen Thousand Dollars ($15,000) per game per day, or part of a day that the software is operating improperly.

Incorrect Software Prohibiting Prize Validation – If the software supplied by the Contractor does not conform to the specifications set forth in the Working Papers, and the MLGCA is unable to validate game Instant Tickets or correctly validate game Instant Tickets as a result thereof, the Director may impose Liquidated Damages in the amount of Fifteen Thousand Dollars ($15,000) per day per game, or part of a day, that the software is operating improperly.

1. Delivery Damages

The Director may impose Liquidated Damages in the amount of Ten Thousand Dollars ($10,000) per game per day for any delay in Contractor quoted and MLGCA accepted delivery dates for Instant Tickets to the MLGCA’s warehouse. Said damages, however, will not be levied if delays occur which are completely out of the Contractor’s control, such as a flood, tornado or other force majeure.

1. Late Delivery of Instant Tickets to Retailer Locations

If Books are not delivered to a Retailer location on the next Working Day after pick-up from the MLGCA’s warehouse, the Director may impose Liquidated Damages in the amount of Twenty Five Dollars ($25) per Book per day for each Book not received by the Retailer.

1. Missing/Incomplete Trademark and Service Mark Search

If a Trademark and Service Mark Search is not performed, or performed incompletely or incorrectly, by the Contractor and as a result an Instant Ticket Game currently on sale must be cancelled, the Director may impose Liquidated Damages in the amount of Twenty Five Thousand Dollars ($25,000) per day for each day an acceptable replacement game is not delivered. The Contractor shall provide the replacement game at no charge. In the event that a trademark problem manifests itself prior to the first sales date of a game and the Contractor cannot cure the problem at its expense prior to the game start, the Contractor shall provide a replacement game specified by the MLGCA in time to meet the scheduled algorithm testing date of the game. If this date is not met, the Director may impose Liquidated Damages in the amount of Ten Thousand Dollars ($10,000) per day for each day an acceptable replacement game is not delivered.

1. Overredemption

If an Instant Game must be terminated by the MLGCA as a result of an overredemption, the Contractor shall be responsible for all costs incurred by the MLGCA resulting from the overredemption. An overredemption occurs when the prizes paid exceed the end of production prize structure established by the Contractor for that Instant Game.

1. Responsibility for Contractor Errors

The Contractor shall be responsible for all costs incurred by the MLGCA resulting from errors or omissions by the Contractor regardless of whether the Instant Game is actually closed-out early. The Contractor shall be responsible for actual costs incurred including loss of anticipated sales. In addition to the above costs, the Contractor shall also be responsible for the loss of goodwill to the MLGCA, with such loss of goodwill being a flat rate cost of Twenty-Five Thousand Dollars ($25,000) per occurrence.

## Disaster Recovery and Data

The Contractor shall have an up-to-date Business Recovery Plan which shall be documented, maintained and periodically tested to ensure minimal interruption to the services provided to the MLGCA in case of an emergency or disaster at the Contractor’s facility. The Contractor shall submit its plan to the MLGCA for its review and required approval.

## Insurance Requirements

The Contractor shall maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised.

NOTE: For an Alternate Contract only, the requirements of this Section will not become effective until the first order for an Instant Ticket Game is placed with the Contractor.

### The following type(s) of insurance and minimum amount(s) of coverage are required:

1. Commercial General Liability - of $1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and $3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
2. Errors and Omissions/Professional Liability - $1,000,000 per combined single limit per claim and $3,000,000 annual aggregate.
3. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of $1,000,000 per loss, and a minimum single loss retention not to exceed $10,000. The State of Maryland and the MLGCA should be added as a “loss payee.”
4. Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars ($10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the State’s claimants or employers is processed or stored.
5. Worker’s Compensation - The Contractor shall maintain such insurance as necessary or as required under Workers’ Compensation Acts, the Longshore and Harbor Workers’ Compensation Act, and the Federal Employers’ Liability Act, to not be less than one million dollars ($1,000,000) per occurrence (unless a state’s law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.
6. Automobile or Commercial Truck Insurance - The Contractor shall maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.
7. Property Insurance - Insurance for extended coverage on all Contractor owned Equipment shall be maintained in the amount of actual replacement cost thereof. This policy shall include an All Risk Property Floater to insure personal property including contents, Equipment and mobile items against fire, collision, flood, etc. Neither the State, the MLGCA, nor MLGCA Retailers shall be responsible for any Equipment not owned by the State.

### The State shall be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers’ Compensation Insurance and Professional Liability Insurance.

### All insurance policies shall be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than thirty (30) days’ advance notice of any non-renewal, cancellation, or expiration. The Contractor shall notify the Procurement Officer in writing, if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor shall provide evidence of replacement insurance coverage to the Procurement Officer at least fifteen (15) days prior to the expiration of the insurance policy then in effect.

### Any insurance furnished as a condition of the Contract shall be issued by a company authorized to do business in the State.

### The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits and requirements set forth in this section within five (5) working days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor shall provide certificates of insurance annually, or as otherwise directed by the Contract Monitor. Contractor shall not commence work under this Contract until all insurance required has been obtained and evidence submitted to the MLGCA.

### Subcontractor Insurance

The Contractor shall require any subcontractors to obtain and maintain levels of coverage equal to that required of the Contractor and shall provide the Contract Monitor with the same documentation as is required of the Contractor.

## Security Requirements

### Facility Security

The printing plant or other facility where Instant Tickets are manufactured shall be equipped with a plant security system, to be reviewed and approved by the MLGCA. The system shall ensure that game tickets and materials are protected from theft, alteration and destruction, not only during the manufacturing process, but also while in storage on the Contractor’s premises. Any failure of the Contractor’s plant or other facility to be in full compliance with the MLGCA’s security standards shall be corrected and brought into full compliance by the Contractor within a reasonable time, as determined by the MLGCA. The MLGCA shall have the right to make any number of announced or unannounced inspections of the Contractor’s premises at any time.

### Security Breach

Upon discovery of any breach of security experienced by the Contractor during the term of the Contract, especially theft or disappearance of any paper stock, Instant Tickets, waste, printing plates, imagery tapes, program tapes or the like, the Contractor shall immediately within one (1) hour notify the MLGCA Director by telephone or in person. The Contractor shall follow up within twenty four (24) hours with written notification to the Director detailing the specifics of the occurrence and what steps have been taken to correct the problem. The MLGCA shall be the sole judge of the adequacy of the steps taken and shall have the right to specify other steps to be taken.

The MLGCA shall have the right to require at any time such further and additional security measures as it deems necessary and/or appropriate to ensure the integrity of the operation of the MLGCA.

The MLGCA reserves the right, at any time and without prior notice, to expand its background investigation, to inspect and otherwise evaluate all phases of performance specified in the Contract, and the premises in which such work is performed.

### Personnel

The Contractor shall, upon the MLGCA’s request, provide criminal history and other background investigations of any officers, directors, principals, owners, investors, shareholders, partners, subcontractors, employees, or any other associates of the Contractor that the MLGCA deems appropriate. Contractor shall have an articulated process approved by MLGCA to investigate new employees before an employee is hired to work on this Contract. MLGCA may deny authorization for hiring.

The Contractor shall instruct its employees and subcontractors to cooperate with the investigation. The MLGCA may terminate the Contract based upon adverse results of background checks if it determines that MLGCA’s integrity, security or goodwill may be in jeopardy. The MLGCA’s right to request such investigations shall continue throughout the Contract term.

The Contractor shall report to the MLGCA’s Procurement Officer the involvement of any of the Contractor’s employees, owners, or agents in any known criminal arrest (exclusive of minor traffic violations) or investigation.

## Problem Escalation Procedure

### The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the MLGCA within appropriate timeframes.

### The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed by the MLGCA should the Contract Monitor not be available.

### The Contractor must provide the PEP no later than ten (10) working days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) working days after the start of each Contract year and within ten (10) working days after any change to the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:

1. The process for establishing the existence of a problem;
2. Names, titles, and contact information for progressively higher levels of personnel in the Contractor’s organization who would become involved in resolving a problem;
3. For each individual listed in the Contractor’s PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor’s PEP;
4. Expedited escalation procedures and any circumstances that would trigger expediting them;
5. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
6. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
7. A process for updating and notifying the Contract Monitor of any changes to the PEP.

### Nothing in this section shall be construed to limit any rights of the Contract Monitor or the MLGCA which may be allowed by the Contract or applicable law.

## SOC 2 Type 2 Audit Report

A SOC 2 Type 2 Report is not a Contractor requirement for this Contract.

## Experience and Personnel

See requirements in Sections 2.4.3 and 2.5.1.

## Substitution of Personnel

### Continuous Performance of Key Personnel

When Key Personnel are identified for the Contract, the following apply:

1. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Monitor or specified in the Contract, Key Personnel shall be assigned to the MLGCA as a dedicated resource.
2. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be replaced by the Contractor from working under the Contract without the prior written approval of the Contract Monitor.
3. The provisions of this section apply to Key Personnel identified in any Task Order proposal and agreement, if issued, and any Work Order Request and Work Order, if issued.

### Definitions

For the purposes of this section, the following definitions apply:

1. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
2. **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Contractor’s Technical Proposal.

### Contractor Personnel General Substitution Provisions

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in **Section 3.12.4**

1. The Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
2. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
   1. A detailed explanation of the reason(s) for the substitution request;
   2. The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
   3. The official resume of the current personnel for comparison purposes; and
   4. Evidence of any required credentials.
3. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
4. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

### Replacement Circumstances

1. Directed Personnel Replacement
   1. If the MLGCA has concerns about the behavior or performance of specific Contractor Personnel, the Contract Monitor may direct the Contractor to replace that individual.
   2. Prior to replacement and with the permission of the Contract Monitor, the Contractor may engage in remediation efforts with the Contractor Personnel, including the establishment of a remediation plan that is acceptable to the Contract Monitor.
   3. Should the Contract Monitor determine that the individual’s behavior or performance issues persist despite the remediation plan, upon notice from the Contract Monitor the Contractor shall replace the individual with a substitute approved by the Contractor Monitor.
   4. Replacement or substitution of key Contractor Personnel under this section shall be in addition to, and not in lieu of, the State’s remedies under the Contract or which otherwise may be available at law or in equity.
   5. If the Contract Monitor determines to direct substitution under **3.12.4.A.1**, if at all possible, at least fifteen (15) Working Days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and in the State’s best interests to remove the Contractor Personnel with less than fifteen (15) Working Days’ notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) Working Days, including immediate removal.
   6. In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.12.4.A.1** of this section, provide a suitable replacement for approval within fifteen (15) Working Days of the notification of the need for removal, or the actual removal, whichever occurs first.
2. Key Personnel Replacement
   1. To replace any Key Personnel in a circumstance other than as described in **3.12.4.A**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.12.3** to the Contract Monitor at least fifteen (15) Working Days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
   2. Key Personnel Replacement Due to Sudden Vacancy
      1. The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) Working Days or more advance notice shall be treated as a replacement under **Section 3.12.4.B.1**.
      2. Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.12.3** within fifteen (15) Working Days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
   3. Key Personnel Replacement Due to an Indeterminate Absence
      1. If any Key Personnel has been absent from his/her job for a period of ten (10) Working Days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) Working Days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under **Section 3.12.3**.
      2. However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel’s ability to return.

### Substitution Prior to and Within 30 Working Days After Contract Execution

Prior to Contract execution or within thirty (30) Working Days after Contract execution, the Offeror may not substitute proposed Key Personnel except under the following circumstances: (a) for actual full-time personnel employed directly by the Offeror: the vacancy occurs due to the sudden termination, resignation, or approved leave of absence due to an Extraordinary Personal Event, or the death of such personnel; and (b) for any temporary staff, subcontractors or 1099 contractors: the vacancy occurs due to an Incapacitating event or the death of such personnel. To qualify for such substitution, the Offeror must demonstrate to the MLGCA’s satisfaction the event necessitating substitution. Proposed substitutions shall be of equal caliber or higher, in the MLGCA's sole discretion. Proposed substitutes deemed by the MLGCA to be less qualified than the originally proposed individual may be grounds for pre-award disqualification or post-award termination.

## Minority Business Enterprise (MBE) Reports

If this RFP includes an MBE Goal (see **Section 4.26**), the Contractor (Primary Contractor Only) shall:

1. Submit the following reports by the 10th of each month to the Contract Monitor and the MLGCA’s MBE Liaison Officer:
   1. A Prime Contractor Paid/Unpaid MBE Invoice Report (**Attachment D-4A**) listing any unpaid invoices, over forty five (45) days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
   2. (If Applicable) An MBE Prime Contractor Report (**Attachment D-4B**) identifying an MBE prime’s self-performing work to be counted towards the MBE participation goals.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) by the 10th of each month to the Contract Monitor and the MLGCA’s MBE Liaison Officer that identifies the Contract and lists all payments to the MBE subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts 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 subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer 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. Contractor must retain all records concerning MBE participation and make them available for State inspection for three (3) years after final completion of the Contract.
5. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

## Veteran Small Business Enterprise (VSBE) Reports

If this solicitation includes a VSBE Goal (see **Section 4.27**), the Contractor (Primary Contractor Only) shall:

1. Submit the following reports by the 10th of the month following the reporting period to the Contract Monitor and the MLGCA’s VSBE representative:
   1. VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (**Attachment E-3**) listing any unpaid invoices, over forty five (45) days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made; and
   2. **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.
2. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and MLGCA’s VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (**Attachment E-4**).
3. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the Contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer 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 VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three (3) years after final completion of the Contract.
5. At the option of the MLGCA, upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

## Work Orders

This Section is inapplicable to this RFP.

## Additional Clauses

### No-Cost Extensions

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

### Non-Compete Clause Prohibition

The MLGCA seeks to maximize the retention of personnel working under the Contract whenever there is a transition of the Contract from one contractor to another so as to minimize disruption due to a change in contractor and maximize the maintenance of institutional knowledge accumulated by such personnel. To help achieve this objective of staff retention, the Offeror shall agree that if awarded the Contract, the Offeror’s employees and agents filling the positions set forth in the staffing requirements of Section working on the State contract shall be free to work for the subsequent contractor awarded the State contract notwithstanding any non-compete clauses to which the employee(s) may be subject. The Offeror agrees not to enforce any non-compete restrictions against the State with regard to these employees and agents if a different vendor succeeds it in the performance of the Contract. To evidence compliance with this non-compete clause prohibition, each Offeror must include an affirmative statement in its technical Proposal that the Offeror, if awarded a Contract, agrees that its employees and agents shall not be restricted from working with or for any successor contractor that is awarded the State business.

**3.16.3 Trademark Notice**

The MLGCA employs several trademarks or registered trademarks. The list that follows is intended to be illustrative, but not necessarily exhaustive. Offerors are hereby provided notice that certain marks listed below may not be identified elsewhere in this RFP as holding intellectual property rights.

Name Mark Owner

1. Cash4Life® ® Multi-State Lottery Association

2. Lottery in Motion™ ™ Scientific Games International, Inc.

3. Mega Millions® ® Illinois Department of the Lottery

4. Megaplier® ® Texas Lottery Commission

5. Powerball® ® Multi-State Lottery Association

6. Power Play® ® Multi-State Lottery Association

7. Properties Plus® ® Scientific Games International, Inc.

8. Racetrax® ® Tabcorp International Pty Ltd

9. Racetrax Bonus™ ™ Not filed for registration

In addition, the MLGCA owns the rights to the following:

1. Starburst L Logo ® (Both old and new configurations)

2. “Stacked” Starburst Logo ®

3. Maryland Lottery ® (Name and logo design)

4. MDLOTTERY.COM ®

5. Let Yourself Play ®

6. Horizontal Maryland Lottery

Starburst Logo ®

7. Keno Bonus® ®

8. Multi-Match® ® (Name and logo design)

9. Keno To Go™ ™

10. Packaged Keno To Go® ® (Name and logo design)

11. World Championship Poker® ®

12. Super Slots® ®

**3.16.4 Information Not Contained in RFP**

Proposals shall be based solely on the material contained in this RFP and any amendments thereto. Offerors are to disregard any newspaper advertisements, news articles, and oral representations when preparing their proposals.

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# Procurement Instructions

## Pre-Proposal Conference

### A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.

### Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals.

### Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see Section 4.2.1 eMMA).

### Attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.

### In order to assure adequate seating and other accommodations at the Conference, please e-mail the Pre-Proposal Conference Response Form (Attachment A) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) working days prior to the Conference date. The MLGCA will make a reasonable effort to provide such special accommodation.

## eMaryland Marketplace Advantage (eMMA)

### eMMA is the electronic commerce system for the State. The RFP, Conference summary and attendance sheet, Offerors’ questions and the Procurement Officer’s responses, amendments, and other RFP-related information will be made available via eMMA.

### In order to receive a contract award, a vendor must be registered on eMMA. Registration is free. Go to https://procurement.maryland.gov, click on “Register” to begin the process, and then follow the prompts.

## Questions

### All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the “RFP Number 2019-05 - Instant Ticket Games and Related Services”, and shall be submitted in writing via e-mail to the Procurement Officer no later than the date and time specified the Key Information Summary Sheet. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.

### Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMMA.

### The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the MLGCA unless it issues an amendment in writing.

If an Offeror discovers any conflict, discrepancy, omission, or other error in this RFP, it shall immediately notify, in writing, the Procurement Officer. Should a potential Offeror identify alleged ambiguities in the specifications or Contract provisions included in this RFP, or should there be doubt as to the meaning or intent of any section herein, the potential Offeror must request clarification from the Procurement Officer prior to the Proposal Due (Closing) Date and Time. Failure to do so may prevent consideration of a future protest. (See COMAR 21.10.02.03)

If an Offeror fails to notify the MLGCA of an error in the RFP known to the Offeror, or an error that reasonably should have been known to the Offeror, the Offeror shall submit a proposal at the Offeror's own risk; and, if awarded the Contract, the Offeror shall not be entitled to additional compensation or time by reason of the error or its later correction.

## Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.

## Proposal Due (Closing) Date and Time

### Proposals, in the number and form set forth in Section 5 Proposal Format, must be received by the Procurement Officer no later than the Proposal Due Date and Time indicated on the Key Information Summary Sheet in order to be considered. All written materials must be in English.

### Requests for extension of this date or time shall not be granted.

### Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the Proposal Due Date and Time listed in the Key Information Summary Sheet will not be considered.

### Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the Proposal Due Date and Time set forth in the Key Information Summary Sheet.

### Proposals may not be submitted by e-mail or facsimile. Proposals will not be opened publicly.

A Register of Proposals will be prepared that identifies each Offeror. The Register of Proposals and identity of Offerors may not be disclosed before the Procurement Officer makes a determination recommending award of the Contract.

### Potential Offerors not responding to this RFP are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

## Multiple or Alternate Proposals

Multiple or alternate Proposals will not be accepted. Submission of proposals for both the Primary and an Alternate Contract will not be considered to be Multiple Proposals under this paragraph.

## Economy of Preparation

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

## Public Information Act Notice

### The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP Section 5.3.2.B “Claim of Confidentiality”). This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal. A blanket statement by the Offeror that its entire proposal is confidential proprietary commercial information or a trade secret is unacceptable. Proposals shall be open to public inspection only after Contract award, to the extent permitted by the PIA.

### Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

## Award Basis

A Contract shall be awarded to the responsible Offeror(s) submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. The MLGCA may make multiple contract awards as a result of this RFP – a Primary Contract and Alternate Contract(s) to any other Offerors that are determined by the MLGCA to be qualified. See RFP Section 6 for further award information.

## Oral Presentation, Case Study and Site Visits by MLGCA During Evaluation

### Oral Presentations

During the evaluation process, Offerors may be required to make individual oral presentations to the Evaluation Committee in order to clarify their proposals. Submission of a proposal does not guarantee an Offeror the opportunity to be invited to participate in oral presentations or discussions. An Offeror’s presentation must include the Key staff that would be assigned to this project if awarded the Contract.

### Case Study

Offerors for the Primary Contract will be required to make an oral presentation of the Case Study in accordance with Section 5.3.3.8 during the evaluation process.

### Site Visits

The Evaluation Committee may make site visit(s) to the Offerors' place of business or other location where Offeror is providing services to a third party.

### Scheduling

The Procurement Officer will notify Offerors of the time, place, procedure, scope, and format for the Case Study and for any oral presentations, demonstrations and/or site visit(s) that may be required. These events may be scheduled concurrently or separately at the MLGCA’s discretion. An Offeror’s failure to promptly comply and cooperate with these requirements could result in its proposal being rejected and eliminated from further consideration.

### Representations

Significant representations made by an Offeror during oral presentations, discussions, demonstrations and site visit(s) are considered part of the Technical Proposal and Offerors shall confirm them in writing. All such written confirmations of representations will become part of the Offeror’s Proposal and shall be binding if the Contract is awarded.

### Expenses

The Offeror shall provide travel, lodging, meals and related expenses both to and from the site visit(s) for up to ten (10) representatives of the MLGCA.  To the extent practicable, the State’s Standard Travel Regulations (COMAR 23.02.01) shall be followed.

The selection of individuals to attend site visits shall be determined in the sole discretion of the Director or the Director’s designee.  Airline and rail transportation shall be purchased by the Offeror, utilizing the lowest logical air or rail fares available.  Ground shuttle transportation may be purchased by the Offeror or reimbursed to State representatives using the State’s Standard Travel Regulations.  Lodging accommodations shall be purchased by the Offeror, utilizing where practicable only those properties that would provide a government rate to Maryland State employee(s) on government business.

Meals and reimbursable expenses other transportation and lodging shall be reimbursed to the State after the State representative submits itemized receipted bills and other supporting documentation as required by the State’s Standard Travel Regulations.  Expenses made by representatives in excess of those permitted under the State’s Standard Travel Regulations shall be reimbursed by neither the State nor the Offeror.

A modest working lunch during site visits may be provided at the Offeror’s expense if the Offeror’s representatives are present at the same time and if leaving the site would be counterproductive and inefficient.

## Duration of Proposal

Proposals submitted in response to this RFP are irrevocable for the latest of the following: one hundred eighty (180) days following the Proposal due date and time, best and final offers if requested (see **Section 6.7.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer’s request only with the Offeror’s written agreement.

## Revisions to the RFP

### If the RFP is revised before the Proposal Due Date and Time, the MLGCA shall post any amendments to the RFP on eMMA and shall endeavor to provide such amendments to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMMA for any amendments issued prior to the submission of Proposals.

### Acknowledgment of the receipt of all amendments to this RFP issued before the Proposal Due Date and Time shall be included in the Transmittal Letter accompanying the Offeror’s Technical Proposal.

### Amendments made after the Proposal Due Date and Time will be sent only to those Offerors that remain under award consideration as of the issuance date of the amendment.

### Acknowledgement of the receipt of amendments to the RFP issued after the Proposal Due Date and Time shall be in the manner specified in the amendment notice.

### Failure to acknowledge receipt of an amendment does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the amendment, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

## Cancellations

### The MLGCA reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.

### The MLGCA reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.

## Incurred Expenses

The MLGCA will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

## Protest/Disputes

Any protest or dispute related to this RFP or the Contract award shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

## Offeror Responsibilities

### Offerors must be able to provide all goods and services and meet all of the requirements of this RFP and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.

### All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror’s Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see Section 4.26 “Minority Participation Goal” and Section 4.27 “VSBE Goal”).

### If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror’s Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.

### A parent guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror’s experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent’s participation as determined by the MLGCA.

## Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Attachment** **M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror’s Proposal. The MLGCA reserves the right to accept or reject any exceptions.**

## Proposal Affidavit

A Proposal submitted by the Offeror must be accompanied by a completed Proposal Affidavit. A copy of this Affidavit is included as **Attachment** **C** of this RFP.

## Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this RFP, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment** **N** of this RFP. This Affidavit must be provided within five (5) working days of notification of recommended award. For purposes of completing Section “B” of this Affidavit (Certification of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

## Compliance with Laws/Arrearages

By submitting a Proposal in response to this RFP, the Offeror 1) if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract; and 2) represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

## Verification of Registration and Tax Payment

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit https://www.egov.maryland.gov/businessexpress.

It is strongly recommended that any potential Offeror complete registration prior to the Proposal Due Date and Time. The Offeror’s failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

## False Statements

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

1. In connection with a procurement contract a person may not willfully:
   1. falsify, conceal, or suppress a material fact by any scheme or device;
   2. make a false or fraudulent statement or representation of a material fact; or
   3. use a false writing or document that contains a false or fraudulent statement or entry of a material fact.
2. A person may not aid or conspire with another person to commit an act under subsection A.
3. A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding $20,000 or imprisonment not exceeding 5 years or both.

## Payments by Electronic Funds Transfer

By submitting a Proposal in response to this RFP, the Offeror, if selected for award:

### Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller’s Office grants an exemption. Payment by EFT is mandatory for contracts exceeding $200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

### Any request for exemption must be submitted to the State Comptroller’s Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller’s website at: http://comptroller.marylandtaxes.com/Vendor\_Services/Accounting\_Information/Static\_Files/GADX10Form20150615.pdf.

## Prompt Payment Policy

This procurement and the Contract(s) to be awarded pursuant to this RFP are subject to the Prompt Payment Policy Directive issued by the Governor’s Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 “Prompt Pay Requirements” (see **Attachment** **M**), should an MBE goal apply to this RFP. Additional information is available on GOSBA’s website at: http://www.gomdsmallbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf.

## Electronic Procurements Authorized

### Under COMAR 21.03.05, unless otherwise prohibited by law, the MLGCA may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.

### Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the RFP or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.

### “Electronic means” refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bso/>), and electronic data interchange.

### In addition to specific electronic transactions specifically authorized in other sections of this RFP (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:

1. The Procurement Officer may conduct the procurement using eMMA, e-mail, or facsimile to issue:
   1. The RFP;
   2. Any amendments and requests for best and final offers;
   3. Pre-Proposal conference documents;
   4. Questions and responses;
   5. Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;
   6. Notices of award selection or non-selection; and
   7. The Procurement Officer’s decision on any Proposal protest or Contract claim.
2. The Offeror or potential Offeror may use e-mail to:
   1. Ask questions regarding the solicitation;
   2. Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer’s request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer and;
   3. Submit a "No Proposal Response" to the RFP.
3. The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

### The following transactions related to this procurement and any Contract awarded pursuant to it are not authorized to be conducted by electronic means:

1. Submission of initial Proposals;
2. Filing of protests;
3. Filing of Contract claims;
4. Submission of documents determined by the MLGCA to require original signatures (e.g., Contract execution, Contract modifications); or
5. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

### Any facsimile or e-mail transmission is only authorized to the facsimile numbers or e-mail addresses for the identified person as provided in the RFP, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

## MBE Participation Goal (Primary Contractor Only)

### Establishment of Goal and Subgoals

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any.

Notwithstanding any subgoals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP will result in the State’s rejection of the Offeror’s Proposal for the applicable Service Category. This failure is not curable.

### Attachments

1. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
2. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
3. Attachment D-1B Waiver Guidance
4. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
5. Attachment D-2 Outreach Efforts Compliance Statement
6. Attachment D-3A MBE Subcontractor Project Participation Certification
7. Attachment D-3B MBE Prime Project Participation Certification
8. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
9. Attachment D-4B MBE Prime Contractor Report
10. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
11. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
12. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process;
13. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals;and
14. The Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

***If the Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.***

### Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in Attachment D-1A is appropriately certified and has the correct North American Industry Classification System (“NAICS”) codes allowing it to perform the committed work.

### Within ten (10) working days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer:

1. Outreach Efforts Compliance Statement (**Attachment D-2**);
2. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
3. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

***If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.***

### A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.

### The Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (Attachment D-1C) and all documentation within ten (10) working days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier.

### All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (Attachment D-1A), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (See Contract – Attachment M, Section 2.1).

### The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – Attachment M, Liquidated Damages for MBE, Section 39).

### As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the subgoals, the MBE prime must also identify other certified MBE subcontractors [see Section 4B of the MBE Participation Schedule (**Attachment D-1A**)] used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE subgoal classifications but can self-perform up to 100% of the stated subgoal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Refer to MBE forms (**Attachment D**) for additional information.

## VSBE Goal (Primary Contractor Only)

### Purpose

1. The Contractor shall structure its procedures for the performance of the work required in the Contract to attempt to achieve the VSBE participation goal stated in this solicitation. VSBE performance must be in accordance with this section and **Attachment** **E**, as authorized by COMAR 21.11.13. The Contractor agrees to exercise all good faith efforts to carry out the requirements set forth in this section and **Attachment** **E**.
2. Veteran-Owned Small Business Enterprises must be verified by the Office of Small and Disadvantaged Business Utilization (OSDBU) of the United States Department of Veterans Affairs. The listing of verified VSBEs may be found at <http://www.va.gov/osdbu>.

### VSBE Goal

1. A VSBE participation goal of the total Contract dollar amount has been established for this procurement as identified in the Key Information Summary Sheet.
2. By submitting a response to this solicitation, the Offeror agrees that this percentage of the total dollar amount of the Contract will be performed by verified veteran-owned small business enterprises.

### Solicitation and Contract Formation

1. In accordance with COMAR 21.11.13.05 C (1), this solicitation requires Offerors to:
   1. Identify specific work categories within the scope of the procurement appropriate for subcontracting;
   2. Solicit VSBEs before Proposals are due, describing the identified work categories and providing instructions on how to bid on the subcontracts;
   3. Attempt to make personal contact with the VSBEs solicited and to document these attempts;
   4. Assist VSBEs to fulfill, or to seek waiver of, bonding requirements; and
   5. Attempt to attend preProposal or other meetings the procurement agency schedules to publicize contracting opportunities to VSBEs.
2. The Offeror must include with its Proposal a completed VSBE Utilization Affidavit and Prime/Subcontractor Participation Schedule (**Attachment E-1**) whereby the Offeror:
   1. Acknowledges it: a) intends to meet the VSBE participation goal; or b) requests a full or partial waiver of the VSBE participation goal. If the Offeror commits to the full VSBE goal or requests a partial waiver, it shall commit to making a good faith effort to achieve the stated goal; and
   2. Responds to the expected degree of VSBE participation as stated in the solicitation, by identifying the specific commitment of VSBEs at the time of Proposal submission. The Offeror shall specify the percentage of contract value associated with each VSBE prime/subcontractor identified on the VSBE Participation Schedule.
3. As set forth in COMAR 21.11.13.05.B(2), when a verified VSBE firm participates on a Contract as a Prime Contractor, a procurement agency may count the distinct, clearly defined portion of the work of the contract that the VSBE Prime Contractor performs with its own work force towards meeting up to one hundred percent (100%) of the VSBE goal.
4. In order to receive credit for self-performance, a VSBE Prime must list its firm in the VSBE Prime/Subcontractor Participation Schedule (**Attachment E-1**) and include information regarding the work it will self-perform. For any remaining portion of the VSBE goal that is not to be performed by the VSBE Prime, the VSBE Prime must also identify verified VSBE subcontractors used to meet the remainder of the goal.
5. Within ten (10) working days from notification that it is the apparent awardee, the awardee must provide the following documentation to the Procurement Officer:
   1. VSBE Project Participation Statement (**Attachment E-2**);
   2. If the apparent awardee believes a full or partial waiver of the overall VSBE goal is necessary, it must submit a fully-documented waiver request that complies with COMAR 21.11.13.07; and
   3. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the VSBE participation goal.

***If the apparent awardee fails to return each completed document within the required time, the Procurement Officer may determine that the apparent awardee is not reasonably susceptible of being selected for award.***

## Living Wage Requirements

1. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over $100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
2. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website http://www.dllr.state.md.us/labor/prev/livingwage.shtml.
3. Additional information regarding the State’s living wage requirement is contained in **Attachment** **F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
4. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
   1. The Tier 1 Area includes Montgomery, Prince George’s, Howard, Anne Arundel and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. In this circumstance, the Contract will be determined to be a Tier (enter “1” or “2,” depending on where the majority of the service recipients are located) Contract.
   2. The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
   3. If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract.
   4. If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract.
5. If the Contractor provides more than 50% of the services from an out-of-State location, the State agency determines the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.
6. The Offeror shall identify in the Proposal the location from which services will be provided.
7. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change.

## Federal Funding Acknowledgement

This Contract does not contain federal funds.

## Conflict of Interest Affidavit and Disclosure

### The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (Attachment H) and submit it with its Proposal.

### By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.

### Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.

### Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that “an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement.” Any Offeror submitting a Proposal in violation of this provision shall be classified as “not responsible.” See COMAR 21.05.03.03.

## Non-Disclosure Agreement

### Non-Disclosure Agreement (Offeror)

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

### Non-Disclosure Agreement (Contractor)

All Offerors are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment** **I**. This Agreement must be provided within five (5) working days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

## HIPAA - Business Associate Agreement

A HIPAA Business Associate Agreement is not required for this procurement.

## Nonvisual Access

### By submitting a Proposal in response to this RFP, the Offeror, if selected for award, warrants that any Information Technology offered under the Proposal shall meet the Non-visual Access Clause noted in COMAR 21.05.08.05 and described in detail below. The Non-visual Access Clause referenced in this solicitation is the basis for the standards that have been incorporated into the Maryland regulations, which can be found at: www.doit.maryland.gov, keyword: NVA. Note that the State’s Non-visual Access Clause has distinct requirements not found in the federal Section 508 clauses.

### The Offeror warrants that the Information Technology to be provided under the Contract:

1. Provides equivalent access for effective use by both visual and non-visual means;
2. Will present information, including prompts used for interactive communications, in formats intended for both visual and non-visual use;
3. If intended for use in a network, can be integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired; and
4. Is available, whenever possible, without modification for compatibility with Software and hardware for non-visual access.

### The Offeror further warrants that the cost, if any, of modifying the Information Technology for compatibility with software and hardware used for non-visual access does not increase the cost of the information technology by more than five percent. For purposes of the Contract, the phrase “equivalent access” means the ability to receive, use and manipulate information and operate controls necessary to access and use information technology by non-visual means. Examples of equivalent access include keyboard controls used for input and synthesized speech, Braille, or other audible or tactile means used for output.

## Mercury and Products That Contain Mercury

All products or equipment provided pursuant to this solicitation shall be mercury-free products. The Offeror must submit a Mercury Affidavit in the form of **Attachment** **K** with its Proposal.

## Location of the Performance of Services Disclosure

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment** **L**. The Disclosure must be provided with the Proposal.

## Department of Human Services (DHS) Hiring Agreement

This RFP does not require a DHS Hiring Agreement.

## Small Business Reserve (SBR) Procurement

This RFP is not designated as a Small Business Reserve (SBR) Procurement.

## Bonds

NOTE: All requirements of this Section 4.38 fully apply to an Offeror/Contractor for the Primary Contract.

For an Offeror/Contractor for an Alternate Contract Sections 4.38.1 and 4.38.2 will not apply; the requirements of Section 4.38.3 will not become effective until the first order for an Instant Ticket Game is placed with the Contractor.

### Proposal Bond

Each Offeror must submit with its Proposal a Proposal Bond or other suitable security, as summarized in **4.38.5**, in the amount of $500,000, guaranteeing the availability of the goods and services at the offered price for one hundred and eighty (180) days after the due date for receipt of Proposals.

The bond shall be in the form provided in **Attachment P.**

The Offeror may request a release of the bond after the date of the award in return for a release signed by the Contractor and accepted by the MLGCA.

The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.

### Litigation/Protest Bond

Each Offeror must submit with its Proposal a Litigation/Protest Bond or other suitable security, as summarized in **4.38.5**, in the amount of $500,000. The purpose of the Litigation/Protest Bond is to discourage frivolous lawsuits and protests by permitting the MLGCA to recover, in addition to its attorney’s fees, damages that result from delay in implementing a Contract. A claim upon the bond may be made by the MLGCA if:

1. The Offeror brings any legal action or protest against the MLGCA, the State, the Commission, or any individual member thereof, or any employee of the State, over the award of a Contract resulting from this RFP;
2. The MLGCA or such other party is the prevailing party at the conclusion of the action or protest; and,
3. The tribunal before which the action was brought, or any other authorized tribunal, determines that the action or any portion thereof was frivolous, was brought in bad faith, or was not based upon reasonable grounds.

The bond shall be in the form of a policy or certificate underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07. Offerors may submit Litigation/Protest Bond in a form as found in **Attachment Q**.

The bond shall remain in effect for one (1) year from the Deadline for Receipt of Proposals. Offerors, including the successful Offeror/Contractor, may request a release of the bond after the date of Contract award in return for a Release and Covenant Not To Sue in a form acceptable to the MLGCA, signed by the Offeror, notarized and accepted by the MLGCA.

### Performance Bond

1. The Contractor shall submit to the Procurement Officer within ten (10) working days after notice of recommended Contract award a Performance Bond, or other suitable security in the amount of One Million Five Hundred Thousand Dollars ($1,500,000), guaranteeing that the Contractor shall well and truly perform the Contract. (Note: For an Alternate Contractor, the requirements of this section shall not become effective until the first order for an Instant Ticket Game is placed with the Alternate Contractor.)
2. The Performance Bond shall be in the form provided in **Attachment R** and underwritten by a surety company authorized to do business in the State and shall be subject to approval by the State, or other acceptable security for bond as described in COMAR 21.06.07, as summarized in **4.38.5**.
3. The Performance Bond shall be maintained throughout the term of the Contract, and renewal option period(s), if exercised. Evidence of renewal of the Performance Bond and payment of the required premium shall be provided to the State.
4. The Performance Bond may be renewable annually. The Contractor shall provide to the State, thirty (30) days before the annual expiration of the bond, confirmation from the surety that the bond will be renewed for the following year. Failure to timely provide this notice shall constitute an event of default under the Contract. Such a default may be remedied if the Contractor obtains a replacement bond that conforms to the requirements of the Contract and provides that replacement bond to the State prior to the expiration of the existing Performance Bond.
5. The cost of this bond, or other suitable security, is to be included in the total prices proposed and is not to be proposed and will not be recoverable as a separate cost item.
6. After the first year of the Contract, the Contractor may request a reduction in the amount of the Performance Bond. The amount and the duration of the reduction, if any, will be at the MLGCA’s sole discretion. If any reduction is granted, the MLGCA’s shall have the right to increase the amount of the Performance Bond to any amount, up to the original amount, at any time and at the MLGCA’s sole discretion.

### Fidelity Bond

The Contractor shall submit to the Procurement Officer, within ten (10) working days after notice of recommended Contract award, a Fidelity Bond (Crime Insurance) in the amount of $1,500,000 covering any loss to the State due to any fraudulent or dishonest act on the part of the Contractor, and any officer, employee, or subcontractor of the Contractor. If coverage for subcontractors is not included in the Fidelity Bond, then the Contractor shall require each subcontractor to provide the Procurement Officer sufficient evidence of its own coverage. The bond must be in the form of a policy or certificate underwritten by a surety company authorized to do business in the State and shall be subject to approval by the MLGCA, or other acceptable security for bond as described in COMAR 21.06.07. The Fidelity Bond shall be maintained throughout the term of this Contract, and renewal option period, if exercised. Evidence of renewal of the Fidelity Bond and payment of the required premium shall be provided to the MLGCA. (Note: For an Alternate Contractor, the requirements of this section shall not become effective until the first order for an Instant Ticket Game is placed with the Alternate Contractor.)

Failure of the Contractor to submit and maintain the required Fidelity Bond coverage, including subcontractor coverage, throughout the term of the Contract, and any Renewal Option Period, if exercised, will constitute an event of Default under the Contract.

### Acceptable Security

Acceptable security shall be as described below, identified within and excerpted from COMAR 21.06.07:

1. Acceptable security for Proposal, performance, and payment bonds is limited to:
   1. A bond in a form satisfactory to the State underwritten by a surety company authorized to do business in this State;
   2. A bank certified check, bank cashier's check, bank treasurer's check, cash, or trust account;
   3. Pledge of securities backed by the full faith and credit of the United States government or bonds issued by the State;
   4. An irrevocable letter of credit in a form satisfactory to the Attorney General and issued by a financial institution approved by the State Treasurer.

### Surety Bond Assistance Program

Assistance in obtaining bid, performance and payment bonds may be available to qualifying small businesses through the Maryland Small Business Development Financing Authority (MSBDFA). MSBDFA can directly issue bid, performance or payment bonds up to $750,000. MSBDFA may also guarantee up to 90% of a surety's losses as a result of a Contractor’s breach of Contract; MSBDFA exposure on any bond guaranteed may not, however, exceed $900,000. Bonds issued directly by the program will remain in effect for the duration of the Contract, and those surety bonds that are guaranteed by the program will remain in effect for the duration of the surety’s exposure under the Contract. To be eligible for bonding assistance, a business must first be denied bonding by at least one surety on both the standard and specialty markets within ninety (90) days of submitting a bonding application to MSBDFA. The applicant must employ fewer than 500 full-time employees or have gross sales of less than $50 million annually, have its principal place of business in Maryland or be a Maryland resident, must not subcontract more than 75% of the work, and the business or its principals must have a reputation of good moral character and financial responsibility. Finally, it must be demonstrated that the bonding or guarantee will have a measurable economic impact, through job creation and expansion of the state’s tax base. Applicants are required to work through their respective bonding agents in applying for assistance under the program. Questions regarding the bonding assistance program should be referred to:

Maryland Department of Commerce

Maryland Small Business Development Financing Authority

MMG Ventures

826 E. Baltimore Street

Baltimore, Maryland 21202

Phone: (410) 333-4270

Fax: (410) 333-2552

## Maryland Healthy Working Families Act Requirements

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

## Proposal Disclosure Prohibition

Upon issuance of this RFP, neither the MLGCA or Commission, nor their representatives, shall discuss the contents of this RFP with potential Offerors or their representatives, other than in conjunction with the Pre-Proposal Conference, Oral Presentations/Case Study/Site Visits or discussions. (See RFP Section 4.1, 4.10 and 6.7)

Until a Contract resulting from this RFP is awarded, no employee, agent, or representative of any Offeror may make available or discuss its proposal with any officer of the State, any Commission member, or any employee, agent or representative of the MLGCA, unless specifically authorized to do so in this RFP or in writing by the Procurement Officer for the purposes of clarification, evaluation, and/or negotiation.

Prior to Contract award, Offerors shall not represent themselves to MLGCA staff, Retailers or the public as having the endorsement of the MLGCA or Commission or as a supplier of any products or services to the MLGCA or Commission.

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# 5 Proposal Format

## 5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

* + Volume I –Technical Proposal
  + Volume II – Financial Proposal

## 5.2 Proposal Delivery and Packaging

5.2.1 Proposals delivered by facsimile and e-mail shall not be considered.

5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.

5.2.3 Offerors may submit Proposals by hand or by mail as described below to the address provided in the Key Information Summary Sheet.

A. Any Proposal received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the Proposal Due Date and Time listed in the RFP will be deemed to be timely. The MLGCA recommends a delivery method for which both the date and time of receipt can be verified.

B. For hand-delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror.

5.2.4 The Procurement Officer must receive all Proposal material by the Proposal Due Date and Time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the Proposal Due Date and Time will not be considered.

5.2.5 Offerors shall submit their Proposals in two separately sealed and labeled packages as follows:

1. Volume I - Technical Proposal consisting of:
   1. One (1) original executed Technical Proposal and all supporting material marked and sealed,
   2. Six (6) duplicate copies of the above separately marked and sealed,
   3. An electronic version of the Technical Proposal in Microsoft Word format, version 2007 or greater,
   4. The Technical Proposal in searchable Adobe PDF format, and
   5. A second searchable Adobe PDF copy of the Technical Proposal with confidential and proprietary information redacted (see **Section** **4.8**).
2. Volume II - Financial Proposal consisting of:
   1. One (1) original executed Financial Proposal and all supporting material marked and sealed,
   2. Six (6) duplicate copies of the above separately marked and sealed,
   3. An electronic version of the Financial Proposal in Excel or searchable Adobe PDF format, and
   4. A second searchable Adobe pdf copy of the Financial Proposal, with confidential and proprietary information redacted(see **Section** **4.8**).

5.2.6 Affix the following to the outside of each volume of sealed Proposal: the name, email address, and telephone number of a contact person for the Offeror. Unless the resulting package will be too unwieldy, the State’s preference is for the separately sealed Technical and Financial Proposals to be submitted together in a single package to the Procurement Officer and including a label bearing:

* + RFP title and number,
  + Name and address of the Offeror, and
  + Closing date and time for receipt of Proposals

5.2.7 Label each electronic media (CD, DVD, or flash drive) on the outside with the RFP title and number, name of the Offeror, and volume number. Electronic media must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

## 5.3 Volume I - Technical Proposal

**NOTE: Omit all pricing information from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).**

**5.3.1**  In addition to the instructions below, responses in the Offeror’s Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., “Section 2.2.1 Response . . .; “Section 2.2.2 Response . . .,”). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page “x”).

**5.3.2** The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:

5.3.2.1 Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.

5.3.2.2 Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 “Public Information Act Notice”**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.

5.3.2.3 Offeror Information Sheet and Transmittal Letter (Submit under TAB B)

The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The Transmittal Letter shall be brief, prepared on the Offeror’s business stationary, and transmit the Offeror’s Proposal. It shall:

(1) State whether the Offeror is submitting a proposal for the Primary Contract, an Alternate Contract, or both. (NOTE: An Offeror submitting for both Primary and Alternate Contracts need only submit a single Technical Proposal, but must complete both Category A & B on **Attachment B-2: Financial Proposal Form**)

(2) Acknowledge receipt of all Amendments to the RFP issued before the Proposal Due Date and Time, if any, and

(3) Be signed by an individual who is authorized to commit the Offeror to all services and requirements as stated in the RFP, including the prices contained in its Proposal.

5.3.2.4 Executive Summary (Submit under TAB C)

(1) The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”

(2) In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).

(3) The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. **Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**

5.3.2.5 Minimum Qualifications Documentation (If applicable, Submit under TAB D)

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.6**.

**5.3.3** Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)

The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirements. If the MLGCA is seeking Offeror agreement to any requirement, the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order, and shall contain a cross reference to the requirement. Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.

**5.3.3.1 Overview of Game Production Methods**

1) The Offeror shall provide a description of the methods to be employed in the manufacturing of Instant Tickets. Each of the major production steps shall be identified and described.

2) The Offeror shall describe its proposed Production Plan and schedule to be adhered to for all games to be produced under this Contract. The Plan and schedule proposed shall begin with the presentation of the proposed game to the MLGCA and conclude with the delivery of the final product to the MLGCA’s Retailer network. The Plan and schedule shall include all major steps, decision points, production steps, and internal controls in the creation, production, and distribution cycles for an instant game.

**5.3.3.2 Anti-Counterfeiting and Anti-Alteration Features**

The Offeror shall describe the built-in features against counterfeiting and alteration in its game Instant Tickets. Include in their entirety any reports made by independent testing laboratories during the past two (2) years.

**5.3.3.3 Game Capability**

The Offeror shall submit seven (7) sample Instant Games, including sample Instant Tickets and actual Working Papers, that the Offeror has produced for NASPL customers. Samples shall include one each for price points of $1, $2, $3, $5, $10, $20 and $30.

**5.3.3.4. Ticket Samples and Laboratory Reports**

The Offeror shall submit not less than three hundred (300) consecutively numbered samples of Instant Tickets for each of six (6) Instant Games it has produced for a NASPL lottery. As applicable and necessary, the MLGCA will accept multiple packs of tickets where the tickets are consecutively numbered within each pack, but not consecutive from pack to pack. Instant Tickets submitted shall be machine made and not handmade, and shall accurately reflect the Offeror’s product. Sample Instant Tickets shall include at least one (1) of each of the following play types:

1. Match three; 4. Beat a score;

2. Key number or symbol match; 5. Extended Play Bingo; and

3. Add up; 6. Extended Play Crossword

All Instant Ticket samples shall contain a Bar Code; at least two (2) Instant Ticket samples shall contain Optical Character Reader (OCR) game/book/ticket/numbers.

The Offeror shall submit copies of written testing results from one or more laboratories covering all Instant Tickets submitted. Costs for this testing shall be borne by the Offeror. The written test results shall be from an independent laboratory for at least two (2) of the sample games. For the remaining three (3) sample games, the written test results shall be either from an independent laboratory or an internal test report.

**5.3.3.5 Ticket Catalogs**

1) The Offeror shall submit two (2) ticket catalogs which contain Instant Tickets from all past available games produced by the Offeror within the past most recent one (1) year. In addition, Ticket Catalogs shall include samples of all available play symbol configurations, as well as information relating to Offeror’s capability to print play symbols in more than one (1) color. The Offeror shall also include sample Instant Tickets featuring examples of printing features, patented processes/game play or ink technology available from Offeror, including but not limited to variable sizes, die-cut shape configurations, recycled/recyclable stock, unique inks, four-color process play area configurations, or other non-standard configurations which may be available.

2) The Offeror shall list and describe any currently held proprietary and/or patented printing and production processes, patented game plays or ink technologies, exclusive licensing agreements, licensed properties of any kind, and copyrights, service marks or trademarks.

**5.3.3.6 Production Facility/Business Recovery Plan**

1) The MLGCA requires a highly reliable source of Instant Tickets. The Offeror shall describe its main production facility and its backup facility(ies) for the production of Instant Tickets for the Lottery, including location, security features and capacities. The Offeror shall detail the current percentage of operating capacity being utilized at the production facilities, and the anticipated impact of adding the printing volumes anticipated by this RFP.

2) The Offeror shall provide a copy of its Business Recovery Plan to be used in case of emergency or disaster at its production facility.

**The following three (3) Sections 5.3.3.7, 5.3.3.8 and 5.3.3.9 apply only to the Primary Contract and shall not be submitted by Offerors for an Alternate Contract.**

**5.3.3.7 Product Plan for Maryland**

Instant Games represent an important growth area for the MLGCA. Instant Ticket sales have increased from FY 2013 through and including FY 2019, growing from $485.8 million in gross sales to $812.4 million in those seven (7) years. During the same time period, the Instant Ticket product has grown from approximately 27.7% to over 37.5% of total lottery sales. However, in recent years the percentage of Net Revenue, when compared to total sales, has decreased due to the growth in higher dollar products. Because the MLGCA’s core mission is to generate revenue to help support the good causes of the State including education, public health, public safety, human resources and the environment, increasing Instant Ticket revenue remains an important area of focus. It is the MLGCA’s goal to both continue Instant Ticket sales growth as well as to grow Instant Ticket revenues.

As a way to achieve optimal merchandising to increase sales results, Instant Game launch strategies have evolved over the last several fiscal years. The MLGCA has reduced the number of launches and increased print quantities of each Instant Game, to both avoid hard recalls and maximize potential sales for each game. Inventory Management strategies have also changed over time: each Instant Game is evaluated on a monthly basis, taking weekly sales, play style, price point and number of games in market at each price point into account, before choosing to continue sales or end an Instant Game. Higher price points are gaining sales share and contributing to overall growth, however, higher price points provide less revenue per dollar sold.

Given the above, the Offeror shall submit its proposed Instant Game Product Plan for Maryland covering a twenty-four month period. The Offeror’s strategy should include, but not be limited to, the recommended number of Instant Games per fiscal year, per price point, top prizes, prize payout, a detailed explanation of the resulting anticipated net sales and specifically Net Revenue per price point, play styles, game themes including extended play games, the quantity of Instant Tickets for each Game, game features, and game launch frequency. Offeror shall also provide a recommended prize structure for each price point ($1, $2, $3, $5, $10, $20, $30) based on Maryland’s Instant Game environment and players.

**5.3.3.8 Case Study**

The Offeror shall provide a written response to the Case Study described below, which will also be presented orally to the Evaluation Committee in accordance with Section 4.10.

**Assignment #1 – Maryland Launch Strategy** – thirty (30) minutes oral presentation time

Offeror shall provide an overall strategy applicable to an entire fiscal year, while focusing on specific launch plans that would apply to Maryland and its Instant Game players. The MLGCA is looking not only for the Offeror’s recommendations but also for the analytical and strategic thinking used to derive the proposed direction as well as the creative and game design capabilities.

The plan shall include, but not necessarily be limited to, discussion on the creative direction, Instant Ticket price, prize structure design, and what strategies should be employed at retail to maximize sales; and so forth. Actual Instant Ticket samples do not have to be manufactured.

The following data will be provided to Offeror upon written request: Demographics of Instant Game players and the player segmentation of Maryland’s Instant Game players. Sales information for the MLGCA is provided in Section 2.

**Assignment #2** - **Best of the Best** – fifteen (15) minutes oral presentation time

Offeror shall present a case study on their “best of the best” single Instant Ticket that has been launched in one of their customer states.

The Offeror shall not use a Maryland Instant Ticket to showcase its “best of the best.”

Case study shall include background on the Instant Ticket, the strategy/creative thinking behind the Instant Ticket design, prize structure development, marketing support, and the success of the Instant Ticket.

**Assignment #3 - Product Plan for Maryland** – thirty (30) minutes oral presentation time

The Offeror shall highlight its Instant Game Product Plan for Maryland described in Section 5.3.3.7.

The MLGCA currently ranks in the top five (5) in per capita sales for Draw Games and twenty second (22nd) in per capita sales for Instant Ticket Games. Explain in detail, as part of the Product Plan, how the Offeror will raise the MLGCA’s per capita Instant Ticket rank without impacting Draw Game sales and Net Revenue and without affecting overall Net Revenue for Instant Ticket Games.

**5.3.3.9 Delivery of Instant Tickets to Retailers**

The Offeror must describe the proposed process/procedures and time frames for the delivery of Instant Tickets, from the pick-up of packed Instant Tickets at the MLGCA’s warehouse to the delivery of these Instant Tickets to Retailer locations. If a subcontractor is to be utilized, the Offeror must name the subcontractor and describe the subcontractor’s experience with deliveries. The proposed subcontractor must be approved by the MLGCA.

The Offeror must describe the automated tracking system that will be employed to track deliveries and the types of reports and information that will be available to the MLGCA. The URL for this specific website page that the MLGCA’s LCMCS Contractor will be linking to shall be provided.

The Offeror must describe its plan for delivery based on the current number of Retailer locations (4,500) throughout Maryland and factor in the capacity to support additional Retailers over the Contract term (See Section 2.2.2.3). This plan shall discuss how deliveries are to be made next Working Day after pick-up from the MLGCA’s warehouse. Any geographic areas that cannot be delivered within the required time period must be identified and explained. A list of current Retailers with addresses is available upon written request (see **Attachment T**).

The Offeror must describe the procedures and processes utilized to document the delivery and receipt of Instant Tickets to the Retailers and how delivery information is updated in the automated tracking system. The Offeror must also describe the procedures and processes followed when a package is refused or undeliverable.

The Contractor shall describe its plan on how it will deliver other materials (example: POS materials) not included with shipments of Instant Tickets to Retailers.

The Offeror must describe the type of vehicles that will be used to pick-up packed Instant Tickets and POS materials from the MLGCA’s warehouse.

The Offeror must describe the number and size of the bulk containers that will be provided to transport packages of Instant Tickets from the MLGCA’s warehouse to the Contractor’s warehouse and distribution facility. In most, but not all cases, these containers will be returned to the MLGCA’s warehouse. (NOTE: The containers being supplied by the current delivery contractor are approximately 3’ x 4’ x 4’ in size and equipped with rollers.)

The Offeror must describe how it will maintain all Instant Tickets in a secure manner at all times.

The Offer must describe its back-up procedures for the delivery of Instant Tickets in the event that the primary delivery service becomes unavailable.

#### **5.3.3.10 Additional Business Enhancements**

The Offeror shall describe Additional Business Enhancements that it proposes to provide and which shall be individually priced in the Financial Proposal Form. Additional Business Enhancements may include, but are not limited to, Merchandising/Retail tools/services, dispensers or items used at point of purchase to increase instant ticket visibility and sales.

1) Offerors shall specify and describe any additional non-standard dispensers or ticket facing equipment that it proposes.

* 1. Offerors shall specify and describe any other types of equipment and services that it proposes.

**5.3.4** **Experience and Qualifications of Proposed Staff (Submit under TAB F)**

The Offeror shall describe the account team personnel that will be assigned to service the MLGCA under the Contract including information in support of the Personnel Experience criteria in **Sections 2.4.3 and 2.5.1**. Specifically, the Offeror shall:

* 1. Describe in detail how the proposed staff’s experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
  2. Include individual resumes for proposed Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation. For Offerors for the Primary Contract, Key Personnel shall specifically include the Dedicated Account Representative (see Section 2.5.1.)
  3. Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks.
  4. State for each person identified as Key personnel, and other personnel involved in MLGCA matters, whether or not during the last five (5) years any of the following events occurred:

a. Such person was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation (excluding traffic violations and other minor offenses);

b. Such person was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining such person from engaging in any type of professional or business practice or activity; or

c. Such person was the subject of any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of such person to engage in any professional or business practice or activity.

5) Explain intended process for implementing background checks for new employees.

**5.3.5** **Offeror Qualifications and Capabilities (Submit under TAB G)**

The Offeror shall include information on past experience with similar projects and services including information in support of the Offeror Experience criteria in **Section 3.11**. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

**5.3.5.1** The Offeror shall describe its organization and its structure, to include:

a. A brief history of the company, including the number of years it has been in business and the founding date of the organization.

b. The exact name of the Offeror submitting the proposal.

c. The type of business entity (e.g., corporation, partnership, etc.).

d. The place of the Offeror’s incorporation, if any.

e. The states and countries in which the Offeror is qualified to do business and the nature of any business done in that state or country.

f. The name, address and telephone number of all attorneys, law firms, or lobbyists representing the Offeror in the State.

g. The name, address and telephone number of the certified public accountants proposed to be used for game production certification.

h. The name, address and telephone number of all personnel, consultants, sales agents or other entities involved in aiding the Offeror’s efforts to obtain this Contract pursuant to this RFP or otherwise assisting the Offeror.

i. If the Offeror is a partnership, the general and limited partners.

j. If the Offeror is a trust, the trustee and all persons entitled to receive income or benefit from the trust.

k. If the Offeror is an association, the members, officers, and directors.

l. If the Offeror is a corporation, the officers, directors, and stockholders; except that, in the case of stockholders of a publicly traded corporation, only stockholders of 5% or more of such publicly held securities need be identified;

m. If the Offeror is a subsidiary or intermediary company, all other intermediary companies and the parent company or holding company involved, the officer, directors, and stockholders of each; except that, in the case of stockholders of a publicly traded corporation, only stockholders of 5% or more of such publicly held securities need be identified.

n. An organization chart of the Offeror showing all major divisions and units, which components will perform the requirements of this Contract, where the management of this Contract will fall within the organization, and what corporate resources will be available to support this Contract in both Primary and Alternate, or back-up, roles. Highlight name/positions on the chart who will work on the Lottery’s account. Include on the chart any new positions that would be created as a result of acquiring the Lottery account and provide a description of how these positions would be filled and when.

o. Any union affiliations that may affect this Contract and describe the effect.

**5.3.5.2** The Offeror shall describe its organization’s background and experience in providing Instant Ticket Games and marketing services, shall include information on past experience with similar projects, and shall describe how its organization can meet the requirements of this RFP specifically to include the following:

* 1. A summary of the services offered;
  2. The number of years the Offeror has provided these services and the geographic locations the Offeror currently serves;
  3. A list of current clients (list NASPL clients first), contract start and end dates, and the current printing commitments for these clients;
  4. A list of current outstanding bids and proposals, potential contract start and end dates, and geographic locations;
  5. A list of Liquidated Damages, in excess of $25,000 for any single incident, assessed or pending against the Offeror for the last five (5) years to include amounts, reason for damages and explanation;

f. A disclosure of whether, during the past five (5) years: (1) the Offeror has had to pull any of its product from sale for any reason, and if so, why, And (2) any NASPL lottery has refused to accept a game for any reason, and if so, why.

**5.3.6** **References (Submit under TAB H)**

At least three (3) references are requested from customers who are capable of documenting the Offeror’s ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see RFP **Section 1**) may be used to meet this request. Each reference shall be from a customer for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:

* 1. Name of customer organization;
  2. Name, title, telephone number, and e-mail address, if available, of point of contact for customer organization;
  3. Value, type, duration of contract(s), and description of goods and services provided, to include geographic area supported, performance objectives satisfied, and improvements made to customer systems (e.g. reduction in operation/maintenance costs while maintaining/improving current performance levels); and
  4. An explanation of why the Offeror is no longer providing the services to the customer organization, if that is the case.

The MLGCA shall have the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance. The MLGCA shall also have the right to obtain additional Instant Tickets from other lotteries to be used in evaluating the Offeror’s product.

**5.3.7** **List of Current or Prior State Contracts (Submit under TAB I)**

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

* 1. The State contracting entity;
  2. A brief description of the goods and services provided;
  3. The dollar value of the contract;
  4. The term of the contract;
  5. The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
  6. Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror’s level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

**5.3.8** **Financial Capability (Submit under TAB J)**

The Offeror shall provide evidence using a commonly-accepted method to prove its fiscal integrity and financial capacity to provide the services required by this RFP. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

* 1. Dun & Bradstreet Rating;
  2. Standard and Poor’s Rating;
  3. Lines of credit;
  4. Evidence of a successful financial track record;
  5. Evidence of adequate working capital; and
  6. Financial references from banks or other financial institutions.

**5.3.9** **Certificate of Insurance (Submit under TAB K)**

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

**5.3.10 Subcontractors (Submit under TAB L)**

The Offeror shall provide a complete list of all subcontractors that will work on the Contract, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.

**5.3.11 Legal Action Summary (Submit under TAB M)**

This Offeror shall include the following information regarding legal actions:

* 1. A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
  2. A description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
  3. A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination;
  4. In instances where litigation is ongoing and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court;
  5. A statement whether the Offeror, a subsidiary or intermediary company, parent company or holding company was indicted, accused or convicted of a crime or was a subject of a grand jury or criminal investigation during the past five (5) years; and
  6. A statement whether the Offeror, a subsidiary or intermediary company, parent company or holding company was the subject of any order, judgment or decree of any court of competent jurisdiction permanently or temporarily enjoining it from or otherwise limiting its participation in any type of business, practice or activity during the past five (5) years.

**5.3.12** **Economic Benefit Factors (Submit under TAB N)**

* 1. The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland’s economy specifically offered. The economic benefit offered should be consistent with the Offeror’s Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3). (**Do not include any detail or inference of the Financial Proposal with this technical information.**)
  2. Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
  3. Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.
  4. As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.
  5. In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:
     1. generic statements that the State will benefit from the Offeror’s superior performance under the Contract;
     2. descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
     3. tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
  6. Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.
  7. Examples of economic benefits to be derived from a contract may include any of the following, and for each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:
     1. The Contract dollars to be recycled into Maryland’s economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**
     2. The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;
     3. Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
     4. Subcontract dollars committed to Maryland small businesses and MBEs; and
     5. Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

**NOTE:** Because there is no guarantee of any level of usage under the Contract, the Offeror should state its level of commitment per $1,000,000 of Contract value. In other words, for each $1,000,000 of Contract value, how many Maryland jobs will be created, what Maryland tax revenue will be generated, how much will be paid to Maryland subcontractors, etc.

**5.3.13** **Technical Proposal - Required Forms and Certifications (Submit under TAB O)**

* 1. All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.
  2. Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror’s services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents. The State does not agree to terms and conditions not provided in an Offeror’s Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.

## 5.4 Volume II – Financial Proposal

The Financial Proposal shall contain all price information in the format specified in **Attachment** **B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. The Offeror must provide complete price information for all services required by this RFP. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the MLGCA.

# Evaluation and Selection Process

## Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will be appointed by the Director and may include members of the Commission. The Evaluation Committee will review all Qualifying Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The MLGCA reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

## Qualifying Proposal

All Offerors’ Proposals received by the Proposal Due Date and Time will be first reviewed by the Procurement Officer to determine if the Offeror’s Minimum Requirements specified in Section 1 have been met and to determine compliance with the submission requirements of the RFP and, in particular, with the requirement for submission of the MBE Forms contained in Attachment D-1/D-2 (Offeror for Primary Contract Only). An Offeror not meeting the Minimum Requirements will be determined to be “not responsible.” A Proposal that does not include the completed D-1/D-2 MBE Form will be determined to be “not reasonably susceptible of being selected for award.” If either determination is made, the Proposal shall not be further considered and the Offeror’s Financial Proposal shall be returned unopened.

## Technical Evaluation

The Evaluation Committee shall conduct its evaluation of the technical merits of the Proposals in accordance with the Evaluation Criteria set forth in Section 6.4 below. If at any time in the evaluation process an Offeror is determined to be not responsible or a Proposal is determined to be not reasonably susceptible of being selected for award, the Proposal will be dropped from further consideration in the awarding of the Contract and the Financial Proposal will be returned unopened to the Offeror.

## Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.

The MLGCA prefers the Offeror’s Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as “concur” or “will comply” will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

### Primary Contract

1. Product Plan for Maryland (5.3.3.7) and Additional Business Enhancements (5.3.3.10)

(Note: sub-criteria “Enhancements” shall have lesser weight than sub-criteria “Product Plan”)

2. Game Capability (5.3.3.3) and Ticket Catalogs (5.3.3.5)

3. Case Study (Originality of Name, Concept, Theme; Visual Impact; Commercial Potential; Quality of Presentation) (5.3.3.8)

4. Overview of Game Production Methods (5.3.3.1); Anti-Counterfeiting and Anti-Alteration Features (5.3.3.2); and Ticket Samples and Laboratory Reports (5.3.3.4)

5. Assigned Personnel’s Background and Experience, with specific emphasis on the Dedicated Account Representative’s qualifications (5.3.4), and Subcontractors (5.3.10)

6. Offeror’s Background, Experience and Capabilities (5.3.5); References (5.3.6), Current/Prior State Contracts (5.3.7), Financial Capability (5.3.8), and Legal Action Summary (5.3.11)

7. Delivery of Instant Tickets to Retailers (5.3.3.9)

8. Production Facility/Business Recovery Plan (5.3.3.6)

9. Economic Benefit (5.3.12)

### Alternate Contract

1. Game Capability (5.3.3.3); Ticket Catalogs (5.3.3.5); and Additional Business

Enhancements (5.3.3.10)

2. Overview of Game Production Methods (5.3.3.1); Anti-Counterfeiting and Anti-Alteration Features (5.3.3.2); and Ticket Samples and Laboratory Reports (5.3.3.4)

3. Offeror’s Background, Experience and Capabilities (5.3.5); References (5.3.6), Current/Prior State Contracts (5.3.7), Financial Capability 5.3.8), and Legal Action Summary (5.3.11)

4. Assigned Personnel’s Background and Experience (5.3.4), and Subcontractors (5.3.10)

5. Production Facility/Business Recovery Plan (5.3.3.6)

## Financial Proposal Evaluation Criteria

The separate Financial Volume of each qualified proposal will be distributed to the Evaluation Committee following the completion of the technical evaluation.

Primary Contract: The Financial Proposals of all Qualified Offerors (see **Section 6.7.2.D**) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the “Total Proposal Price” within the stated guidelines set forth in this RFP and as submitted on **Attachment** **B-2**: Financial Proposal Form. Prices listed in A.4 and B.3, Additional Tasks, will not be considered in the basis of award.

## Reciprocal Preference

### Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:

1. The Maryland resident business is a responsible Offeror;
2. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
3. The other state gives a preference to its resident businesses through law, policy, or practice; and
4. The preference does not conflict with a federal law or grant affecting the procurement Contract.

### The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

## Selection Procedures

### General

1. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.
2. With or without discussions, the State may determine the Offeror to be not responsible or the Offeror’s Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

### Selection Process Sequence

1. A determination is made, for Offerors for Primary Contract only, that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment** **D-1A**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment** **E-1**) is included and is properly completed, if there is a VSBE goal.
2. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State’s requirements and the Offerors’ ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
3. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror’s Technical Proposal. Technical Proposals are given a final review and ranked.
4. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror’s entire Proposal.
5. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO.

### Award Determination

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings for the Offerors for the Primary Contract, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Primary Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical factors will receive equal weight with financial factors.

Except for the Offeror recommended for award of the Primary Contract, the Procurement Officer may recommend award of an Alternate Contract to any other Offeror that submitted a Proposal for an Alternate Contract and has been determined to be technically qualified.

Recommended contract award(s), if any, resulting from this RFP, is subject to all appropriate State approvals.

### Selection and Ordering Process/Alternate Contract(s)

The MLGCA shall have the sole discretion and unilateral right to assign any specific Instant Ticket Game production order to any Alternate Contractor. It is anticipated that up to a total of 33% of Instant Ticket Game production will be assigned to the Alternate Contractor(s).

## Debriefing of Unsuccessful Offerors

Unsuccessful Offerors will be debriefed upon their written request to the Procurement Officer, provided the request is made within a reasonable period of time, not to exceed ten (10) days, after receiving notice from the Procurement Officer of not being recommended for award. Request for debriefings shall be honored by the MLGCA at the earliest feasible time after the request has been received. Debriefings shall be held in accordance with COMAR 21.05.03.06.

## Documents Required upon Notice of Recommendation for Contract Award

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee(s) shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7** – **RFP Attachments and Appendices**.

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# RFP Attachments and Appendices

**Instructions Page**

A Proposal submitted by the Offeror shall be accompanied by the completed forms and/or affidavits identified as “With Proposal” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Proposal submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this RFP, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

Table 1: RFP ATTACHMENTS AND APPENDICES

| Applies? | When to Submit | Label | Attachment Name |
| --- | --- | --- | --- |
| Y | Before Proposal | A | Pre-Proposal Conference Response Form |
| Y | With Proposal | B | Financial Proposal Instructions and Form |
| Y | With Proposal | C | Proposal Affidavit (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf>) |
| Y | With Proposal | D | MBE Forms D-1A (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>)  **IMPORTANT:** If this RFP contains different Functional Areas or Service Categories. A separate Attachment D-1A is to be submitted for each Functional Area or Service Category where there is a MBE goal. |
| Y | 10 Working Days after recommended award | D | MBE Forms D-1B, D-1C,D-2, D-3A, D-3B (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>)  **Important:** Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award. |
| Y | As directed in forms | D | MBE Forms D-4A, D-4B, D-5 (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>) |
| Y | With Proposal | E | Veteran-Owned Small Business Enterprise (VSBE) Form E-1A (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf>) |
| Y | 5 Working Days after recommended award | E | VSBE Forms E-1B, E-2, E-3 (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf>)  **Important:** Attachment E-1B, if a waiver has been requested, is also required within 10 days of recommended award. |
| Y | With Proposal | F | Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf>) |
| N | N/A | G | Federal Funds Attachments (N/A) |
| Y | With Proposal | H | Conflict of Interest Affidavit and Disclosure (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>) |

|  |  |  |  |
| --- | --- | --- | --- |
| Y | 5 Working Days after recommended award – However, suggested with Proposal | I | Non-Disclosure Agreement (Contractor) (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>) |
| N | N/A | J | HIPAA Business Associate Agreement (N/A( |
| Y | With Proposal | K | Mercury Affidavit (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf>) |
| Y | With Proposal | L | Location of the Performance of Services Disclosure (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>) |
| Y | 5 Working Days after recommended award | M | Sample Contract (included in this RFP) |
| Y | 5 Working Days after recommended award | N | Contract Affidavit (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>) |
| N | N/A | O | DHS Hiring Agreement (N/A) |
| Y | With Proposal | P | Proposal Bond |
| Y | With Proposal | Q | Litigation/Protest Bond |
| Y | 5 Working Days after recommended award | R | Performance Bond |
| Y | With Proposal | S | Authorization for Release of Information |
| Y | N/A | T | MLGCA Retailers |
| Appendices | | | |
| Applies? | When to Submit | Label | Appendix Name |
| Y | n/a | 1 | Abbreviations and Definitions (included in this RFP) |
| Y | With Proposal | 2 | Offeror Information Sheet (see link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf>) |
| **Additional Submissions** | | | |
| Applies? | When to Submit | Label | Document Name |
| Y | 5 Working Days after recommended award |  | Evidence of meeting insurance requirements (see **Section 3.6**); 1 copy |

1. Pre-Proposal Conference Response Form

**INSTANT TICKET GAMES AND RELATED SERVICES**

**RFP Number 2019-05**

A Pre-Proposal conference will be held on **February 5, 2020 at 11:00 a.m**. Local Time, at:

MLGCA headquarters

Montgomery Park Business Center

1800 Washington Blvd., Suite 330

Baltimore, MD 21230

Please return this form by February 3, 2020, advising whether or not your firm plans to attend. The completed form should be returned via e-mail or fax to the Procurement Officer at the contact information below:

Robert W. Howells

MLGCA

E-mail: Robert.Howells@Maryland.gov

Fax #: 410-230-8727

Please indicate:

|  |  |
| --- | --- |
|  | Yes, the following representatives will be in attendance. |
|  | Attendees (Check the RFP for limits to the number of attendees allowed):  1.  2.  3. |
|  | No, we will not be in attendance. |

|  |  |  |
| --- | --- | --- |
| Please specify whether any reasonable accommodations are requested (see RFP § 4.1“Pre-Proposal conference”): | | |
| Entity: |  |
| *Entity Name (please print or type)* |  |
| By: |  |
| *Signature/Seal* |  |
| Printed Name: |  |
| *Printed Name* |  |
| Title: |  |
| *Title* |  |
| Date: |  |
| *Date* |  |

1. Financial Proposal Instructions & Form

B-1 Financial Proposal Instructions

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Offeror’s TOTAL PROPOSAL PRICE. Follow these instructions carefully when completing your Financial Proposal Form:

A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., $24.15. Make your decimal points clear and distinct.

B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.

C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.

D) Any goods or services required through this RFP and proposed by the Offeror at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **$0.00**.

E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.

F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.

G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03.F, and may cause the Proposal to be rejected.

H) All prices stated on the Financial Proposal Form shall be firm fixed prices for the entire term of the Contract, to include the Renewal Option period, if exercised, and any other extensions. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.

I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the RFP. With respect to the Primary Contract, these prices shall also include the Dedicated Account Representative (Section 2.5.1) and the Research, Marketing, and Training Support budget (Section 2.5.6). No other amounts will be paid to the Contractor. Specifically, no taxes or assessments or license fees or permits of any type will be paid in addition to the prices stated on the Financial Proposal Form. If labor rates are requested, those amounts shall be fully-loaded rates; no additional overtime amounts will be billed to the MLGCA.

J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the MLGCA does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.

K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

L) The Financial Proposal Sheet is divided into Category A for all requirements of the Primary Contract and Category B for all requirements of the Alternate Contract(s).

M) **CATEGORY A - PRIMARY CONTRACT:**

For the performance of all requirements contained in this RFP *except* Section 2.6 Delivery Services, the Contractor will be paid based on a firm-fixed dollar amount per square inch of Instant Ticket area for Instant Tickets that it provides. The Contractor will receive compensation based only on the Instant Tickets that it provides; any unusable quantity shall be credited to the MLGCA.

1)The Offeror shall state its proposed price to provide all services, equipment and personnel required by this RFP for the ***Primary Contract,*** except Section 2.6 Delivery Services,in the form of a FIRM, FIXED DOLLAR AMOUNT PER SQUARE INCH OF INSTANT TICKET AREA (PER 1000 INSTANT TICKETS) provided by the Contractor.

2)The Offeror shall state its proposed price to provide all services, equipment and personnel required by Section 2.6 Delivery Services of this RFP in the form of a FIRM-FIXED DOLLAR AMOUNT PER DELIVERY OF INSTANT TICKET ORDERS AND POS MATERIALS TO RETAILERS.

3)The Offeror shall state its proposed price to provide each of the Additional Tasks (See Section 2.4.8 #32) listed in the form of a FIRM, FIXED DOLLAR AMOUNT PER SQUARE INCH OF INSTANT TICKET AREA (PER 1000 INSTANT TICKETS) provided by the Contractor. The dollar amount indicated will be an incremental amount to be added to the amount for the base Instant Ticket for the Additional Task. For example, if the amount for the base Instant Ticket is $2.00 and the MLGCA requires metallic ink for a particular game for which the Offeror’s additional price is $0.09, then the resulting overall price to the Lottery is $2.09 per square inch of Instant Ticket area for this game.

4)The Primary Contract that results from this RFP will be an Indefinite Quantity Contract with Firm Fixed Unit Prices (Firm, Fixed dollar amount per square inch of Instant Ticket area/1000 and Firm, Fixed dollar amount per delivery of Instant Ticket orders and POS materials to Retailers) as described in COMAR 21.06.03.02 & 21.06.03.06.

5)The “TOTAL PROPOSAL PRICE (I + II)” specified on the Financial Proposal Form – Attachment B-2(Category A – Primary Contract) will be used for price evaluation, comparison and selection for recommendation for award.

**N) CATEGORY B - ALTERNATE CONTRACT:**

The Contractor will be paid based on a firm-fixed dollar amount per square inch of Instant Ticket area for Instant Tickets that it provides.

1)The Offeror shall state its proposed price to provide all services, equipment and personnel required by this RFP for an ***Alternate Contract*** in the form of a FIRM-FIXED DOLLAR AMOUNT PER SQUARE INCH OF INSTANT TICKET AREA (PER 1000 INSTANT TICKETS) provided by the Contractor.

2)The Offeror shall state its proposed price to provide each of the Additional Tasks (See Section 2.4.8 #32) listed in the form of a FIRM, FIXED DOLLAR AMOUNT PER SQUARE INCH OF INSTANT TICKET AREA (PER 1000 INSTANT TICKETS) provided by the Contractor. The amount indicated will be an incremental dollar amount to be added to the amount for the base Instant Ticket for this Additional Task. For example, if the base Instant Ticket amount is $2.00 per square inch of Instant Ticket area and the MLGCA determines that it wants to use metallic ink for a particular game for which the Offeror’s additional price is $0.09 per square inch of Instant Ticket area, then the resulting overall price to the Lottery is $2.09 per square inch of Instant Ticket area for this game.

3)The Alternate Contract(s) that results from this RFP will be an Indefinite Quantity Contract with Firm, Fixed Unit Prices (Firm, Fixed dollar amount per square inch of Instant Ticket area/1000) in accordance with COMAR 21.06.03.02 & 21.06.03.06.

B-2 Financial Proposal Form

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

**See separate Excel Financial Proposal Form attached**

1. Proposal Affidavit

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf>.

1. Minority Business Enterprise (MBE) Forms

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>.

This RFP includes a Minority Business Enterprise (MBE) participation goal of **\_\_10.0%\_\_\_ percent *for the Primary Contract only***and all of the following subgoals:

 N/A     percent for African American-owned MBE firms;

 N/A     percent for Hispanic American-owned MBE firms;

 N/A     percent for Asian American-owned MBE firms;

 N/A     percent for Women-owned MBE firms.

1. Veteran-Owned Small Business Enterprise (VSBE) Forms

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentE-VSBEForms.pdf>.

This RFP includes a VSBE participation goal of **\_1.0\_%** ***for the Primary Contract only***

1. Maryland Living Wage Affidavit of Agreement for Service Contracts

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf> to complete the Affidavit.

A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at $100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee’s time during any work week on the State Contract.

B. The Living Wage Law does not apply to:

(1) A Contractor who:

(a) Has a State contract for services valued at less than $100,000, or

(b) Employs 10 or fewer employees and has a State contract for services valued at less than $500,000.

(2) A subcontractor who:

(a) Performs work on a State contract for services valued at less than $100,000,

(b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than $500,000, or

(c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.

(3) Service contracts for the following:

(a) Services with a Public Service Company;

(b) Services with a nonprofit organization;

(c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement (“Unit”); or

(d) Services between a Unit and a County or Baltimore City.

C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.

D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.

E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry’s website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.

G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer’s share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee’s wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer’s share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.

H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer’s contribution to an employee’s deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer’s contribution to an employee’s deferred compensation plan shall not lower the employee’s wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.

I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of $20 per day for each employee paid less than the Living Wage.

J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dllr.state.md.us/labor/prev/livingwage.shmtl> and clicking on Living Wage for State Service Contracts.

1. Federal Funds Attachments

This RFP does not include a Federal Funds Attachment.

1. Conflict of Interest Affidavit and Disclosure

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>.

1. Non-Disclosure Agreement (Contractor)

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

1. HIPAA Business Associate Agreement

This RFP does not require a HIPAA Business Associate Agreement.

1. Mercury Affidavit

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-K-MercuryAffidavit.pdf>.

1. Location of the Performance of Services Disclosure

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

1. Contract

**Maryland State Lottery and Gaming Control Agency (“MLGCA”)**

**“INSTANT TICKET GAMES AND RELATED SERVICES”**

**#2019-05**

THIS CONTRACT (the “Contract”) is made this \_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_ by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the **MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY (“MLGCA”).**

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Definitions

In this Contract, the following words have the meanings indicated:

1.1 “COMAR” means Code of Maryland Regulations.

1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace Advantage vendor ID number is (eMMA Number).

1.3 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_\_\_\_\_(Financial Proposal date), as modified by any Best and Final Offer thereto.

1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.

1.5 “RFP” means the Request for Proposals for **Instant Ticket Games and Related Services (# 2019-05)**, and any amendments, addenda, and attachments thereto issued in writing by the State.

1.6 “State” means the State of Maryland.

1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. \_\_\_\_\_\_\_\_\_\_\_\_ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.

1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

2. Scope of Contract

2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP

Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor’s cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.

2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

3. Period of Performance

3.1 The term of this Contract begins on the date the Contract is signed by the MLGCA following any required prior approvals, including approval by the Board of Public Works, if such approval is required (the “Effective Date”) and shall continue until August 31, 2024 (“Initial Term”).

3.2 In its sole discretion, the MLGCA shall have the unilateral right to extend the Contract for one (1) additional three (3) year renewal option (“Renewal Term”) at the prices established in the Contract. “Term” means the Initial Term and any Renewal Term(s).

3.3. The Contractor’s performance under the Contract shall commence as of the date provided in a written NTP.

3.4 The Contractor’s obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

4. Consideration and Payment

4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the MLGCA shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

4.2 This Primary Contract is an Indefinite Quantity Contract with Firm, Fixed Unit Prices (Firm, Fixed dollar amount per square inch of Instant Ticket area/1000 and Firm, Fixed Dollar amount per delivery of Instant Ticket orders and POS materials to Retailers) as described in COMAR 21.06.03.02 & 21.06.03.06.

or

This Alternate Contract is an Indefinite Quantity Contract with Firm, Fixed Unit Prices (Firm, Fixed dollar amount per square inch of Instant Ticket area/1000) as described in COMAR 21.06.03.02 & 21.06.03.06.

The total price/amount of this Contract for the initial approximately four (4) year term excluding any future modifications shall not exceed **($ amount to be inserted upon contract award)** Dollars. In the event that the MLGCA exercises its unilateral option to extend the Contract in its sole discretion, the price/amount of this Contract for the Renewal Option three (3) year term excluding any future modifications shall not exceed **($ amount to be inserted upon contract award).** If the MLGCA exercises the option to extend, such option shall be at the same prices, terms and conditions as contained in the base term. The “not to exceed” amounts are not guaranteed amounts, but only the maximum amount authorized to be expended under this Contract without further written and properly authorized modification. If the charges are likely to become greater than the not to exceed amounts, the MLGCA will request approval from the Maryland Department of Budget and Management, the Maryland Board of Public Works, and other necessary State officials.

4.3 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the MLGCA’s receipt of a proper invoice from the Contractor as required by RFP section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

(1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State’s payment of the amount on which the interest accrued; and

(2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

(1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or

(2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller’s Office grants Contractor an exemption.

4.4 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.

4.5 Payment of an invoice by the MLGCA is not evidence that services were rendered as required under this Contract.

4.6 Contractor Incentive Program (For Primary Contractor ONLY): The Contractor Incentive Program ("CIP") shall be for the Primary Contractor only and shall be based on the total incremental Net Revenue increase over the prior three (3) complete fiscal years average total Net Revenue. The three-year average will be recalculated each year based on the three most recent complete years. Each year after the first complete Contract year the Contractor shall be paid CIP compensation of one percent (1%) of any incremental increase in total Net Revenue over the then-current three-year average. Any CIP payment will be made annually within fifteen (15) days after the receipt of the year-end audited financial statements (usually around October of each year) and after, and subject to, an invoice to be submitted by the Contractor. If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued support of the CIP, the Director may discontinue the CIP at any time upon thirty (30) days written notice to the Contractor.

5. Rights to Records

5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.

5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be “works made for hire” as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.

5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

6. Exclusive Use

6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.

6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the MLGCA or developed by Contractor relating to the Contract, except as provided for in **Section 8**. **Confidential or Proprietary Information and Documentation**.

7. Patents, Copyrights, and Intellectual Property

7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date (“Pre-Existing Intellectual Property”). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.

7.2 Except for (1) information created or otherwise owned by the MLGCA or licensed by the MLGCA from third parties, including all information provided by the MLGCA to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract (“Deliverables”), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the MLGCA will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.

7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys’ fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.

7.4 Without limiting Contractor’s obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.

7.5 Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.

7.6 Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on http://www.opensource.org/licenses/alphabetical) (each an “Open Source License”). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.

7.7 The Contractor shall report to the MLGCA, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.

7.8 The Contractor shall not affix (or permit any third party to affix), without the MLGCA’s consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the MLGCA shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

8. Confidential or Proprietary Information and Documentation

8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor’s computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State’s confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State’s confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract..

8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

9. Loss of Data

9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.

9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP** **Section 3.7**.

9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP** **Section 3.7**.

10. Indemnification and Notification of Legal Requests

10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys’ fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor’s, or any of its subcontractors’, performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State’s rights or interests, without the State’s prior written consent.

10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the Contractor or its subcontractors as a result of or relating to the Contractor’s obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.

10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

11. Non-Hiring of Employees

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

12. Disputes

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer’s decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

13. Maryland Law Prevails

13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.

13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.

13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

14. Nondiscrimination in Employment

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual’s refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

15. Contingent Fee Prohibition

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

16. Non-Availability of Funding

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State’s or the Contractor’s rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

17. Termination for Default

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State’s option, become the State’s property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor’s breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

18. Termination for Convenience

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).

19. Delays and Extensions of Time

19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

20. Suspension of Work

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

21. Pre-Existing Regulations

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

22. Financial Disclosure

The Contractor shall comply with the provisions of Section13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, $100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches $100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

23. Political Contribution Disclosure

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of $200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of $500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: <http://www.elections.state.md.us/campaign_finance/index.html>.

24. Retention of Records

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

25. Right to Audit

25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor’s performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor’s compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.

25.2 Upon three (3) Working Days’ notice, the State shall be provided reasonable access to Contractor’s records to perform any such audits. The MLGCA may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the MLGCA’s election. The MLGCA may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.

25.3 The right to audit shall include any of the Contractor’s subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the MLGCA has the right to audit such subcontractor(s).

26. Compliance with Laws

The Contractor hereby represents and warrants that:

1. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
2. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
3. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

27. Cost and Price Certification

27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.

27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

28. Subcontracting; Assignment

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State’s sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor’s obligations to its subcontractors.

29. Limitations of Liability

29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:

(a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 5 “Patents, Copyrights, Intellectual Property”** of this Contract;

(b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and

(c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor’s liability shall be unlimited.

(d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.

29.2 Contractor’s indemnification obligations for Third party claims arising under Section 6 (“Indemnification”) of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor’s indemnification liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.

29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

30. Commercial Nondiscrimination

30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State’s Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual’s refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.

30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the MLGCA, in all subcontracts.

31. Prompt Pay Requirements

31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the MLGCA, at its option and in its sole discretion, may take one or more of the following actions:

(a) Not process further payments to the Contractor until payment to the subcontractor is verified;

(b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;

(c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;

(d) Place a payment for an undisputed amount in an interest-bearing escrow account; or

(e) Take other or further actions as appropriate to resolve the withheld payment.

31.2 An “undisputed amount” means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such “undisputed amounts” include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.

31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the MLGCA concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:

(a) Affect the rights of the contracting parties under any other provision of law;

(b) Be used as evidence on the merits of a dispute between the MLGCA and the Contractor in any other proceeding; or

(c) Result in liability against or prejudice the rights of the MLGCA.

31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.

31.5 To ensure compliance with certified MBE subcontract participation goals, the MLGCA may, consistent with COMAR 21.11.03.13, take the following measures:

(a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:

i. Inspecting any relevant records of the Contractor;

ii. Inspecting the jobsite; and

iii. Interviewing subcontractors and workers.

Verification shall include a review of:

i. The Contractor’s monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and

ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.

(b) If the MLGC determines that the Contractor is not in compliance with certified MBE participation goals, then the MLGCA will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.

(c) If the MLGCA determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the MLGCA requires, then the MLGCA may:

i. Terminate the Contract;

ii. Refer the matter to the Office of the Attorney General for appropriate action; or

iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

(d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

32. Living Wage

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the MLGCA may withhold payment of any invoice or retainage. The MLGCA may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

33. Use of Estimated Quantities

Unless specifically indicated otherwise in the State’s solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the MLGCA does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

34. Risk of Loss; Transfer of Title

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

35. Effect of Contractor Bankruptcy

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to “intellectual property,” and the subject matter of this Contract, including services, is and shall be deemed to be “embodiments of intellectual property” for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code (“Code”) (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State’s rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State’s possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

36. Miscellaneous

36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.

36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.

36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.

36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e,g, and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

37. Contract Monitor and Procurement Officer

37.1 The Contract Monitor is the State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The MLGCA may change the Contract Monitor at any time by written notice to the Contractor.

37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The MLGCA may change the Procurement Officer at any time by written notice to the Contractor.

38. Notices

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

Kate Airey, Contract Monitor

Maryland State Lottery and Gaming Control Agency (MLGCA)

Montgomery Park Business Center

1800 Washington Blvd., Suite 330

Baltimore, Maryland 21230

Phone Number: 410-230-8797

E-Mail: kate.airey@maryland.gov

With a copy to:

Robert W. Howells, Procurement Officer

Maryland State Lottery and Gaming Control Agency (MLGCA)

Montgomery Park Business Center

1800 Washington Blvd., Suite 330

Baltimore, Maryland 21230

Phone Number: 410-230-8789

E-Mail: Robert.Howells@Maryland.gov

If to the Contractor:

(Contractor’s Name)

(Contractor’s primary address)

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[[Delete the following if a parent company guarantee is inapplicable:]]

Parent Company Guarantor

Contact: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

39. Liquidated Damages for MBE

39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages, including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.

(a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): $25 per day until the monthly report is submitted as required.

(b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): $500;00 per MBE subcontractor.

(c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.

(d) Failure to meet the Contractor’s total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.

(e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: $100 per day until the undisputed amount due to the MBE subcontractor is paid.

39.3 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

40. Parent Company Guarantee (If applicable)

If a Contractor intends to rely on its Parent Company in some manner while performing on the State Contract, the following clause should be included and completed for the Contractor’s Parent Company to guarantee performance of the Contractor. The guarantor/Contractor’s Parent Company should be named as a party and signatory to the Contract and should be in good standing with SDAT.

(Corporate name of Contractor’s Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor’s Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor’s Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor’s Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

41. Compliance with federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law

HIPAA clauses do not apply to this Contract.

**42. Lottery Ticket Purchase and Prize Payment Restrictions**

In accordance with Section 9-123 of the Maryland State Government Article, Annotated Code, no officer or employee of the MLGCA, their spouse, child, brother, sister, or parent residing in the household of such officer or employee shall purchase a Maryland Lottery ticket or be paid a prize in any Maryland Lottery game. During the term of this Contract, this restriction shall also apply to officers and employees of the Contractor or of any subcontractor whose use is subject to MLGCA approval who are directly involved with the MLGCA’s account, and their spouse, child, brother, sister, or parent residing in the household of such officer or employee. The Contractor shall ensure that this requirement is made known to each officer and employee of the Contractor and any subcontractor whose use is subject to MLGCA approval. The Director shall have the sole discretion to determine the applicability of this restriction to any specific individual.

**43. Product Substitution/Technical Enhancements**

During the term of the Contract, the MLGCA may desire to incorporate new products or technologies that are within the scope of the Contract but were not available in the marketplace at the time of execution of the Contract. Such new products and technologies may offer significant advantages to the State in terms of economy, efficiency, quality and effectiveness and therefore it may be in the State’s interest to take advantage of such new products or technologies in a manner consistent with applicable law and the Contract.

1. A product or device provided by the Contractor during the term of this Contract may be substituted by the Contractor only under the following conditions:

a. The item has been discontinued by the manufacturer or has otherwise become obsolete;

b. The replacement item shall be of equal or greater performance and technical capabilities than the item being replaced;

c. The price of the replacement item shall not exceed the price of the item being replaced; and

d. The substitution shall be pre-approved in writing by the Procurement Officer.

Any request for substitution shall be submitted in writing to the Procurement Officer. The request shall include the reason for substitution; a list of the items being replaced; a list of the replacement items including product documentation, literature, etc.; and the price of the replacement items.

2. Enhancement or replacement of obsolete or obsolescent technology may be accepted by the MLGCA at its sole discretion. Any request for such enhancement or substitution shall be submitted in writing to the Procurement Officer and the Contract will be amended accordingly.

3. Nothing in this Contract shall preclude the MLGCA from utilizing future technical enhancements to the printing processes, evolving printing technologies, or enhancements and proprietary games or play styles developed by the Contractor, so long as the price charged for such possible future option is fair and reasonable.

**44. Relationship of The Parties (Independent Contractor)**

During the course of this Contract the Contractor may enter into agreements with third-parties in order for Contractor to fulfill its contractual obligations and responsibilities under this Contract. Contractor fully understands and agrees that the relationship between the MLGCA (State) and the Contractor is that of client and Independent Contractor, and is not, and shall not be deemed to be, any other relationship, including but not limited to, that of joint venture, partners, joint employers or principal and agent. No agent, employee, or servant of the Contractor or any of its subcontractors shall be or shall be deemed to be an employee, agent, or servant of the State for any reason. The Contractor shall be solely and entirely responsible for its acts and the acts of its agents, employees, servants and subcontractors during the performance of this Contract.

From any amount due the Contractor, there will be no deductions for federal income tax or FICA payments, nor for State income tax, nor for any other purposes that are associated with any employer-employee relationship, unless required by law. Payment of federal income tax, FICA, and State income tax is the responsibility of the Contractor. The Contractor is responsible for complying with all federal and state laws as to taxes and Social Security payments to be withheld from wages paid to its employees and other contractors.

**44.1 No Liability by MLGCA to Third-Party Vendors or Subcontractors**

The MLGCA, Commission and State have no liability for payment or performance to any third party which enters into an agreement with the Contractor for work related to this Contract. The Contractor does not have the power or authority to sign an agreement in the MLGCA’s name or on behalf of the MLGCA, to bind or attempt to bind the MLGCA, Commission or the State, or any employee or official thereof, to any agreement with a third-party vendor, for payment of any monies or other obligations related to, or arising out of that third-party agreement, or to obligate the MLGCA to any liability if the Contractor fails to pay any subcontractor or other third-party vendor. All agreements into which the Contractor enters with subcontractors and other third-party vendors for work to be performed under this Contract shall be in the Contractor’s name only and shall not name the MLGCA as a party to the agreement.

**44.2 Contractor Acknowledgement, Indemnification and Duty to Notify**

Contractor acknowledges, fully understands and agrees that the MLGCA, Commission or State is not a party to, and is not liable for payment or performance, any third-party agreement that the Contractor may enter into arising out of work related to this Contract. Contractor agrees to remove, redact, or strike any language from agreements it signs with subcontractors and third-party vendors, noting a responsibility or liability by the MLGCA, Commission or State with respect to the payment of any monies or other obligations. Contractor agrees to fully indemnify and hold harmless the MLGCA, Commission and State from any and all liability of any nature arising out of its third-party relationships, and agrees to provide written notice for each agreement it completes with a third-party vendor, notifying such entities of the Independent Contractor relationship.

**45. Good Faith**

The parties agree to cooperate fully in good faith and to assist each other to the extent reasonable and practicable to accomplish the objectives set forth in this Contract.

**46. News/Press Releases**

The MLGCA is the only entity authorized to issue news releases relating to this Contract and performance thereunder. The Contractor shall not issue any news or press releases or any commercial advertising pertaining to this Contract or to the MLGCA or Commission without the prior written approval of the Procurement Officer.

**47. Adverse Interest**

The Contractor agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor further agrees that in the performance of this Contract it will not knowingly employ, directly or indirectly, any person having such an interest.

**48. Non-Exclusive Rights**

The Contract shall be non-exclusive and nothing in this Contract shall preclude the MLGCA from procuring similar services from another vendor. The MLGCA reserves the right to secure directly the services of third parties to perform any services secured under this Contract. The Offeror will not be entitled to payment of any fee or otherwise for any services performed by these third parties.

**49. Rights in Products**

1. All original written material including, but not limited to, reports, software and/or other documentation originated and prepared exclusively for the MLGCA pursuant to this Contract shall belong exclusively to the MLGCA.

2. All preexisting ideas, concepts, know-how and techniques and each invention, discovery and improvement thereof, previously made or conceived of by either the Contractor or the MLGCA, as the case may be, whether reduced to practice or not (“Preexisting Party Innovations”), and any and all domestic, foreign or other intellectual property and other proprietary rights whatsoever relating thereto, whether registered, recorded or otherwise protected under patent, copyright, trademark, trade secret or other law (“Intellectual Property Rights”) shall remain the sole and exclusive property of the party hereto which made or conceived of same. Furthermore, the MLGC has the right to use any preexisting intellectual property rights, free of any type of fees, of the Contractor necessary to effectuate the purpose of this Contract.

3. All ideas, concepts, know-how and techniques and each invention, discovery and improvement thereof, exclusively made or conceived for the MLGCA by the Contractor or its employees separately or jointly with MLGCA personnel in the course of performance under this Contract, whether reduced to practice or not (“New Innovations”), together with all Intellectual Property Rights relating thereto (“New Intellectual Property Rights”), shall be owned solely and exclusively by the MLGCA and may be used by the Contractor only upon written agreement with the MLGCA.

In furtherance of the foregoing, Contractor shall deliver to the MLGCA good and marketable title, free and clear of any lien or encumbrance to all work product and deliverables hereunder; provided that, Contractor shall be permitted to incorporate into said work product and deliverables software and other materials, technologies or other works owned by third parties (a “Third Party Preexisting Work”) under the terms of a blanket developer license or other authority; provided further, such Third Party Preexisting Work is specifically identified to the MLGCA prior to the delivery of such materials and Contractor obtains at no additional cost for the benefit of the MLGCA, its successors, assigns and contractors, an irrevocable, perpetual, nonexclusive, royalty–free right and license, for wherever the MLGCA can lawfully operate, to make, use, sell, offer for sale, reproduce, sublicense and distribute and otherwise exploit said Third Party Preexisting Works.

**50. Royalties**

The State shall not pay any royalties or other fees/costs to outside parties for proprietary material used in the performance of this Contract or in the conduct of the MLGCA or Commission activities.

**51. Intellectual Property Protection**

To the extent that full ownership of any New Intellectual Property Rights does not automatically vest in the MLGCA by virtue of this Contract or otherwise, Contractor hereby irrevocably transfers and assigns to the MLGCA all right, title and interest in any New Intellectual Property Rights. Contractor shall obtain a suitable form of assignment of any actual or prospective New Intellectual Property Rights from all persons who perform any part of the services under this Contract. In the event the Lottery elects to file an application for the protection of the New Intellectual Property Rights anywhere in the world based on work product or deliverables made by an employee of Contractor, such employee and Contractor shall assist the MLGCA, at the MLGCA’s expense, in preparing such application and shall execute all documents necessary for the MLGCA to file, effect and maintain title to such application in the name of the MLGCA. Contractor agrees to require each of its employees and authorized agents who provide services on behalf of Contractor to execute and provide the MLGCA with a copy of an assignment acceptable to the MLGCA prior to the provision of any services by each such person, and to disclose to the MLGCA the name of each such person and agent prior to the commencement of work by such person or agent.

The Contractor shall promptly provide written notice to the MLGCA of each claim received, or reasonably anticipated to be asserted, that the service, work product, deliverables, or New Intellectual Property Rights infringe or otherwise violate any third party Intellectual Property Rights (“Third Party Infringement Claims”). Such notice shall include all available information regarding the actual or anticipated notice or claim, the likely parties thereto and an assessment of liability thereunder based on all reasonably available information. Further, from time to time and as changes in circumstances warrant, Contractor shall update in writing the MLGCA on the status of all anticipated notices and claims.

The Contractor shall hold and save harmless the State of Maryland, the MLGCA, the Commission, and its agents, officers, and employees from liability of any nature or kind arising out of a claim or suit, including Third Party Infringement Claims, for or on account of the use of any service, work product or deliverable furnished or used in the performance of any Contract resulting from this RFP or the New Intellectual Property Rights. The Contractor agrees to defend any and all such threatened or actual claims and suits, and to pay all damages and costs, including attorneys and witness fees, subject to the right of the State to provide additional legal counsel at the State's own expense; provided that, the MLGCA (i) promptly notifies the Contractor in writing of the claim; and (ii) allows Contractor to control and cooperates with Contractor in, the defense and any related settlement negotiations.

In addition to Contractor’s obligations stated above, if any service, work product, deliverable, or New Intellectual Property Rights become, or can be reasonably anticipated to become, the subject of a Third Party Infringement Claim, the Contractor, at its own expense and with the consent of the MLGCA, shall within thirty (30) days from the time Contractor first learns of such a claim or potential claim, perform the following:

a) procure for the MLGCA the right to continue receiving the service or using the work product, deliverable, or New Intellectual Property Rights,

b) replace the service, work product, deliverable, or the New Intellectual Property Rights with a non-infringing service, work product, deliverable, or Intellectual Property Rights substantially complying with the applicable specifications, or

c) modify the service, work product, deliverable, or New Intellectual Property Rights so that it becomes non-infringing and performs in a substantially similar manner to the original service, work product, deliverable, or New Intellectual Property Rights.

The Contractor shall not affix any restrictive markings upon any work product, deliverable, New Intellectual Property or other data and if such markings are affixed, the MLGCA shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

Contractor agrees to treat all New Intellectual Property Rights as confidential and trade secret proprietary information. Except as expressly permitted in paragraph 51, Contractor shall not sell, copy, transfer, publish, disclose, display, or otherwise make available any New Intellectual Property Rights to any person or third party (including any of its subsidiaries), except those with a need to know such New Intellectual Property Rights in order to accomplish the purposes of this Contract. Contractor shall secure and protect the New Intellectual Property Rights in a manner consistent with the maintenance of the rights in the New Intellectual Property Rights, and shall take appropriate action by instruction and/or agreement with its employees who are permitted access to such New Intellectual Property Rights, to satisfy its obligations hereunder. The foregoing restrictions continue to apply (even after the termination of this Contract) without limit in time.

SIGNATURES ON NEXT PAGE

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

|  |  |
| --- | --- |
| Contractor | State of Maryland  MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY (MLGCA) |
|  |  |
| By: | By: Gordon Medenica,  Director |
|  |  |
| Date |  |
|  |  |
| PARENT COMPANY (GUARANTOR) (if applicable) | By: |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| By: | Date |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
| Date |
| Approved for form and legal sufficiency  this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Assistant Attorney General |  |
|  | |
| APPROVED BY BPW: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_  (Date) (BPW Item #) | |
|  | |

1. Contract Affidavit

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

1. DHS Hiring Agreement

This RFP does not require a DHS Hiring Agreement.

1. Proposal Bond

**Page 1 of 2**

Bond No. \_\_\_\_\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Offeror)

as Principal, hereinafter called the Principal, and

(Bonding Company)

a corporation duly organized under the laws of the state of , as Surety, hereinafter called the Surety, are held and firmly bond unto the State of Maryland, hereinafter called "State" for the sum of Five Hundred Thousand and 00/100 Dollars ($ 500,000 ), for the payment of which sum, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a proposal for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_Instant Ticket Games and Related Services (#2019-05)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Identify project by number and brief description)

NOW, THEREFORE, if the Principal, upon acceptance by the State of its proposal identified above, within the period specified herein for acceptance for one hundred-eighty (180) days, shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the proposal as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the State for any cost of procuring the work which exceeds the amount of its proposal, then the above obligation shall be void and of no effect.

The Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the proposal that the Principal may grant to the State, notice of which extension(s) to the Surety being hereby waived; provided that such waiver of notice shall apply only with respect to extensions aggregating not more than ninety (90) calendar days in addition to the period originally allowed for acceptance of the proposal.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

**Page 2 of 2**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

In Presence of: **INDIVIDUAL PRINCIPAL**

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_as to\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

In Presence of: **CO-PARTNERSHIP PRINCIPAL**

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

(Name of Co-Partnership)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as to BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as to\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**CORPORATE PRINCIPAL**

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Corporation)

AFFIX

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_CORPORATE

Corporate Secretary President SEAL

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**SURETY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Name of Surety)

Attest:

AFFIX

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_CORPORATE

Secretary President SEAL

Bonding Agent’s Name

Agent’s Address

Business Address of Surety \_\_\_\_\_\_\_\_\_\_\_\_\_

1. Litigation/Protest Bond

BOND NO.

KNOW ALL MEN BY THESE PRESENTS THAT having its principal office at as Principal and authorized to transact business in the State of Maryland, as Surety and held and firmly bound to the State of Maryland, as obligee in the sum of Five Hundred Thousand and 00/100 Dollars ($500,000). As a condition of the Maryland State Lottery and Gaming Control Agency’s Request for Proposals #2019-05, this bond must be supplied with the Proposal with provision that a claim may be made upon this bond in accordance with Section 4.38.2 of the Maryland State Lottery and Gaming Control Agency’s Request for Proposals #2019-05 for “Instant Ticket Games and Related Services”.

PRINCIPAL AND SURETY bind themselves, their heirs, assigns, executors and administrator, jointly and severally, conditioned that this obligation shall remain in full force and effect for a period of one (1) year from the Deadline for Receipt of Proposals.

Provided, however, the Surety shall not be liable for the sum greater than the penal sum of this bond.

IN WITNESS WHEREOF, the said Principal’s hand and seal have been set hereunto and the said Surety has caused these presents to be signed by its Attorney to become effective on this, the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2020.

WITNESS: BY:

TITLE:

SURETY:

WITNESS: BY:

TITLE:

1. Performance Bond

­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Principal Business Address of Principal

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Surety Obligee: STATE OF MARYLAND

a corporation of the State of \_\_\_\_ By and through the following

and authorized to do business in Administration: Lottery & Gaming Control

the State of Maryland

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Penal Sum of Bond (express in words and figures)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20 \_\_\_\_\_

Date Bond Executed

Contract Number: \_#2019-05\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 20 \_\_\_\_\_

Description of Contract: Date of Contract

Instant Ticket Games and Related Services

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal named above and Surety named above, are held and firmly bound unto the Obligee named above in the Penal Sum of this Performance Bond stated above, for the payment of which Penal Sum we bind ourselves, our heirs, executors, administrators, personal representatives, successors, and assigns, jointly and severally, firmly by these presents. However, where Surety is composed of corporations acting as co-sureties, we, the co-sureties, bind ourselves, our successors and assigns, in such Penal Sum jointly and severally as well as severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each co-surety binds itself, jointly and severally with the Principal, for the payment of such sum as appears above its name below, but if no limit of liability is indicated, the limit of such liability shall be the full amount of the Penal Sum.

WHEREAS, Principal has entered into or will enter into a contract with the State of Maryland, by and through the Administration named above acting for the State of Maryland, which contract is described and dated as shown above, and incorporated herein by reference. The contract and all items incorporated into the contract, together with any and all changes, extensions of the time, alterations, modifications, or additions to the contract or to the work to be performed thereunder or to the Plans, Specifications, and Special Provisions, or any of them, or to any other items incorporated into the contract shall hereinafter be referred to as "the Contract."

WHEREAS, it is one of the conditions precedent to the final award of the Contract that these presents be executed.

**PAGE 2 OF 3**

NOW, THEREFORE, during the original term of said Contract, during any extensions thereto that may be granted by the Administration, and during the guarantee and warranty period, if any, required under the Contract, unless otherwise stated therein, this Performance Bond shall remain in full force and effect unless and until the following terms and conditions are meet:

1. Principal shall well and truly perform the Contract; and

2. Principal and Surety shall comply with the terms and conditions contained in this Performance Bond.

Whenever Principal shall be declared by the Administration to be in default under the Contract, the Surety may, within 15 days after notice of default form the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly to complete the contract in accordance with and subject to its terms and conditions. In the event the Surety does not elect to exercise either of the above stated options, then the Administration thereupon shall have the remaining contract work completed, Surety to remain liable hereunder for all expenses of completion up to but not exceeding the penal sum stated above.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligations on the Performance Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the Specifications.

This Performance Bond shall be governed by and construed in accordance with the laws of the State of Maryland and any reference herein to Principal or Surety in the singular shall include all entities in the plural who or which are signatories under the Principal or Surety heading below.

IN WITNESS WHEREOF, Principal and Surety have set their hands and seals to this Performance Bond. If any individual is a signatory under the Principal heading below, then each such individual has signed below on his or her own behalf, has set forth below the name of the firm, if any, in whose name he or she is doing business, and has set forth below, then all members of each such partnership or joint venture have signed below, each member has set forth below the name of the partnership or joint venture, and each member has set forth below his or her title as general partner, limited partner, or member of joint venture, whichever is applicable. If any corporation is a signatory under the Principal or Surety heading below, then each such corporation has caused the following: the corporation's name to be set forth below, a duly authorized representative of the corporation to affix below the corporation's seal and to attach hereto a notarized corporate resolution or power of attorney authorizing such action, and each such duly authorized representative to sign below and to set forth below his or her title as a representative of the corporation. If any individual acts as a witness to any signature below, then each such individual has signed below and has set forth below his or her title as a witness. All of the above has been done as of the Date of Bond shown above.

**PAGE 3 OF 3**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In Presence of: **INDIVIDUAL PRINCIPAL**

Witness

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In Presence of: **CO-PARTNERSHIP PRINCIPAL**

Witness

\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL) (Name of Co-Partnership)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as to BY :\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(SEAL)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**CORPORATE PRINCIPAL**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest: (Name of Corporation)

AFFIX

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY:\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_CORPORATE

Corporate Secretary President SEAL

**SURETY**

Attest:

AFFIX

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_CORPORATE

Signature SEAL

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Business Address of Surety)

Bonding Agent's Name ­­­­­­­­­­­­­­­­­­­­­­­­­­­­-\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Agent's Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Authorization for Release of Information

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Insert Name of Offeror) has submitted a proposal in response to RFP #2019-05 issued by the Maryland Lottery and Gaming Control Agency (“MLGCA”). As part of the MLGCA’s evaluation of the proposal, it will be contacting other entities that have had business relationships with Offeror.

This document, signed by an authorized representative of Offeror, demonstrates the desire of Offeror to:

1. Allow representatives of the MLGCA unfettered access to any and all monitoring reports, licensing or certification documents, and records of evaluations related to the experiences of Offeror in its prior or current contracts for lottery related services, as well as the experiences of any of its parent or subsidiary corporations or other entities with which it has been associated;

2. Allow the same access afforded by the previous section 1 above to apply to situations in which Offeror may have functioned as a subcontractor;

3. Grant representatives of the MLGCA unfettered access to discuss openly the performance of Offeror related to the experiences set out in sections 1 and 2 above; and

4. Expressly authorize that any and all of the information conveyed to representatives of the MLGCA be kept in confidence by the MLGCA without any expectation or requirement that the content of such information shall ever be released to Offeror or any other entity, except where otherwise required by law.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name & Title:

(Name of Offeror)

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. MLGCA Retailer Locations

A list of current MLGCA Retailer locations is available from the Procurement Officer. Contact the Procurement Officer to make arrangements to obtain a copy.

Robert W. Howells, Procurement Officer

Maryland State Lottery and Gaming Control Agency

Montgomery Park Business Center

1800 Washington Boulevard, Suite 330

Baltimore, MD 21230

Telephone: (410) 230-8789

Fax: (410) 230-8727

E-mail Address: rhowells@msla.state.md.us

Appendix 1. – Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

1. Access – The ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any information system resource.
2. Administrative Expense – To calculate Net Revenue, Administrative Expenses must be removed from gross sales; Administrative Expenses include instant ticket printing and delivery costs, as well as an allocation of other lottery related expenses based on a percentage of instant ticket sales to total sales.
3. Algorithm – A mathematical rule or procedure used in Bar Codes on Instant Tickets and in the system files related to Instant Tickets to encrypt and decrypt Instant Ticket information and to validate Instant Tickets.
4. Alternate Contractor - A supplier, on an as-needed basis, of Instant Ticket Games and Related Services under this Contract that may print up to 33% of the MLGCA’s Instant Tickets per Fiscal Year.
5. Bar Code – The symbol on an Instant Ticket, On-Line Ticket or other item (e.g. coupon, lottery buck, keno buck, lottery dollar or other type of promotional giveaway) which is used to uniquely identify each ticket or item. A code consisting of a group of printed and variously patterned bars and spaces and sometimes numerals that are designed to be scanned and read into computer memory as identification for the object it labels.
6. Book - A Pack of Instant Tickets, with individual Instant Tickets uniquely numbered by virtue of game/pack/ticket identifiers. Books contain varying numbers of Instant Tickets, depending on the game.
7. COMAR – Code of Maryland Regulations available on-line at <http://www.dsd.state.md.us/COMAR/ComarHome.html>. Regulations governing the MLGCA are found in COMAR Title 36. Regulations governing the State procurement process are found in COMAR Title 21.
8. Commission – The Maryland State Lottery and Gaming Control Commission (MLGCC).
9. Compliance Game – An Instant Ticket Game that is printed in a significantly reduced quantity, which uses a prize structure where every ticket is a High Tier Prize winner.
10. Contract – The Contract awarded to a successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
11. Contract Monitor – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor’s responsibilities. The MLGCA may change the Contract Monitor at any time by written notice to the Contractor.
12. Contractor – A selected Offeror that is awarded a Contract by the State.
13. Contractor Personnel – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of a Contract awarded from this RFP.
14. Data Breach – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data. Sensitive Data means PII;PHI; other proprietary or confidential data as defined by the State, including but not limited to “personal information” under Md. Code Ann., Commercial Law § 14-3501(e) and Md. Code Ann., St. Govt. § 10-1301(c) and information not subject to disclosure under the Public Information Act, Title 4 of the General Provisions Article; and information about an individual that (1) can be used to distinguish or trace an individual‘s identity, such as name, social security number, date and place of birth, mother‘s maiden name, or biometric records; or (2) is linked or linkable to an individual, such as medical, educational, financial, and employment information.
15. Days – Means calendar days unless otherwise specified.
16. Director – Director of the Maryland State Lottery and Gaming Control Agency.
17. Draw Game - A lottery game (1) sold and redeemed through a subscription or a computer network at Retailer locations; and (2) for which tickets are generated by a Terminal and are a record of a transaction for a Draw Game. Draw Game includes: jackpot and nonjackpot games, monitor games, multi-jurisdictional game played with Draw Game tickets and any other agency-issued game played as described in this definition.
18. Drawing - A random selection event used for determining winning numbers of certain MLGCA games, to include live Drawings as well as Drawings conducted via random number generation.
19. eMMA – eMaryland Marketplace Advantage (see RFP **Section 4.2**).
20. First Read Rate – A measure of reader performance, especially Bar Code reader performance, which indicates the proportion of times the reader returns a successful read of a legitimate code on the first try.
21. Fiscal Year – The State budget year from July 1 – June 30. For example, FY20 (or FY 2020) represents the period beginning July 1, 2019 through June 30, 2020.
22. Information System – A discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.
23. Information Technology (IT) – All electronic information-processing hardware and software, including: (a) maintenance; (b) telecommunications; and (c) associated consulting services.
24. Instant Game (also Instant Ticket Game) – A lottery game where tickets have an area that the player exposes in accordance with the game instructions, and includes (a) Scratch-off tickets, and (b) tickets using other methods of revealing a hidden area.
25. Instant Ticket – Instant Ticket or Instant Game Ticket means an authorized lottery game ticket issued in an Instant Game.
26. Key Personnel – All Contractor Personnel identified in the solicitation as such that are essential to the work being performed under the Contract. See RFP **Sections 3.10**.
27. Local Time – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
28. Lottery Central Monitoring and Control System (LCMCS) -Contractor-provided computer system, comprised of software, offices, Hardware, parts, supplies, commodities, personnel and services necessary to provide all game operations which enable the MLGCA to sell and redeem all tickets, validate Instant Tickets and perform accounting and Pack management functions for Retailers. The current Lottery Central Monitoring and Control System Contract (#2015-01) which commenced May 25, 2017 is provided by Scientific Games International, Inc. (SGI).
29. Minority Business Enterprise (MBE) – Any legal entity defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
30. MLGCA – The Maryland Lottery and Gaming Control Agency, also sometimes referred to as the Lottery.
31. NASPL – The North American Association of State and Provincial Lotteries.
32. Net Revenue (also, Revenue) – Dollar amount of net Instant Ticket sales less commissions paid to Retailers (commissions paid to Retailers include but are not limited to sales commissions, cashing fees, and agent bonuses) less prize expenses less Administrative Expenses and bad debt expenses.
33. Notice to Proceed (NTP) – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this RFP with a delayed or non-specified implementation date.
34. NTP Date – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
35. OCR - Optical Character Reading/Recognition.
36. Offeror – An entity that submits a Proposal in response to this RFP.
37. Player Activated High Definition (PHD) Terminal – A touch screen player-operated terminal that features a high definition monitor built-in, to the unit that sells and validates Draw and/or Instant Tickets. PHDs are for placement in high-traffic Retailer locations; designed for use by the player directly; contain a currency acceptor for payment; dispense tickets of variable lengths; and provide connectivity to the LCMCS to record the sale of tickets at the time of purchase and to track paper inventory in the machine.
38. Point of Sale (POS) – Depending on context: (a) the location where a product is purchased; (b) the device with which a Retailer records a sale and collects money; or (c) promotional, advertising or display pieces (e.g. stickers and signs) placed where a product is sold used to increase public awareness of MLGCA products and services to increase sales.
39. Primary Contractor – The principal supplier of Instant Ticket Games and Related Services under this Contract that will print at least 67% of the total number of MLGCA’s Instant Ticket Games that are assigned per Fiscal Year.
40. Prize Expense – Net Sales multiplied by the theoretical payout (percent) of the game.
41. Prize Tiers – Low Tier, Mid Tier and High Tier; Low Tier Prizes are prizes that are $25 or less; Mid Tier Prizes are $26 - $600; High Tier Prizes are $601 and higher.
42. Procurement Officer – Prior to the award of any Contract, the sole point of contact in the State for purposes of this RFP. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The MLGCA may change the Procurement Officer at any time by written notice to the Contractor.
43. Proposal – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
44. Retailer – A person or business entity that is licensed by the MLGCA to sell its products. (The term “Agent” may occasionally be used interchangeably to mean “Retailer”).
45. Scratch-Off Game - An Instant Game that requires the player to remove a latex coating to determine if the ticket is a winner. Also called “scratch game” or “scratcher”.
46. State – The State of Maryland and, within the context of its use, also the MLGCA.
47. State-of-the-Art – The most current technology. The MLGCA shall have the sole right to determine if equipment proposed in response to this RFP and provided under the resulting Contract is state-of-the-art.
48. Subcontractor - Any person or firm having an agreement with a contractor to perform all or some of the contractor’s work under a contract with the MLGCA. Does not include an employee with an employment contract with the Contractor, or an employee organization with a collective bargaining agreement with the Contractor.
49. Total Proposal Price - The Offeror’s total price for goods and services in response to this RFP, included in Financial Proposal **Attachment B-2**: Financial Proposal Form.
50. Validation – Validate or Validation means the process of determining that a ticket is the rightful winner so that the claimant may be paid the prize.
51. Validation Number - The unique serial number on the face of the ticket by which means the validity and pay status of the ticket is determined. Also known as a VIRN (Void If Removed Number).
52. Veteran-owned Small Business Enterprise (VSBE) – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
53. Working Days – Each day when State Government offices are open for business.
54. Working Papers – Those papers or documents provided by the Contractor that set forth game specifications from which Instant Tickets shall be printed and delivered.

Appendix 2. – Offeror Information Sheet

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf>.