**REQUEST FOR PROPOSALS (RFP)**

**CENTRAL MONITOR AND CONTROL SYSTEM FOR A VIDEO LOTTERY TERMINAL PROGRAM**

**#2021-06**

**RESPONSES TO WRITTEN QUESTIONS (Q&A #3)**

**November 18, 2020**

This list of questions and responses #3 (Q&A#3) is being issued to clarify certain information contained in the above-named Request for Proposals (RFP). The statements and interpretations of Contract requirements, which are stated in the following responses are not binding on the State, unless the State expressly amends the RFP. Nothing in the State’s responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the entity asking the question as to what the Contract does or does not require. Some questions have been edited for brevity and clarity, and duplicate questions may have been combined or eliminated.

The following are questions submitted pursuant to the RFP and the State Lottery and Gaming Control Agency’s (“MLGCA”) responses to those questions:

**49. QUESTION:** Attachment M, Contract, Pages 43 and 44: We understand negotiation of the contract is not encouraged. As a public company, we do have certain diligence obligations and we would ask for understanding as to scope of negotiation permitted. In particular, the following sections of the agreement we would review:

• Section 5.1 - We would ask that records that become property of MLGCC are enumerated clearly because all submissions are not intended to be MLGCC property.

• Section 5.2 - We would request that any 'work for hire' be designated in advance and in writing between the parties.

* Section 6.1 - We would request negotiation over copyright ownership.

• Section 7.2 - We would require some parameters over software licensing, in particular MLGCC modifying the software.

• Section 10.1 - We would ask MLGCC to provide prompt notice of any indemnification claims in order to properly defend the claim.

**ANSWER:**

**5.1) This Section specifically refers to all documents and materials “prepared by the Contractor for purposes of this Contract”.**

**5.2) As stated in this Section, “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.**

**6.1) No for newly created work, but a separate licensing agreement may be negotiated for it. Pre-existing work would not be subject to MLGCC copyright per Section 7.2.**

**7.2) The MLGCC does not intend to modify the software provided pursuant to the Contract.**

**10.1) Prompt notification of indemnification claims is the normal business practice of the MLGCA.**

**50. QUESTION:** Section 2.3.2.G (2) Software License and Escrow and 3.15.1 Source Code Escrow, Pages 21 & 89: Per current practice, each Casino moves its VLTs, banks, and related wiring to optimize the floor, and all of this is under the control of that Casino to streamline and expedite. Consequently, each Casino is currently responsible for all costs, maintenance, and associated damage.

1. Is it the MLGCA’s intention to change the current process and have the Contractor perform this activity, adding steps and new processes, going forward?

2. If the MLGCA’s intention is that each Casino can make changes to their floor and wiring directly without engaging the Contractor, would the MLGCA confirm that any damages associated with work performed by the Casino will not be the responsibility of the Contractor?

3. Moving VLTs, banks, and associated wiring involves an ongoing, variable price based on each Casino’s operational procedures. Therefore, if the responsibility for these changes is with the Contractor, would the MLGCA please confirm how this effort is to be priced within the Proposal as this is not an increase in the number of VLTs but will be a significant variable cost?

4. To the extent that the Contractor is not involved in any such changes, would the MLGCA confirm that the Contractor will not be responsible for any related maintenance without additional fees?

5. And would the MLGCA further confirm that the Contractor will not be liable for any damages that arise as a result of the Casino’s floor modifications being made without the Contractor’s input or participation?

**ANSWER: In regard to software escrow**

1. **No.**
2. **Yes, but the Contractor may have to provide assistance in determining the proper resolution.**
3. **These types of changes are not the responsibility of the Contractor. The Casinos perform the game moves, etc. with no involvement from the Contractor so there should not be an expense to the Contractor.**
4. **The Contractor may need to provide support in resolving communication issues between the VLTs and MTSCs without additional fees. All other types of maintenance will not be the responsibility of the Contractor.**
5. **Yes, the Contractor is not liable for damages resulting from floor modifications for which they were not properly notified.**

**51. QUESTION:** Sections 4.16.3, Page 96; Section 5.3.2.4 Executive Summary, Page 119; and Contract paragraph 40., page 167: The following questions relate to the requirement of a parent guarantee.

Given that, in the event required by the terms of the RFP, a parent guarantee will be executed by the selected Contractor per Section 39.3, which contains language of the Parent Company guaranty, and given the RFP directions in Section 4.16.3, which requires a signed statement by the parent organization in the Offeror’s Proposal that the parent “will guarantee the performance of the subsidiary,” and the fact that RFP Section 5.3.2.4, copied below, references Section 4.16 but also references the inclusion of a guarantee of performance from a parent organization in the Executive Summary, would the MLGCA confirm what an Offeror (who will, if selected, upon Contract execution, be submitting an executed performance guarantee of its parent organization) must submit with its Proposal, specifically will the submission of a statement included in the Executive Summary signed by an authorized representative of the Offeror’s parent organization stating that the parent organization will guarantee the performance of the Offeror (as specified in Section 4.16.3) fulfill this requirement, or please specify otherwise?

**Yes.**

Section 4.16.3 of the RFP provides in part that:

“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***.” (emphasis added)

Section 5.3.2.4 of the RFP provides that:

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

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”).”***

The introductory language of Contract paragraph 40. Parent Company Guarantee is copied in part below. Would the MLGCA agree to add the words “(if applicable)” — as underlined and noted below — for accuracy in the case where a Contractor’s parent entity is not in fact registered to do business in Maryland?

“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 ***(if applicable).”***

**No. MLGCA would not accept this change.**

The Parent Company Guarantee language is copied below. Would the MLGCA consider revising this language to include the additional language underlined below as reasonable commercial accommodations which will not affect the applicability or efficacy of the parent guarantee to the MLGCA?

“(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***; provided, however, that (Corporate name of Contractor’s Parent Company) may cause its obligations under the foregoing sentence to be assumed by a person or merge with a person the creditworthiness of which is not less than the creditworthiness of (Corporate name of Contractor’s Parent Company) on the date of the Contract upon notice to the State.*** (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 guarantor; ***provided, however, that the State shall not bring any claim, action, lawsuit or proceeding against (Corporate name of Contractor’s Parent Company) until it has exhausted its rights and remedies against the Contractor.***

**First bold: MLGCA does not understand the value of this request and accordingly declines to accept it.**

**Second bold: No, the MLGCA does not accept any limitations on the State’s ability to protect its interests.**

**ANSWER: See above responses to each section.**

**52. QUESTION:** Section 5.3.12 Technical Proposal-Required Forms and Certifications, Page 127: Subsection 2) requires that Offerors 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. If there are any terms or conditions that must be passed through to MLGCA per section 2, those terms will be included in the Technical Proposal, or the MLGCA will not be subject to them.

We have two requests for clarification in connection with the following Sub-section 3):

1) Where terms and conditions are required to be passed through pursuant to Subsection 2) above, in the event no further action is required or contemplated by the relevant licensor (or other third party), and no further authorization is applicable or contemplated, we assume that there is no further requirement to provide a letter of authorization, which in any case the relevant licensor or third party may refuse to deliver as inapplicable and not required.

2) Please confirm that pursuant to Sub-section 3) of this requirement, the MLGCA requires a Letter of Authorization if and to the extent any third-party authorization is applicable, as there may be many cases where Offerors use or provide services, hardware or software originally procured from third-party providers, such as pursuant to purchase orders or agreements between the Offeror and such third-party vendors, which agreements are in the Offeror’s name only and do not name the MLGCA as a party or otherwise, and which agreements do not require or contemplate any further authorizations or conditions applicable to MLGCA. In such cases, the MLGCA would not benefit from any letter of authorization, and where the concept is inapplicable, the third party may well not provide any such letter of authorization. For example, as the requirement is written currently, the supplier would be required to provide a letter from Microsoft for the use of the Window’s operating system as part of the solution which Microsoft and other similar large companies with off-the-shelf software would be unlikely to provide.

**ANSWER:**

1. **To the extent that terms and conditions pass through to MLGCA without any further action by it and no further authorization is required, then no authorization letter would be needed by the MLGCA.**
2. **This language is required for State Contracts; however, it does not likely apply to a significant portion of the Deliverables. Contractor may specifically inquire whether individual specific authorizations are needed if a question arises during the term of the Contract.**

**53. QUESTION:** Contract 2.1, Page 151: If there is any conflict among the exhibits to the Contract, this section provides that the RFP shall have control over the Technical and Financial Proposals to determine the prevailing provision. In the event a Proposal contains specifications other than those in the RFP, it is requested that the MLGCA revise the RFP to provide that the Proposal of the Contractor will have control over the RFP, or

otherwise clarify how any such specifications in the Proposal would be interpreted?

**ANSWER: This Section is part of the Statewide Procurement Template and will not be changed. If a Proposal contains specifications that are in conflict with the RFP, then the RFP as stated in this Section would prevail. If the Proposal contains specifications in addition to the RFP and that have been accepted by the MLGCA as part of the Evaluation and Award process, then those specifications would prevail.**

**54. QUESTION:** Contract 5.1 and 6.1, Page 154: Section 5.1 provides, in part, that materials, including software, prepared for the purposes of the Contract shall be the sole property of the State. Section 6.1 provides that the State shall have exclusive right to use, duplicate and disclose any data, information, documents, records, or results, in whole or in part… that may be created or generated by the Contractor in connection with the Contract and that if such material “including software” is capable of being copyrighted, the State shall be the copyright owner.

Would the MLGCA confirm that both of these sections, as they pertain to any Intellectual Property in the items noted, will be interpreted consistently with Section 7.2 pursuant to which the Contractor retains ownership of its Pre-existing Intellectual Property and the Contractor retains all right, title, and interest in the solution and 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 the Contractor and its licensors, and the MLGCA will have no rights to the same except as expressly granted in this Contract subject only to the exceptions listed?

**ANSWER: Please see the response to Question 49, the property that the State will own is limited by Section 7.2.**

**55. QUESTION:** Contract 7.2, Page 155: Would the MLGCA clarify that the non-exclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software provided by the Contractor and any modifications to the Software is limited to the permitted use for the purpose of fulfilling the intent of the Contract and for the duration of the Contract?

**ANSWER: Yes, except to clarify that it is intended to cover the entire term of the Contract, regardless of whether the Contractor defaults.**

**56. QUESTION:** Contract 7.2, Page 155: To ensure any such Deliverables would be appropriately documented, would the MLGCA confirm that the Deliverables for which title passes to the State would be created pursuant to or otherwise memorialized in a separate writing acknowledged by both parties?

**ANSWER: Yes, this is correct and is the normal business practice of the MLGCA.**

**57. QUESTION:** Contract 7.2, Page 155: Section 7.2 excepts out Contractor Pre-Existing Intellectual Property from Deliverables. Can the MLGCA confirm and revise this section, as needed, to clarify that Deliverables would also not include any third-party Intellectual Property or any copyrights, patents, trademarks, trade secrets created by the Contractor after the Effective Date of the Contract but independent of the Contract?

**ANSWER: No, this Section will not be revised, but Deliverables would not include property created completely independent from the MLGCA’s resources and Contractor’s duties under the Contract.**

**58. QUESTION:** Contract 7.3, Page 155: a) Would the MLGCA confirm that the Contractor will not be obligated to 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 under this section that arise 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 to the extent that the State or its agents misuse or use any such Contractor-provided products/services in any way that is not permitted under the Contract?

b) Would the MLGCA revise this section to require the MLGCA to promptly notify the Contractor of any third-party infringement claim and give the Contractor a reasonable opportunity to control the defense of the claim, at Contractor’s own expense and with counsel of Contractor’s own selection; provided that MLGCA shall at all times also have the right to fully participate in the defense and settlement of the claim at MLGCA’s own expense? The requirements proposed above are necessary in order for the Contractor

to reasonably defend an infringement claim.

**ANSWER:**

**a) Yes, with the provided clarifications:**

1. **This would only apply to infringement that arises solely from intentional misuse of the products/services; and**
2. **The requirements that the Contractor notifies the MLGCA in advance of providing a Deliverable to it as to what uses are prohibited, any limitations that accompany the Contractor-provided products/services, and any and all contact information of any third-parties that have an interest in the underlying work that is being delivered to the MLGCA.**

**b) No, but this is consistent with the normal business practice of the MLGCA.**

**59. QUESTION:** Contract 8.1, Page 156: Section 8.1 of the Contract permits each party to share confidential information on certain terms, specifically providing in part:

“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.”

This section goes on to provide conditions under which the State’s confidential information – but not the Contractor’s confidential information – may be shared. It is also noted that there appears to be a typo in such section, copied below.

Would the MLGCA revise this section to:

a) correct the typo, and

b) make this section reciprocal so that it also applies to the State’s handling of Contractor confidential information?

“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.

**ANSWER: a) The typographical error will be corrected (See Amendment #2 to the RFP).**

**b) The Section will not be otherwise revised. The Contractor’s confidential information would be handled in accordance with the Maryland Public Information Act.**

**60. QUESTION:** Contract 10, Page 157: Would the MLGCA confirm that the Contractor's obligations under Section 10.1 to indemnify the State and related parties are not intended to apply to any claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses of any kind to the extent they resulted from the Contractor's actions or omissions requested by or in compliance with the State’s requirements?

**ANSWER: No.**

**61. QUESTION**: Section2.3.13 Server Based Downloadable Gaming, Page 51: Based on the following requirement:

“Server Based Gaming solutions will give the Facilities the ability to enhance customers’ gaming experience by downloading games to a specific VLT, group of VLTs and/or progressive VLTs from a central location; to reconfigure those VLTs with new features or different games; to provide an array of services to players; and to deliver account-based gaming.

“The Contractor shall provide all equipment, hardware, software and personnel necessary to provide the central monitoring, authentication and reporting for Server Based Downloadable Gaming.

“All VLTs and servers shall communicate with an open protocol. The MLGCC’s preference is for a system architecture that is designed to Gaming System Association (“GSA”) recommendations and Game to System (“G2S”) and System to System (“S2S”) protocols. The Contractor shall provide a system capable of handling a combination of thin, thick and hybrid clients simultaneously.”

Our understanding is that the MLGCC desires to allow each Casino (Facility) to use its Casino Management System to download games from a central server to a physical VLT and to be able to make configuration changes. This would allow all the Casinos to have increased flexibility in deploying content and driving revenue, while the Central System would provide monitoring, authentication, and reporting on the games that reside on the physical VLTs. This arrangement is similar to what is currently in operation in Maryland (example: MGM National Harbor Casino).

Would the MLGCA confirm our understanding, or if looking for something different, provide further detail?

Assuming the previously noted intent is correct, would the MLGCC consider the following changes to requirement 2.3.13 to give Offerors the flexibility to provide the MLGCA a solution that best meets its needs, while adhering to open standards and specific MLGCA requirements and regulations.

“All VLTs and servers shall communicate with an open protocol. The MLGCC’s preference is for a system architecture that is designed to Gaming System Association (“GSA”) recommendations and Game to System (“G2S”) and System to System (“S2S”) protocols, ***or other such industry standard system-to-system interface protocols and methods as agreed with the Facility operators at the time of implementation.*** ~~The Contractor shall provide a system capable of handling a combination of thin, thick and hybrid clients simultaneously.~~ ***The Contractor shall provide a system architecture that allows for Casino’s to use game downloading from centralized servers***.”

**ANSWER: This Section will be revised to read as follows:**

“All VLTs and servers shall communicate with an open protocol. The MLGCC’s preference is for a system architecture that is designed to Gaming System Association (“GSA”) recommendations and Game to System (“G2S”) and System to System (“S2S”) protocols, **or other such industry standard system-to-system interface protocols and methods*.*** ~~The Contractor shall provide a system capable of handling a combination of thin, thick and hybrid clients simultaneously.~~ **The Contractor shall provide a system architecture that allows for Casino’s to use widely adopted protocols**.”

**(See Amendment #2 to the RFP).**

**62. QUESTION:** Section 3.9 SOC 2 Type 2 Audit Report, Page 79: The AICPA SOC 2 framework focuses on cloud and data center security controls. Most of the data center security controls are already included in our SOC 1.

a) Would the MLGCA consider changing the audit requirement from a SOC2 to a SOC1?

b) If not, as SOC2 includes five Trust Service categories – Security, Availability, Processing Integrity, Confidentiality or Privacy – would the Privacy category, or any other category, be excluded from the audit since the Central System will be independent of any player tracking system and cashless technology?

**ANSWER: a) No, a SOC2 audit is required.**

**b) Yes, that would be acceptable.**

**63. QUESTION: Section** 3.10.1.B.2 Network Specialist, Page 82: This section reads as follows:

“The Network Specialist shall be assigned to the Implementation Team and shall provide support to the MLGCC to insure acceptable interface capabilities between the MLGCC and the Contractor’s Primary and Back-up Sites.

“The Network Specialist shall demonstrate expertise in the type of network proposed and implemented and shall be a Microsoft Certified System Engineer (MCSE).”

The RFP states that the “Network Specialist shall be a Microsoft Certified System Engineer (MCSE).” Although our Infrastructure Specialists are all MCSE-certified, our Network Engineers are all Network Specific Certified from Cisco, Juniper, Fortinet, etc.

Can either “or equivalent” or “CCNA, CCNP, or Network Specific Certification” be added at the end of the requirement following the words “... shall be a Microsoft Certified System Engineer (MCSE)”?

**ANSWER: Yes, this Section will be revised (See Amendment #2 to the RFP).**

**64. QUESTION:** Section 5.3.3.2.C Communication Protocols, Page 120: Section C) of this requirement asks Offeror to describe the communications protocols that the Central System supports, including whether the protocols are open or proprietary, other jurisdictions that are currently using these protocols, types of games supported by the protocols, and a listing of manufacturers of gaming devices presently authorized to use this protocol.

Can the MLGCA define “types of games”?

**ANSWER: The types of games are slot machines, ETGs, and skill-based slots, and any other types of games typically in operation at casinos similar to those in Maryland.**

**65. QUESTION: Section** 5.3.12.3 Technical Proposal- Required Forms & Certifications, Page 128: Section 3) of this requirement requires,

“For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.”

a) Due to the potential volume and size of the documentation requested in 5.3.12, would the MLGCA accept submission of these agreements on electronic media only?

b) For Open Source license agreements, would the MLGCA consider accepting a link to the license agreements for which the software and documentation are licensed?

**ANSWER: a) Yes, electronic media is acceptable.**

**b) No, they may not be provided via a link, but may be provided by electronic media such as thumb drive or CD.**