

REQUEST FOR PROPOSALS (RFP)

LOTTERY CENTRAL MONITORING AND CONTROL SYSTEM #2015-01

RESPONSES TO WRITTEN QUESTIONS (Q&A #3) February 4, 2016

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:

93. QUESTION: Section 1.39 Non-Visual Access, page 45: What methods are provided by the current LCMCS vendor to meet this RFP requirement?

ANSWER: The current LCMCS Contract contains the following requirements for Non-Visual Access:

"By submitting a Proposal in response to this RFP, the Offeror warrants that the information technology offered under this Proposal: (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. Offeror further warrants that the cost, if any, of modifying the information technology for compatibility with software and hardware used for non-visual access will not increase the cost of the information technology by more than five (5%) percent. For purposes of this warranty, 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.”

“The Contractor shall ensure compliance in any applicable support to the State of Maryland IT Non-Visual Access Standards. The standards should be incorporated to the fullest extent possible for Information Technology. These standards/policies may be revised from time to time and the Contractor shall comply with all such revisions. The Non-visual Access Clause noted in COMAR 21.05.08.05 and referenced in this solicitation (Section 3.52.1 above) is the basis for the standards that have been incorporated into the Maryland regulations. (See COMAR 17.06.02. for the official regulation)”

94. **QUESTION:** Section 1.49 Performance Bond, page 50; and Appendix U, page 284: There is a discrepancy between the RFP and the bond form as to the number of days the Surety has to cure the default. In Performance Bond Section 1.49.7, it states that the surety shall have the option within thirty (30) days of notice of default to cure the default or tender funds sufficient to pay the cost of completion. In Attachment U Performance Bond Form on the top of the second page it states that the Surety may, within 15 days after notice of default from the Administration, notify the Administration of its election to either promptly proceed to remedy the default or promptly proceed to complete the contract. We request that the MLGCA agree that the Bond form can be changed to 30 day notice to be in conformity with the RFP?

ANSWER: Yes, the Performance Bond form should be changed to thirty (30) days to conform with the requirements of the RFP.

95. **QUESTION:** Section 1.49.4, page 49; and Appendix U, page 284: In Lieu of the Performance Bond form; Appendix U; will the MLGCA allow an industry standard bond form to be used? If not, will the MLGCA agree to the following changes in the RFP and Bond form so they are consistent with one another?

1. Section 1.49.4 states that the bond may be annually renewable. However, the bond form is not clear. Therefore we request to delete the following:

“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 met”

And replace this with:

“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, the Contractor must at all times maintain with the Obligee a Performance Bond that shall remain in full force and effect unless and until the following terms and conditions are met or the bond is nonrenewed in accordance with terms stated herein.”

2. Add the following language to clarify that the bond can be renewed on an annual basis; extended by continuation certificate; and that non-renewal, cancellation or material modification of the bond by the Surety will not constitute an event of default by the Contractor provided that the Contractor obtains an acceptable replacement Performance Bond to be effective prior to the expiration of the thirty (30) day notice period:

“Notwithstanding the provisions of the Contract, the term of this bond shall apply from _____, _____, until _____, _____, and may be extended by the Surety by Continuation Certificate and increased or decreased by a Rider for additional periods from the expiry date hereof. However, neither nonrenewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof, provided that the foregoing shall not relieve Principal of its obligation to furnish a replacement bond in the event of nonrenewal, as set forth in the Contract, nor for any liabilities arising from its failure to do so. The liability of the Surety under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto.”

ANSWER: Use of the form provided in Appendix U is encouraged in order to avoid an Offeror’s substitute form being determined to be unacceptable. However, an industry standard bond form containing all provisions of the form provided in Appendix U and underwritten by a surety company authorized to do business in the State may be acceptable, subject to the MLGCA’s review and approval.

96. **QUESTION:** Section 1.49 Performance Bond, page 50: Will the Lottery give the reasons why the performance bond could be lowered, and then increased again, at the MLGCA’s sole discretion as described in Section 1.49.6?

ANSWER: As stated in the RFP, “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.” This decision would be based on factors such as but not limited to the Contractor’s satisfactory performance and stability up to the date of the request. As further stated in the RFP, “If any reduction is granted, the MLGCA 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." This decision would be based on factors such as but not limited to the deterioration of the Contractor's performance and stability subsequent to the date of the reduction.

97. QUESTION: Section 1.49 Performance Bond, page 51: Surety Companies prefer not to write Performance bonds with strict Forfeiture language in the contract or bond form as required by Section 1.49.7. We request that the first line in this Section be deleted: "The Performance Bond is forfeited to the MLGCA, in whole or in part, if the Contractor defaults in the performance of its contractual obligations or if the MLGCA incurs damages due to the willful or negligent performance of the Contractor or its subcontractors."

ANSWER: The next two sentences in this Section state that "However, the surety shall have the option within thirty (30) days of notice of default to cure the default or tender funds sufficient to pay the cost of completion up to an amount not to exceed the penal sum of the bond. With the concurrence of the MLGCA, the surety may assume the remainder of the Contract to perform or sublet." It is the MLGCA's understanding that this Section is acceptable to a surety provided that this option to cure is included.

98. QUESTION: 3.4.2.3.3 Backup Data Center – In regard to the requirement for a private circuit of 50 mbps with latency of five (5)ms or less between the MLGCA back-up servers and the MLGCA primary data center. Please provide further definition on the MLGCA's use of "private" in the context of the requirement. Also, the requirement for a latency of five (5) ms or less is typically only available on point-to-point fiber connection and the cost is driven by geographical distance. Is the 5ms requirement the actual technical requirement of the Lottery? This seems excessively costly. Would the MLGCA provide additional detail on what applications will traverse this circuit that require such high speed and with 5ms or less latency? If the Lottery Backup servers are placed in the contractors Primary or Backup data center, is it acceptable for both the contractor and the Lottery to share the 50 mbps circuit assuming the Lottery required service levels are met?

ANSWER: The circuit shall be a leased virtual private circuit capable of providing both layer 2 and 3 network functionality and deliver connectivity over a private data network in a secure and prioritized method on an Internet Protocol (IP) platform. The circuit and core infrastructure of the network shall be designed to offer different classes of service and shall be able to prioritize traffic with Quality of Service (QoS) to ensure that packet delivery and latency remains at or above industry standards and meets MLGCA requirements. The circuit shall be dedicated for MLGCA use only but can also support other data communications into the MLGCA headquarters; i.e. ICS and LCMCS administrative access and

primary ICS transaction processing. However, the MLGCA may require more than 50 Mbps based on utilization of other applications.

The circuit shall support:

1. A minimum of 50 Mbps of bandwidth.
2. Administrative network security policy and operational requirements for data transport that meets MLGCA security and privacy requirements as well as State and Federal regulations and statutes.
3. Support for standards-based encryption protocols.
4. Industry standards defined for common technical and operational measures to maintain system reliability; relevant parameters include:
 - a. An average end to centralized MLGCA hub site delay of less than \leq 5 milliseconds.
 - b. Provide less than \leq 0.1% packet loss.
 - c. Provide greater than \geq 99.9% network availability.

99. QUESTION: Section 3.25.1 Conversion Plan, Item # 4k, page 120: a) Will the MLGCA provide further information about the call volume currently received on the Winning Numbers Hotline? Specifically, the information provided in Section 3.2.8.3.K accounts only for the number of calls that actually get through to the hotline and does not indicate the number of calls that are rejected due to the lines being busy. Will the MLGCA also provide statistics that include that information regarding call volume?

b) Will the MLGCA indicate who is the current vendor for the telephone line of the Winning Numbers Hotline (AT&T, etc.)?

ANSWER: a) The number of rejected calls to the winning number line is not obtainable. The system utilizes 35 analog lines and the call volume peaks after the mid-day drawings (12:25 pm to 3:00 pm). The total daily call volume is accurately stated in the RFP, assuming all callers are making multiple calls until a connection is available. The number of analog lines (35) cannot successfully support all calls, concurrently, all of the time.

b) The current vendor for the winning number telephone lines is Verizon.

100. QUESTION: Section 3.26.2 Task II – Host “mdLottery.com” online Network, page 127: Is the scope of work set forth in this Section limited to providing infrastructure (servers, network equipment) etc., or is the MLGCA expecting the Contractor to develop/maintain the actual content of the website?

ANSWER: Yes, the scope of work set forth in Section 3.26.2 is limited to providing, maintaining, and configuring the infrastructure; servers, network equipment, data circuits, environmental controls, etc. similar to the services provided by a commercial hosting company, i.e. Rackspace. The development

and maintenance of the website, applications, and databases are not within the scope of the requirement.

101. QUESTION: Section 3.30.15 Invalid Winning Tickets, Page 148:

a) Will the MLGCA confirm, per the terms of applicable law or the game rules, that the MLGCA does not have a legal obligation to pay prizes to players for invalid winning tickets (i.e., tickets that are produced in error) that are not identified as valid winning tickets on the validation files?

b) Will the MLGCA confirm that, pursuant to the Maryland Code of Regulations (COMAR), Section 36.02.04 (Common Provision for all Lottery Games), the MLGCA is not liable for tickets produced and issued in error and a player's only remediation is payment of a refund equal to the purchase price of the ticket?

c) Further, will the MLGCA confirm that, prior to paying any prizes to players for invalid winning tickets (i.e., tickets that are produced in error) that are not identified as valid winning tickets on the validation files, the MLGCA will first give the Contractor notice of such intent to pay such invalid ticket, and the right to participate in discussion of such issue prior to paying any amount for which the Contractor would be liable?

ANSWER:

a) **Yes, but if the prize is not identified as a valid winning ticket on the validation files but it should be, then the Contractor would be responsible for payment.**

b) **Yes, per COMAR 36.02.06.10C.**

c) **The MLGCA will provide written notice of any claims filed against the MLGCA or Commission arising out of the Contractor's performance under the Contract of which it has notice. Subject to the approval of the Office of the Maryland Attorney General, the MLGCA may allow Contractor the right to participate in or to control such litigation, but the MLGCA and the State reserves the right to jointly participate in all such legal proceedings, as well as the settlement of any such claims. Additionally, with respect to this answer and to answers a) and b), the MLGCA cannot anticipate nor control litigation against the State. Should a court finally determine that the MLGCA, through its Contractor, was negligent or breached some obligation and is accordingly responsible for payment of a prize, the Contractor shall be responsible for payment of the prize or other damages as mandated by the court.**

102. QUESTION: Section 3.32 Insurance Requirements; 3.32.4.1 General Liability, page 155: This Section requires liability limits of \$1,000,000 per occurrence and

\$3,000,000 aggregate. Will the MLGCA accept evidence of an underlying General Liability policy of \$2,000,000 Combined Single Limit for Bodily Injury and Property Damage; followed by evidence of \$1,000,000 Umbrella/Excess Liability in order to comply with this section?

ANSWER: Yes, that would be acceptable coverage.

103. QUESTION: Section 3.32 Insurance Requirements; 3.32.4.2 Errors and Omissions/Professional Liability and 3.32.4.4 Cyber Security /Data Breach Insurance, page 155: The requirements for Errors and Omission/Professional Liability and Cyber Security/Data Breach Insurance both show per occurrence limits. It is industry practice that these policies are written on an aggregate basis. Therefore, it is requested that the MLGCA amend the sections, respectively, as follows:

3.32.4.2 The Contractor shall maintain Errors and Omissions/Professional Liability insurance with minimum liability of \$1,000,000 per occurrence/ **aggregate**.

3.32.4.4 The Contractor shall maintain Cyber Security/Data Breach Insurance in the amount of \$10,000,000 per occurrence/**aggregate**.

ANSWER: Sections 3.32.4.2 and 3.32.4.4 will be revised as proposed in the question. (See Amendment #3 to the RFP)

104. QUESTION: Section 3.32.5 State Inclusion on Insurance, pages 155-156: It is common practice in the insurance industry to give 30 days' Notice of Cancellation and the majority of insurance policies are written this way. Therefore, will the MLGCA amend this Section to state that: "All policies shall be endorsed to include a clause that requires that the insurance carrier provide the Contract Manger, by certified Mail; not less than **30 days'** advance notice of any non-renewal, cancellation, or expiration

ANSWER: Yes, the RFP will be revised to change the 45 days' notice to 30 days' notice. (See Amendment #3 to the RFP)

105. QUESTION: Section 4.2.2.6.24, Task VI Additional Business Enhancements, pages 166-167: The RFP states in this Section 4, in describing Task VI – Additional Business Enhancements, that "[a]ny such additional capabilities offered which are over and above the basic requirements of the RFP and not included in the base price should be individually listed and described below." This Offeror believes that the foregoing language would prohibit Offerors from providing to the MLGCA (and listing in this Task VI – Additional Business Enhancements section) any "Additional Business Enhancements" that are above and beyond the requirements of the RFP but for which the Offeror would include at no additional cost (i.e., included in the base price) – which would clearly be a benefit to the MLGCA. As such, will the MLGCA revise this Section

4.2.2.6.24 so that, in addition to permitting Offerors to list those Additional Business Enhancements that are “not included in the base price”, Offerors are permitted to also include any “Additional Business Enhancements” that are above and beyond the requirements of the RFP that would be provided “at no additional cost” to the MLGCA?

[If so, it is suggested that the MLGCA require that the Offerors differentiate in their responses to this Section 4.2.2.6.24 as to whether the “Additional Business Enhancement” is: (i) not included in the base price or (ii) included at no additional cost, which would allow the evaluators to more favorably view those Additional Business Enhancements that are included at no additional cost, as the pricing (i.e., cost to the MLGCA) for these Task VI - Additional Business Enhancements are not included in the “Total Estimated Base Contract Term Price” on Attachment F, which forms the basis of ranking the Offerors’ financial proposal and, as a result, an Offeror could arguably propose Additional Business Enhancements (that could be evaluated favorably and potentially given significant evaluation weigh under the Level 1 Criteria), but for which the associated pricing (which is not included in the financial ranking of Offerors) is so expensive that it would render such Additional Business Enhancement unattractive to the MLGCA?]

ANSWER: Services and equipment that are being provided “at no additional cost” should be described within the relevant section of the Technical Proposal and included in the overall price being proposed for the LCMCS in Part A of the Financial Proposal. Only optional services and equipment being offered should be described in Task VI and the price for each such optional item included in the appropriate section of Part C of the Financial Proposal.

106. QUESTION: Attachment A – Section 1.10 Proposal, page 181: Will the MLGCA revise the definition of “Proposal” to include in such definition “any permitted modifications to the Technical Proposal or Financial Proposal in accordance with the RFP (specifically, Section 5 of the RFP)”?

ANSWER: Yes, the definition of “Proposal” will be revised to include any revisions or clarifications, including BAFOs, that have been submitted by the Offeror and accepted by the MLGCA. (See Amendment #3 to the RFP)

107. QUESTION: Attachment A – Section 14 Termination and Suspension of Service, page 189: Section 14.4 provides that the State shall be entitled to “post-termination assistance generally made available with respect to the services.” Will the MLGCA confirm that such “post-termination assistance” would be subject to compensation payable to the Contractor?

ANSWER: Not generally, but in the event of a Termination for Convenience under Contract Section R23.7, the State may be responsible for the reasonable costs associated with early termination of the contract.

108. QUESTION: Attachment A – Section R23.6 Termination for Default, page 192: In connection with the “Termination for Default” provision set forth in Section R23.6 of the draft Contract (Attachment A), there is no “materiality” threshold for the level of failure or violation, nor is there an opportunity to cure such failure or violation. As such, will the MLGCA consider adding that such failure or violation must be a “material” failure or violation in order to give the MLGCA and the State the right to terminate the Contract for default?

ANSWER: No. The Termination for Default provision is a mandatory requirement of State law and will not be changed. As stated in Section R23.6, “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.”, which states the following in paragraph (4):

"If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the State, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

109. QUESTION: Attachment A – Section R23.13 Subcontracting and Assignment, page 194: Will the MLGCA confirm that the restriction on subcontracting set forth in Section R23.13.1 (i.e., requiring prior written approval of the Procurement Officer) does not apply to those subcontractors identified in an Offeror’s Proposal, and by accepting such Proposal the Procurement Officer is “approving” such subcontractors?

ANSWER: Yes, that is correct.

110. QUESTION: General - Will the MLGCA provide any contracts and amendments that may be in place with Tabcorp and Diamond Games.

ANSWER: There are no contracts in existence between the MLGCA and Tabcorp except for a license agreement to use the Racetrax® name and logo. This license agreement runs concurrently with the term of the present contract that exists between the MLGCA's current LCMCS provider and Tabcorp. The MLGCA has no rights to continue to use the Racetrax® game, name or logo after the expiration of the present LCMCS contract or with any new LCMCS Contractor.

The MLGCA contract with Diamond Game is unrelated to this RFP.

111. QUESTION: Please provide an electronic file in Excel format with sales & validations from player self-service vending machines by retailer, please include sales from online games, instant tickets, and validation of online and instant tickets?

ANSWER: Information about the ten (10) week average sales for each player self-service vending machine has been posted to the SFTP site. (The file name is: Player Self Service Terminals 10 Week Average 01-17-16)

112. QUESTION: Please provide details relating to any retailer incentive programs that have been run over the past two years. Please provide details of the success for using such incentives and how they were funded?

ANSWER: Information about Retailer Incentives has been posted to the SFTP site. (The file name is: Retailer Incentive Overview #113)

113. QUESTION: a) Are there any game formats, including an electronic instant with a digital reveal, that the Lottery is prohibited from selling?

b) Does the lottery allow thermal paper instant win tickets with instant win jackpots marketed under the names Fast Play, Print-N-Play and Easy Play by other lotteries to be printed from the clerk terminals and from player self-service terminals?

ANSWER: a) As a legal prohibition, no, although the Maryland General Assembly has expressed concerns about such alternative methods of play.

b) Yes, the MLGCA allows instant win games. An example is "Fast Play" which is a marketed term from one of the providers.

114. QUESTION: Please provide an Excel file indicating by retailer location which equipment is located at each retailer, that being, how many clerk terminals, if vending machines, how many and which types, and how many Keno and Racetrax monitors and what sizes are located there? Under the new contract, does the Lottery intend to install two monitors at every retailer location? If not, which types of retailers are not required to

have monitors? Does the Lottery own any of the Keno and Racetrax monitors in the retailers now and are those available to be connected to the new central system?

ANSWER: The files listed below have been posted on the MLGCA SFTP site of which potential offerors have been previously notified:

- Terminal Sales by Retailer July 2015 – January 2016
- ITVM Inventory - 01-27-16
- Player Self Service Terminals 10 Week Average - 01-17-16
- Total Monitor Inventory- 01-20-16
- Terminal Counts per Retailer - 02-01-16

The MLGCA currently has 4,800 Monitors installed in Retailer locations. As reflected in the Total Monitor Inventory - 01-20-16 document on the SFTP site, there is a mix of Retailers with one, two or more Monitors. The MLGCA anticipates installing approximately an equal number of Monitors during the Conversion process, but has the right to increase the number of Monitors at any time throughout the Contract term as needed. There are a small number of Retailers who presently have and may continue to provide their own Monitors. These are not included in the inventory provided on the SFTP site and the Contractor will not be required to support these Monitors, except to permit the connection to the video display feed for Keno and Racetrax results.

No existing Monitors are to be reused under this Contract.