

## **RFP – LC000054 – Online Play System, Player Loyalty Program & Related Services (Q & A)**

### **1. RFP Reference Number - 1.16, 1.17, and 3.29, RFP Page Number-27, 28, and 68**

We understand that as set forth in Section 1.16, 1.17, and 3.29 that the Lottery will not publicly disclose any information which is clearly marked Confidential as required in Section 1.16 and which is exempt from public disclosure under the Public Records Laws, including information that meets the requirements of N.C.G.S. §132-1.2 of the Public Records Laws, and in addition, information that constitutes security-related information that cannot be disclosed without compromising the security interests of the Responding Contractor. Can the NCEL please confirm that this understanding is correct? **Confirmed.**

Would the Lottery also please confirm that personal information included in a Proposal which is also marked as Confidential as required in Section 1.16 will also be exempt from public disclosure under the Public Records Laws and that such information will not be disclosed per Section 3.29 after three years following the termination of the Contract? **Confirmed.**

### **2. RFP Reference Number - 1.20, and RFP Page Number - 29**

It is understood that the Contractor is responsible for the performance of all Contractor obligations under the Contract including any performed by any subcontractor or sub-supplier as set forth in Section 3.9.

The defined term “Subcontractor” is not consistently used in the RFP; however, we understand that the subcontractor requirements mean and refer to subcontractors as defined. Can the NCEL please confirm that this understanding is correct? Otherwise general small sub-suppliers to Responding Contractors who do not provide services or deliverables to the Lottery or IP or have access to confidential information would be subject to several inapplicable provisions.

Will the Successful Contractor be able to change subcontractors identified in its Proposal after award of the Contract or Contract execution upon notice to the Lottery without penalty? **Please refer to Section 1.14, Glossary of Terms, which defines “Subcontractors” as “Person(s) to whom the Bidder entrusts a Major Part of the Contract.” In addition, “Major Part” is defined as “A product, system, or service provided, which is essential/critical for an implementation and/or operation of the Lottery.” For purposes of the RFP and the Contract, any “subcontractor” that does not provide a “Major Part” will not be considered, a “subcontractor” for reporting, approval and compliance requirements under the RFP and Contract.**

### **3. RFP Reference Number – 3.6.1, and RFP Page Number – 49**

The following questions relate to the Lottery's ability to terminate for failing to cure within 72 hours.

Section 3.6.1 allows the Lottery to terminate the contract in whole or in part in a broad range of situations.

Would the Lottery please consider increasing the applicable cure period from 72 hours to a more reasonable cure period in cases in which it is not possible to be cure in 72 hours, however, cure is begun within 72 hours? **The Lottery will consider extending the cure period based upon the specific incident/event and on a case-by-case basis. In general, the 72 hour-period will be minimum standard for performance.**

Would the Lottery please amend the section allowing termination after 72 hours for failing to cure a material violation of any specific provision as "any specific provision" covers every contract obligation, by limiting this to violations which have a material impact on the Lottery operations or reputation of the Lottery? Otherwise a failure to comply with a provision that has no material impact on the Lottery or Lottery operations could result in termination under this provision. **No**

**4. RFP Reference Number – 3.7, and RFP Page Number – 51**

Would the Lottery please consider a reasonable limitation on the scope of work that the Successful Contractor is required to provide without compensation? **Please refer to the provision in Section 3.7, specifically to the language "assist to the extent reasonable and practical to accomplish." This language should apply to any item during conversion of where, as the current contractor the data, information or source of data is possessed; that shall be converted to another entity with the Lottery's interest ensuring continuity of services to our customers.**

**5. RFP Reference Numbers – 3.16 and 4.3.1, and RFP Page Numbers – 55 and 83**

When must the Responding Contractor that is a subsidiary relying on the financial resources of the parent certify, in writing and in a form acceptable to the Lottery, the availability of its resources to the Responding Contractor? **Upon request by the Lottery and any Internal/External Auditor(s)**

Will the Lottery please provide an acceptable form or provide details regarding how the Responding Contractor can confirm the form is acceptable? **The Lottery does not have a standard "acceptable" form to provide.**

**6. RFP Reference Number – 3.21, and RFP Page Number – 58**

We understand that pursuant to this section, should the Lottery obtain systems, materials, or processes from another third party, the Contractor will be required to cooperate or make changes in order to permit compatibility under the Lottery's direction.

Can the NCEL please clarify if the Contractor will be compensated for these efforts through the Change Control process or could the Lottery please specify how the Contractor will be compensated otherwise? **Compensation will be determined on a case-**

by-case basis, depending upon the effort and scope of work to be performed. Compensation (if any) and method of compensation will be agreed upon by the Successful Contractor and the Lottery.

**7. RFP Reference Numbers – 3.22-3.23, 3.33, and RFP Page Numbers 58-59 and 71**

Pursuant to Section 3.23 (L)(1), the Lottery reserves the right to determine in its discretion whether it is liable or otherwise obligated to pay for the prize value of a winning play which is not identified as a valid, winning salable play, or which is later determined to be an invalid play.

Could the Lottery please advise whether it would consider itself liable in circumstances where under the applicable game rules it is not liable to pay out on such a prize? **This LD section applies to scenarios whereby, despite any applicable game rules and requirements and due to the Successful Contractor’s error (software, computer and/or human errors), the player/user is led to believe that he/she has a “winning” play, the Lottery may require the Successful Contractor to pay for the associated prize and impose the specified LD amount.**

**8. RFP Reference Number – 3.23, and RFP Page Numbers – 59-65**

We understand that the Contractor would not be liable under Section 3.23 for any penalties or damages flowing from bad acts or intentional misconduct of any third party not under the Contractor’s control. Can the Lottery please confirm if this understanding is correct? **Confirmed.**

**9. RFP Reference Number – 3.23, and RFP Page Numbers – 59-65**

In specific cases where actual damages are proven to be materially lower than assessed liquidated damages under the Contract, would the Lottery consider such evidence and consider making a reasonable adjustment to lower the amount assessed against the Contractor to the amount of actual damages sustained by the Lottery? **No. The specified amounts encompass loss of good will, as well as, any actual damages.**

**10. RFP Reference Number – 3.23, and RFP Page Numbers – 59-65**

Given that the Lottery has fulsome remedies, including full indemnification protection and liquidated damages, would the Lottery consider a commercially reasonable cap on a Contractor’s liability for damages under the Contract? **No.**

**11. RFP Reference Number – 3.23, and RFP Page Numbers – 59-65**

It is our understanding that the Lottery would not seek damages from the Contractor to the extent that the incident causing or giving rise to damages is caused by the Lottery or third parties or events outside of the Contractor’s direction, control, and responsibility, or Force Majeure events. Could the Lottery please explain how the Successful Contractor might present facts which are relevant to the Lottery’s determination that damages apply prior to the Lottery finally assessing such damages? **Presumably, at the time of the incident/event or shortly thereafter, the Successful Contractor can provide any facts as necessary for the Lottery’s determination.**

**12. RFP Reference Number – 3.24 and related IP Sections, and RFP Page Number – 65**

Would the Lottery please confirm our understanding that no pre-existing intellectual property of the Contractor and its subcontractors or independently developed intellectual property owned by or licensed by the Contractor that is not developed exclusively for the Lottery will be considered Work Product? **Confirmed.**

**13. RFP Reference Number – Various**

The Standard Contract contains a definition of Subcontractor that is not the same as the defined term “Subcontractor” in the RFP. In addition, the word subcontractor is not capitalized throughout the RFP. We assume that the defined term in the RFP applies and controls, would the Lottery please confirm this assumption or please specify otherwise? **Please refer to response to Question 2 above. Subcontractors shall be deemed those working on “Major Part” of the Contract.**

**14. RFP Reference Number – 3.37.1, and RFP Page Number – 75**

Would the Lottery please confirm our understanding that the Contractor must only supply a list of employees (and their Social Security Numbers) who are working on the Contract and that such information will be provided subject to all confidential information obligations and all data privacy laws? **Confirmed.**

**15. RFP Reference Number – 3.37.2, and RFP Page Number – 75**

It is not possible to compel escrow of third-party source code in the case of SaaS, off the shelf, or widely marketed software for example. Would the Lottery please confirm our understanding that such third-party code is not required to be escrowed? **The Lottery confirms that third-party source code is not required to be escrowed. Software source code developed specifically by the Successful Contractor, or on behalf of the Successful Contractor, to operate the Lottery’s system, shall be escrowed subject to the Successful Contractor having access and legal rights to the source code.**

**16. RFP Reference Number – Online Play Standard Contract, Section 2(A)**

Would the Lottery please clarify that the following language bolded and underlined in Section 2A of the Standard Contract Terms refers to and is limited to Changes agreed by the parties as set forth in Section 9 of the Online Play Standard Contract or please specify otherwise?

A. VENDOR and its Subcontractors will work in conjunction with the Executive Director of the NCEL (the "Director"), the NCEL staff, the NCEL Commission (the "Commission") and such other vendors, subcontractors, employees, agents, retailers and consultants of the NCEL. VENDOR and its Subcontractors will provide the System and Services to the NCEL as detailed in the RFP, the Questions and Answers and the Proposal **and will perform such specific services and provide such deliverables as requested, from time to time, orally or in writing, by the Director, his/her designee(s) and/or the Commission.** **No. This language applies to any requests for products and/or services as encompassed under the RFP and Contract.**

**17. RFP Reference Number – Online Play Standard Contract, Section 9**

Would the Lottery please confirm our understanding that changes made pursuant to Section 9 would be made subject to agreed terms and conditions on timing, scope, and schedule in addition to compensation? **The Lottery shall determine whether such changes**

are deemed material changes to the scope of work, which may affect compensation. Minor/insignificant changes that may or may not affect timing and/or schedule are not considered a material change.

**18. RFP Reference Number – 1.12, and RFP Page Number – 23**

Will the NCEL please confirm that there is not a requirement to submit an electronic copy of the Price Proposal? **Confirmed.**

**19. RFP Reference Number – 1.12, and RFP Page Number – 23**

Will the NCEL please confirm that while all Options must include pricing, if such Options are included in the Technical Proposal or shown as N/C if offered at no additional fee (i.e., included in the base), may a responding Contractor include Options (Specified, Invited, and Offered) without pricing if such Options are included in the Transmittal Letter (i.e., outside of the Technical Proposal)? **Confirmed.**

**20. RFP Reference Number – 5.3, and RFP Page Number – 87**

Section 5.3.1 of the RFP states that the Contractor must propose all Specified Options with pricing; however, within several of the listed Specified Options it is stated that the Pricing shall be negotiated (i.e., Additional Staffing, Additional UI Development, Affiliated Marketing System and Operations, Packaged Prepaid Cards, and Virtual Claims Center Operations). Will the NCEL please confirm that Responding Contractors are not required to submit binding pricing for all Specified Options including those referenced in this section that are stated as negotiable? **No. All prices are binding, except those stated as negotiable.**

Will the Lottery please also confirm how this pricing will be negotiated in the process? **At the time when the Lottery desires to elect the specified option.**

**21. RFP Reference Number – 6.6, and RFP Page Number – 93**

The RFP states that the Lowest Bid in the Price Points category earns all the price points available. For all other bids, the Price Points are based upon the Price Weight times the maximum point for Price (or 250). Will the NCEL please clarify the calculation for awarding of Price Points to the non-Lowest bidders and provide an example of the calculation? **See example below.**

<b>Available Points</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>Cost Proposed</b>	\$1,000	\$2,500	\$4,000	\$8,000
<b>100</b>	100	40	25	13

Points are calculated as: **Lowest proposed cost divided by the evaluated proposal multiplied by the total points allowed for the category.**

**22. RFP Reference Number – Q&A Response #2/Section 6.6**

The NCEL responded to a question regarding whether the Pricing score will include the cost of Specified Options. NCEL's response indicated that only Specified Options that have been clearly required to be included in the main Pricing Proposals (i.e., digital

instants) will be included in the Price Score. Will the Lottery please confirm that the Specified Options listed as Mandatory in Section 5.3.1 will not be included in the Price Evaluation? **Confirmed.**

23. **General Information Regarding the RFP Submission and Proposal Submission, 1.14 Bid Bond & 1.15 Litigation Bond** – The Lottery’s previous Q&A response (July 12) states that “NCEL agrees to split the Bid Bond and the Litigation Bond equally based upon the 5% requirement”. Can the Lottery confirm that this means it is looking for a Bid Bond at 2.5% of the contract value and a Litigation Bond at 2.5% of the contract value? **Yes**

24. **Section 2 Lottery Background, 2.2 General Information, 2.2.8 Online Play Sales/Financial Results** – Can the Lottery provide a percentage split of players that purchase subscriptions vs. single ticket purchases on a monthly basis for the past 12 months? Can the Lottery please indicate: **Please see attached chart.** 

- Total number of purchasers per month
- Number of purchasers who bought single-ticket draw games
- Number of purchasers who bought subscriptions

25. **Section 5 Pricing, 5.2 Price Proposal Requirements, 5.2.2 Base Price:** Can the Lottery confirm that in order to level the playing field between the incumbent supplier and non-incumbent suppliers, that the Lottery is ONLY evaluating the price provided for the full solution – i.e., Pricing Proposal I, which includes BOTH A) online draw and B) digital instants pricing? **No. The Lottery is requiring a new state-of-the-art full service Online Play and Player Loyalty/Rewards system. The Lottery is evaluating both Pricing Proposals (Pricing Proposal I and Pricing Proposal II) as referenced in Section 5.2.2, not just Pricing Proposal I.**

26. **Section 5 Pricing, 5.3 Pricing of Options, 5.3.1 Specified Options** – Our understanding is that specified options must include detailed specifications and pricing. However, for certain options, pricing guidance within the item itself seems inconsistent with this instruction: for example, Affiliate Marketing System and Operations states that Pricing shall be negotiated at time of execution. Can the Lottery clarify what the expectation is with respect to what should be provided within the response? There are other items in a similar situation within 5.3.1 Specified Options. Can the Lottery please clarify pricing direction for all items? **See answers to Questions 20 and 22 above.**

27. **Appendix A Technical Specifications, A.2 Detailed Technical Responses, A.2.4 Payment Issuance, Withdrawal Methods** – Can the Lottery please provide additional details regarding the make, model, and capabilities of its retail terminals? Would the Lottery please confirm whether barcode scanning is a supported feature of the terminals? **The Lottery currently deploys two (2) different terminal devices. The retailer terminals and ticket vending machines are provided by our current draw game provider. Both terminal devices possess barcode scanners that have the capabilities or can be configured to read all of the most current standard barcodes (I2of5, PDF-417, QR Codes, etc.).**

28. **Appendix A Technical Specifications, A.2 Detailed Technical Responses, A.2.9 Game Development Services, Minimum Quantity** states that certain games are strictly prohibited, such as casino slot and table games. Can the Lottery please direct us to the related legislation and/or policies that reflect these prohibitions and any other relevant policies and/or legislation restricting prize payout and/or any other relevant operational element related to this procurement? For example, we are interested in information about maximum advertising expenditure, etc., so that as a Responding Contractor we may have the most fulsome understanding possible of the Lottery's operating environment. Please refer to the "North Carolina State Lottery Act," N.C.G.S. 18C (see attachment). In general, the NC State Lottery Act does not restrict prize payout, but the Lottery's priority is maximizing net revenue to help fund specified NC educational programs. The Lottery Act does limit the Lottery's administrative cost to no more than 8% and advertising to no more than 1% of annual revenues. Both N.C.G.S. § 14-306.1A, "Types of machines and devices prohibited by law; penalties; and N.C.G.S. § 14-306.4, "Electronic machines and devices for sweepstakes prohibited" restrict the Lottery from offering games through VLTs and/or slot machines. 

29. **General** – Can the Lottery provide the Successful Contractor's response to NCEL RFP #LC-000042 Lottery Subscription System and Related services for the purpose of formulating an inclusive pricing strategy for all relevant digital services? The Lottery cannot provide the current Contractor's proposal to LC-000042 without extensive redactions due to its proprietary information. However, please be aware the original Subscription System RFP contain limited scope for the system. Please see attached copy of the previous RFP LC-000042. 