



**State of Oklahoma
Office of Management and Enterprise
Services/ ISD Procurement**

Amendment of Solicitation

Date of Issuance: 11/15/2012 Solicitation No. 4350000009
 Requisition No. 4350000028 Amendment No. 003

Hours and date specified for receipt of offers is changed: No Yes, to: _____ CST/CDT

Pursuant to OAC 580:15-4-5©, this document shall serve as official notice of amendment to the Solicitation identified above. Such notice is being provided to all suppliers to which the original solicitation was sent. Suppliers submitting bids or quotations shall acknowledge receipt of this solicitation amendment prior to the hour and date specified in the solicitation as follows:

- (1) Sign and return a copy of this amendment with the solicitation response being submitted; or,
- (2) If the supplier has already submitted a response, this acknowledgement must be signed and returned prior to the solicitation deadline. All amendment acknowledgements submitted separately shall have the solicitation number and bid opening date printed clearly on the front of the envelope.

ISSUED BY AND RETURN TO:

Office of Management and Enterprise Services
 ISD Procurement _____
 3115 N. Lincoln Blvd.
 Oklahoma City, OK 73105

Hurtisine Franklin
 Contracting Officer
(405) 521-6419
 Phone Number
Hurtisine.Franklin@omes.ok.gov
 E-Mail Address

Description of Amendment:

a. This is to incorporate the following:

b. All other terms and conditions remain unchanged.

 Supplier Company Name (**PRINT**) Date

 Authorized Representative Name (**PRINT**) Title Authorized Representative Signature



The State acknowledges number in the Section A.14 and A.36 are in error the correct number shall apply.

Please see Section A.25 below- The state acknowledges the error and a correction has been. A.25.3 is all inclusive of A.25.2

A.25. Termination for Convenience

A.25.1 The State may terminate the contract, in whole or in part, for convenience if the State Purchasing Director or the State CIO determines that termination is in the State's best interest. The State shall terminate the contract by delivering to the contractor a Notice of Termination for Convenience specifying the terms and effective date of contract termination. The contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State.

A.25.2. If the contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.

Corrections RFP:

The state acknowledges a typographical error in Section A.1.15 in the General Provisions
Offerors please disregard this typographical error. See Section A1.15. below

In Section A.1.15., what is the full word in the first line of text for this term: "*Minor Deficiency*" or "*minor informality*" means an immaterial defect in a p_____

A.1.15. Minor Deficiency or "minor informality" means an immaterial defect in a response or variation in a bid from the exact requirements of a solicitation that may be correct or waived without prejudice to other offerors. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

The state acknowledges the omission-Please see Section B.2.1

B.2. Agency Provisions

B.2.1 "Net sales" will be calculated at the end of each full week of sales to determine the amount subject to compensation

*****Note*****

A.14. Rejection of Offer

The State reserves the right to reject any offers that do not comply with the requirements and specifications of the solicitation. An offer may be rejected when the offeror imposes terms or conditions that would modify requirements of the solicitation or limit the offeror's liability to the State. Other possible reasons for rejection of offers are listed in OAC 580:16-3-19.

Attempts to impose unacceptable conditions on the State, or impose alternative terms not in the best interest of the State shall not be tolerated. Continued attempts to impose unacceptable conditions or terms on the State shall



result in a determination of your non-responsiveness of your offer due to the lack of compliance with the terms and conditions of negotiation or the solicitation.

**Responses to - Page comment added by Sarah Lamberti
Submitted 10/18/2012**

Question-1

Would the State please release OLC sales by game, by retailer for the period covered by the current contract?

Answer-1

See attached excel files. The instant data in these files represents ticket activations. Also, in the report ending 11-3-12 for the current fiscal year, the report was modified so that PCT's (PAT on the report) and 2nd terminals are all reported under one geographic location. Super Retailer sales (SRL) are reported separately labeled in each report:

- OLC Retail Sales 10-12-05 to 6-30-06
- OLC Retail Sales 7-1-06 to 6-30-07
- OLC Retail Sales 7-1-07 to 6-30-08
- OLC Retail Sales 7-1-08 to 6-30-09
- OLC Retail Sales 7-1-09 to 6-30-10
- OLC Retail Sales 7-1-10 to 6-30-11
- OLC Retail Sales 7-1-11 to 6-30-12
- OLC Retail Sales 7-1-12 to 11-3-12

Question -2.

Would the State please clarify whether vendor benchmark visits will be requested? If so, is there a specific time frame set for such visits?

Answer-2.

Vendor benchmark visits may or may not be required depending on the details of the proposals received by the State. If they are deemed necessary, Offerors will be notified with as much time to prepare for our visit as possible.

Question: 3

In Section A.1.15., what is the full word in the first line of text for this term: ““Minor Deficiency” or “minor informality” means an immaterial defect in a p_____ . .? ”

Answer 3.

**The state acknowledges a typographical error in Section A.1.15 in the General Provisions
Offerors please disregard this typographical error. See Section A.1.15. below**

A.1.15. Minor Deficiency or “minor informality” means an immaterial defect in a response or variation in a bid from the exact requirements of a solicitation that may be correct or waived without prejudice to other offerors. A minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.



Question 4- Part One

Various terms of the RFP concern “*confidential*” and “*proprietary*” information and the manner in which such information should be submitted as part of a Bidder’s proposal. Section A.2.2. of the RFP states that: “*Offers shall be submitted to the State Agency...in a single envelope, package, or container and shall be sealed.*” Sections A.7. and E.4.1. reference 74 O.S. §85.10 (The Oklahoma Central Purchasing Act). Pursuant to the Administrative Rules issued under that Act (OAC 580:16-3-9 Bid documents open for public inspection), a Bidder must follow specified procedures regarding the submission of confidential and proprietary information (emphasis added): “(b) If the bidder submits information in a response to a solicitation that the bidder considers confidential or proprietary, the bidder shall: 1) specifically identify what information is confidential or proprietary upon each page containing confidential or proprietary information; 2) enumerate the specific grounds, based on applicable laws which support treatment of the material as exempt from disclosure, and explain why disclosure is not in the best interest to the public; and 3) conspicuously mark on the outside of the bid packet to indicate it contains confidential information.” Section E.4.2. of the RFP requires the following (emphasis added): “if an offeror believes particular information requested by the RFP for evaluation purposes is proprietary, the offeror shall submit that information separate and apart from its response and mark it Proprietary and Confidential...” Lastly, Section E.4.1. of the RFP states that “Offerors claiming any portion of their offer as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality,” while Section E.4.2. of the RFP states that “if an offeror believes particular information requested by the RFP for evaluation purposes is proprietary, the offeror shall submit that information separate and apart from its response and mark it Proprietary and Confidential.” Read together, there are several apparent ambiguities among these provisions as indicated in the following questions intended to obtain the

Answer 4.-Part One

Confidential - not available to the public, e.g. because it is commercially or industrially sensitive

Proprietary- ¹used, manufactured, or sold by a person or company with an exclusive property right such as a patent or trademark ²the right of ownership, or something exclusively owned.

Bid Proposals- Reference Section A.2.2 of the General Terms and Conditions- Offers shall be submitted to the State Agency identified in the front page of this solicitation, in a single envelope, package, or container and shall be sealed. The name and address of the offeror shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER.

a) Offerors should submit their responses to the bid as required in this section of the General Terms and Conditions.

Offerors must determine how they will submit their responses, if a proposal is huge and requires a for example a Box, Crate, or any other Large Container is must be sealed and contain the following information on the container The name and address of the offeror shall be inserted in the upper left corner of the single envelope, package, or container. SOLICITATION NUMBER AND SOLICITATION RESPONSE DUE DATE AND TIME MUST APPEAR ON THE FACE OF THE SINGLE ENVELOPE, PACKAGE, OR CONTAINER. If an offeror determines their bid response is small enough to be contained in Business Envelope or a Manila Folder, the offeror must follow the instructions as prescribed in the solicitation.



- b) Any Information that the Offeror deems as Confidential and/or Proprietary should as prescribed in the RFP, clearly mark and identify such information. This information maybe submitted with the Response to the Proposal (same container) in a separate Business Envelope, Folder, or Binder and marked as required (Confidential and/or Proprietary).

Question 4-Part Two

Question: First, please clarify if the State differentiates between information that is deemed either “confidential” or “proprietary” and, if so, how, and whether the Bidder is required to submit “proprietary” information and “confidential” information under different procedures?

4-Answer-Part Two

Any Information that the Offeror deems as Confidential and/or Proprietary should as prescribed in the RF, clearly mark identify such information. This information maybe submitted with the Response to the Proposal (same container) in a separate Business Envelope, Folder, or Binder and marked as required (Confidential and/or Proprietary).

Question 4-Part Three

Question: Second, as the above-cited terms of the RFP and Central Purchasing Administrative Rules are not fully consistent regarding the required procedures for submitting confidential and/or proprietary information, will the State please clarify if it would like “confidential” and/or “proprietary” information submitted in accordance with the RFP (i.e., in a separate package) or pursuant to the Central Purchasing Administrative Rules (pages/sections marked “confidential” along with explanatory grounds, but submitted as part of the same package as the rest of the RFP)?

Answer 4-Part Three

Any Information that the Offeror deems as Confidential and/or Proprietary should as prescribed in the RF, clearly mark identify such information. This information maybe submitted with the Response to the Proposal (same container) in a separate Business Envelope, Folder, or Binder and marked as required (Confidential and/or Proprietary).

It remains the responsibility of an offeror to determine if their organization’s information is confidential and /or proprietary, it remains the responsibility of an offeror to identify and mark as such; as the definition for each of these terms are not the same.

The rules state that it is the responsibility of the offeror to identify and information that the offeror/bidder considers Confidential and/or Proprietary and mark it as such.

The RFP allows for the following:

Any Information that the Offeror deems as Confidential and/or Proprietary should as prescribed in the RFP, clearly mark and identify such information. This information maybe submitted with the Response to the Proposal (same container) in a separate Business Envelope, Folder, or Binder and marked as required (Confidential and/or Proprietary).



Confidential - not available to the public, e.g. because it is commercially or industrially sensitive

Proprietary- ¹used, manufactured, or sold by a person or company with an exclusive property right such as a patent or trademark ²the right of ownership, or something exclusively owned.

Question 4-Part Four

Question: Lastly, the State's 2005 RFP contained the following statement in Section 4.7.1.: "*The State will make reasonable attempts to maintain, in accordance with all applicable laws, the confidentiality of any trade secrets or proprietary information identified by Vendors.*" Will the State please amend Section E.4. of the current RFP to add that assurance of the State's intent to protect a Bidder's trade secrets or proprietary information?

Answer 4-Part Four

The State remains firm on E.4 as prescribed in the RFP.

E.4. Proprietary and/or Confidential

E.4.1. Offerors claiming any portion of their offer as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. **The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. §85.10.**

E.4.2.If an offeror believes particular information requested by the RFP for evaluation purposes is proprietary, the offeror shall submit that information separate and apart from its response and mark it Proprietary and Confidential. If ISD in its sole discretion agrees the information is proprietary, ISD will maintain the information as Confidential. If ISD does not acknowledge the information as proprietary, ISD will return or destroy the information with proper notice to the offeror and the evaluation will be completed without consideration of the information marked Proprietary. PROPOSALS MARKED, IN TOTAL, AS PROPRIETARY and/or CONFIDENTIAL SHALL NOT BE CONSIDERED

Question 5

Section A.2.6. states: "*By submitting a proposal, contractor agrees not to make any claims for damages or have any rights to damages, because of any misunderstanding or misrepresentation of the specifications or because of any misinformation or lack of information.*" (emphasis added). **Question:** So as to reasonably protect Contractors from the State's negligent or intentional acts, will the State please limit this waiver of claims provision by adding the following text at the end of the statement: ". . . *unless any such misrepresentation or misinformation communicated by the State is intentional or negligent.*"?

Answer 5

The State remains firm on Section A.2.6 as prescribe in the RFP.

Reference Section A.2.7

A.2.7. If a contractor fails to notify the State of an error, ambiguity, conflict, discrepancy, omission or other error in the SOLICITATION, known to the contractor, or an error that reasonably should have been known by the contractor, the contractor shall submit a proposal at its own risk; and if awarded the contract, the contractor shall not be entitled to additional compensation, relief, or time, by reason of the error or its later correction. If a



contractor takes exception to any requirement or specification contained in the SOLICITATION, these exceptions must be clearly and prominently stated in their response.

Section E.7 §E.7.1 provided an offerors the opportunity for clarifications of the RFP by way of a request for an administrative review. The specified cutoff date as note in the RFP in the aforementioned section; for submitting a request for an administrative review for RFP #435000009 was 10/04/2012 @ 3PM CST.

¹“Offerors who believe **solicitation requirements or specifications** are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing,

²“Requests for administrative review of technical or contractual requirements shall include the reason for the request, supported by information, and any proposed changes to the requirements. “

Please see Section E.7 §E.7.1 below

Section E.7.

E.7.1 RFP Clarifications

Offerors who believe **solicitation requirements or specifications** are unnecessarily restrictive or limit competition may submit a request for administrative review, in writing, to the Contracting Officer listed herein. To be considered a request for review must be received no later than 3:00PM Central Time on XXX XX, 2012. The State shall promptly respond in writing to each written review request, and where appropriate, issue all revisions, substitutions or clarifications through a written amendment to the solicitation. Requests for administrative review of technical or contractual requirements shall include the reason for the request, supported by information, and any proposed changes to the requirements.

Question 6

The OK Central Purchasing Division Administrative Rules state: “580:16-3-17. Public bid opening. *Bidders may request a bid be opened in public.* No evaluation or award shall be made at the public opening.” (emphasis added). RFP Section A.6. states that “Sealed offers MAY BE OPENED UPON PUBLIC REQUEST, by the requesting agency . . .” (emphasis added). **Question:** Will the State please explain what is meant by the underscored text in this Section A.6.?

Answer 6

A.6. Offer Public Opening

Sealed offers MAY BE OPENED UPON PUBLIC REQUEST, by the requesting agency identified in the front page of this solicitation, at the time and date specified in the solicitation as Response Due Date and Time.

This section is meant to advise, inform and relay the State’s policy regarding public openings.

Respondents to the RFP may request a Public Opening. Public Openings may also be requested by members or the general public.

A Public Opening is a public unsealing and inspection of sealed bids received in response to a RFP bid proposals are



read aloud to the those who wish to attend the opening. Public Openings are held upon request on the closing date and scheduled at the closing time. Only the Procurement Assistant and the Procurement Specialist are allowed to handle bids at Public Opening, questions regarding the

Question 7

Both Sections A.14. and A.36. of the RFP reference the Central Purchasing Administrative Rules issued under The Oklahoma Central Purchasing Act. However, both references are to the *former* Administrative Rules (OAC 580:15) instead of those Administrative Rules effective as of July 1, 2011 (OAC 580:16). **Question:** Please confirm that all references in the RFP to the *former* Administrative Rules (OAC 580:15) are incorrect and that the references should instead be to the equivalent sections (if applicable) of the current Administrative Rules (OAC 580:16).

Answer 7

The State acknowledges number in the Section A.14 and A.36 are in error the correct number shall apply.

Question 8

Section A.16. contemplates the possibility of modifications to the Contract, noting in Section A.16.1. that "*The contract may be modified only through a written Contract Modification, signed by the State.*" Similarly, under Section A.51. the State "*reserves the right to modify the terms of this contract at any time to allow for technologies not identified elsewhere under this document,*" including an "*emerging technology*" and "*reserves the right to include such technology hereunder or to issue a formal modification or amendment to the contract.*" **Question:** Will the State please amend Sections A.16.1. and A.51. to add a term stating that: "*If any modification duly issued by the State causes an increase in the agreed scope of work as defined in the contract documents, the cost of which is not expressly included within the agreed base system and services, the State and Contractor will negotiate in good faith an equitable adjustment to compensate the Contractor's added costs of supplying the products and/or services required by the modification, plus a reasonable profit on any such added costs.*"?

Answer 8

The State remains firm on clauses Section A.16.1 and A.51 until such time of award. The state may negotiate with the awardee.

Question 9

Section A. 21. (Non-Appropriation Clause) relates to contracts "issued for multiple years," and further states that "the procuring agency may terminate its obligations under the contract if sufficient appropriations are not made by the Legislature or other appropriate governing entity to pay amounts due for multiple year agreements." As: (i) the Proposal is for a one (1)-year contract (with 9 renewal terms), and (ii) more importantly, the Legislature is not required to appropriate funds in connection with this contract, as pursuant to the Oklahoma Education Lottery Act, Title 3A O.S. §731 (Funding of Oklahoma Lottery Commission - Procurements), "The Oklahoma Lottery Commission shall be self-sustaining and self-funded," the Bidder does not believe this Section A.21. is appropriate or required.

Question: Since the OLC is self-funded and does not require appropriations to continue operations, we request that the State delete Section A.21. from the RFP as inapplicable to this procurement.

Answer 9

Please Reference Section A of the General Provisions

A. GENERAL PROVISIONS

The following provisions shall apply where applicable to the solicitation.



Question 10- Part One

Section A.24.2. would allow the State to “terminate the contract immediately, without a 30-day written notice to the contractor, when violations are found, when conditions preclude the 30-day notice, or when the State determines that, an administrative error occurred prior to contract performance.” As written, Section A.24.2. raises the following concerns: (i) It fails to include any advance notice to Contractor and a reasonable opportunity to cure any potential ground for termination; and (ii) It is ambiguous as to the intended meaning of the terms “violations,” “conditions” and “administrative error prior to contract performance” as used in this Section A.24.2.

Question: Will the State please amend Section A.24.2. to require the State to provide written Notice to Contractor of an intent to terminate the Contract for cause and a minimum Notice period preceding any such termination of not less than 15 days or the minimum period reasonably needed, whichever is longer, to cure the “condition,” “violation” or “administrative error” giving rise to such Notice?

Answer 10- Part One

The term “may” is applied in this clause; The state remains firm on this clause until such time of award. The state may negotiate with the awardee.

Question 10- Part Two

Question: Entering into an agreement with ambiguous terms greatly increases a Contractor’s risk and may impact a Bidder’s ability to obtain certain insurance and bonding and may force the Bidder to account for this risk in its Offer. Will the State please clarify the ambiguous terms noted above by amending Section A.24.2. to add definitions of the terms “condition,” “violation” and “administrative error prior to contract performance”?

Answer 10-Part Two

The term “may” is applied in this clause; the state remains firm on this clause until such time of award. The state may negotiate with the awardee.

Question 10-Part Three

Question: Additionally, as written, Section A.24.2. does not condition the State’s right to terminate on any violation, condition or administrative error being *material*. The Contract should not be subject to a termination for default or cause based on immaterial performance failures. Will the State please add the word “material” before each of following terms in Section A.24.2: “condition,” “violation” and “administrative error prior to contract performance”?

Answer 10-Part Three

The term “may” is applied in this clause; the state remains firm on this clause until such time of award. The state may negotiate with the awardee

Question 11-Part One

Section A.25.2. states that “*If the contract is terminated (for the State’s convenience), the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.*” (emphasis added). Section A.25.3. states that “*If the contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.*” There are two problems with these provisions: First, they are inconsistent (possibly as a result of a typographical error in inadvertently deleting part of one term, as suggested by the absence of a period at the end of A.25.3.), making a contractor’s recovery under A.25.3. more restrictive than under A.25.2.

Question: Will the State please confirm that the inclusion of Section A.25.3., which partially repeats Section A.25.2., is an error and delete that section from the RFP? Second, absent a compensation provision that appropriately recognizes the major capital investment required to design, manufacture or purchase component parts as needed, and implement the



Computer Gaming System, the Contractor would be at significant economic risk, especially during the early years of the Contract, should the State elect to terminate the Contract for its Convenience, pursuant to A.25.1., as its significant capital investment will not have been fully recovered via sales through the Contractor's terminals.

Answer 11-Part One

Please see Section A.25 below- The state acknowledges the error and a correction has been. A.25.3 is all inclusive of A.25.2

A.25. Termination for Convenience

A.25.1 . The State may terminate the contract, in whole or in part, for convenience if the State Purchasing Director or the State CIO determines that termination is in the State's best interest. The State shall terminate the contract by delivering to the contractor a Notice of Termination for Convenience specifying the terms and effective date of contract termination. The contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State.

A.25.2.If the contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.

The term "may" is applied in this clause; the state remains firm on this clause until such time of award. The state may negotiate with the awardee.

Answer 11-Part Two

The term "may" is applied in this clause; the state remains firm on this clause until such time of award. The state may negotiate with the awardee.

Question 12

The second sentence of Section A.35. states that "*If the need arises for goods or services over and above the contract for this project, contractor shall cease the project and contact agency for approval prior to proceeding.*" (emphasis added).

Question: To remove any ambiguity over the State's intent of the quoted statement and to assure that lottery operations will not be interrupted by a project stoppage in this situation, will the State please delete the phrase "*cease the project and*" from this sentence in Section A.35.?

Answer 12

- a) The state remains firm on this clause.
- b) Only an individual that as been duly authorized as representative of state can obligate the state for payment of goods or services.

c) A.35. Unauthorized Obligations

At no time during the performance of this contract shall the contractor have the authority to obligate the State or the agency for payment of any goods or services over and above the awarded contract. If the need arises for goods or services over and above the contract for this project, contractor shall cease the project and contact agency for approval prior to proceeding.

****Please Note the following terms in Section A –General Provisions****

A.16. Contract Modification

A16.1. The contract issued as a result of this solicitation is under the authority of the State personnel signing the Contract. The contract may be modified only through a written Contract Modification, signed by the State.



substitution of work or materials, directed by a person who is not specifically authorized by the Office of State Finance in writing, or made unilaterally by the contractor, is a breach of the contract. Unless otherwise specified by applicable law or rules, such changes, including unauthorized written Contract Modifications, shall be void and without effect, and the contractor shall not be entitled to any claim under a contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the resultant contract.

A.17. Delivery, Inspection and Acceptance

- A.17.1. Unless otherwise specified in the solicitation or awarding documents, all deliveries shall be F.O.B. Destination. The contractor shall prepay all packaging, handling, shipping and delivery charges and firm prices quoted in the offer shall include all such charges. All products and/or services to be delivered pursuant to the contract shall be subject to final inspection and acceptance by the State at destination. "Destination" shall mean delivered to the receiving dock or other point specified in the purchase order. The State assumes no responsibility for goods until accepted by the State at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the contractor until accepted by the receiving agency. The contractor shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.
- A.17.2. Contractor(s) shall be required to deliver products and services as offered on or before the required date. Deviations, substitutions, or changes in products and services shall not be made unless expressly authorized in writing by the State.

Question 13

Section A.47. states that "*No offshore services are provided pursuant to this contract.*" **Question:** The intent of this statement is unclear. Contractors furnishing products and services under contract with domestic lotteries often utilize off-shore facilities and vendors to provide some of the required products and/or services. Will the State please: (i) confirm that the Contractor(s) awarded a Contract in this procurement shall be permitted to utilize offshore facilities and engage offshore vendors to meet the requirements for products and services; and (ii) specify any intended restrictions on such utilization?

Answer 13

- a) The state does not accept sealed bids or offer documents submitted in response to a request for tenders and containing detailed information on requirements and terms associated with a potential contract. e.g., firms registered or incorporated outside the country where it has its main offices and operations,
- b) The state allows for implementation and Service Support only as related to offshore services.

Please reference Section B.3 in the RFP

B.3. Contractors and Sub-Contractors Obligations

- B.3.1 The contractor may use sub-contractors in support of this contract; however, the contractor shall remain solely responsible for the performance of this contract.
- B.3.2. All payments for products or services shall be made directly to the contractor. If sub-contractors are to be used, the sub-contractors shall be identified in the Proposal and shall include the nature of the services to be performed. The State reserves the right to approve any and all sub-contractors providing services under this contract.
- B.3.3. All contractor and sub-contractor changes after award, including changes of the actual employees performing services on this contract, are subject to approval by the State. No payments shall be made to the contractor for



- B.3.3. All contractor and sub-contractor changes after award, including changes of the actual employees performing services on this contract, are subject to approval by the State. No payments shall be made to the contractor for services performed pursuant to this contract by unapproved employees of a sub-contractor.
- B.3.4. Contractor's employees or agents, if any, who perform services for the State under this agreement shall also be bound by the provisions of this agreement. At the request of the State, contractor shall provide adequate evidence that such persons are their employees or agents. In accordance with the section on "Employment Relationship", the State shall not be responsible to contractor's employees for any employee benefit or any obligation relating to employment, including health insurance benefits, workers' compensation insurance, paid vacation, or any other employee benefit.

Question 14-Part One

Section A.48. states that *"The contractor's repeated failure to provide defined services, without reasonable basis as determined by the sole discretion of the State of Oklahoma's chief Information Officer, shall constitute a material breach of the contractor's obligations, which may result in cancellation of the contract."* (emphasis added). Section C.3.3.2. states in relevant part that *"Failure to meet or to maintain OLC security will be grounds for exclusion from further consideration, or if a Contract has been awarded, will be grounds for immediate cancellation of the Contract."* (emphasis added).

Question: Does the State intend the term "*cancellation*" as used in Sections A.48. and C.3.3.2. to mean the same as the word "*termination*" as used in Section A.24.2.? If not, will the State please define the term "*cancellation*" as used in these two provisions?

Answer 14-Part One

A.48. Failure to Provide

The contractor's repeated failure to provide defined services, without reasonable basis as determined by the sole discretion of the State of Oklahoma's chief Information Officer, shall constitute a material breach of the contractor's obligations, which may result in cancellation of the contract

- a) The term "may" result is use in A.48.
- b) In Section C.3.3.2 the term "will is used (the term is specific)
- c)The terms Termination and Cancellation are to be used interchangeably

Please reference Section A.57. Mandatory and Non-Mandatory Terms

A.57. Mandatory and Non-Mandatory Terms

- A.57.1. Whenever the terms "shall", "must", "will", or "is required" are used in this RFP, the specification being referred to is a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the Offeror's Proposal.
- A.57.2. Whenever the terms "can", "may", or "should" are used in this RFP, the specification being referred to is a desirable item and failure to provide any item so termed shall not be cause for rejection.

A.58. Special Provisions

Special Provisions apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.



Question 14 –Part Two

Question: As written, neither Sections A.48. nor C.3.3.2. requires the State to provide a Contractor with advance notice of intent to cancel and a reasonable opportunity to cure the problem giving rise to a potential cancellation. Will the State please confirm that it will allow a cure period; and if so, please amend both Sections A.48. and C.3.3.2. to require the State to provide written Notice to Contractor of an intent to cancel the Contract and a minimum Notice period preceding any such cancellation of not less than 15 days or the minimum period reasonably needed, whichever is longer, to cure the “*failure to provide defined services*” or “*failure to meet or to maintain OLC security*” giving rise to such Notice?

Answer 14-Part Two

- a) The term “may” is applied in this clause; the state remains firm on this clause
- b) **In Section C.3.3.2 the term “will is used (the term is specific) the term “will” when used is mandatory.**

Please refer to the following sections of section of Section A -General Provisions

*****Note *****

A. General Provisions

The following provisions shall apply where applicable to the solicitation

A.57. Mandatory and Non-Mandatory Terms

- A.57.1. Whenever the terms “shall”, “must”, “will”, or “is required” are used in this RFP, the specification being referred to is a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the Offeror’s Proposal.
- A.57.2. Whenever the terms “can”, “may”, or “should” are used in this RFP, the specification being referred to is a desirable item and failure to provide any item so termed shall not be cause for rejection.

A.58. Special Provisions

Special Provisions apply with the same force and effect as these General Provisions. However, conflicts or inconsistencies shall be resolved in favor of the Special Provisions.

Answer 14- Part Three

Please refer to Sections A.18, A.24 and A.25 of the General Terms and Conditions § A.18.1 & A.24.1, A.24.2 , A.24.3 and A.25.1, A.25.2 and A.25.3

A.18. Invoicing and Payment

A.18.1. Contractor shall be paid upon submission of an accurate and proper invoice(s), as defined by Title 62 O.S. §34.73, to the agency, at the prices stipulated on the contract. Failure to provide accurate invoices may result in delay of processing invoices for payment. **Pursuant to 74 O.S. §85.44B, invoices shall be paid in arrears after products have been delivered or services provided. Invoices shall contain the purchase order number, a description of the services provided, and the dates of those services.**

A.24. Termination for Cause



A.24.1. The contractor may terminate the contract for default or other just cause with both a 30-day written request and upon written approval from the State. The State may terminate the contract for default or any other just cause upon a 30-day written notification to the contractor.

A.24.2. The State may terminate the contract immediately, without a 30-day written notice to the contractor, when violations are found, when conditions preclude the 30-day notice, or when the State determines that, an administrative error occurred prior to contract performance.

A.24.3. If the contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted.

A.25. Termination for Convenience

A.25.1. The State may terminate the contract, in whole or in part, for convenience if the State Purchasing Director or the State CIO determines that termination is in the State's best interest. The State shall terminate the contract by delivering to the contractor a Notice of Termination for Convenience specifying the terms and **effective date of** contract termination. The contract termination date shall be a minimum of 60 days from the date the Notice of Termination for Convenience is issued by the State.

A.25.2. If the contract is terminated, the State shall be liable only for products and/or services delivered and accepted, and for costs and expenses (exclusive of profit) reasonably incurred prior to the date upon which the Notice of Termination for Convenience was received by the contractor.

A.25.3. If the contract is terminated, the State shall be liable only for payment for products and/or services delivered and accepted

Question 15

Will the State please clarify that the terms "software" and "Software" as used in Section A.52. and throughout the RFP refer to any deliverable provided to the State by the Contractor that: (i) first originated under this Contract; (ii) is unique to the State; and (iii) was paid for by the State?

Answer 15

A.52. 1 Means - It is understood and agreed that the **Software is being developed by the contractor for the sole and exclusive use of the State of Oklahoma.**

A.52. Ownership Rights

A.52.1. It is understood and agreed that the Software is being developed by the contractor for the sole and exclusive use of the State of Oklahoma. Moreover, except with regard to any deliverable based on contractor's reusable or pre-existing intellectual property ("Utilities"), the State of Oklahoma shall be deemed the sole and exclusive owner of all right, title, and interest therein, including all copyright and proprietary rights relating thereto.

A.52.2. Except for any utilities, all work performed by the contractor of software and any supporting documentation therefore shall be considered as Works for Hire (as such are defined under the U.S. Copyright Laws) and, as such, shall be opened by and for the benefit of State of Oklahoma.

Offerors please refer to the following sections of section of Section A -General Provisions



*****Note *****

A. General Provisions

The following provisions shall apply where applicable to the solicitation

Question 16

With respect to Sections A.53.1. and A.53.2., will the State please clarify that its right to use whatever materials and information it will own pursuant to these provisions shall be subject to whatever intellectual property rights are held by a third party(ies) that may be applicable thereto? Further, will the State please clarify that its right to use the "Utilities" is solely in connection with the software provided by the Contractor under the Contract?

Answer 16

The state remains firm on this clause until such time of award. The state will open for discussions with the awardee. Offerors please refer to the following section of Section A -General Provisions

*****Note *****

A. General Provisions

The following provisions shall apply where applicable to the solicitation

Question 17

Contractor's practice is to deposit its proprietary source code into escrow for the benefit of customers who have purchased its systems.

Question: Given that this is a lease rather than purchase and sale agreement, will the State add the following provisions to Section A.54.: 1) "Notwithstanding anything to the contrary in this provision or elsewhere in the Contract, Contractor's obligation hereunder shall be limited to ensuring that a copy of its proprietary source code for the deliverables provided under the Contract and related upgrades shall be placed in escrow. 2) "Upgrades to Contractor's proprietary source code shall be deposited annually unless a material change to the proprietary source code reasonably requires a more frequent deposit. 3) "Notwithstanding this or any other provision of the Contract which may indicate or imply otherwise, as between the State and Contractor, Contractor shall be deemed to own all rights, title and interest in all proprietary source code deposited in escrow. 4) "Notwithstanding anything in this or any other provisions of the Contract that may indicate or suggest the contrary, in the event that Contractor breaches its obligations to maintain and support the online products in the manner that Contractor is expressly obligated to do so hereunder, and fails to cure the alleged breach within the prescribed period after receipt of written notice from the State of such breach, Contractor will, at Contractor's option, either retain the services of a third party to provide the specific maintenance service that Contractor failed to provide in accordance with the requirements of the Contract, or will authorize the escrow agent to release to the State in trust, whatever portion of the escrowed source code is technically required to fix the particular proprietary source code defect, but under strict obligations of confidentiality. On repair of the defect, Lottery shall be obligated to return the source code to Contractor or, with Contractor's permission, maintain it in a secure and limited access file in the event that the State's fix was not permanent."

Answer 17

The state remains firm on this clause until such time of award. The state will open for discussions with the awardee. Offerors please refer to the following section of Section A -General Provisions

*****Note *****

A. General Provisions

The following provisions shall apply where applicable to the solicitation



Question- 18

The first sentence of the definition of “Average Lost Sales” or “Estimated Lost Sales” in Section B.1.1. states that “*Average Lost Sales*’ or *Estimated Lost Sales*’, in reference to liquidated damages (LDs), will be included in the Vendor’s proposal for all appropriate items, including items mentioned in this RFP as being subject to LDs.” (emphasis added). Further, Sections C.2.32.1. and C.3.30.1. both state that the “Offeror’s proposal *must include proposed LD where requested throughout this SOLICITATION, and those proposed LD must be summarized at this point in the Proposal.*” (emphasis added).

Question: Will the State please clarify what is meant by the term “*appropriate items*” in the definition set forth in Section B.1.1.? Additionally, will the State please clarify whether it expects Bidders to propose LDs for any performance incidents other than those expressly noted in the RFP?

Answer-18

Offerors should describe proposed LD where requested and provide a summary of them where requested. “Appropriate items” means in all sections where LD are specifically requested. If Offeror feels there are other performance related LD that should be included, include them in the appropriate summary with an explanation of what they are.

Question- 19

Section B.2.1. was omitted from the revised version of the RFP. **Question:** Please confirm that this deletion was a printing error; and if so, please re-insert Section B.2.1. into the RFP

Answer-19

The state acknowledges the omission-Please see corrected Section B.2.1 below

B.2. Agency Provisions

B.2.1 “Net sales”, will be calculated at the end of each full week of sales to determine the amount subject to compensation.

Question 20

Section B.2.6. includes two separately numbered statements concerning non-revenue software maintenance. The first provision in subsection B.2.6. states “*Updates /modifications to the Computer Gaming System (CGS) requested by OLC, as related to changes to functionality for items not related to additions of revenue producing games or other game changes to correct problems in systems / games that are designed to produce revenue.*”

Question: The quoted provision in Section B.2.6. is a sentence fragment. Will the State please clarify its intended meaning? Additionally, will the State please confirm it will separately compensate Contractor for any such updates/modifications, or whether the Contractor should instead include a proposed price/hourly rate for performing the work required by such updates/modifications?

Answer 20-

The sentence fragment is describing “non-revenue software maintenance updates”. The State expects that a reasonable amount of such changes will be included in the base pricing. To protect the Offeror from unreasonable and frequent



requests for such changes by the State, the State suggests that the Offeror propose reasonable limitations on frequency and / or programming hours involved in such changes. Section C.2.15.2 indicates the Proposal should describe any limitations on such updates and if there are limitations, the Proposal should include proposed costs for exceeding such limits. This applies only to this type of change. Changes to implement revenue producing functions, to update / fix revenue producing functions and changes related to MUSL compliance are to be included entirely in the proposed base pricing. This limit would also not apply to any program / software changes required to set up the Vendor systems to accommodate Lottery practices and requirements during a transition period from one Vendor to another.

Question 21

Section C.2.15. ONLINE SYSTEM SOFTWARE DEVELOPMENT AND SUPPORT states in Section C.2.15.2. that *“Vendor’s Proposal should describe any limitations for annual non-revenue software maintenance updates to accommodate changes requested by the OLC. Proposed costs of exceeding the limits must be included in the cost proposal.”* (emphasis added).

Question: It is impossible to know, based on information disclosed in the RFP, the extent to which State-requested non-revenue software maintenance updates may exceed agreed limits. Accordingly, will the State please confirm that Offeror’s proposed costs of exceeding the agreed limits should be included in the cost proposal as an hourly rate?

Answer 21

Lottery requests for such changes have typically been made on a quarterly basis and have been relatively minor in regards to Vendor resources, not exceeding 1500 hours on an annual basis. A limit that accommodates a level slightly higher than that is what the State expects to see. Any proposed costs for exceeding the Vendor proposed limit should include hourly rates that would be charged.

Question 22

Section B.3.1.4. specifies a State Notice to Contractor of at least 30 days regarding the State’s exercise of its options to renew, or not renew, the Contract.

Question: As 30-day notice may not be a sufficient amount of time for a Contractor to allocate or redeploy its resources as needed and implement contingency plans to assure uninterrupted lottery operations, will the State please amend Section B.3.1.4. to include a 90-day notice to the Contractor of the State’s exercise of its option to renew, or alternatively not to renew, the Contract?

Answer 22

The state remains firm on this clause- Whenever the term “shall” is used is a mandatory requirement

B.3.1.4. Notification to exercise the option to renew the contract shall be set forth, in writing, by the State at least 30 days prior to the end of each contract period. The contract shall be contingent upon approval by the State. If a decision is made not to exercise an option period, notice shall be sent at least 30 days prior to the end of the current contract period.

Please reference the following section of the RFP

A.57. Mandatory and Non-Mandatory Terms

A.57.1. Whenever the terms “shall”, “must”, “will”, or “is required” are used in this RFP, the specification being referred to is a mandatory specification of this RFP. Failure to meet any mandatory specification may cause rejection of the Offeror’s Proposal.

A.57.2. Whenever the terms “can”, “may”, or “should” are used in this RFP, the specification being referred to is a



desirable item and failure to provide any item so termed shall not be cause for rejection.

Question 23

Regarding the requirement within Section C.2.1.9., is it the expectation of the State to have both primary and backup data centers physically manned 24 hours a day, seven days a week or just the primary with the backup being monitored 24 hours a day, seven days a week with all appropriate security measures in place?

Answer 23

It is the intention of the State that the facilities in which the primary and back-up data centers are housed be physically manned 24/7.

Question 24

Section C.2.5.2. provides that "Offeror must install additional games and enhancements to existing games *if ordered* by the OLC."

Question: Does the State intend that the cost to develop and install additional games and enhancements should be included in an Offeror's bid price? If so, as it is impossible to know, based on information disclosed in the RFP, the extent to which the State may request additional games and enhancements to existing games, will the State please confirm that Offeror's proposed costs of developing and installing such games should be included in each Offeror's pricing proposal at a time plus materials rate? If not, will the State please advise Offerors how the costs of such work should be accounted for in pricing proposals?

Answer 24

The cost of such changes would be included in the base pricing from the Vendor. Typically, changes have been those required by MUSL (currently Hot Lotto and Powerball in Oklahoma) or for the Mega Millions game. The Lottery currently has Pick 3, Pick 4 and Cash 5 as instate player pick games, Pick 4 being the last one added in July of 2011. Any programming changes required to accommodate promotions or instant games would also need to be included in the base pricing offered by the Offeror.

The State maintains that any changes needed to implement, support or fix programming related to revenue producing games also benefits the Vendor. Related costs for new revenue producing games, implemented to increase lottery sales, would be recovered by the Vendor in increased income from the base pricing rates multiplied by the increased sales. Offerors should be able to estimate how many changes are typically required for a lottery due to MUSL or Mega Millions changes and an approximate number of hours required to make the changes.

Question 25

Will the State please delete Section C.2.25.3., as it duplicates the last sentence in C.2.22.2.

Answer 25

C.2.25.3 is hereby deleted.

Question 26

The third (last) sentence of Section C.2.30.1.(b). contains the letters "cc," which appear to be included in error.

Question: If this is so, will the State please delete those letters from Section C.2.30.1.(b) or, alternatively, explain their meaning in this sentence?



Answer 26

The state acknowledges and confirms this to be a typographical error. Offerors will please disregard

C.2.30. SECURITY PLAN

C.2.30.1. Offeror must maintain a security program that protects the integrity of all online game and instant ticket transactions and protects the physical environment that houses the system's software and hardware components. Offeror's proposal must describe in detail its approach to ensure that these security control objectives will be met.

b) Offeror will be required to maintain all aspects of gaming systems so that they are in compliance with security standards of the Multi-State Lottery Association (MUSL), unless otherwise grandfathered in by MUSL. Offeror's Proposal should describe how Offeror will comply with this requirement and establish appropriate deadlines to correct any areas that are not in compliance. Cost for this will be included in the base price quote and will not apply to any agreed-to resource cc) limitations regarding system modifications, revisions or amendments.

Question 27

Sections C.2.32.1. and C.3.30.1. both require that the Offeror "include proposed LDs where requested throughout this SOLICITATION, and those proposed LD must be summarized at this point in the Proposal." **Question:** Please clarify whether the State intends that Online-related LDs are to be summarized only in response to C.2.32.1. and Instant Ticket-related LDs are to be summarized only in response to C.3.30.1. or, alternatively, should all proposed LDs be set forth twice; i.e., in response to each of Sections C.2.32.1. and C.3.30.1.? Further, Sections C.2.32.3. and C.3.30.3. both state that these LDs "shall be in addition to, not in lieu of, the rights of the OLC to pursue other appropriate remedies." However, the Oklahoma Statutes, in Title 15, Section 215 (Amount presumed to be damages, provision for), expressly provide that LDs are *only* appropriate and valid "when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage." (15 O.S. §215) As such, when LDs are assessed, they are intended as the exclusive remedy for a given performance failure – in lieu of separate recovery of actual damages. As court decisions around the U.S. have made clear, where duplicate assessments of damages for the same contract breach result in an improper windfall recovery, the contract provision permitting such assessments is void as an illegal penalty. **Question:** As LD assessments are intended to be exclusive remedies, will the State please delete "and shall be in addition to, not in lieu of, the rights of OLC to pursue other appropriate remedies" from both Sections C.2.32.3. and C.3.30.3.? Lastly, unlike the Liquidated Damages provisions for the Instant Ticket Services (i.e., RFP Section C.3.30.6.), the Liquidated Damages terms for the Online Lottery Games and Operating System, as set forth Section C.2.32., do not include a liability exception in the event of a "Force Majeure Event."

Question: Will the State please add a Force Majeure Event exception, as new Section C.2.32.7., like the term included in Section C.3.30.6.?

Answer 27

Online-related LD should be summarized in response to C.2.32.1 and Instant-related LD should be summarized in response to C.3.30.1. They do not need to be repeated in both sections.

The State adds the following as provided for under Section C.3.30.6 and C.2.32 of the RFP B "Special Provisions".

Force Majeure

Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been



avoided by exercising reasonable diligence. Force Majeure shall include acts of God, war, riots, strikes, fire, floods, or other similar occurrences.

Force Majeure shall not include, or be related to, the following occurrences:

- Late delivery or equipment, supplies or materials or an oversold condition of the market.
- Inability of either the Contractor or approved subcontractor to acquire or maintain any required insurance, bond, license, or permit.

Notification: If either party is delayed by Force Majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of it shall be provided. The time of completion for the suppliers' performance may be extended by contract modification for a period of time as determined by the State Purchasing director equal to the time that the results or effects of such delay prevented the supplier from performing in accordance with this contract.

Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment, or services from the best available source during the time of Force Majeure, and Contractor shall have no recourse against the state.

Question 28

Will the State please confirm that the costs (including legal) of registering "new trademarks and services marks developed for OLC" will be borne by the State, by adding the following at the end of the sentence in Section C.3.23.3.: "... and at the State's sole cost and expense."

Answer 28

Yes. See the following language which modifies C.3.23.3:

C.3.23.3. New trademarks and service marks developed for OLC will be registered by legal counsel chosen by OLC in the name of OLC for its sole use and at the State's sole option, cost and expense.

Question 29

The RFP in Section C.3.30.6. uses the term "Force Majeure Event" with the letter caps on those words, suggesting it is a defined term in the RFP. However, the RFP does not include a definition of that term.

Question: Will the State please add the following definition of "Force Majeure Event" in Section A.1.: "*Force Majeure Event*" means an event which results in a delay caused by, or resulting from, (i) any acts, omission, or neglect of the other party or its representatives, or (ii) acts of God, war or other emergency, acts of terrorism, any outbreak of hostilities, or other national or international calamity or crisis, civil commotion, fire, accident, flood or casualty, strike, lock-out, labor difficulties, breakdown, failure of supply or shortages of labor, materials, or equipment, government orders or regulations, unusually severe weather, or any other causes beyond such party's reasonable control. The period of time in connection with such Force Majeure Event shall not be counted in determining the time during which such work shall be completed hereunder, and such time shall be deemed to be extended by the period of such delay. The Offeror/Bidder/Contractor shall further not be responsible for any inability to perform, or delay in the performance of, the services or deliverables described herein, or for any claims, defects, or damages relating to such services or deliverables during this Force Majeure Event period."

Answer 29

The State adds the following as provided for under Section C.3.30.6 and C.2.32 of the RFP B "Special Provisions".



Force Majeure

Definition: Except for payment of sums due, neither party shall be liable to the other or deemed in default under this contract if and to the extent that such party's performance of this contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force Majeure shall include acts of God, war, riots, strikes, fire, floods, or other similar occurrences.

Force Majeure shall not include, or be related to, the following occurrences:

- Late delivery or equipment, supplies or materials or an oversold condition of the market.
- Inability of either the Contractor or approved subcontractor to acquire or maintain any required insurance, bond, license, or permit.

Notification: If either party is delayed by Force Majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force Majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of it shall be provided. The time of completion for the suppliers' performance may be extended by contract modification for a period of time as determined by the State Purchasing director equal to the time that the results or effects of such delay prevented the supplier from performing in accordance with this contract.

Rights Reserved: The state reserves the right to cancel the contract and/or purchase materials, equipment, or services from the best available source during the time of Force Majeure, and Contractor shall have no recourse against the state.

Question 30

Section C.3.2.3 of the RFP states that all tickets "must contain full UV coating over the entire front surface of the ticket..." **Question:** UV coating over the play area will affect the scratch characteristics of a ticket. Would the State please clarify that the UV coating would need to be applied over the display area (non-play area) of the OLC's tickets?

Answer 30

OLC prefers that proposals include full UV coating.

- Offerors may propose non-full UV coating as an alternative product.
- Proposals shall include pricing/cost of the proposed alternative
- Pricing/cost shall include the cost of full UV coating to clearly demonstrate any resulting reduction in price/cost.

Any proposed alternative Products/Services shall include price/cost
Proposed alternatives must include cost of primary Products/Services to clearly demonstrate any resulting reduction in price/cost. **Please reference Section G.2.4 of the RFP for Alternative Products/Services**

Question 31

Answer 31

Question 32

Section D.4.5. is inconsistent with the Oklahoma Central Services Administrative Rules' requirements for defining and determining a Responsive Bid. Specifically, Rule 580:16-1-2. Definitions states that "'*Responsive*' means a bid or proposal that has been determined to conform to the essential requirements of a solicitation." (emphasis added).



Further, Rule 580:16-7-32 lists the multiple reasons for rejecting a bid as non-responsive. Of those reasons, Section D.4.5. includes only subsection (1) of Rule 580:16-7-32 (“the bid fails to acknowledge an amendment the State Purchasing Director issues to a solicitation”) among the four requirements for the State to determine a responsive bid.

Question: Based on the foregoing Rules, it is clear that many RFP requirements omitted from Section D.4.5., e.g., responses to the technical and pricing requirements, are “essential” in determining whether a bid is responsive. So as to clarify that the four listed requirements in Section D.4.5. are in fact “preliminary” requirements, the satisfaction of which is necessary to allow a Proposal to be further considered in the evaluation process, will the State please amend Section D.4.5. as follows:

“D.4.5. Evaluation Process -Determination of Solicitation Responsiveness ~~Satisfaction of Preliminary Requirements~~—An responsive offer is defined as an offer that ~~must meets all the general mandatory~~ **preliminary requirements as outlined below:**

- Responding Bidder Information Sheet complete Form 076
- Certification for Competitive Bid and Contract (Non-Collusion Certification) Form 004
- Worker’s Compensation Insurance Certificate
- Amendments, if issued, are acknowledged.

*Meeting all **preliminary** requirements outlined above allows the offer to proceed in the evaluation process. Failure to meet all of the above may result in the proposal being disqualified from further evaluation.”*

Answer 32

- a) The term “may” is applied in this clause; the state remains firm on this clause

Question 33

Section E.3.2. requires that the Offeror’s offer include an original, plus Nine (9) copies of documents. In Section E.4., the RFP states that proprietary information must be submitted separate and apart from the response. In addition, Section G, Price and Cost, states that pricing must be submitted in a separately sealed envelope.

Question: Would the State please clarify the number of copies and CDs required for the 1) confidential/proprietary information submitted separate from the response 2) the number of copies and CDs of pricing to be included in a proposal submission?

Answer 33

- a) An original document, plus **Nine (9)** copies for a total of **ten (10)**
Must include RFP response, Cost Proposal, Confidential /Proprietary information
- b) **three (3) “machine readable”** versions, preferably in Microsoft WORD format, on CD or DVD,
Must in include- RFP response 1 CD - Confidential /Proprietary – 1 CD- Cost Proposal 1-CD

Question 34

Section E.5.1. states that “Proposals will not be considered confidential after a contract is awarded.”

Question: Will the State please add the following at the end of the last sentence of Section E.5.1.: “*except for any portion(s) of a Proposal that are exempt from public disclosure under the Oklahoma Open Records Act or other*”



applicable Oklahoma law.”?

Answer 34

The state remains firm on this clause

E.5. Oklahoma Open Records Act

E.5.1. Proposals are subject to public disclosure in accordance with the Open Records Act. To the extent permitted by the **Oklahoma Open Records Act, 51 O. S. (2001) § 24A.1-27**, the offerors proposals will not be disclosed, except for purposes of evaluation, prior to approval by the CIO of the resulting contract. All material submitted becomes the property of the State of Oklahoma. Proposals will not be considered confidential after a contract is awarded.

Question 35

The deliverables set forth in Sections E.9.7. (Financial Status) and E.9.9. (Certain Ancillary Agreements) are both listed as being a “MANDATORY DELIVERABLE.”

Question: Will the State please explain why only the deliverables set forth in Sections E.9.7. and E.9.9. are listed as “mandatory” deliverables, and why the other deliverables listed in Section E.9. are not similarly listed as “mandatory”?

Answer 35

Whenever the terms “Must, Will or shall are used this is a Mandatory requirement.

Question 36

Section E.9.6. requests Bidder disclosure of “any litigation or pending litigation for the past five years” and states that “Proper completion of Attachment A will satisfy this requirement.” However, Paragraph 6. of Attachment A only provides for the disclosure of “pending” litigation, and there is no corresponding Section of Attachment A for the disclosure of past litigation for 5 years.

Question: Please clarify what Paragraph, if any, of Attachment A is the appropriate location for the disclosure of non-pending litigation for the past 5 years. Further, will the State revise Section E.9.6. to limit the disclosure requirement to only “material litigation,” which can be defined as follows: “*Material litigation* means any litigation that, according to generally accepted accounting principles, is deemed significant to Bidder’s financial health and would be required to be referenced in Bidder’s annual audited financial statements, report to shareholders or similar documents.”

Answer 36

- a) **Attachment A should be completed as prescribe.**
- b) **The state remains firm on clause E.9.6**

Question 37

Section E.9.7., Financial Status, requires that the Offeror present the last three years of its financial statements and, if the Contractor is a subsidiary of another entity, the last three years of audited financial statements of the parent company must also be submitted.



Question: If the Offeror and its subsidiaries fully consolidate their financial reporting and operational results with the parent entity and, as a result,, the parent entity’s financial reporting presents the most appropriate measure of Offeror’s financial capability, would the State please confirm that only the parent’s audited financial statements are required to be presented?

Answer 37

- a) **If the parent entity is wholly responsible for the fulfillment of a resulting contract, the financial reporting must be to that level**
- b) **If the subsidiaries is whole responsible for the fulfillment of resulting contract, the financial reporting must be to that level**

Question 38

Section E.10 of the RFP details the form of the notice of award.

Question: Will the State please provide the expected award date for this procurement? _

Answer 38

The state is currently unable to provide a projected award date.

Question 39

Section G.1. states that “The Lottery is obligated to compensate the Successful Vendor(s) *only as a result of sales conducted through the gaming system,*” and further states both that “price quotes that are a percent of sales should [be] presented as a percentage” and that “Offerors may also provide *alternative pricing* for the services.” (emphasis added). Section G.2. states that “contractor’s compensation will be a price quoted as a *percent of net...sales.*” (emphasis added). **Question:** Will the State please confirm that an Offeror may propose “alternative pricing” that is not based on a percentage of “net . . . sales,” provided that the Offeror complies with the other stated requirements in Section G.1. regarding alternative pricing?

Answer 39

Offeror should provide pricing as requested in G.2.1, G.2.2 and/or G.2.3. An Offeror may also propose alternative pricing that is not based on the formula and definitions included in the RFP as long as they comply with the other stated requirements in Section G.1 regarding alternative pricing. If the alternative pricing is not based on sales as defined in Section G.1., the Offeror’s proposal must clearly define the methodology used to calculate payment to the Offeror and include their projections for the factors involved and the resulting anticipated fees that would be paid to the Offeror based on those factors

Question 40

Paragraph 9. and Paragraph 10. of Attachment A of the RFP request similar information with respect to the “Vendor Team.” **Question:** Please confirm that there is no intended distinction between the information sought in Paragraphs 9. and 10. of Attachment A, or if to the contrary, please explain the intended distinction?

Answer 40

There is no intended distinction between the two questions. Offeror’s response to Paragraph 9 will be the same as response to Paragraph 10 of Attachment A.

Question 41

The acknowledgment set forth on page 46 of Attachment A states that the Vendor acknowledges there are



limitations on the ability of the Vendor to: (i) “submit proposals in response to subsequent request for proposals issued by OLC;” and (ii) “enter into or perform contracts or other arrangements with certain third parties.” **Question:** Will the State please identify what restrictions the Vendor will be subject to in connection with its ability to: (i) “submit proposals in response to subsequent request for proposals issued by OLC;” and (ii) “enter into or perform contracts or other arrangements with certain third parties”?

Answer 41

Only one statutory provision in the Lottery Act related to a Vendor’s ability to submit proposals – Vendor can’t also be a retailer. Most of the pertinent provisions in the Lottery Act have to do with arrangements with certain third parties. For example:

No person, partnership, unincorporated association, corporation, or other business entity or principal, officer or director of a corporation or other business entity shall be selected as a lottery retailer who:... d. is a vendor or any employee or agent of any vendor doing business with the Commission,...

No employee of the Commission shall have a financial interest in any vendor doing business or proposing to do business with the Commission.

No employee of the Commission who leaves the employment of the Commission may represent any vendor or lottery retailer before the Commission for a period of two (2) years following termination of employment with the Commission.

A major procurement contract shall not be entered into with any vendor if the vendor or a person associated with the vendor named pursuant to the provisions of paragraph 1 of subsection A of this section has been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction, or is awaiting sentencing on a plea of guilt or nolo contendere to the same type of felony.

A major procurement contract shall not be entered into with any vendor that has an ownership interest in an entity that had supplied consultation services under contract to the Commission regarding the request for proposals pertaining to those particular goods or services.



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