

**IOWA LOTTERY
REQUEST FOR PROPOSAL
IL-10-01 On-Line Gaming System and Related Products and Services
10/8/09**

AMENDMENT #1 TO THE REQUEST FOR PROPOSAL

The following amendments are hereby incorporated into the RFP.

Section 1.16.1 is restated as follows:

1.16.1 VOLUME I – Technical (Non-Price) Proposal

The Technical Proposal shall include descriptive and technical matter only and be appropriately labeled on the exterior of the enclosure. **No cost figures shall be contained in the Technical Proposal.**

The Vendor must respond to every item that requires a response in this RFP in the order presented in the RFP. The Vendor’s response must provide the required information requested, an acknowledgement of acceptance where applicable, or an indication of not applicable (N/A).

The original plus seven (7) copies of The Technical Proposal (Volume I) are to be delivered. In addition, one copy of the original Technical Proposal must be submitted on a CD using a Microsoft Word or PDF file. The electronic version should include all Proposal sections within a single file to facilitate searches for terms across the breadth of the Proposal.

All requested written documents must be submitted on 8 1/2” x 11” paper and size 12 Arial font, exceptions may apply to schematics, attachments, diagrams, etc.

The contents of the Technical (non-price) Proposal volume must follow this outline, employing divider pages with labeled tabs to separate the response sections:

- 1. Transmittal letter. One copy of the transmittal letter shall be structured and contain all of the information specified in RFP Appendix I and included with the original copy of the Technical Proposal.*
- 2. Bid Bond and Litigation Bond (see RFP Sections 1.32 and 1.33). Bonds to be included with the original copy of the Technical Proposal.*
- 3. Disclosure of litigation, investigations, and other information (see RFP Section 1.36), to be included with the original copy of the Technical Proposal.*
- 4. Statement acknowledging all RFP addenda, to be included in the original copy of the Technical Proposal.*

5. *Statement of agreement to comply with all terms and conditions contained in Part 2 and Appendix C, to be included with the original copy of the Technical Proposal.*
6. *Class “L” Business Entity disclosure form required by the Lottery (see RFP Section 1.35 and <http://www.ialottery.com/Vendors/Forms.html>) must be provided in a separate binder or package. The binder or package shall contain one (1) paper copy plus one (1) copy on CD. Business Entity disclosure information is not to be placed on the CD with other technical information.*
7. *Letter requesting trade secret protection of confidential information (if needed). See RFP Section 1.26. The redacted sections must be noted in a letter submitted with the cover letter as part of the original copy of the Technical Proposal and will be made available for public inspection.*
8. *Response to all paragraphs of where a response is deemed appropriate including but not limited to every paragraph of Specifications (Part 3) in identical order to which it appears in the RFP. **An original in paper form and two (2) additional copies in electronic format on CDs of the required financial information (Section 3.9.11) should be filed with the original only, and not with all seven (7) copies.***
9. *Vendor-supplied technical documentation as appendices to be included with the original and all **copies** of the Technical Proposal.*

Section 1.16.2 is restated as follows:

1.16.2 VOLUME II – Price Proposal

The Vendor shall be required to provide pricing in accordance with RFP Section 4.

*The Price Proposal must be identified as a separate enclosure or Volume II. An individual authorized to legally bind the Vendor must sign the Price Proposal in ink. **The original plus one (1) copy of the Price Proposal must be delivered to the RFP Coordinator or RFP Coordinator’s designee. In addition, one copy of the Price Proposal must be submitted on a CD separate from the Volume I – Technical Proposal.***

The contents of the Price Proposal must follow the following outline, employing divider pages with tabs to separate these response sections:

1. Cover page stating Vendor’s identifying information.
2. Pricing for the Baseline System
3. Pricing for **Specified Options, Invited Options and Offered Options (RFP Section 1.38)**

Price Proposals that are incomplete or non-conforming may be rejected as non-responsive.

Section 1.26 is restated as follows:

1.26 Public Records and Requests for Confidentiality

The release of information by the Lottery to the public is subject to Iowa Code chapter 22 and 531 Iowa Administrative Code section 1.5. Vendors are encouraged to familiarize themselves with these provisions prior to submitting a Proposal. A copy of the Iowa Code and Iowa Administrative Code can be found on the State of Iowa's web page, www.legis.state.ia.us and located under the topic Iowa Law. All information submitted by a Vendor may be treated as public information by the Lottery unless the Vendor properly requests that information be treated as confidential at the time of submitting the Proposal. By submitting a Proposal, the Vendor grants the Lottery the right to make the required copies of the Proposal.

Any requests for confidential treatment of information must be included in a letter with the Vendor's Proposal and must enumerate the specific grounds in Iowa Code chapter 22 which support treatment of the material as confidential and must indicate why disclosure is not in the best interests of the public. Pricing information cannot be considered confidential information. The request must also include the name, address, and telephone number of the person authorized by the Vendor to respond to any inquiries by the Lottery concerning the confidential status of the materials.

Any documents submitted which contain confidential information must be marked on the outside as containing confidential information, and each page upon which confidential information appears must be marked as containing confidential information. The confidential information must be clearly identifiable to the reader wherever it appears. All copies of the Proposal submitted, as well as the original Proposal, must be marked in this manner.

In addition to marking the material as confidential material where it appears, the Vendor must submit one copy of the Bid Proposal plus one (1) on CD both marked "Public Copy" from which the confidential information has been excised. These copies are in addition to the number of copies requested in section 1.16.1. The confidential material must be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the document as possible. The "Public Copy" will be made available for public inspection.

In the event the Lottery receives a request for the release of information that includes material a Vendor has marked as confidential, the Lottery will provide a written notice to the Vendor regarding the request by e-mail as soon as practicable. Unless otherwise directed by a court of competent jurisdiction, the Lottery will release the requested information 7-10 business days after receipt of the request.

Once a contract has been executed, the contract and all supporting documents in the Successful Vendor's Proposal including pricing shall be considered public and subject to disclosure pursuant to Iowa Code chapter 22.

The Vendor's failure to request confidential treatment of material pursuant to this section and the relevant laws and administrative rules will be deemed by the Lottery as a waiver of any right to confidentiality which the Vendor may have had.

Section 1.35 is restated as follows:

1.35 Disclosure Documents and Investigations

This RFP represents a major procurement and as such, comprehensive disclosure information is required from each Vendor as provided herein. The disclosure documents to be completed by Vendors are referenced in RFP Appendix H.

Any Vendor, its parent, as well as any subsidiary corporation of the Vendor (not any other subsidiaries of the parent company), providing goods or services to the Lottery, is required to undergo a DCI background investigation conducted by the Iowa Department of Public Safety, Division of Criminal Investigation (DCI) before a contract is awarded. The investigation may include the submission of disclosure documents, interviews and various records checks in addition to those identified in Appendix H.

Any Vendor that has undergone a DCI background investigation within the past five (5) years or is currently undergoing a DCI background investigation is not required to go through another extensive DCI background investigation in connection with this RFP.

Class "L" documents, to be included with the RFP response, will be received by the Lottery, with the Lottery then providing these documents to the DCI. The DCI will conduct a preliminary review of each Vendor's Class "L" background form submission.

Upon completion of the RFP evaluation process, the Lottery CEO will direct the DCI to conduct an applicable DCI background investigation on the Vendor(s). After the DCI has been directed to complete the DCI background investigation(s), the DCI will contact the Vendor(s) to make arrangements for the completion of the background investigation. Additionally the DCI will inform the Vendor(s) which individuals need to submit a DCI Class "L-1" background form and collect the application fees associated with those individuals. These individuals can expect to be contacted by a DCI agent or agents for the purpose of completing background investigations.

Document submission requirements:

All disclosure documents provided as part of the Proposal should be clearly identified as disclosure documents and should be contained in a separate envelope within the Proposal package. Only one composite copy of the disclosure documents should be submitted.

Any Vendor, its parent, as well as any subsidiary corporation of the Vendor (not any other subsidiaries of the parent company) providing goods or services to the Lottery, must submit, as part of its Proposal, a completed DCI Class "L" Business Entity (Class "L").

The Vendor(s) selected by the Lottery CEO for background investigation must also submit a completed DCI Class "L-1" Vendor Key Personnel (Class "L-1") for each "control person" of the Vendor. A control person is defined as all persons owning 5 percent (5%) or more of the Vendor, a subsidiary of the Vendor or the parent company of the Vendor and all officers and directors thereof. In addition the Lottery may require a Class "L-1" to be submitted for any person identified as a trustee, partner, sole proprietor, employee or other person in a sensitive position or relationship with the bidder. The Class "L-1" requires the submittal of one completed fingerprint card. To obtain the required number of blank fingerprint cards, the Vendor should contact the RFP coordinator.

Upon request from the Lottery or DCI, Vendors shall be required to provide additional records as requested to supplement the previously provided documentation relating to a background application. This may include records pertaining to an affiliated company.

Cost of Background Investigation: The expense of conducting the background investigation(s) performed by DCI will be borne by the Vendor. The application fee is required prior to the start of the DCI investigation process. All fees are to be submitted in the form of a check or money order payable to the Iowa Division of Criminal Investigation.

Class "L" Business Entity - An application fee is required for each Class "L" submitted. Fees associated with the Class "L" applications are \$10,000 for a domestic applicant Vendor and \$15,000 for a foreign applicant Vendor. Any funds not expended by the DCI in the review of the Vendor's Class "L" background form will be returned by the DCI to the Vendor.

Any Vendor currently under investigation, or which has been investigated for an RFP or other gaming contract by the DCI within the past five (5) years, is required to submit a Class "L" background application form. However, any such Vendor will not be required to undergo an extensive DCI background investigation in connection with this RFP.

The Lottery or DCI may, at their discretion, request additional information from a Vendor, who has previously undergone a DCI background investigation within the past five (5) years. If the Lottery or DCI requests additional records from such Vendor, the Vendor shall deposit with DCI the estimated cost of collecting and evaluating such information. All requests shall be provided by the DCI or the Lottery in writing. If investigative costs exceed the total amount of fees filed by the business entity, DCI may require additional funds, as it deems appropriate.

Class "L-1" Vendor Key Personnel - The DCI will notify the Vendor(s) which individuals need to have a background investigation completed. Class "L-1" fees will be payable at that time. Fees associated with the Class "L-1" applications are:

- Individual residing in Iowa: \$4,000
- Individual residing within the contiguous United States: \$6,000
- Individual residing outside the contiguous United States: \$7,000

If the investigative costs exceed the total amount of fees filed by the applicant, DCI may require additional funds, as it deems appropriate.

The Lottery reserves the right to accept a Proposal which does not include all required information provided that any omitted information is promptly made available to the Lottery upon request. The Lottery or DCI may require any Vendors submitting a Proposal to provide additional background documentation after reviewing the documents initially submitted with the Proposal.

Any information provided to the Lottery in the disclosure documents as well as the results of the investigation conducted by the DCI will be used by the Lottery and Lottery Board to determine the successful Vendor. The information may be used to disqualify a Vendor who does not meet the Lottery's standards. The DCI will confer with Vendors upon request regarding the completion of the disclosure documents. Vendors who wish to discuss the completion of the disclosure documents should contact Charis Paulson, Iowa Department of Public Safety, Division of Criminal Investigation, telephone: (515) 725-6015, email – paulson@dps.state.ia.us

The Lottery may reject a Proposal based upon the results of these background checks and disclosures. The Vendor is advised that any person who knowingly provides false or intentionally misleading information in connection with any investigation by the Lottery may cause the Proposal to be rejected, or a subsequent contract to be canceled.

Section 2.9.1 is restated as follows:

2.9.1 Insurance Coverages

Specific coverage requirements are listed below. Dollar amounts defined below are minimums and the Successful Vendor must purchase and maintain these minimum insurance coverages. Statements of self-insurance to cover these obligations will be considered non-responsive.

1. Property Insurance. Insurance on all buildings, fixtures and equipment provided or used in providing the System and all services must be maintained in the amount of actual replacement cost thereof. This policy must insure personal property including contents, equipment, and mobile items against fire, collision, flood, and all other insurable hazards. Lottery retailers are not responsible for any terminal or equipment insurance.

2. *General Liability Insurance. Commercial General Liability and Property Damages Insurance with limits of not less than \$10,000,000 combined single limit for Bodily Injury and Property Damage per occurrence and \$10,000,000 Aggregate.*
3. Professional Liability and Errors and Omissions Insurance. Amount: \$20,000,000.
4. Automobile Bodily Injury and Liability Insurance. Insurance with a combined single limit of not less than \$1,000,000.
5. Workers' Compensation Insurance. To cover all of Successful Vendor's employees during the term of the contract in accordance with Iowa statutes, or other applicable worker's compensation laws.

Professional Liability and Errors and Omissions Insurance must indemnify the Lottery, its directors, officers and employees, and the State for direct or indirect loss due to any error or omission caused by the Successful Vendor and coverage must continue until one (1) year past the term of the Contract.

All other insurances required by this section must be effective upon execution of the Contract and continue in full force and effect throughout the term of the Contract. The Lottery must receive thirty (30) days advance written notice of cancellation, termination, or failure to renew any policy.

Section 2.10 is restated as follows:

2.10 Performance Bond

Upon notification of receiving the award, the Successful Vendor must provide to the Lottery, a performance bond, irrevocable Letter of Credit, or other form of security acceptable to the Lottery in the amount of ten million dollars (\$10,000,000) during the term of the Contract. The performance bond shall bind the Successful Vendor to fully and faithfully perform its obligations under the Contract, and provide payment to the Lottery if the Successful Vendor defaults in the performance of the Contract or has caused or incurred any uncompensated liquidated damages.

The performance bond may be used to satisfy liquidated damages payments due the Lottery that have not been received within thirty (30) calendar days after written notice of liquidated damage occurrence has been given to the Successful Vendor by the Lottery.

Other forms of security may be acceptable but are subject to the Lottery's discretion and approval. Failure to post an additional bond or security within seven (7) days after notice that proposed security is inadequate, shall be grounds for immediate termination of the Contract.

Letter of Credit as Performance Security.

Letter of Credit as Performance Security. Any Contract resulting from this RFP will allow an irrevocable Letter of Credit as performance security to be provided. The Successful Vendor shall maintain an irrevocable Letter of Credit, in the amount of USD \$10,000,000.00 with payment in favor of the Lottery as provided herein. Any irrevocable Letter of Credit submitted must be in the form and include language substantially similar to the language provided in Exhibit 1 of the RFP. The irrevocable Letter of Credit includes any amendments, additions, or replacement letters (collectively referred to as "Letter of Credit") and shall be issued by a financial institution that is well capitalized pursuant to Federal Deposit Insurance Corporation (FDIC) or National Credit Union Administration (NCUA) guidelines, that is FDIC or NCUA insured, that is registered to do business in the State of Iowa, and that has a physical presence in Iowa ("Issuing Bank"). If at any time the Issuing Bank fails to satisfy these requirements for any reason, Contractor shall obtain a substituted irrevocable Letter of Credit from another institution. Successful Vendor shall pay the cost of maintaining the irrevocable Letter of Credit.

Delivery and Duration. The Successful Vendor shall deliver the irrevocable Letter of Credit, original in form, to the Lottery before performing any services pursuant to the Contract, and in all cases no later than fifteen (15) calendar days following final execution of the Contract. The irrevocable Letter of Credit shall be in place for the term of the Contract and any extensions or renewals thereof. A lapse of the irrevocable Letter of Credit will be a material breach of the Contract.

Nonrenewal of Letter of Credit. In the event the Lottery receives a Notice of Non-Renewal from the Issuing Bank, the Successful Vendor must provide a substituted irrevocable Letter of Credit for the next Contract year no later than sixty (60) calendar days prior to the expiration of the Letter of Credit then in effect. Any substituted irrevocable Letter of Credit submitted must be in the form and include language substantially similar to the language provided as Exhibit 1 to the RFP.

Rights to Draw on the Letter of Credit. The Lottery shall have the right to draw upon the Letter of Credit in one or more drawings for either a portion or the full amount upon occurrence of any of the following events: (i) the Contract has been terminated by the Lottery for cause; (ii) the Successful Vendor is in default under the terms of the Contract and any notice period provided in a notice of default has expired; or (iii) the Successful Vendor is in default under the terms of the Contract and the issuance of a notice of the default is barred or stayed by law; or (iv) the Successful Vendor fails to make payments due to the Lottery that have not been received within thirty (30) calendar days after written notice of liquidated damage occurrence has been provided to the Successful Vendor by the Lottery. The Lottery may draw upon the Letter of Credit as often as any of the foregoing events occur up to the full amount of the Letter of Credit.

Amendment. Successful Vendor shall promptly cause the Letter of Credit to be amended if the Lottery reasonably requests an amendment, such as to change the address for notices. If the Letter of Credit is lost, stolen, or damaged, Successful Vendor shall cooperate with Lottery to replace such Letter of Credit.

Section 2.22 is restated as follows:

2.22 Title to, Use of, and Compensation for, Intellectual Property

To the extent a Successful Vendor utilizes or relies upon third-party Intellectual Property Rights in fulfilling its obligations under the Contract, the Successful Vendor will represent that it has the valid right to use such intellectual property right. In addition, in the event of failure to perform or breach of contract the Successful Vendor must ensure continued right of use of licensed intellectual property by the Lottery.

The Successful Vendor shall indemnify and hold harmless the State of Iowa, the Lottery, the Lottery's officers and directors, employees, staff, other Lottery Vendors, retailers, and all agents, employees, officers and directors thereof, from and against any and all claims, damages, fees and expenses (including any attorneys' fees and including reasonable value of time for the Attorney General's Office) arising from or related to any claims that any or all of the products or services provided by the Successful Vendor under the contract violate the Intellectual Property Rights of a third party.

While the Lottery and the Successful Vendor agree that Intellectual Property associated with any product or service provided by (or developed solely by) the Successful Vendor during the term of this Contract and used by the Lottery will remain the property of the Successful Vendor, the Successful Vendor will grant a license or authority to the Lottery to make use of any such Intellectual Property with respect to Lottery conduct of games and business until the latter of the following: contract expiration or the end of a game utilizing the license. There shall be no additional charge for this right of the Lottery.

Intellectual Property fees for third-party products, logos, trademarks, brands, or labels that the Successful Vendor deploys in the System under the Contract shall be addressed under RFP Section 2.18.4. The Successful Vendor may not separately charge the Lottery an Intellectual Property fee for any items owned by the Successful Vendor.

The Successful Vendor's obligation under this Section shall not extend to any liability caused by (a) the negligence of or the unauthorized use of the Lottery system by the Lottery, the state of Iowa, or its agents, officials or employees, (b) any act or omission of a third party, not a subcontractor of the Successful Vendor, or (c) the Lottery's use of any attachment to the Lottery system of a third party system, terminal or product not provided by the Successful Vendor.

Section 2.26.23 is restated as follows:

2.26.23 Retailer Network Outages

Communication equipment and network products and services provided by the Successful Vendor shall be subject to liquidated damages for outages and degraded performance.

1. Condition

A network damage condition occurs if a retailer's availability during the retailer's normal business hours falls below the agreed-upon Service Level Agreement in any month. See RFP Section 3.3.4.7, which defines the minimum SLA as 99.7%.

2. Damages

In the event that a retailer network damage condition exists, the Lottery may impose liquidated damages according to the following schedule:

Liquidated damages in an amount of five hundred dollars (\$500) per occurrence may be assessed for each retailer experiencing the degraded service until the condition is rectified.

Section 3.9.11 is restated as follows:

3.9.11 Financial Viability

In order to ensure the Vendor's financial capability to perform under the contract, the Lottery requires the following financial information.

1. Submission of Financial Statements. All Vendors and substantial subcontractors must submit audited financial statements, or federal income tax returns if the Vendor or substantial subcontractor does not have audited financial statements prepared for the last two (2) fiscal years. Audited financial statements must be the result of an audit of the entity's records, reviewed in accordance with Generally Accepted Auditing Standards (GAAS) by an independent certified public accounting firm. The audited financial statements shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP), and must include balance sheets, income statements, statements of cash flows, statements of retained earnings, notes to the financial statements for both years, and any management letters that have been received for those years. The Proposal must include the most recent 10-K and 10-Q statements, if applicable, as well as any form 8-K, for two (2) years. For non-United States (US) entities the equivalent non-US accounting standards apply.
2. Subsidiaries. If a Vendor or substantial subcontractor is a subsidiary of a parent entity and the Vendor or substantial subcontractor does not have its

- own, separate financial statements, the Vendor or substantial subcontractor may satisfy its financial responsibility submission requirements by submitting the consolidated financial statements of its parent entity if the consolidated financial statements include the activity of the Vendor or substantial subcontractor. If a Vendor or substantial subcontractor submits the consolidated financial statements of its parent, the parent must serve as financial guarantor of the Vendor or substantial subcontractor.
3. Parent Corporation Resources. If the Vendor is a subsidiary and will rely on the financial resources of the parent to perform this contract, the parent must certify, in writing in a form acceptable to the Lottery, the availability of its resources to the Vendor. Parent entities that serve as financial guarantors of subsidiary firms shall be held accountable for all terms and conditions of the RFP and the resulting contract and shall execute the Contract as guarantor.
 4. External Borrowing. The Vendor must provide a letter of commitment in a form acceptable to the Lottery from a creditor acceptable to the Lottery, if outside borrowing will provide any or all of the funding for this project.

Response Note: An original in paper form and two (2) additional copies in electronic format on CDs of the required financial information must be provided and should be submitted with the original copy of the Proposal (not with copies). All submissions must employ US currency or include a US currency conversion formula.