



REQUEST FOR PROPOSALS

for

TABLE GAME CONSULTING SERVICES

DSL 2009-2

July 6, 2009

by the

**DELAWARE STATE LOTTERY
1575 McKee Road, Suite 102
Dover, Delaware 19904**

REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES FOR TABLE GAME CONSULTING SERVICES

ISSUED BY THE DELAWARE STATE LOTTERY OFFICE

I. Overview

The Delaware State Lottery Office (“DSL” or “Lottery”) seeks proposals for consulting services for the planning and implementation of table game (blackjack, craps, roulette, etc.) regulatory controls at authorized Delaware venues. This request for proposals (“RFP”) for professional services is issued pursuant to 29 Del. C. §§6981 and 6982.

The proposal schedule of events subject to the RFP is outlined below:

RFP Issued	July 6, 2009
Bidders’ Written Questions Due	July 20, 2009 by 3 p.m.
Responses by Lottery to Questions	July 27, 2009
Deadline for Receipt of Proposals	August 10, 2009 by 3 p.m.
Recommendation to the Director	August 24, 2009

The proposals must conform to the requirements of the Proposal Procedure and the Required Information Sections of the RFP. A proposal may be rejected if it is incomplete, conditional, or fails to include a material term or component of the RFP. Failure to respond to any section of the RFP in a material way or to follow the format of the RFP may result in disqualification of a bidder. This determination to reject a proposal will be at the sole discretion of the RFP Committee.

II. Cover letter

Each proposal must be accompanied by a cover letter that briefly summarizes the proposing firm’s interest in providing the required professional services. The cover letter must also clearly state and justify any exceptions to the requirements of the RFP, including but not limited to the contractual terms and conditions that the applicant may have taken in presenting the proposal. Furthermore, the transmittal letter must attest to the fact that no activity related to this proposal contract will take place outside of the United States. The Lottery reserves the right to deny any and all exceptions taken to the RFP requirements.

III. Scope of Services

The consulting services will include but not be limited to:

- A. Preparation of a detailed strategic plan and timeline for implementing table games at authorized Delaware venues.
- B. Development of rules and regulations governing table games in Delaware.
- C. Analysis of Lottery staffing and training requirements necessary to fulfill administrative and regulatory oversight responsibilities for table game operations in Delaware.
- D. Design of table game financial and procedural policies, including development of internal controls; reviewing applicable federal government requirements; and, development of compliance audit policies and procedures.
- E. Assisting in the conduct of various table game related audits including policy and procedure compliance, proper allocation of funds, information gathering for financial reporting, etc.

IV. Proposal Procedures

A. RFP Issuance

1. Obtaining Copies of the RFP

This RFP is available in electronic form through the Lottery's website at <http://delottery.com/rfp.asp>. Paper copies of this RFP will be available upon request by contacting Vernon A. Kirk, Chairman of the Evaluation Committee.

2. Public Notice

Public notice has been provided in accordance with 29 Del. C. § 6981.

3. Assistance to Bidders with a Disability

Bidders with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the Lottery. Address all communications to the person listed below; communications made to other Lottery or State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the bidder. Bidders should rely only on written statements issued by the RFP designated contact.

Vernon A. Kirk, Principal Deputy
Delaware State Lottery
1575 McKee Road, Suite 102
Dover, DE 19904
vernon.kirk@state.de.us

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

5. Consultants and Legal Counsel

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the bidders' responses. Bidders shall not contact consultant or legal counsel on any matter related to the RFP.

6. Contact with State Employees

Direct contact with Lottery State of Delaware employees other than the Lottery Designated Contact regarding this RFP is expressly prohibited without prior consent. Bidders directly contacting Lottery or State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions

The Proposal Evaluation Committee reserves the right to refuse to consider any proposal from a bidder who:

- a) Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b) Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c) Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d) Has violated contract provisions such as:
 - 1) Failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
or
 - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e) Has violated ethical standards set out in law or regulation; and
- f) Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions or Proposals

1. Acknowledgement of Understanding of Terms

By submitting a bid, each bidder shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and must respond to the items outlined in this RFP using the required format. The Lottery reserves the right to reject any non-responsive or non-conforming proposals. Each proposal must be submitted with four (4) copies in a sealed envelope conspicuously labeled "Table Game Consulting Services DSL 2009-2". The envelope should also contain the name, address, and telephone

number of the proposing firm. If delivered by mail, the proposal shall be enclosed in an “inner” envelope as indicated above. The Lottery’s time is considered official time.

All proposals must be delivered in person or by mail to:

Vernon A. Kirk, Principal Deputy
Delaware State Lottery
1575 McKee Road, Suite 102
Dover, DE 19904

Any proposal submitted by mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than 3 p.m., Eastern Standard Time/Eastern Daylight Time. Any proposal received after the date and time provided in Section 1 shall not be considered and shall be returned unopened. The proposing bidder bears the risk of delays in delivery. The contents of any proposal shall not be disclosed to competing entities during the negotiation process.

Upon receipt of bidder proposals, each bidder shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve bidders from any obligation in respect to this RFP.

Each bidder is expected to provide the DSL with information and evidence that will make possible the selection of the bidder to be awarded the Contract in a manner which best serves the stated interests of the State of Delaware. Proposals must be fully responsive to the specific requirements stated in this RFP.

Clarifications from bidders may be requested by the Lottery for the purpose of resolving ambiguities or questioning information presented in the proposals. Clarifications may occur throughout the proposal evaluation process. Clarification responses shall be in writing and shall address only the information requested.

3. Modifications

Any changes, amendments, or modifications to a proposal must be made in writing, submitted in the same manner as the original responses and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments, or modifications to a proposal shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

4. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, bidder name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

5. Proposal Opening

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to Bidder.

There will be no public opening of proposals but a public log will be kept of the names of all bidder organizations that submitted proposals. The contents of any proposal shall not be disclosed to competing bidders prior to contract award.

6. Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

7. Concise Proposals

The Lottery discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

8. Realistic Proposals

It is the expectation of the Lottery that bidders can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The Lottery and/or State of Delaware shall bear no responsibility or increase obligation for a bidder's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

9. Confidentiality of Documents

All documents submitted, as part of the bidder's proposal will be deemed confidential during the evaluation process. Bidder proposals will not be available for review by anyone other than the Lottery Proposal Evaluation Committee or its designated agents. There shall be no disclosure of any bidder's information to a competing bidder prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, 29 Del. C. Ch. 100. Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Bidder(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Bidder(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a bidder feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Bidder(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Bidder's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by 29 Del. C. § 10002(d), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the Lottery will open the envelope to determine whether the procedure described above has been followed.

10. Discrepancies and Omissions

Bidder is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of bidder. Should bidder find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, bidder shall notify the Lottery's Designated Contact, in

writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of bidder's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, no later than ten (10) calendar days prior to the time set for opening of the proposals.

a) RFP Question and Answer Process

The Lottery will allow written requests for clarification of the RFP in accordance with the schedule in Section I (Overview). Such clarifications must be sent in a timely manner to the Chairman of the Evaluation Committee. Clarifications must be hand-delivered, delivered by a contract delivery service, sent through the U.S. Postal Service or sent via email. All questions will be consolidated into a single set of responses, and Bidders' names will be removed from questions in the responses. All bidder questions, all Lottery answers, and any changes in the RFP resulting from such inquiries will be documented in published addenda communicated to questioning bidders directly by e-mail with delivery receipt requested and will be posted on the website of the Delaware Lottery at <http://delottery.com/rfp.asp> along with all other addenda to the RFP. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number
Paragraph number
Page number
Text of passage being questioned
Question

11. Lottery's Right to Reject Proposals

The Lottery reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the Lottery's specifications or bidder's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the Lottery may deem necessary in the best interest of the State of Delaware.

12. Lottery's Right to Cancel Solicitation

The Lottery reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The Lottery makes no commitments expressed or implied, that this process will result in a business transaction with any bidder.

This RFP does not constitute an offer by the Lottery. Bidder's participation in this process may result in the Lottery selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the Lottery to execute a contract nor to continue negotiations. The Lottery may terminate negotiations at any time and for any reason, or for no reason.

13. Lottery's Right to Award Multiple Source Contracting

Pursuant to 29 Del. C. § 6986, the Lottery may award a contract for a particular professional service to two or more bidders if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

14. Notification of Withdrawal of Proposal

Bidder may modify or withdraw its proposal by written request, provided that both proposal and request is received by the Lottery prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

15. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the Lottery's website at <http://delottery.com/rfp.asp>. Any statement related to this RFP made by any Lottery or State of Delaware employee, contractor or its agents does not bind the Lottery.

16. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be highlighted and included in writing in the proposal. Acceptance of exceptions is within the sole discretion of the Evaluation Committee.

17. Award of Contract

The final award of a contract is subject to approval by the Lottery. The Lottery has the sole right to select the successful bidder(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a bidder of the acceptance of its proposal by the Lottery and the subsequent full execution of a written contract will constitute a contract, and no bidder will acquire any legal or equitable rights or privileges until the occurrence of both such events.

a) RFP Award Notifications

The Evaluation Committee will review the proposals and will determine all applicants that meet the minimum qualifications to perform the required services. The Committee will recommend to the Director the qualified bidders. The Director may select one or more of the qualified bidders for negotiation. Upon conclusion of the negotiations, the Director will award the contract.

The contract shall be awarded to the bidder whose proposal is most advantageous to the State of Delaware, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the Lottery is not obligated to award the contract to the bidder who submits the lowest bid or the bidder who receives the highest total point score. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning bidder will be invited to negotiate a contract with the State of Delaware; remaining bidders will be notified in writing of their selection status.

C. RFP Evaluation Committee Chairperson

The RFP Evaluation Committee Chairperson, Vernon A. Kirk, acting on the DSL's behalf, is the sole point of contact with regard to this RFP. The DSL is the only entity authorized, and hereby reserves the right to clarify, change, modify, amend, alter, or withdraw the specifications, terms, and conditions of this RFP and any Contract awarded as a result of this RFP.

The written agreement resulting from this RFP will become binding and effective after approval by the Director of the DSL. All communications concerning this

procurement must be addressed in writing to the RFP Evaluation Committee Chair:

Vernon A. Kirk, Principal Deputy
Delaware State Lottery
1575 McKee Road, Suite 102
Dover, DE 19904
Phone: (302) 744-1604
Fax: (302) 739-6706

Other than the RFP Evaluation Committee Chair, bidders shall make no unsolicited contact with any DSL personnel, or agency designee, regarding this RFP. Prior to the award of a Contract, bidders shall not represent themselves to DSL staff or retailers as having the endorsement of the DSL, nor as the DSL's consultant to provide the professional services identified in this RFP. Any bidder causing or attempting to cause a violation or circumvention of this ethical standard may, in the sole discretion of the DSL, be disqualified from further consideration.

D. Change of Financial Condition

If a bidder who has submitted a Proposal in response to this RFP experiences a substantial change in financial condition prior to the award of a Contract pursuant to this RFP, Committee Chairperson, Vernon A. Kirk must be notified in writing at the time the change occurs or is identified. If the successful bidder experiences a substantial change in financial condition during the term of a Contract with the DSL, the Director must be notified in writing at the time the change occurs or is identified. A "substantial change" in financial condition is defined as any event which, following generally accepted accounting principles, would require a footnote disclosure in the annual report of a publicly traded United States corporation. Failure to notify the DSL of such a change may result in the rejection of a bidder's proposal or termination of the Contract.

E. Proposal Disclosure Prohibition

Disclosure by a bidder or agent of the bidder of Proposal contents to any third party prior to the award of a Contract under this RFP may result in rejection of the Proposal.

F. Costs Associated with Proposal

Neither the DSL nor the State of Delaware shall be liable for any of the costs incurred by a bidder in preparing or submitting a Proposal, including, but not limited to preparation, copying, postage, and delivery fees and expenses associated with the RFP. Each proposal should be prepared simply and economically, providing a straightforward, concise description of the bidder's

ability to meet the requirements of the RFP. Emphasis should be on completeness and clarity of content.

G. Acceptance Period

Proposals must remain valid for twelve (12) months. Proposals containing a term of less than twelve (12) months may be rejected. Bidders shall be strictly held to the terms in their Proposals. The contents of this RFP and the proposal will become contractual obligations, if a Contract ensues. Failure of the Successful Bidder to accept these obligations may result in cancellation of the award.

H. Rejection or Selection of Proposals

The DSL reserves the right to reject any or all Proposals or any portion thereof, to advertise for new Proposals, to arrange to receive or itself perform and obtain the services and goods to be obtained hereunder, otherwise, to abandon the need for such goods and services, or to award in whole or in part a Contract deemed to be in the best interests of the DSL and most advantageous to the State. Bidders will be held to the terms submitted in their Proposals. Failure to meet obligations may result in cancellation of any award.

Bidders who submit a Proposal in response to this RFP but who are not awarded the Contract will be notified in writing.

V. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information may result in rejection of the proposal in the sole discretion of the Lottery.

A. Minimum Requirements

1. Delaware business license:

Provide evidence of a Delaware business license or evidence of an application to obtain the business license.

2. Submit a cover letter as described in Section II.

3. Submit a signed Appendix A – Price Proposal

4. Submit a signed Appendix B – Proposal certification.

5. Submit a signed Appendix C – Non-collusion statement.

B. General Evaluation Requirements

1. Experience, reputation and capacity

Provide a summary of your organization's background and experience in providing consulting services related to table game operations and their associated regulatory and compliance requirements. List all table game related consulting contracts performed within the last five years. Include information on any consulting contracts that were cancelled or any pending lawsuits with regard to a prior consulting contract.

2. Expertise

Provide a description of your organization's expertise preparing policies and related operating procedures for table games; reviewing security aspects of table game operations; preparing table game rules and regulations and internal control procedures; and, creating audit guidelines necessary for table game regulatory oversight.

3. Personnel

State the names, titles and functions of all employees that will be involved in this project. Enclose copies of resumes of all these employees.

4. Price

Complete and submit Appendix "A" – Price Proposal.

VI. Evaluation Process

The Proposal Evaluation Committee shall review all proposals submitted in response to this RFP.

A. Proposal Evaluation Committee ("Committee")

The Committee shall be comprised of three (3) members appointed by the Director of the Delaware State Lottery:

1. Vernon A. Kirk, Principal Deputy, Delaware Lottery
2. James L. Logue, Deputy Director, Video Lottery, Delaware Lottery
3. Sgt. Joseph Ferrera, Video Lottery Enforcement Unit, Delaware State Police

The Committee shall determine the bidders that meet the minimum requirements of this RFP pursuant to the selection criteria contained in the RFP and the procedures established in 29 Del. C. §§6981-82. The Committee shall make a recommendation regarding the award to the Director who shall have final

authority, subject to the provisions of this RFP and 29 Del. C. §6982, to award a contract to the successful bidder in the best interest of the State.

B. Proposal Selection Criteria

The Committee shall assign up to the maximum number of points for each Evaluation Item to each of the proposing bidders. All assignments of points shall be at the discretion and judgment of the Committee.

The proposals shall contain all the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the Delaware State Lottery Office and the Committee to be essential for use by the Committee in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible bidder and participate in the Committee's consideration for award. Proposals that do not meet or comply with the instructions to this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the discretion and judgment of the Committee.

The Committee reserves the right to:

1. Recommend to the Director a proposal other than the one with the lowest cost.
2. Reject any and all proposals received in response to this RFP or to make a recommendation that there is no responsible bidder based on the proposals received.
3. Waive or modify any non-material information, irregularity, or inconsistency in proposals received.
4. Request modification or clarification of proposals from any or all bidders during the review process.
5. Negotiate any aspect of the proposal with any bidder and negotiate with more than one bidder at the same time.
6. Select more than one bidder pursuant to 29 Del. C. §6986 and the elements contained in Section III, Scope of Services.

All proposals shall be evaluated using the same criteria and scoring process. The following criteria shall be used by the Committee to evaluate proposals:

<u>Evaluation Item</u>	<u>Maximum Points</u>
Experience, reputation and capacity	25 Points
Expertise	25 Points
Personnel	25 Points
Price	<u>25 Points</u>
TOTAL POINTS	100 Points

C. Proposal Clarification

The Evaluation Committee may contact any bidder in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

D. References

The Evaluation Committee may contact any customer of the bidder and use such information in the evaluation process.

E. Oral Presentations

Selected bidders may be invited to make oral presentations to the Evaluation Committee.

All of the bidder's costs associated with participation in oral discussions conducted with the State of Delaware are the bidder's responsibility.

VII. Selection

- A. Based on the criteria established pursuant to 29 Del. C. §6981(e) and Sections V and VI of this RFP, the Committee shall determine and recommend to the Director, the qualified bidder(s).
- B. The Director shall then interview at least one of the qualified bidders. The Director may negotiate with one bidder without terminating negotiations with another bidder and may negotiate with one or more bidders during the same period. At any point in the negotiation process, the Director may, at his discretion, terminate negotiations with one or all bidders.

- C. The Director may require the bidder(s) with whom the Director is negotiating to execute a truth-in-negotiation certificate stating the wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time of contracting. All professional service contracts shall provide that the original contract price and any additions thereto shall be adjusted to exclude significant sums where the agency determines that the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within one year following the end of the contract.

VIII. Contract Conditions

The bidder awarded the contract under this RFP shall be subject to the following contractual provisions:

A. Term of Contract

The term of the contract between the successful bidder and the Lottery shall be two (2) years from the date of the execution of the contract. The DSL reserves the right to extend the Contract at its sole option up to a maximum of two (2) one-year extensions. Price terms for any extensions will be at a rate of compensation to be re-negotiated by the parties.

B. Contract Terms and Conditions

1. General Information

- a) The selected bidder will be required to enter into a written agreement with the Lottery. The Lottery reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the Lottery. Bidders will be required to sign the contract for all services, and may be required to sign additional agreements.
- b) The selected bidder or bidders will be expected to enter negotiations with the Director, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected bidder's response to this RFP will be incorporated as part of any formal contract.
- c) The successful bidder shall promptly execute a contract incorporating the terms of this RFP. No bidder is to begin any service prior to receipt a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The

purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once the successful bidder receives it.

- d) If the bidder to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another bidder. Such bidder shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

2. Collusion or Fraud

Any evidence of agreement or collusion among bidder(s) and prospective bidder(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such bidder(s) void.

By responding, the bidder shall be deemed to have represented and warranted that its proposal is not made in connection with any competing bidder submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the bidder did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the bidder's proposal preparation.

Advance knowledge of information which gives any particular bidder advantages over any other interested bidder(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

3. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Bidders found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected bidder will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or

otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

4. Solicitation of State Employees

Until contract award, bidders shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the bidder, its affiliates, actual or prospective contractors, or any person acting in concert with bidder, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a bidder may result in rejection of the bidder's proposal.

This paragraph does not prevent the employment by a bidder of a State of Delaware employee who has initiated contact with the bidder. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Bidders may not knowingly employ a person who cannot legally accept employment under state or federal law. If a bidder discovers that they have done so, they must terminate that employment immediately.

5. Non-appropriation

In the event that the General Assembly fails to appropriate the specific funds necessary to continue the contractual agreement, in whole or in part, the agreement shall be terminated, as to an obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriations is available or upon the exhaustion of funds.

6. Termination

a) Termination for Cause.

If for any reasons, or through any cause, the Bidder fails to fulfill in timely and proper manner his obligations under the contract, or if the Bidder violates any of the covenants, agreements or stipulations of the contract, the Lottery shall thereupon have the right to terminate the contract by giving written notice to the Bidder of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs

and reports or other material prepared by the Bidder under the contract shall, at the option of the Lottery, become its property, and the Bidder shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is useable to the Lottery.

b) Termination for Convenience

The Lottery may terminate the contract at any time by giving written notice of such termination and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Bidder under the contract shall, at the option of the Lottery, become its property, and the Bidder shall be entitled to compensation for any satisfactory work completed on such documents and other materials which is useable to the Lottery. If the contract is terminated by the Lottery as so provided, the Bidder will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Bidder as covered by the contract, less payments of compensation previously made. Provided however, that if less than 60 percent of the services covered by the contract have been performed upon the effective date of termination, the Bidder shall be reimbursed (in addition to the above payment) for that portion of actual out of pocket expenses (not otherwise reimbursed under the contract) incurred by the Bidder during the contract period which are directly attributable to the uncompleted portion of the services covered by the contract.

c) Upon mutual agreement with the successful bidder.

7. Work Product

All materials and products developed under the executed contract by the bidder are the sole and exclusive property of the State. The bidder will seek written permission to use any product created under the contract.

C. Notice

Any notice to the Lottery required under this Agreement shall be sent by certified mail to:

Wayne Lemons, Director
Delaware State Lottery
1575 McKee Road, Suite 102
Dover, DE 19904

D. Responsibilities of Successful Bidder

The successful bidder will assume sole responsibility for the provision of the professional services under the executed contract and the Lottery will consider the successful bidder to be the sole point of contact with regard to contractual matters.

E. Elements of the Agreement

1. The RFP, the purchase order, the executed contract and any supplemental documents between the Lottery and the successful bidder shall constitute the contract between the State of Delaware and the bidder. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: Contract, State of Delaware's RFP, Bidder's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the Lottery and the bidder.
2. In the event of a conflict in language between the RFP and the Proposal, the provisions and requirements set forth or referenced in the RFP and its clarifications and amendments shall govern. In the event that an issue is addressed in the Proposal that is not addressed in the RFP, no conflict in language shall be deemed to occur.
3. In the event of a conflict in language between the RFP or the Proposal and the executed Agreement, the provisions and requirements set forth or referenced in the Agreement shall govern. In the event that an issue is not addressed in the Agreement, no conflict in language shall be deemed to occur.
4. Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

F Licenses, permits, and laws

In performance of this contract, the successful bidder is required to comply with all applicable federal, state, and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful bidder. The bidder shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 Del. C. §2301(b).

Prior to receiving an award, the successful bidder shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200 Public Service, (302) 577-8205 Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject bidder to applicable fines and/or interest penalties.

G. Non-discrimination

In performing the services subject to this RFP, the successful bidder agrees that it will not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin, or in violation of the ADA. The successful bidder shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

H. Covenant against contingent fees

The successful bidder warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage, or contingent fee excepting a bona-fide employee or a bona-fide established commercial or selling agency maintained by the bidder for the purpose of securing business. For breach or violation of this provision, the Lottery shall have the right to annul the contract without liability or at its discretion, to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee(s).

I. Indemnification

1. By submitting a proposal, the proposing bidder agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of Delaware, the Delaware Lottery, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the firm's, its agents and employees' performance of the work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, in whole or in part, to the Lottery, its employees or agents.

2. Proprietary Rights Indemnification

Bidder shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the Lottery or the State of Delaware, the Lottery shall promptly notify the bidder in writing and bidder shall defend such claim, suit or action at bidder's expense, and bidder shall indemnify the Lottery or the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the bidder (collectively "Products") is or in bidder's reasonable judgment is likely to be, held to constitute an infringing product, bidder shall at its expense and option either:

- a) Procure the right for the Lottery or the State of Delaware to continue using the Product(s); or
- b) Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- c) Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the Lottery or the State of Delaware agrees to and accepts in writing.

J. Insurance

1. Bidder recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the bidder's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the bidder in their negligent performance under this contract.
2. The bidder shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations

under this contract. The bidder is an independent contractor and is not an employee of the State of Delaware.

K. Performance Requirements

The selected Bidder will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

L. Ownership of Materials

Ownership of all data, databases, documentary material, and operating reports originated and prepared for the Lottery pursuant to the Agreement shall belong solely and exclusively to the Lottery. The bidder will seek written permission to use any product created under the contract.

M. Ticket Purchase, Table Game Play and Prize Payment Restrictions

No officer or employee of the successful bidder's or of any subcontractor's project team, including the chain of management associated with the team(s), shall play any Lottery ticket or table game offered by the Lottery or be paid a prize in any Lottery ticket or table game during the term of this Agreement.

N. Advertising

The successful bidder agrees not to use the Lottery's name, logos, images, nor any data or results arising from the procurement process or the Agreement as part of any commercial advertising without prior written approval by the Lottery.

O. Code of Conduct

The Lottery is an extremely sensitive enterprise because of the nature of the business and because it is government affiliated. Therefore, it is essential that its operation, and the operation of other enterprises that would be linked to it in the public mind, avoid not only impropriety but also the appearance of impropriety. Because of this, the successful bidder is expected to:

1. Offer goods and services only of the highest standards.
2. Use its best efforts to prevent the Lottery from becoming embroiled in unfavorable publicity.
3. Avoid promotional activities that could be interpreted as improper and embarrassing to the Lottery.
4. Make sales presentations in a responsible manner and when it is felt necessary to point out the superiority of its goods or services over those of its

competitors, to do so in such a manner as to avoid unfavorable publicity for the lottery industry.

5. Comply with all laws and Rules and Regulations of the Lottery.
6. Report security problems or potential security problems with the on-line system, immediately to the Lottery.

P. Authority of Lottery

On all questions concerning the interpretation of specifications, the acceptability and quality of material furnished and/or work performed, the classification of material, the execution of the work, and the determination of payment due to or to become due, the decision of the Lottery shall be final and binding.

Q. Subcontract Approval

The bidder selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, bidders assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any proposed subcontracts shall be subject to the prior approval of the Lottery and shall include such contractual requirements, as shall be binding on agencies of the State of Delaware.

R. Compensation During Contract

The successful bidder will be compensated by submitting invoices that correspond to the Lottery's business and accounting cycle. The submitted invoices will be confirmed by the Lottery. Confirmed invoices will be paid by the Lottery within thirty (30) days of receipt.

S. Governing Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful bidder consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Bidders certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

1. The laws of the State of Delaware;
2. The applicable portion of the Federal Civil Rights Act of 1964;
3. The Equal Employment Opportunity Act and the regulations issued there under by the federal government;

4. A condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. That programs, services, and activities provided to the general public under resulting contract conform to the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any bidder fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the bidder in default.

The selected bidder shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

T. Independent Contractor

The successful bidder shall perform its services under this Agreement as an independent contractor and shall provide workmen's compensation and social security, as well as income tax deductions and any other taxes or payroll deductions required by law for its employees who are performing services specified by this Agreement. Such personnel may perform within and outside the State of Delaware the services contemplated to be performed by the successful bidder hereunder, as the successful bidder shall assign thereto.

U. Assignment

The parties agree that this RFP and subsequent contract contemplate the rendition of expert consulting services, and therefore, neither the contract, nor any interest therein, nor any claim arising hereunder, shall be transferred or assigned by the successful bidder to any other party or parties. Any attempt to assign the contract shall render it void as of the date of the attempted assignment.

V. Minority/Women-Owned Business Participation

It has been and remains the policy of the State of Delaware to promote equality of economic opportunity for minority and women-owned business enterprises (MBE/WBEs) in contracting activities. Accordingly, the successful bidder is strongly encouraged to utilize MBE/WBE subcontractors in the performance of the contract.

APPENDIX “A”

PRICE PROPOSAL

1. INTRODUCTION

This section describes the manner in which the bidders will submit pricing for the Lottery’s consideration and review.

2. SEPARATELY SEALED PRICE PROPOSAL

The bidders are required to submit their price proposal in a separately sealed envelope. The outside of the envelope must be clearly identified as such. Each price envelope must include a submittal letter signed by an individual authorized to obligate the bidder to the bid as stated.

3. FORMAT OF PRICE SUBMISSION

The bidders must submit pricing in the following format:

Consulting services rate \$ _____/hour

Note: Bidders can submit multiple rates for different levels of personnel that will be involved in providing the services requested in this RFP. Bidders submitting multiple rates must include an estimate by percentage of the amount of time different levels of personnel will be utilized.

Travel expenses are to be submitted as separate items on monthly invoices. Receipts will be required for all travel expense reimbursement. Common carrier travel will be at coach fare. Mileage reimbursement for personal vehicles will be at the rate of \$.40 per mile. The per diem rate will be \$160 and is a combination of lodging, meals and incidental expense allowance.

APPENDIX "B"

PROPOSAL CERTIFICATION

I certify that I have the authority to bind the bidder indicated below to the specific terms and conditions and specifications required in this RFP and offered in this bidder's proposal.

NAME (Please type or print)

SIGNATURE

TITLE

BIDDER

DATE

Purchase orders should be sent to:

COMPANY NAME

ADDRESS

CONTACT PERSON

FEDERAL E.I. NUMBER

PHONE NUMBER

This PROPOSAL CERTIFICATION and the NON-COLLUSION STATEMENT immediately following must be completed and signed in order for the bid proposal to be considered.

APPENDIX C: STATEMENT OF NON-COLLUSION

This is to certify that the undersigned bidder has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal submitted this date to the Delaware State Lottery.

The undersigned bidder swears that it has not employed or retained any company or person, working primarily for the firm offering professional services, to solicit or secure this agreement by improperly influencing the agency or any of its employees in any professional service procurement process.

The undersigned bidder swears that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working primarily for the firm offering professional services, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this agreement.

NAME OF BIDDER

AUTHORIZED
REPRESENTATIVE

(Please type or print)

SIGNATURE

TITLE

Sworn to and subscribed before me this _____ day of _____, 2009.

Notary Public

My commission expires: _____