

**VIDEO LOTTERY OPERATION LICENSE IN
BALTIMORE CITY
(#2012-0101)**

**RESPONSES TO WRITTEN QUESTIONS
June 14, 2011**

This List of Questions and Responses #3 (Q&A#3) is being issued to clarify certain information contained in the above named RFP. The statements and interpretations of License requirements, which are stated in the following questions are not binding on the State, unless the State expressly amends the RFP. Nothing in the State's responses to these questions is to be construed as agreement to or acceptance by the State of any statement or interpretation on the part of the entity asking the question as to what the License does or does not require. Some questions have been edited for brevity and clarity, and duplicate questions may have been combined or eliminated.

The following are questions submitted pursuant to the RFP and the Location Commission's responses to those questions:

40. QUESTION: Section 1.2.2.3: Please confirm that the land lease cost of 2.99% and other payments required to the City of Baltimore under the MOU and RFP section 4.3 are credited to the \$25 million per 500 VLTs investment requirement, i.e., that the minimum lease of \$8M, is a capital expenditure that is credited, since there is no land acquisition cost in this project.

ANSWER: Yes, these costs will be allowed to be credited toward the capital investment requirement. The Applicant shall include in its Proposal a calculation of the fair market value of the property and the methodology used by the Applicant in determining that calculation, including the discount rate used. The exact amount of the credit allowed will be based upon a determination by the Location Commission of the fair market value over the 15 year initial License term. (See Amendment #1 to the RFP)

41. QUESTION: Section 2.10.1.2 of the RFP discusses refunds of the Initial License Fee (the "Fee"). It allows for withdrawal of proposal and a refund of the Fee under certain circumstances outlined in Section 2.9.4 which includes refund of Fee "Under extraordinary circumstances, in the sole discretion of the Location Commission". Please provide clarification on what happens to the Fee under the following circumstances:

- a) Award of License to Applicant X. Applicant X is ultimately unable to secure financing for project even after using reasonable commercial efforts to do so and withdraws.
- b) Award of License to Applicant X. As part of a negotiated supplement to the City of Baltimore MOU, the City of Baltimore was to provide \$x million of grant funds to Applicant X. City of Baltimore fails to provide said grant funds. Applicant X withdraws.
- c) Applicant X submits a Proposal with ten (10) conditions. VLFLC accepts nine (9) of the conditions and accepts the Proposal pursuant to Section 2.17 of the RFP which allows the VLFLC to accept any proposal "in whole or in part". Having not been granted all conditions, Applicant X withdraws its proposal.
- d) The Baltimore City LDA or LDLA or required permits (including building permits) or certificates of occupancy are not obtained, despite the good faith efforts of the Applicant;
- e) The Board of Estimates of Baltimore City fails to approve the negotiated supplement to the MOU or fails to take any other action required to fulfill any obligation of Baltimore City or any other person described in the Baltimore City MOU or the Proposal;
- f) The Baltimore City MOU is terminated pursuant to Section C. 1. thereof because the parties are unable to agree on the terms of the Supplemental Agreements within sixty (60) days after award of the License.
- g) The environmental Response Action Plan fails to receive final approval; results in costs in excess of estimates, or its implementation reveals previously unknown conditions.

ANSWER: a) The Fee would be forfeited, except under extraordinary circumstances determined by the Location Commission in its sole discretion.

b) This situation is not applicable. The City will not be providing grant funds to any Applicant.

c) – f) The Disposition of the Initial License Fee including Refunds and Forfeiture is addressed in Sections 2.10.1.2 and 2.10.1.3, respectively. Generally, the Applicant would receive a refund of the Initial License Fee absent a finding of bad faith on the part of the Applicant by the Location Commission.

g) If the Location Commission determines that the cost is significantly greater, the Applicant would receive a refund of the Initial License Fee

absent a finding of bad faith on the part of the Applicant by the Location Commission.

42. **QUESTION:** Section 2.31: Seeing that the permanent facility must be operational no later than 30 months from time of Award (preferably 18 months), has Baltimore City agreed to an expedited process for entitlements (i.e. obtaining zoning, other governmental approvals and access to utilities and roads)?

ANSWER: All of the available City-owned sites are appropriately zoned for a VLT facility in the current zoning code and the comprehensive revision of the zoning code that is currently underway. Accommodations have also been made in the Urban Renewal Plan (URP) and Planned Unit Development (PUD) for these areas. There are no height restrictions for the properties. (See Amendment #1 to the RFP)

The first attachment to Amendment #1 is a copy of the Baltimore City Zoning Code showing VLTs as an allowable use. Ordinance 09-0330 was enacted for the purpose of allowing a VLT facility as a permitted use in B-2 or M-2 as long as the land fits the State criteria. The second attachment is the map amendment to the URP showing that the offered properties are B-2 or M-2. The third attachment is a copy of Ordinance 08-0023 which was enacted for the purpose of amending the URP for Carroll Camden. The ordinance waives height limitations within the Project area. The maximum building height reverts back to FAR. 1411 Warner and 701 Ostend are zoned M-2-3 which features an FAR of 8. The balance of the sites are zoned B-2-3 featuring an FAR of 5.

Current law provides that a VLT Facility may be open between 8 a.m. and 2 a.m. Under Chapter 240 of 2011, a VLT Facility may stay open until 4 a.m. on weekends. Changes to State and Baltimore City law will be necessary to provide for liquor sales at a VLT Facility after 2:00 a.m.

43. **QUESTION:** What traffic mitigation plan must be provided by an Applicant in its Proposal?

ANSWER: The Applicant does not need to submit a traffic mitigation plan. (Additional information will be forthcoming - See Amendment #1 to the RFP)

44. **QUESTION:** (Section 3.1.6.1(F)): Since the architectural drawings will be somewhat preliminary at the time of submission, how much flexibility is there to change the plans? Two months for the entitlement (i.e. obtaining zoning, other governmental approvals and access to utilities and roads) and design process is

brief. Does the Commission anticipate amendments to the Applicant's design after award and, if so, how much time may be used to fine-tune the design of the Facility and complimentary uses?

ANSWER: It is understood that changes may be necessary as the Facility plans are finalized and there will be some flexibility allowed to adjust drawings, as determined by the Location Commission and consistent with the original plan presented in the Proposal.

45. QUESTION: Section 4.3.6: Please confirm that the Baltimore City Entertainment Group litigation has been resolved or will not impact the award of a License or any of the land parcels or properties which are the subject of the RFP. If the Baltimore City Entertainment Group litigation does impact the award of a License or properties, may an Applicant withdraw its Proposal and receive a prompt refund of its initial License Fee?

ANSWER: On June 1, 2011, the Circuit Court for Baltimore City issued an order denying BCEG's petition for judicial review of the Maryland State Board of Contract Appeals determination that the Location Commission's rejection of BCEG's 2009 license application was "reasonable, justified and lawful." If BCEG appeals the Circuit Court decision, the Location Commission is confident of its legal position. In the unlikely event of a reversal, however, this RFP may be cancelled, in which case Applicants under this RFP would receive a refund of the Initial License Fee. (See Amendment #2 to the RFP)

46. QUESTION: Section 5.4: Provides that the Location Commission may request a revised Proposal from any Applicant if it is in the best interests of the State.

- a) Will the Commission promptly refund the initial License Fee to an Applicant who declines to revise its Proposal?
- b) May a request for a revised Proposal be addressed to one or more but not all Applicants, or will such requests be made to all Applicants?
- c) If a request for a revised Proposal is made to less than all Applicants, will such request be disclosed to the other Applicants?

ANSWER: a) If the Applicant declines to revise its Proposal and then withdraws its Proposal, the Applicant will forfeit the Initial License Fee (see Section 2.10.1.3). Alternatively, if an Applicant declines to revise its Proposal, the Location Commission may either award the License or reject

the Proposal. If the Commission rejects the Applicant's Proposal, the Applicant will receive a refund of the Initial License fee.

b) The Location Commission, in its discretion, may request a revised Proposal from one or more Applicants, or from all Applicants.

c) No.

47. **QUESTION:** (Appendix I): Will any third-party approvals be required (design panels, etc...) prior to award or development?

ANSWER: No, not prior to License award, but after License award the awardee will need to go through the City's development process which includes design review, etc.