

PRE-PROPOSAL CONFERENCE SUMMARY
VIDEO LOTTERY OPERATION LICENSE
IN BALTIMORE CITY
RFP #2012-0101

May 24, 2011

At approximately 10:10 a.m., Mr. Robert Howells, Director of Procurement for the Maryland State Lottery Agency, welcomed everyone to the Pre-Proposal Conference for Video Lottery Operation License in Baltimore City (RFP #2012-0101), being conducted on behalf of the Video Lottery Facility Location Commission. He introduced those present: Bonnie Kirkland, Robert Fontaine and Holly Knepper from the Office of the Attorney General; Ryan Bishop and Rachel Hise from the Department of Legislative Services; and Marie Torosino. He also stated that representatives from Baltimore City were also present.

Mr. Howells asked that if anyone did not sign-in to please do so before leaving and reminded the attendees to sign-in or clip their business card on the sign-in sheet. If there were any minority business enterprises (MBE) present, they were requested to indicate this on the sign-in sheet and he explained that prime vendors and potential MBE subcontractors should take advantage of this opportunity to network. The attached Sign-In Sheet lists the attendees at the Conference.

Mr. Howells said that a Summary of the Pre-Proposal Conference, complete and final answers to the written questions previously submitted, questions asked at the Pre-Proposal Conference, the Sign-In Sheet, and any Amendments to the RFP, if necessary, would be sent by e-mail to the attendees and to any other entities who were sent the RFP or who are known to have obtained a copy of the RFP. This information will also be published on e-Maryland Marketplace as well as the Lottery's website.

Mr. Howells said there are two separate Commissions involved in the award of the VLT license. The Video Lottery Facility Location Commission ("Location Commission") was created by the VLT law specifically for the purpose of receiving applications and awarding licenses for the VLT facilities. The Location Commission reviews the application and the proposals for technical merit for the facility and the financial proposal. Once the five licenses are awarded the Location Commission's function is completed. The Maryland State Lottery Commission ("Lottery Commission") is responsible for the background investigations and issuing the licenses to manufacturers and employees. The Lottery Commission is also responsible for the ongoing regulation and compliance of the facilities once they are up and running, and has the task of owning and/or leasing the VLT machines and the central monitor and control system.

He noted that there were a number questions submitted in writing that referred to RFP #2009-0101. This was the original RFP that was issued in December 2008, when the VLT program first started to move forward, and that RFP is closed. Applicants should be relying solely on RFP #2012-0101, the current VLT law (Title 9, Subtitle 1A, State Government Article, Annotated Code of Maryland) and the current Lottery regulations contained in COMAR – the Code of Maryland Regulations - Title 14, Subtitle 01.

Mr. Howells then went through each Section of the RFP.

SECTION 1. INTRODUCTION/OBJECTIVE

Mr. Howells reviewed Section 1 and no additional questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

SECTION 2. REQUEST FOR PROPOSALS TERMS AND CONDITIONS

Mr. Howells reviewed Section 2 and the following questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

QUESTION: When you say name of the applicant, do you want the names of the applicant and principals?

ANSWER: The company name and the officers, directors and principals.

QUESTION: Are you going to elaborate on the 365 day requirement more in the written responses?

ANSWER: We will be responding in writing and elaborating to some degree. If the answer is not clear, than a follow up question can be asked.

QUESTION: I guess relative to typical process, this is a tremendously long time period. Would there be any material efforts to change the provision?

ANSWER: Section 5.5 notes that if there is a change in your financial condition during the evaluation period, which is the entire time between when proposals are submitted and when a license is awarded, you are required to notify us.

QUESTION: Would this be specific to the applicant's financial condition?

ANSWER: Yes. Changes in ownership or proposed facility financing and other such changes are not considered changes in financial conditions and those are not subject to provisions of this Section, but are subject to Section 5.4 which is the discussions and negotiations Section of the RFP.

QUESTION: Do any of the current licensees have any minority equity ownership?

ANSWER: He does not believe so. Please send him the question in writing and the Commission will respond in writing.

QUESTION: Does the MBE certification standard apply to the City or State? There is a difference between a State certified MBE and a City certified MBE.

ANSWER: Yes, they are different, and some are possibly dual certified. There could be a case where there might be one MBE that is actually counted for both. These are issues we need to work through as to whether or not there is going to be a dual requirement. We will respond to that in writing.

QUESTION: Is there a state WBE goal?

ANSWER: There were sub-goals in the state which were at least temporarily suspended in the last legislative session. The MBE program was renewed for one year in order for the State to review these issues. Currently, the State does not have sub-goals.

QUESTION: MBE and WBE goals will not be submission criteria, but need to be certified that the goal will be met. In order to meet those goals, we do not have to say how or by whom?

ANSWER: Correct, you do not have to submit the normal schedules for a typical State contract procurement under Title 21 where all MBEs have to be identified up front. That does not apply to this license application process.

QUESTION: At what stage will that need to be firmed up; before or after the December license decision?

ANSWER: One of the submission requirements is to provide a plan for meeting the MBE requirements and how you intend to do that. We are not asking you to identify specifically by name who those contractors may be. If you know who they are, that is fine. You may know that you are going to attempt to use an MBE company to provide a specific type of service and that there are five of these companies that are identified by the MDOT website. We are not asking you to have actually entered into contracts with these MBE firms. That will not happen until after license award.

QUESTION: So if you have a phase in, do you pay the full license fee on 4,750 machines up front or do you pay on 3,750 and an additional licensing as those machines come in over time?

ANSWER: Section 2.32 talks about reallocation of VLTs. If you apply for a license for 4,750 machines, you pay an initial license fee based on the 4,750 machines even if you will be phasing them in over a period of time. If you apply for a license for 3,750 machines and pay a license fee for the 3,750, you may at some future date come back and ask for additional machines. You would pay the additional license fee at that time when

you request and receive the additional 1,000 machines. Currently, we have some excess machines because at this point Penn National and Ocean Downs have not used their entire allocation. If you come back in two years and ask for more machines, we don't know if they will be available. You have to pay the initial license fee based on the number of machines you are asking for with your proposal.

SECTION 3. INFORMATION REQUIRED IN APPLICANT'S PROPOSAL

Mr. Howells reviewed Section 3. and the following questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

QUESTION: To what degree will the Commission rely on licensure from other jurisdictions?

ANSWER: We received some questions to that effect and will respond in writing. For individuals who have been licensed in other recognized jurisdictions, certainly there are concessions made for that. That is covered in the regulations and we will expound upon that in writing in the response.

QUESTION: In Section 3 there is a requirement that in response to the RFP, asks you to discuss the current changes in zoning or the traffic impact that are subject to pending changes in law in Baltimore City. Will you be providing guidance with the City?

ANSWER: We will. He introduced Ms. Kim Clark, Executive Vice President of the Baltimore Development Corporation. She said the zoning and the land use is in place.

QUESTION: There are things happening with regard to subcommittee meeting plans. There is a new zoning code that probably won't be used until the fall.

ANSWER: Ms. Clark said they will be covered under the old zoning code and the new zoning code.

QUESTION: Dependent upon what the final form is that might be approved. For example, in terms of the kinds of improvements that are supposed to be approved?

ANSWER: Ms. Clark said we have been working very cooperatively with the Baltimore City Department of Transportation. Everyone knows how important this project is.

QUESTION: We are being asked for certain specifications in our submission and we are not sure as to what the requirements are going to be because we haven't had those meetings with anyone?

ANSWER: Ms. Clark said they are offering meetings with the City for potential applicants.

QUESTION: How are you going to consider the applicant's qualifications? Specifically, are you going to look at the applicant alone or the applicant and the entity? Looking at Section 3.1.7.3, it says the applicant shall describe its background and experience related to VLT programs and other gaming activities. This experience must be under the applicant's company name. For example if you have Worldwide Gaming, Inc. and they decide to start a Worldwide Gaming Maryland subsidiary that doesn't have any gaming experience. Similarly, if you have XYZ partnership and Worldwide Gaming is a partner in that organization and another variation would be having a corporation that itself is without gaming experience but enters into a management contract with Worldwide Gaming, Inc. Clearly they have plenty of gaming experience with the contractor but the entity itself does not have gaming experience. Can you take that into consideration and how would that be resolved.

ANSWER: Describe the applicant, whatever the company is or whatever the entity is, and the experience they have. Then the next step is to describe the experience of the principals, any other corporations that are involved. I think both of the existing operators did that. They formed specific corporations to operate their Maryland facilities that were new for those facilities. The Location Commission will evaluate all of those factors. The applicant's experience or structure, the principals, the whole package will be looked at.

QUESTION: If the applicant itself doesn't have any gaming experience either because it is new, then would the entity say they do not have gaming experience?

ANSWER: For example, ABC Maryland Corporation was incorporated on such and such a date specifically for the purpose of operating the facility and then continue to describe whatever the principals are that are involved.

QUESTION: Do you then describe the management contract that you have with the organization?

ANSWER: Yes, provide all that information. We certainly expect that we will have a whole array of different organizational structures and so forth that we are going to have to look through.

QUESTION: The fact that the entity itself might not have gaming experience would not necessarily be something that will prevent it or be considered less than another type of gambling experience?

ANSWER: We will look at the whole package of what you are proposing.

QUESTION: With respect to the Executive Summary Section, you mentioned to address all the minimum requirements. By minimum requirements do mean Section 1.2?

ANSWER: Correct. We have listed them again here. Again it is the initial license fee, that you are agreeing to the \$25 million per 500 machines, and you are agreeing to the 33%.

QUESTION: Exceptions for some other requirements are not addressed in that area?

ANSWER: If there are other exceptions to the requirements, then that goes in the Executive Summary section. If you are taking an exception to a minimum requirement, that may be a problem. If you are taking an exception to some other term or condition, that should be listed here. The general rule about exceptions is they do not eliminate your proposal from consideration. However, they are items that during the evaluation and review process are going to have to be addressed and typically are going to have to be removed or resolved in some fashion before we get to the point of license award. Generally speaking, we cannot make an award to someone who has an outstanding exception.

QUESTION: The negotiation on the MOU with the City between the applicant and the City, is that kept confidential between the applicant and the City?

ANSWER: Yes, the City is required to abide by all of the terms and conditions for confidentiality. Ms. Clark said the MOU document itself has been approved by the Board of Estimates. Once it is approved by the Board of Estimates it is a published document. Any further negotiations, if for an example an entity wants to negotiate something less in an MOU, we would have to take that back to the Board of Estimates for approval. So it would be a public document.

QUESTION: Then we can negotiate the content of the MOU before that changes?

ANSWER: Ms. Clark said correct.

QUESTION: But before the change is made...?

ANSWER: Ms. Clark said if a change is made that lessens the benefit to the City that MOU has to go back to the Board of Estimates. Ms. Hise said we will answer that in writing.

QUESTION: But if you make changes to the MOU?

ANSWER: The whole concept of having this pre-approved and having it part of the RFP was to expedite the process and not have to go through all of this now. We will respond to that in detail in a written response.

QUESTION: Could you include in the response when it would go to the Board of Estimates? Before July 28? For example, if you are successfully negotiating the less, I think the timing is as important as anything on that question.

ANSWER: Yes.

QUESTION: Also whether or not it will be taken up in an executive session or a public session?

ANSWER: At the Board of Estimates.

SECTION 4. FACILITY SPECIFICATIONS

Mr. Howells reviewed Section 4. and the following questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

We received questions regarding Section 4.3.4 Environmental Remediation. There is a meeting being held regarding the remediation plan on June 1 at 6:30 p.m. at Harbor Hospital to discuss this remediation plan if anyone is interested in attending. Ms. Clark said the meeting is part of the remediation plan submitted to the Maryland Department of the Environment (“MDE”) and it is required by MDE. Representatives from our environmental consultant will be there to discuss the plan as well as people from MDE and ourselves. If you want more technical information about what is in the plan, you are more than welcome to attend. There is also a link from the RFP to the plan that has been submitted to MDE. MDE has not started their approval. By law, they do not start their review until after the public meeting.

QUESTION: John Daughy representing BCEG—what if we do not know between tomorrow and July 28 the outcome of the BCEG appeal? If we respond to the RFP but the court has not decided by July 28?

ANSWER: Ms. Kirkland said the question that we received presumes that we may or may not know. You would submit an application along with the required initial license fee. If after that time there is a cancellation of the RFP, the initial license fee would be refunded. Prior to July 28, there is no initial license fee to be refunded. It presumes that would happen after that time. If it happens before that time and the RFP is cancelled, there are no applications and no initial fees to be refunded.

QUESTION: You talk in terms of an order of court, but suppose there is no order of court and the situation is such that there is no final resolution and for example, the title company wouldn’t issue title insurance or the lender would not feel secure in getting lien on the properties, what happens then?

ANSWER: Ms. Kirkland said it is our position at this point, we have won in the Board of Contract Appeals. Also in Section 4.3.6.2, the City has won with regard to the control over the sites. So at this point, we feel that both the City and the State are perfectly free to go forward with the RFP and the award of the license.

QUESTION: But those decisions are not final Appellate decisions, so there is litigation that could continue for some period of time.

ANSWER: Ms. Kirkland said yes there is.

QUESTION: So what I am really asking is in the absence of a final order, but in essence a cloud on the title is such that at the time of the license award the applicant can't with certainty know that they have clear title to the property. What could happen?

ANSWER: Ms. Kirkland said that is a City issue. It is part of the litigation that we were not party to, but at present they have clear title.

QUESTION: It is my understanding that BCEG does not have title to the property by deed of record. They have an LOI that was assigned to them by the Board of Estimates from the previous developer that was developing the project. So the basis of their claim is that they a right based on the reassignment of an LOI. They do not technically own the property, the city owns the property. Can you clarify?

ANSWER: Ms. Clark said the City owns the property.

QUESTION: So the title is clear as far as the City is concerned. The issue here is the rights that BCEG has to the LOI which was assigned to them by the previous developer it was under contract with. Is this correct?

ANSWER: Ms. Clark said the City has clear title to those properties. Ms. Kirkland said we can certainly clarify that in the written responses.

QUESTION: Beside the BCEG issues, are there any outstanding legal issues?

ANSWER: These are the only two that I am aware of. Ms. Clark said the City has clear title to the property.

QUESTION: Is there any current legal issue with respect to this?

ANSWER: Ms. Kirkland said not that I am aware of. Ms. Clark said there have been no suits filed in court.

QUESTION: Have any suits been threatened?

ANSWER: Ms. Clark said they are always threatening.

QUESTION: On this topic, previously we talked about the 24/30 month, the developments related to this litigation that for some reason like in the financing prohibit development proceeding as planned due to the RFP application, are you are risk of losing your license or will remedies to either extend the timeline, how are those delays contemplated to be addressed?

ANSWER: Ms. Hise said we received a question similar to this in writing and we will respond in writing.

SECTION 5. EVALUATION AND SELECTION PROCEDURE

Mr. Howells reviewed Section 5. and the following questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

QUESTION: On the revised application, do we assume they will be posted on July 28?

ANSWER: On the revised application, which would be after receipt of proposals and after the Commission has done their preliminary review of the proposals and has questions or concerns that they may want to discuss about the proposal.

QUESTION: Will other applicants be made aware that someone has changed their proposal?

ANSWER: Other applicants would not have any knowledge of the applicant's original proposal. The fact that you have submitted a proposal would be on the Register of Proposals and would be made public. Everyone's proposal is handled in a confidential manner. Ms. Hise said if additional machines are requested and the license fee is paid then we would make that public. Mr. Howells said the Register of Proposals will contain each applicant's name, the number of machines and the fee paid. If that were to change, we would revise and issue a new Register of Proposals.

SECTION 6. REQUIREMENTS OF OPERATION LICENSE AND OPERATION LICENSEE

Mr. Howells reviewed Section 6 and the following questions were asked. He also noted that questions previously submitted regarding this Section will be responded to in writing.

QUESTION: How does the MOU fit in with the Commission's selection process? There is a provision in the MOU that essentially suggests that the City could be negotiating with multiple applicants and reaching separate agreements with each applicant. In essence, improve the term of the MOU. Then the question becomes what role and how much weight is given to the City's input with regard to all these different MOUs?

ANSWER: Ms. Hise said prior to submission of the proposal, you can negotiate with the City through the terms of the RFP for better conditions to the City. That would then be submitted with your proposal as a supplement to the MOU which would have the different terms. Once all the proposals are submitted, it is the Location Commission's role to select the applicant under the criteria that are set out in the law and the proposal that they find is in the best interest of the State.

QUESTION: How does that differ with the best interest of the City?

ANSWER: Ms. Hise repeated that the Location Commission's role is to choose the proposal that is in the best interest of the State.

QUESTION: The MOU appears to require 50 years but the license is for 15 years with a 10 year renewal, how is that discrepancy resolved?

ANSWER: We received that question in writing and we will respond in writing as to what happens in the 25 year gap.

QUESTION: Can you address the parking garage, the financing?

ANSWER: The terms of the parking garage will be responded to in writing.

Mr. Howells then provided the attendees with a final opportunity to ask any questions regarding the entire RFP or process. There were no additional questions.

In conclusion, Mr. Howells stated that a Summary of the Pre-Proposal Conference, Questions & Answers, the Sign-in Sheet and Amendment to the RFP, if any, will be sent to all parties as soon as possible. He also reminded the attendees that the Location Commission will accept additional questions after the Conference up until such time as it becomes impractical to research and distribute the answers to all parties.

If anyone would like to set up a meeting with the City, please send him an e-mail as soon as possible or come up and give me your contact information before leaving today's meeting..

Mr. Howells thanked everyone for attending today. The Pre-Proposal Conference concluded at 11:39 a.m.

Summary prepared by:

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