



TEXAS LOTTERY COMMISSION

REQUEST FOR PROPOSALS

FOR

ADVERTISING SERVICES

ISSUED October 16, 2017 4:00 P.M. Central Time
Request for Proposal No. 362-18-0002



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GLOSSARY OF TERMS

This Glossary assigns definitions to the listed terms. The definition given to a term listed in this Glossary applies whenever the term appears in this Request for Proposals (RFP) and in any response, including a Proposal, to this Request for Proposals.

Term	Definition
Apparent Successful Proposer	The Proposer recommended by the evaluation committee and approved by the Executive Director, subject to the execution of a completed contract.
Business Hours	The Texas Lottery's business hours are 8:00 a.m. to 5:00 p.m. CT, Monday through Friday, except State holidays.
Contract	The agreement entered into by the Texas Lottery and the Successful Proposer, which will incorporate the contents of this RFP and the Successful Proposer's Proposal, except as specifically provided to the contrary in the Contract and any amendments to the Contract.
Contract Award	The day of the contract announcement after the signing of a Contract between the Texas Lottery and the Successful Proposer.
CPA	Texas Comptroller of Public Accounts.
Day	A calendar day.
Executive Director	The Executive Director of the Texas Lottery Commission or an employee of the Texas Lottery Commission authorized to act on behalf of the Executive Director.
Executive Management	The Executive Director of the Texas Lottery Commission and the Charitable Bingo Operations Director.
Fiscal Year	The Texas Lottery's fiscal year, which begins on September 1 and ends on August 31 of the following year.
Historically Underutilized Business (HUB)	A Historically Underutilized Business is a business that is certified by the State of Texas that (1) is at least 51% owned by an Asian Pacific American, Black American, Hispanic American, Native American, American woman, and/or Veteran as defined by 38 U.S.C. Section 101 who has suffered at least a 20 percent service-connected disability as defined by 38 U.S.C. Section 101(16); (2) is a for-profit entity that has not exceeded the size standards prescribed by 34 Texas Administrative Code (TAC) §20.294, and has its principal place of business in Texas; and (3) has an owner residing in Texas with a proportionate interest who actively participates in the control, operations and management of the entity's affairs. For further explanation, see the CPA HUB rule definitions at 34 TAC §20.282.
HSP	The Historically Underutilized Business Subcontracting Plan (HSP) required by Chapter 2161 of the Texas Government Code



	and by Texas Lottery Commission Rule, 16 TAC §403.301 (See Attachment C.).
Intellectual Property Rights	The worldwide legal rights or interests evidenced by or embodied in: (i) any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery, or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights or neighboring rights; (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain name registrations; and (v) any other proprietary or similar rights. The Intellectual Property Rights of a party include all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
Invited Option	An Invited Option is identified as being of specific interest to the Texas Lottery; however, the Texas Lottery makes no commitment to quantity or timing for acquisition. The Proposer is not obligated to include an Invited Option in the Proposal.
Offered Option	Offered Options are not requested in the response to this RFP, but may be identified by the Proposer and included in its Proposal. A Proposer is not obligated to include an Offered Option in the Proposal. This is an opportunity for Proposers to offer options that the Texas Lottery may not have been aware of at the time the RFP was written. The Texas Lottery makes no commitment to quantity or timing for acquisition of Offered Options and offered options are not considered during evaluation of Proposals.
Major And Prime Contracts	The following Texas Lottery contracts are considered major or prime contracts: lottery operations and services, scratch (instant) ticket manufacturing and services, advertising services, lottery drawings CPA services, document management services, drawings studio and production services, promotional products, TLC Headquarters lease, TLC warehouse lease, internal audit services, internal control system, security management system and monitoring services, risk review and compliance monitoring, security officer services, website hosting services, Houston claim center lease, trademark license and promotional agreements with the Dallas Cowboys, Houston Texans, and Irving Music Factory The Texas Lottery may add or delete major or prime contracts at its sole option.
Proposal	All information and materials submitted by a Proposer in response to this RFP. This includes the Cost Proposal, Technical Proposal, and other information and materials provided to the Texas Lottery by the Proposer prior to Contract Award.



Proposer	An individual or entity that submits a Proposal. The term includes anyone acting on behalf of the individual or entity that submits a Proposal, such as agents, employees and representatives.
Responsive Proposal	A Proposal submitted which conforms in all material respects to the RFP, as determined by the Texas Lottery.
RFP	This Request for Proposals.
State	The State of Texas and its agencies, boards and commissions, officers and employees.
Subcontractor	A person who contracts with the Successful Proposer to work, to supply commodities, or contribute toward completing work for the Texas Lottery.
Successful Proposer	The Proposer with whom the Texas Lottery executes a Contract to provide the goods and services that this RFP requires.
Texas Lottery Commission, Texas Lottery, Lottery or TLC	That agency created by Chapters 466 and 467, Texas Government Code. The Texas Lottery Commission may be referred to as the Texas Lottery, Lottery or TLC throughout this document.
Working Days	Business days occurring Monday through Friday except for the legal holidays observed by the State of Texas. The terms “working days” and “business days” may be used interchangeably.
Works	Any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced or developed by a Successful Proposer (or such third parties as the Successful Proposer may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of TLC under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to lottery games, game names, game designs, ticket format and layout, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the



	foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided to TLC under the Contract, and (viii) all Intellectual Property Rights in any of the foregoing.
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1 GENERAL INFORMATION

1.1 PURPOSE

- 1.1.1 The Texas Lottery Commission is issuing this Request for Proposals (RFP) to obtain proposals from qualified vendors to provide advertising services for the Texas Lottery with the objective of responsibly communicating information to all adult (ages 18+) Texans intended to enhance awareness of Texas Lottery games and the mission of the Texas Lottery to generate revenue for the State's designated beneficiaries including Texas public education and veterans.
- 1.1.2 The Successful Proposer shall be required to perform services as specified in this RFP and shall fully understand the Texas Lottery's history and background, and support the Texas Lottery's vision, mission, core values and goals. Proposers are encouraged to review the following:
- FY18 Media Flowchart Attachment I
 - FY16 Sales/Revenue by Game, Attachment J
 - Demographic Survey of Texas Lottery Players, available at: http://www.txlottery.org/export/sites/lottery/About_Us/Publications/Reports.html
 - National Association of State and Provincial Lotteries (NASPL) website, www.naspl.org
 - La Fleur's website, www.lafleurs.com
 - the Texas Lottery Commission's 2018 Business Plan, available at: http://www.txlottery.org/export/sites/lottery/About_Us/Publications/Reports.html
 - the Texas Lottery Commission's 2017-2021 Strategic Plan, available at: http://www.txlottery.org/export/sites/lottery/About_Us/Publications/StrategicPlans.html
- 1.1.3 Proposers must demonstrate an understanding of Texas as a minority-majority state as well as the ability to effectively reach and speak to all adult (ages 18+) Texans. According to U.S. Census population estimates as of July 1, 2016, Texas had a minority population of 16.0 million comprising 57.4% of its total population of 27.9 million.
- 1.1.4 The Successful Proposer (either with its own resources and staff or through subcontracting -see Part 5- with other service vendors) must be able to perform the functions of a full-service advertising agency, including, but not limited to, branding, creative concepting, production, planning, purchase and placement of broadcast, digital, social, print and out-of-home advertising. Additional services include, but are not limited to, experiential event and activation planning, advertising-related market analysis and translation services.



1.2 OUR VISION AND MISSION

- 1.2.1 Vision – To be the preeminent Lottery and Charitable Bingo agency through innovative leadership.
- 1.2.2 Texas Lottery Mission – The Texas Lottery is committed to generating revenue for the State of Texas through the responsible management and sale of entertaining lottery products. The Texas Lottery will incorporate the highest standard of security, integrity and responsible gaming principles, set and achieve challenging goals, provide quality customer service and utilize a TEAM approach.
- 1.2.3 Charitable Bingo Mission – Provide authorized organizations the opportunity to raise funds for their charitable purposes by conducting bingo. Determine that all charitable bingo funds are used for a lawful purpose. Promote and maintain the integrity of the charitable bingo industry throughout Texas.

1.3 OUR CORE VALUES

- 1.3.1 Integrity and Responsibility — The Texas Lottery Commission works hard to maintain the public trust by protecting and ensuring the security of our lottery games, systems, drawings and operational facilities. We value and require ethical behavior by our employees, licensees and vendors. We promote the integrity of Charitable Bingo in Texas for the benefit of charitable organizations.
- 1.3.2 Innovation — We strive to incorporate innovation into our products to provide the citizens of Texas with the best entertainment experience available through our products. We pursue the use of technology that enhances the services that we provide to our customers and reduces our operating expenses. All proposed innovations must be authorized by Texas law, and do not include video lottery, casino gaming, internet-based lottery sales, fantasy sports, or any other activities not authorized by law.
- 1.3.3 Fiscal Accountability — We emphasize fiscal accountability by ensuring that all expenditures directly or indirectly generate revenue, enhance security, fulfill regulatory requirements, improve customer service and/or boost productivity. We recognize our responsibility in generating revenue for the State of Texas without unduly influencing players to participate in our games. We maximize benefits to charities through the continual examination and review of Charitable Bingo operations.
- 1.3.4 Customer Responsiveness — The Texas Lottery Commission takes pride in providing exemplary service to the people of Texas through the courteous dissemination of clear and accurate information about our products, services and regulatory functions. We seek and respond to feedback expressed by our employees, retailers, licensees and the playing and non-playing public. We apply this feedback in the development of our products and in the services that we provide.
- 1.3.5 Teamwork — We are committed to creating an environment of mutual respect where open, honest communication is our cornerstone. We embrace the diversity of our team and individual perspectives in working together to achieve our common goals.



- 1.3.6 Excellence — We strive for excellence by taking a position of leadership on issues that impact the Texas Lottery Commission and achieve challenging goals by focusing on our core values.

1.4 SCHEDULE OF EVENTS

The following time periods are set forth for informational and planning purposes only. The Texas Lottery reserves the right to change any of the time periods and will post all changes on the Electronic State Business Daily, <http://esbd.cpa.state.tx.us/>, and/or the Texas Lottery website, <http://www.txlottery.org/> (Click on About Us, Doing Business with TLC, Procurement).

Date	Event
October 16, 2017 (4:00 p.m., CENTRAL TIME)	Issuance of RFP
October 25, 2017 (1:30 p.m., CENTRAL TIME)	Pre-Proposal Conference at Texas Lottery Headquarters
November 6, 2017 (4:00 p.m., CENTRAL TIME) (Late Questions will not be answered)	Written Questions Due
November 16, 2017 (4:00 p.m., CENTRAL TIME)	Final date for submission of draft HSP forms and final date to conduct one-on-one workshops (in person or via telephone conference)
November 17, 2017	Responses to Written Questions Issued
December 5, 2017 (4:00 p.m., CENTRAL TIME) (Late Proposals will not be considered)	Deadline for Proposals
January 22 - February 2, 2018	Oral Presentations
on or before February 23, 2018 (or as soon as possible thereafter)	Announcement of Apparent Successful Proposer

1.5 SUCCESSFUL PROPOSER'S / LOTTERY RELATIONSHIP

The Texas Lottery Commission is a part of the Executive Branch of Texas State Government. The Texas Lottery will not relinquish control over lottery operations. The Successful Proposer shall function under the supervision of the Texas Lottery. Its operations will be subject to the same scrutiny and oversight that would apply if all operations were performed by Texas Lottery employees. Accordingly, all operations must be conducted in adherence to applicable statutes and the highest ethical standards.



1.6 PROCUREMENT AUTHORITY

This RFP and all activities leading toward the execution of a written contract pursuant to this RFP are being conducted in accordance with the State Lottery Act (TEX. GOV'T CODE ANN. §§ 466.001 et seq.), as amended; the Texas Lottery's administrative regulations (16 TAC §§ 401.101, et seq.); and other applicable laws of the State of Texas. All Proposers should read and be familiar with the State Lottery Act and 16 TAC §401.101.

1.7 PROPOSALS SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT

- 1.7.1 The Texas Lottery is subject to the Texas Public Information Act (Act) (TEX. GOV'T CODE ANN., ch. 552). Proposals submitted to the Texas Lottery in response to this RFP are subject (in their entirety) to release by the Texas Lottery as public information. A Proposal, or specific parts thereof, may however, be shown by the Proposer to fall within one or more of the exceptions to disclosure provided in the Act, the State Lottery Act or other applicable law. Marking an entire Proposal as "confidential" or "copyrighted" is unacceptable. If a Proposer believes that parts of its Proposal are confidential under the Act, it should specify the confidential information by marking "Confidential" on each page or by each paragraph containing such information prior to submitting the Proposal to the Texas Lottery. In response to this Section, Proposers shall provide the Texas Lottery with specific and detailed reasons for each item marked "Confidential". Vague and general claims to confidentiality are not acceptable. This detail is necessary so that the Texas Lottery will have sufficient information to provide to the Attorney General of Texas, if a ruling regarding the confidentiality of such information is requested. Failure of a Proposer to respond to such notification may result in the release of all or part of the Proposal as public information. It is the Proposer's obligation to submit briefing to the Attorney General setting forth the basis upon which the requested information should remain confidential. The Attorney General may determine all or part of a Proposal to be public information even though parts of the Proposal were marked "Confidential" by the Proposer.
- 1.7.2 The Texas Lottery assumes no responsibility for asserting legal arguments to the Attorney General on behalf of Proposers.
- 1.7.3 Proposers are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

1.8 MISUNDERSTANDING OR LACK OF INFORMATION

By submitting a Proposal, a Proposer covenants and agrees that it fully understands and will abide by the terms and conditions of the RFP and it will not make any claims for, or have any rights to, cancellation or relief without penalty because of any misunderstanding or lack of information. The Executive Director reserves the right to accept Proposals by waiving minor technicalities if the Executive Director, within his or her sole discretion, determines it to be in the best interests of the Texas Lottery. The decision of the Executive Director shall be conclusive, and subject to protest under Section 2.17 of this RFP.



1.9 REJECTION OF PROPOSALS AND CANCELLATION OF RFP

Issuance of this RFP and/or retention of Proposals does not constitute a commitment on the part of the Texas Lottery to award a Contract. The Texas Lottery maintains the right to reject any or all Proposals, and to cancel this RFP, if the Texas Lottery, in its sole discretion, considers it to be in its best interests to do so.

1.10 OWNERSHIP OF PROPOSALS

All materials submitted by a Proposer will become the property of the Texas Lottery and may be used as the Texas Lottery deems appropriate.

1.11 INCURRED EXPENSES

The Texas Lottery accepts no obligations for costs incurred in preparing and submitting a Proposal. Proposals shall be submitted at the sole expense of the Proposer. All Proposals shall be prepared simply and economically, providing a straightforward, concise delineation of the Proposer's capabilities to satisfy the requirements of this RFP.

1.12 PROPOSAL TENURE

All Proposals shall be valid for a period of one hundred and eighty (180) Days from the deadline for submitting Proposals.

1.13 NO TEXAS LOTTERY OBLIGATIONS

The Texas Lottery reserves the right to select qualified Proposals to this RFP without discussion of the Proposals with Proposers. It is understood that all Proposals will become a part of the Texas Lottery's official procurement files after the Contract has been awarded or the procurement has been terminated, and will be available for public inspection except for portions that the Proposer has designated as proprietary and confidential (see Sections 552.110 and 552.305 of the Public Information Act and RFP section 1.7 above).

1.14 SUCCESSFUL PROPOSER'S OBLIGATIONS

The Successful Proposer shall always be responsible for the performance of any contractual obligations that may result from the award of the Contract and shall be liable for the non-performance of any or all Subcontractors.

1.15 CAPTIONS

The captions to the Sections of this RFP are for convenience only and are not part of the RFP's substantive terms.



1.16 PARTS INCORPORATED

All attachments listed in the Table of Contents are incorporated into and expressly made a part of this RFP.



2 PROPOSAL PROCESS

2.1 CONTACT PERSON

The sole point of contact for communications concerning this RFP will be Angela Zgabay-Zgarba, whose mailing address and email address, are as follows:

Angela Zgabay-Zgarba
Contracts Management & Procurement Manager
Texas Lottery Commission
P. O. Box 16630
Austin, TX 78761-6630
Phone (512) 344-5215
contracts@lottery.state.tx.us

The Texas Lottery Headquarters' physical address for deliveries is:

Angela Zgabay-Zgarba
Contracts Administration
Texas Lottery Commission
611 East 6th Street
Austin, TX 78701

2.2 PROHIBITION AGAINST UNAUTHORIZED CONTACT

- 2.2.1 The Texas Lottery is committed to a procurement process that maintains the highest level of integrity. Accordingly, Proposers, as well as their agents, liaisons, advocates, lobbyists, "legislative consultants," representatives or others promoting their position, are limited to those communications authorized by and described in this RFP. Any attempt to influence any of the participants, whether that attempt is oral or written, formal or informal, direct or indirect, outside of this RFP process is strictly prohibited.
- 2.2.2 Should allegations of improper contact be made prior to Contract Award, the Executive Director may investigate those allegations and, in his sole discretion, disqualify a Proposer.

2.3 PRE-PROPOSAL CONFERENCE

Prospective Proposers should plan to attend a Pre-Proposal Conference to be held at the Texas Lottery Headquarters (611 East 6th Street, Austin, Texas). See the Schedule of Events for the date and time. The Pre-Proposal Conference will include an overview of the RFP and a presentation on the HUB Subcontracting Plan (HSP) requirements. A question-and-answer session will also take place regarding general, technical and HSP questions. Attendance at the Pre-Proposal Conference is recommended, but not mandatory. A video



of the Pre-Proposal Conference will be posted on the Texas Lottery website at www.txlottery.org. All prospective Proposers are highly encouraged to view the video.

2.4 INQUIRIES

- 2.4.1 Written inquiries concerning this RFP will be accepted and responses posted on the Electronic State Business Daily (ESBD), <http://esbd.cpa.state.tx.us/>, and the Texas Lottery website, www.txlottery.org, according to the timetable established in the Schedule of Events. Inquiries received after the deadlines set in the Schedule of Events may be reviewed by the Texas Lottery, but will not be answered. Any addenda or amendments, whether made as a result of a prospective Proposer's written inquiries or otherwise, will be posted on the ESBD and the Texas Lottery website. It is the responsibility of the Proposer to check these websites for any additional information regarding this RFP.
- 2.4.2 Inquiries shall be submitted by email by the inquiry submission deadline to:
- contracts@lottery.state.tx.us
- 2.4.3 A Proposer shall inquire in writing and should obtain clarification as to any ambiguity, conflict, discrepancy, exclusionary specification, omission or error in this RFP (collectively, "errors") prior to submitting a Proposal, but in no event shall be entitled to additional compensation, relief or time by reason of any error or its later correction. If a Proposer fails to obtain written clarification of any errors, the Proposer shall submit a Proposal at its own risk; and, if awarded a Contract, the Proposer shall be deemed to have waived any claim to contest the Texas Lottery's interpretation thereof.

2.5 SUBMISSION OF PROPOSAL

- 2.5.1 Proposals must be delivered to Angela Zgabay-Zgarba at the address provided in Section 2.1 and received no later than the deadline established in the Schedule of Events. Late Proposals will not be considered. No exceptions will be made.
- 2.5.2 The Proposer shall submit one (1) signed original and ten (10) copies of its Proposal. For Part 5 only, Proposers shall provide one (1) signed original and two (2) copies of all required HSP documentation. All Proposals submitted must be bound in a three-ring binder, organized and arranged to correspond directly with the numbered sections of this RFP, and all pages must be numbered. For Parts 1, 2 and 3 only, Proposers may provide a blanket acknowledgment and acceptance in lieu of a section-by-section response. For Parts 4, 6, 7 and 8 only, Proposers shall provide a section-by-section response to the RFP. For Part 5, Proposers shall follow the instructions for completing and submitting a HSP.
- 2.5.3 If a Proposer is claiming any part(s) of its Proposal is confidential, the Proposer must provide a detailed response to Section 1.7 and mark the material as "Confidential". A Proposer may not amend a commitment to comply with a specific section of this RFP by a later reference back to that section.
- 2.5.4 The Proposer's Commitment (Attachment A) and the Background Information Certification (Attachment D-1) shall be signed by an officer or agent of the Proposer with



authority to contractually bind the Proposer, and the attachments must be included with the original Proposal.

- 2.5.5 Proposers are required to propose a complete solution, in their Proposal, to the Texas Lottery's requirements. Any items not specifically requested, but integral to the requested services, shall be included in the Proposal and identified in the appropriate sections thereof.
- 2.5.6 Proposers responding to this RFP must fully and completely address all goods, services and other requirements described in this RFP. Incomplete or partial Proposals will not be considered. The Proposer shall provide all information that the Proposer believes would be helpful to the Texas Lottery in evaluating the Proposer's ability to fulfill the RFP requirements.
- 2.5.7 In addition to the printed Proposal, the Proposer must also submit one copy of the text portion of its Proposal, excluding the Cost Proposal, on a compact disk or USB drive in a searchable PDF file. If there is any disparity between the contents of the printed Proposal and the contents of the Proposal contained in electronic format, the contents of the printed Proposal shall take precedence. The electronic or soft copy required herein will not be accepted in lieu of the signed original and copies as required in Section 2.5.2.
- 2.5.8 Proposals that have been copyrighted, in whole or in part, by any Proposer are unacceptable and may be rejected as non-responsive.

2.6 RESPONSE FORMAT & CONTENTS

The Proposer must demonstrate its understanding of the requested goods and services and must address specifically, in writing, the Proposer's approach to providing each requirement in this RFP. Each Proposal must be organized in the manner described below:

- (a) Letter of Transmittal;
- (b) Executive Summary;
- (c) Section-by-section response to the RFP (see Section 2.5.2 above);
- (d) Sealed Cost Proposal (Attachment to the original proposal only);
- (e) Proposer's Commitment (Attachment A); and
- (f) Background Information Certification (Attachment D-1).

2.7 LETTER OF TRANSMITTAL

- 2.7.1 Proposers must submit a Letter of Transmittal that identifies the entity submitting the Proposal and includes a commitment by that entity to provide the goods and services required by the Texas Lottery in this RFP. The Letter of Transmittal must state that the Proposal is valid for one hundred and eighty (180) Days from the Day after the deadline for submitting Proposals. Any Proposal containing a term of less than one hundred and eighty (180) Days for acceptance shall be rejected. The Letter of Transmittal must be signed by a person(s) legally authorized to bind the Proposer to the representations in the Proposal. The Proposer should also indicate, in its Letter of Transmittal, why it believes it is the most qualified Proposer to provide the goods and services required by the Texas Lottery in this RFP.



- 2.7.2 The Letter of Transmittal must include a statement of acceptance of the terms and conditions set forth in Part 3 of this RFP that will be included in the Contract. If the Proposer takes exception to any of the proposed terms and conditions, those exceptions must be noted in the Letter of Transmittal. Proposers shall provide specific and detailed reasons for each exception, together with suggested alternative language. Vague and general exceptions are not acceptable. Proposers should realize, however, that failure to accept the terms and conditions specified in Part 3 of the RFP may result in disqualification of the Proposal.

2.8 EXECUTIVE SUMMARY

- 2.8.1 Proposers must provide an executive summary of their Proposal (excluding cost information) that asserts that the Proposer is providing, in its Proposal, all the requirements of this RFP. If the Proposer is providing goods or services beyond those specifically requested, those goods or services must be identified. If the Proposer is offering goods or services that do not meet the specific requirements of this RFP, but in the opinion of the Proposer are equivalent or superior to those specifically requested, any such differences must be noted in the Executive Summary. The Proposer should realize, however, that failure to provide the goods and services specifically requested may result in disqualification.
- 2.8.2 The Proposer must demonstrate its understanding of the requested goods and services and must address specifically, in writing, the Proposer's approach to providing each requirement in this RFP.
- 2.8.3 The Executive Summary must not exceed five (5) pages and should represent a full and concise summary of the contents of the Proposal.

2.9 PROPOSER'S CONTRACTING AUTHORITY

The Proposer warrants and represents that the person named on the Proposer's Commitment (Attachment A) has the full right, power and is legally authorized to execute the Contract resulting from this RFP on behalf of the Proposer. Commitments must be unqualified, not limited, and fully commit the Proposer to provide the goods and services required under this RFP.

2.10 PROPOSER'S COST PROPOSAL

- 2.10.1 The Proposer must state its pricing for all goods and services rendered during the course of the proposed Contract, including any and all costs involved that are to be paid or reimbursed by the Texas Lottery. The pricing for the required goods and services is to be presented only in the format set forth in Attachment H of the RFP. Pricing information shall include all costs associated with providing the required goods and services and must be submitted in a separate, sealed envelope clearly marked as such, attached to the original Proposal only. No reimbursement is available to the Successful Proposer beyond the



amount agreed to be paid for the goods and services provided. Pricing agreed to in any resulting Contract shall be firm and remain constant through the life of the Contract.

- 2.10.2 The Proposer shall not disclose its Cost Proposal or other cost information in the body of its written Proposal. Including cost information in the written Proposal may be cause for disqualification.

2.11 MULTIPLE PROPOSALS

Each Proposer may submit only one Proposal. If a Proposer submits more than one Proposal, all Proposals from that Proposer may be rejected.

2.12 CHANGES, MODIFICATIONS AND CANCELLATION

The Texas Lottery reserves the right to make changes to and/or cancel this RFP and will post all changes and modifications, whether made as a result of a potential Proposer's written inquiries or otherwise, and cancellation notices on the Electronic State Business Daily and the Texas Lottery websites. **It is the responsibility of the Proposer to check these websites for any additional information regarding this RFP. If the Proposer fails to monitor the ESBD and TLC websites for any changes or modifications to the RFP, such failure will not relieve the Proposer of its obligation to fulfill the requirements as posted.**

2.13 UPDATES TO INFORMATION SUPPORTING A PROPOSAL

Following the submission of Proposals and prior to the signing of a Contract, the Proposer is under a continuing obligation to notify the Texas Lottery in writing of any updates or changes to information offered in support of its Proposal that might reasonably be expected to affect the Texas Lottery's consideration of the Proposal. Nothing in this section shall be interpreted to permit the unilateral modification by a Proposer of its commitment to provide goods and services described in its Proposal as filed for the cost stated therein.

2.14 ADDITIONAL INFORMATION

By submitting a Proposal, the Proposer grants the Executive Director the right to obtain any information from any lawful source regarding the past history, practices, conduct, ability and eligibility under the State Lottery Act of the Proposer to supply goods, services and to fulfill requirements under this RFP, and the past history, practices, conduct, ability and eligibility of any director, officer or key employee of the Proposer. By submitting a Proposal, the Proposer generally releases from liability and waives all claims against any party providing information about the Proposer at the request of the Executive Director. Such information may be taken into consideration in evaluating Proposals.



2.15 PROPOSAL EVALUATION AND CONTRACT AWARD

- 2.15.1 The Texas Lottery Commission intends to conduct a fair, comprehensive and impartial evaluation of all Proposals received in response to this RFP using an evaluation committee. The evaluation committee will be selected by the Executive Director and may consist of Texas Lottery employees or outside individuals with expertise in particular areas. In addition, the Texas Lottery's General Counsel, other in-house legal counsel, and outside legal counsel may assist by advising the evaluation committee. Texas Lottery employees and consultants may also assist in the process as technical non-voting members of the evaluation committee.
- 2.15.2 Each member of the evaluation committee will independently score each Proposal responsive to this RFP. Evaluation committee members may seek, obtain and consider the opinions of other committee members or subject matter experts (including Texas Lottery staff, staff from other Texas agencies and consultants retained by the Texas Lottery) when evaluating and independently scoring particular areas of the Proposals.
- 2.15.3 The evaluation committee may request clarification of information or representations in a Proposal before completing the initial evaluation. Requests for clarification and responses to requests for clarification will be in writing and will become part of the evaluation record.
- 2.15.4 The procurement process will be conducted in accordance with 16 TAC § 401.101.
- 2.15.5 At a minimum, the factors to be considered by the evaluation committee in evaluating Proposals shall include:
- (i) the proposer's price to provide the goods or services;
 - (ii) the probable quality of the offered goods or services;
 - (iii) The agency's evaluation of the likelihood of the proposal to produce the desired outcome for the agency, considering, among other criteria:
 - (I) the quality of the proposer's past performance in contracting with the agency, with other state entities, or with private sector entities;
 - (II) the qualifications of the proposer's personnel;
 - (III) the experience of the proposer in providing the requested goods or services;
 - (IV) the financial status of the proposer; and
 - (iv) whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the agency has determined that subcontracting is probable.

The evaluation committee also may consider vendor performance reviews maintained by the Texas Comptroller of Public Accounts under TEX. GOV'T CODE ANN. Section 2262.055.

A copy of the scoring matrix is included as Attachment G.



2.15.6 A written notice of Contract Award will be posted on the ESBD, and sent to all Proposers immediately following execution of the Contract.

2.16 ORAL PRESENTATIONS AND/OR SITE VISITS

2.16.1 Proposers shall be required to make oral presentations to the evaluation committee. See the Schedule of Events for dates.

2.16.2 Proposers invited for an oral presentation shall make an oral presentation under the following guidelines:

- 30 minute set-up period
- One hour for the presentation
- 30 minute break
- 30 minute question-and-answer period
- 30 minute tear-down period

Proposers may be required, as part of the presentation, to respond to questions developed by the evaluation committee.

2.16.3 The oral presentation must substantially represent material included in the original written Proposal, with emphasis placed on the creative response. Proposers will be provided with equal advance notice of oral presentation assignments and guidelines.

2.16.4 In addition to members of the evaluation committee, Texas Lottery purchasing and contracts staff, legal counsel, together with Texas Lottery employees and consultants assisting in the process as technical non-voting members of the evaluation committee, may be present during the oral presentations.. Oral presentations will be held at the Texas Lottery Commission headquarters in Austin, Texas, and may be videotaped by the Texas Lottery.

2.16.5 The Texas Lottery, in its sole discretion, reserves the right to conduct site visits prior to Contract Award.

2.17 PROTEST PROCEDURE

Any protest shall be governed by TEX. GOV'T CODE ANN. § 466.101 and 16 TAC §§ 401.102-103.



3 CONTRACTUAL TERMS AND CONDITIONS

3.1 INTRODUCTION

This part sets forth terms and conditions applicable to the procurement process as well as terms and conditions that will become part of the Contract. The Texas Lottery reserves the right to incorporate additional provisions in the Contract in the best interest of the Texas Lottery.

3.2 GOVERNING LAW AND VENUE

The procurement process, the award procedure, and the Contract shall be governed by, construed and interpreted in accordance with the applicable laws of the State of Texas. Any and all actions or suits brought by a Proposer or any related party regarding this RFP or the Contract shall be brought in the state district court located in Austin, Travis County, Texas. By submitting a Proposal, a Proposer is deemed to waive the right to bring any action in any other court. This section is purely a venue provision and shall not be deemed a waiver of sovereign immunity.

3.3 CONTRACT ELEMENTS

- 3.3.1 The Contract between the Texas Lottery and the Successful Proposer will follow the general format specified by the Texas Lottery. The Texas Lottery reserves the right to negotiate provisions in addition to those stipulated in this RFP. The contents of this RFP, as modified by published addenda or amendments, and the Successful Proposer's Proposal will be incorporated into the Contract. In the event of any conflict or contradiction between or among these documents, the documents shall control in the following order of precedence: the written Contract, the RFP, and the Successful Proposer's Proposal. Specific exceptions to this general rule may be noted in the Contract.
- 3.3.2 The Texas Lottery has determined that subcontracting opportunities are probable under this RFP. Therefore, the Texas Lottery requires the submission of an HSP as a part of each Proposal, as discussed further in Part 5 of this RFP. The HSP, if accepted by the Texas Lottery, will become a provision of the Contract.
- 3.3.3 If any term or provision of this RFP or the Contract is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the RFP or Contract shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

3.4 AMENDMENTS

The Contract may be amended only by written agreement signed by both parties.



3.5 NON-WAIVER

The failure of the Texas Lottery to object to, or to take affirmative action with respect to, any conduct of the Successful Proposer which is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach. Nothing in this RFP, or the Contract, shall constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the Texas Lottery Commission, as an agency of the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the Texas Lottery Commission under this contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities, or be considered as a basis for estoppel.

3.6 CLARIFICATION OF LOTTERY'S INTENT

It is the responsibility of the Successful Proposer to address and resolve all questions with the Texas Lottery's designated points of contact, and to achieve a clear understanding of all Texas Lottery requirements during each stage of the Contract term. The Texas Lottery will use reasonable efforts to provide timely responses to questions of policy or procedure as they may affect the Successful Proposer's performance. Key Texas Lottery staff will be available to the Successful Proposer on a reasonable basis, but may not be available on State or national holidays, as defined in Section 662.003 of the TEX. GOV'T CODE ANN., or weekends.

3.7 RELATIONSHIP OF THE PARTIES

The Successful Proposer and the Texas Lottery agree and understand that the Successful Proposer shall render the goods, services and requirements under the Contract as an independent contractor, and nothing contained in the Contract will be construed to create or imply a joint venture, partnership, employer/employee relationship, principal agent relationship or any other relationship between the parties. Employees of the Successful Proposer will not be considered employees of the Texas Lottery within the meaning of any federal, state, or local law, ordinance, or regulation including, but not limited to, laws, ordinances, or regulations concerning unemployment insurance, social security benefits, workers compensation, or withholding requirements. The Successful Proposer shall be responsible for complying with any such laws, ordinances, or regulations, and shall indemnify and hold harmless the Texas Lottery from any costs or damages, including attorney's fees, sustained by the Texas Lottery resulting from the Successful Proposer's breach of its obligations under this section. The Texas Lottery will withhold indemnified losses from payments to the Successful Proposer, or, if no payments are made, the Texas Lottery will make demand of payment of indemnified losses. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery's demand.



3.8 PAYMENT

- 3.8.1 All payments will be made in accordance with TEX. GOV'T CODE ANN. ch. 2251 ("Payments for Goods and Services"). The Successful Proposer shall submit invoices in accordance with Section 7.14 and as prescribed by the Texas Lottery. Each invoice shall note the contract number, services rendered and date of services. Invoices may be submitted by mail to the Texas Lottery Commission, P. O. Box 16630, Austin, Texas 78761-6630, Attn: Accounts Payable or by e-mail to AccountsPayable@lottery.state.tx.us. Payments will be made only upon the completion of services or after the delivery of goods authorized in an approved invoice.
- 3.8.2 Pursuant to TEX. GOV'T CODE ANN. § 2251.025, interest is not due on a payment until it becomes "overdue." A payment is not "overdue" until the 31st day after the latter of: (1) the date the Texas Lottery receives the goods covered by the contract; (2) the date the performance of service under the contract is completed; or (3) the date the Texas Lottery receives an invoice for the goods or services. TEX. GOV'T CODE ANN. § 2251.021. Services are "completed" when accepted by the Texas Lottery.
- 3.8.3 The Successful Proposer acknowledges that the State of Texas requires consistent, high quality performance during the entire term of any Contract resulting from this RFP and during any transition to an alternate or successor provider. The Successful Proposer agrees that to ensure such consistent, high quality performance, and an orderly transition to a new vendor, the Texas Lottery may withhold the last two (2) payments due during the last year of any Contract resulting from this RFP (the "Hold Back"). In the event that the Successful Proposer fully and completely performs all of its duties under any Contract resulting from this RFP, and a successful transition to an alternative provider is completed, then upon such completion the Texas Lottery shall pay the Hold Back to the Successful Proposer. In the event that the Successful Proposer fails to fully and completely perform all of its duties under any Contract resulting from this RFP, or the transition to an alternative vendor is unsuccessful, and such failure is proximately caused in whole or part by any act or omission of the Successful Proposer, the Texas Lottery shall be entitled to retain the Hold Back or such portion as the Executive Director deems equitable.
- 3.8.4 The Successful Proposer agrees that if the Texas Comptroller of Public Accounts is prohibited from issuing a warrant to the Successful Proposer under Section 403.055 of the TEX. GOV'T CODE ANN., any payments owed to the Successful Proposer under the Contract will be applied towards the debt or delinquent taxes that the Successful Proposer owes the State of Texas until the debt or delinquent taxes are paid in full.

3.9 ASSIGNMENTS

- 3.9.1 No right or obligation of the Successful Proposer under the Contract may be assigned by the Successful Proposer without the prior written approval of the Texas Lottery, and in the event of any such approval, the terms and conditions hereof shall apply to and bind the party or parties to whom the right or obligation is assigned as fully and completely as the Successful Proposer is hereunder bound and obligated. No assignment shall operate to



release the Successful Proposer from its liability for the timely and effective performance of its obligations hereunder. Assignments made in violation of this provision shall be null and void.

- 3.9.2 Subject to the limitations on assignment contained herein, the Contract shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties hereto.

3.10 SUBCONTRACTING

- 3.10.1 If any part of the Contract between the Texas Lottery and the Successful Proposer is to be subcontracted, the Successful Proposer must obtain prior written approval from the Texas Lottery, and the Subcontractor must comply with all applicable requirements of the Texas Lottery. The Texas Lottery reserves the sole right to require the Successful Proposer to terminate any Subcontractor with or without cause.
- 3.10.2 In the event the Texas Lottery approves of the use of any Subcontractor under an approved HUB Subcontracting Plan in accordance with Part 5, the Successful Proposer is not relieved of its responsibility and obligation to meet all the requirements of this RFP.
- 3.10.3 The Texas Lottery will incur no additional obligations and the obligations of the Successful Proposer will not be reduced as a result of any such subcontracts.
- 3.10.4 The Successful Proposer agrees to indemnify and hold the Texas Lottery harmless from all claims and actions of the Successful Proposer's Subcontractors. The Texas Lottery will withhold indemnified losses from payments to the Successful Proposer, or, if no payments are made, the Texas Lottery will make demand of payment of indemnified losses. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery's demand.
- 3.10.5 The Successful Proposer's obligation to pay Subcontractors is governed by TEX. GOV'T CODE ANN. § 2251.022 ("Time for Payment by Vendor"), as it may be amended.

3.11 LOTTERY APPROVAL OF STAFFING

- 3.11.1 The Successful Proposer shall not employ or contract with or permit the employment of unfit or unqualified persons or persons not skilled in the tasks assigned to them. The Successful Proposer shall at all times employ sufficient labor to carry out functions and services in the manner and time prescribed by the Contract. In accordance with TEX. GOV'T CODE ANN. § 466.155, "unfit" is defined as any person convicted of a felony, criminal fraud, gambling or gambling-related offense or a person convicted of a misdemeanor involving moral turpitude whose sentence, parole, mandatory supervision or probation ended less than ten (10) years ago. The Successful Proposer shall be responsible to the Texas Lottery for the acts and omissions of the Successful Proposer's employees, agents (including, but not limited to, lobbyists) and Subcontractors and the Successful Proposer shall enforce strict discipline among the Successful Proposer's employees, agents (including, but not limited to, lobbyists) and Subcontractors performing the services under the Contract.



- 3.11.2 The Successful Proposer shall provide the Texas Lottery written notification and justification within three (3) Working Days of any changes involving the Successful Proposer's key personnel assigned to the Texas Lottery account. The Successful Proposer shall provide the Texas Lottery with the resume of the person who is to be hired or placed on the Texas Lottery account and must receive written approval from the Texas Lottery prior to the person's working on the account.
- 3.11.3 Notwithstanding anything herein to the contrary, any person employed by the Successful Proposer shall, at the written request of the Texas Lottery, and within the Texas Lottery's sole discretion, be removed immediately by the Successful Proposer from work relating to the Contract.

3.12 BACKGROUND INVESTIGATIONS

- 3.12.1 Under TEX. GOV'T CODE ANN. §466.103, the Executive Director of the Texas Lottery is prohibited from awarding a contract for goods or services related to lottery operations to a person or legal entity who would not qualify for a sales agent license under the requirements of Government Code §466.155.
- 3.12.2 The Texas Lottery Commission may initiate investigations into the backgrounds of (a) the Successful Proposer; (b) any of the Successful Proposer's officers, directors, investors, owners, partners and other principals, as more particularly described in TEX. GOV'T CODE ANN. § 466.155 (collectively, Successful Proposer Principals); (c) any of the Successful Proposer's employees; (d) any of the Successful Proposer's Subcontractors, or any of the Subcontractors' officers, directors, investors, owners, partners, principals or employees (collectively, Subcontractor Personnel); or (e) any other associates of the Successful Proposer it deems appropriate. The Texas Lottery Commission may also request background information for a spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of the Successful Proposer, any Successful Proposer Principals, or Successful Proposer employees described above. Such background investigations may include fingerprint identification by the Texas Department of Public Safety, the Federal Bureau of Investigation, and any other law enforcement agency. The Texas Lottery may terminate the Contract based solely upon the results of these background investigations.
- 3.12.3 The Successful Proposer agrees that, during the term of the Contract and any renewal thereof, it shall be obligated to provide such information about any Successful Proposer Principals, Successful Proposer employees, and Subcontractor Personnel as the Texas Lottery may prescribe. The Successful Proposer also agrees that the Texas Lottery may conduct background investigations of such persons.
- 3.12.4 Upon notification by the Texas Lottery to the Successful Proposer that the Texas Lottery objects to an employee based on the results of a background investigation, the Successful Proposer shall prevent that employee from working on the Texas Lottery account and shall deny that employee access to the Texas Lottery systems.



3.13 COMPLIANCE

The Successful Proposer agrees to comply with all applicable laws, rules and regulations, including without limitation those involving non-discrimination on the basis of race, color, religion, national origin, age, sex and disability.

3.14 TERM OF CONTRACT

- 3.14.1 The Contract will commence on the Contract execution date and continue through August 31, 2022, subject to the termination provisions in this RFP and subject to the Texas Lottery being continued and funded by the Texas Legislature.
- 3.14.2 The Texas Lottery reserves the right to extend the Contract, at its sole discretion, for two (2) additional one-year periods, at the Contract rate or rates as modified during the term of the Contract.
- 3.14.3 At the end of the initial term or any renewal period, the Texas Lottery, at its sole discretion, reserves the right to extend the Contract for up to three (3) additional months, in one-month intervals, at the Contract rate or rates as modified during the term of this Contract.
- 3.14.4 At the end of the Contract term, or upon earlier termination under any provision of this Contract, the Successful Proposer shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and provider, if requested by the Texas Lottery.

3.15 TERMINATION AT WILL

The Texas Lottery, in its sole discretion, may terminate, in whole or in part, the Contract at will and without cause, upon no less than thirty (30) Days' advance written notice. The Texas Lottery also may terminate the Contract immediately with written notice if the Executive Director, in his or her sole judgment, believes that the integrity or security of the Texas Lottery is in jeopardy and it is in the best interest of the Texas Lottery to do so. The Texas Lottery's right to terminate for convenience the Contract is cumulative of all rights and remedies which exist now or in the future.

3.16 TERMINATION FOR CAUSE

The Texas Lottery reserves the right to terminate the Contract, in whole or in part unless otherwise provided by the Federal Bankruptcy Code or any successor law, upon no less than five (5) Days' notice under any of the following conditions:

- (a) A receiver, conservator, liquidator or trustee of the Successful Proposer, or of any of its property, is appointed by order or decree of any court or agency or supervisory authority having jurisdiction; or an order for relief is entered against the Successful Proposer under the Federal Bankruptcy Code; or the Successful Proposer is adjudicated bankrupt or insolvent; or any portion of the property of the Successful Proposer is sequestered by court order and such order remains in effect for more than thirty (30) Days after such party obtains knowledge thereof; or a petition is



filed against the Successful Proposer under any state, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) Days, or

- (b) The Successful Proposer makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee, or liquidator of the Successful Proposer or of all or any part of its property; or judgment for the payment of money in excess of \$50,000.00 (which is not covered by insurance) is rendered by any court or governmental body against the Successful Proposer, and the Successful Proposer does not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within thirty (30) Days from the date of entry thereof, and within said 30-Day period or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefore as may be required under generally accepted accounting principles; or a writ or warrant of attachment or any similar process shall be issued by any court against all or any material portion of the property of the Successful Proposer, and such writ or warrant of attachment or any similar process is not released or bonded within thirty (30) Days after its entry, or
- (c) A court of competent jurisdiction finds that the Successful Proposer has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or
- (d) The Successful Proposer fails to communicate with the Texas Lottery as required by the Contract, or
- (e) The Successful Proposer fails to remove any person from work relating to the Contract upon written notice from the Texas Lottery, or
- (f) The Successful Proposer breaches the RFP's standard of confidentiality with respect to this RFP or the goods or services provided thereunder, or
- (g) The Texas Lottery makes a written determination that the Successful Proposer has failed to substantially perform under the Contract and specifies the events resulting in the Texas Lottery's determination thereof, or
- (h) The Successful Proposer fails to comply with any of the terms, conditions or provisions of the Contract, in any manner whatsoever, or
- (i) The Successful Proposer engages in any conduct that results in a negative public impression including, but not limited to, creating even an appearance of impropriety



with respect to the Texas Lottery, Texas Lottery games, the Successful Proposer, or the State of Texas.

3.17 TERMINATION RELATED TO AVAILABILITY OF LEGISLATIVE APPROPRIATIONS

All obligations of the Texas Lottery are subject to the availability of legislative appropriations. The Successful Proposer acknowledges the ability of the Texas Lottery to make payments under the Contract is contingent upon the continued availability and authorization for expenditure of funds. The Successful Proposer further acknowledges funds may not be specifically appropriated for the Contract and the Texas Lottery's continual ability to make payments under the Contract is contingent upon the funding levels appropriated to the agency. The Texas Lottery will use all reasonable and lawful efforts to ensure funds are available. The Successful Proposer agrees if future levels of funding for the Texas Lottery are not sufficient to continue operations without operational reductions, the Texas Lottery, in its sole discretion, may terminate the Contract, either in whole or in part. In the event of such termination, the Texas Lottery will not be considered to be in default or breach under the Contract, nor shall it be liable for any damages or other amounts caused by or associated with such termination. The Texas Lottery shall make reasonable best efforts to provide advance written notice of Contract termination to the Successful Proposer. In the event of termination, the Successful Proposer shall, unless otherwise mutually agreed upon in writing, cease all work immediately. The Texas Lottery shall be liable for payments limited only to the portion of work the agency authorized in writing before the termination date that the Successful Proposer has completed, delivered to the agency, and that is accepted by the agency.

3.18 TERMINATION WITHOUT PENALTY

Pursuant to TEX. GOV'T CODE ANN. § 466.014(c), the Executive Director is permitted to terminate the Contract, without penalty, if an investigation reveals that the Successful Proposer would not be eligible for a sales agent license under TEX. GOV'T CODE ANN. § 466.155.

3.19 NO LIABILITY UPON TERMINATION

If the Contract is terminated for any reason, the Texas Lottery and the State of Texas shall not be liable to the Successful Proposer for any damages, losses, financial obligations, breach of contract, or any other claims or amounts arising from or related to any such termination. However, the Successful Proposer may be entitled to the remedies provided in TEX. GOV'T CODE ANN., ch. 2260.

3.20 WARRANTIES

3.20.1 The Successful Proposer warrants and agrees that it is lawfully organized and constituted under all applicable national, international, state and local laws, ordinances and other



authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.

- 3.20.2 The Successful Proposer warrants and agrees that it has the legal authority and capacity to enter into and perform the Contract, and that it has the financial ability to perform its obligations under such Contract.
- 3.20.3 The Successful Proposer warrants and agrees that it is duly authorized to operate and do business in all places where it will be required to do business under the Contract; that it has obtained or will obtain all necessary licenses and permits required in connection with such Contract; and that it will fully comply with all laws, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of such Contract.
- 3.20.4 The Successful Proposer warrants and agrees that it has no present interest and shall not acquire, or assign to any third party, any interest that would conflict in any manner with its duties and obligations under the Contract.
- 3.20.5 The Successful Proposer warrants and agrees that all goods and services it supplies in its performance under the Contract shall meet the performance standards required thereunder and shall be performed in a prompt, high quality, professional and competent manner using only qualified personnel.
- 3.20.6 The Successful Proposer warrants and agrees that it shall not take any action inconsistent with any of the terms, conditions, agreements, or covenants set forth in this RFP without the express written consent of the Texas Lottery.
- 3.20.7 The Successful Proposer warrants that it is eligible for a sales agent license under TEX. GOV'T CODE ANN. § 466.155 (Chapter 466 is also known as the State Lottery Act).
- 3.20.8 The Successful Proposer warrants and agrees that it shall not sell, assign, lease, transfer, pledge, hypothecate, or otherwise dispose of any component of any goods or system proposed in response to the RFP or any interest therein, or permit any of it to become a fixture or accession to other goods or property.

3.21 SUCCESSFUL PROPOSER SITE VISITS

The Texas Lottery shall have the free and unrestricted right, acting by itself or through its authorized representatives, to enter the premises of the Successful Proposer and any Subcontractors, and to enter any other sites involved in providing goods and/or services under the Contract, to examine their operations and to inspect and copy the records of the Successful Proposer and/or Subcontractors pertaining to goods and services provided under the Contract. The Successful Proposer agrees that the Successful Proposer and its Subcontractors shall implement all reasonable quality control and security procedures requested by the Texas Lottery or representatives as designated by the Texas Lottery. The Texas Lottery will use reasonable efforts not to disrupt the normal business operations of the Successful Proposer (or Subcontractor, as applicable) during site visits announced or unannounced.



3.22 INTELLECTUAL PROPERTY RIGHTS

- 3.22.1 *Ownership.* As between the Successful Proposer and the Texas Lottery, the Works and Intellectual Property Rights in the Works are and shall be owned exclusively by the Texas Lottery, and not the Successful Proposer. The Successful Proposer specifically agrees that all Works shall be considered “works made for hire” and that the Works shall, upon creation, be owned exclusively by the Texas Lottery. To the extent that the Works, under applicable law, may not be considered works made for hire, the Successful Proposer hereby agrees that the Contract transfers, grants, conveys, assigns, and relinquishes exclusively to the Texas Lottery all right, title and interest in and to the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Texas Lottery shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works, subject to any exceptions with respect to pre-existing or third party rights as set forth below.
- 3.22.2 *Ownership of Prior Rights by the Texas Lottery.* All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the Texas Lottery prior to the issuance of this RFP or execution of the Contract (e.g., copyrights, trademarks, etc.) shall continue to be exclusively owned by the Texas Lottery, and the Successful Proposer shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible and intangible items solely for the purposes set forth in this RFP or the Contract, if any, and only for the duration of such Contract.
- 3.22.3 *Ownership of Prior Rights by the Successful Proposer.* All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the Successful Proposer prior to the issuance of this RFP shall continue to be exclusively owned by the Successful Proposer, and the Texas Lottery shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible or intangible items solely for the purposes set forth in this RFP or the Contract. All intellectual property relating to the goods and/or services set forth herein or under the Contract, including the Intellectual Property Rights in those goods and/or services, that was created, developed or licensed by the Successful Proposer prior to the issuance of this RFP or the execution of the Contract, or during the term of the Contract, to the extent such intellectual property is not considered “works” as defined above, shall be, and is, licensed to the Texas Lottery on a non-exclusive, perpetual, irrevocable, royalty-free, worldwide basis, to allow the Texas Lottery or its designees to provide, and continue to provide, the goods and services set forth herein or under the Contract, including after the expiration or termination of the Contract.
- 3.22.4 *Further Actions.* The Successful Proposer, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Texas Lottery to evidence more fully the transfer of ownership of all Works to the Texas Lottery to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Texas Lottery. In the event the Texas Lottery shall be unable for any reason to obtain the Successful Proposer’s



signature on any document necessary for any purpose set forth in the foregoing sentence, the Successful Proposer hereby irrevocably designates and appoints the Texas Lottery and its duly authorized officers and agents as the Successful Proposer's agent and the Successful Proposer's attorney-in-fact to act for and in the Successful Proposer's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Successful Proposer.

- 3.22.5 *Waiver of Moral Rights.* The Successful Proposer hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Works which the Successful Proposer may now have or which may accrue to the Successful Proposer's benefit under U.S. or foreign copyright laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. The term "Moral Rights" shall mean any and all rights of paternity or integrity of the Works and the right to object to any modification, translation or use of the Works, and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 3.22.6 *Confidentiality.* All Works and all materials forwarded to the Successful Proposer by the Texas Lottery for use in and preparation of the Works, shall be deemed the confidential information of the Texas Lottery, and the Successful Proposer shall not use, disclose, or permit any person to use or obtain the Works, or any portion thereof, in any manner without the prior written approval of the Texas Lottery.
- 3.22.7 *Injunctive Relief.* The RFP and the Contract are intended to protect the Texas Lottery's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Texas Lottery's business. Therefore, the Successful Proposer acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property, licensing, and confidentiality provisions of the RFP or Contract, upon a request by the Texas Lottery, without requiring proof of irreparable injury as same should be presumed.
- 3.22.8 *Return of Works.* Upon the request of the Texas Lottery, but in any event upon expiration or termination of the Contract, the Successful Proposer shall surrender to the Texas Lottery all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Successful Proposer or furnished by the Texas Lottery to the Successful Proposer, including all materials embodying the Works, any Texas Lottery confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This section is intended to apply to all Works made or compiled by the Successful Proposer, as well as to all documents and things furnished to the Successful Proposer by the Texas Lottery or by anyone else that pertains to the Works.



- 3.22.9 *Successful Proposer's Name or Logo.* The Successful Proposer shall not affix its company name, label, logo, or any other similar identifying information to or on any products, equipment or any other goods provided under the Contract.

3.23 PRE-EXISTING AND THIRD PARTY RIGHTS

- 3.23.1 To the extent that any pre-existing rights and/or third party rights or limitations are embodied, contained, reserved or reflected in the Works, the Successful Proposer shall either (a) grant to the Texas Lottery the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Texas Lottery's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and (ii) authorize others to do any or all of the foregoing, or (b) where the obtaining of the aforementioned rights is not reasonably practical or feasible, provide written notice to the Texas Lottery of such pre-existing or third party rights or limitations, request the Texas Lottery's approval of such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Texas Lottery's written approval of such pre-existing or third party rights and the limited use of same. The Successful Proposer shall provide the Texas Lottery with documentation indicating a third party's written approval for the Successful Proposer to use any pre-existing or third party rights that may be embodied, contained, reserved or reflected in the Works. The Successful Proposer shall indemnify, defend and hold the Texas Lottery harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys' fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third party rights. The foregoing indemnity obligation shall not apply to instances in which the Texas Lottery either (y) exceeded the scope of the limited license that was previously obtained by the Successful Proposer and agreed to by the Texas Lottery, or (z) obtained information or materials, independent of the Successful Proposer's involvement or creation, and provided such information or materials to the Successful Proposer for inclusion in the Works, and such information or materials were included by the Successful Proposer, in an unaltered and unmodified fashion, in the Works.
- 3.23.2 The Successful Proposer agrees that it shall have and maintain, during performance of the Contract, written agreements with all employees, Subcontractors, or agents engaged by the Successful Proposer in performance hereunder, granting the Successful Proposer rights sufficient to support all performance and grants of rights by the Successful Proposer. Copies of such agreements shall be provided to the Texas Lottery promptly upon request.



3.24 REMEDIATION

If the Works or the Intellectual Property Rights therein become the subject of a lawsuit or claim of infringement, or the Successful Proposer becomes aware that such items are likely to become the subject of a lawsuit or claim of infringement, the Successful Proposer shall exercise one (1) of the following two (2) options in order to provide the Texas Lottery with continued and uninterrupted use of the Works and Intellectual Property Rights therein: (a) obtain for the Texas Lottery the right to continue the use of the alleged infringing Works at no additional cost to the Texas Lottery, or (b) obtain alternative, substitute or new Works for the allegedly infringing Works, which are of equivalent or superior quality to the allegedly infringing Works, at no additional cost to the Texas Lottery, and subject to the acceptance of the Texas Lottery in its sole discretion.

3.25 INTELLECTUAL PROPERTY SEARCH

The Successful Proposer, at its expense, shall conduct all appropriate intellectual property searches (e.g., full copyright, trademark or service mark or patent searches) for all proposed Works, to ensure that the proposed Works are protectable by the Texas Lottery and do not infringe the Intellectual Property Rights of any third person or entity. The Successful Proposer holds the Texas Lottery harmless from the infringement of such Works, as set forth above. The Texas Lottery retains the right and option to obtain or secure registration of the Works in its own name, and on its own behalf, without the substantive involvement of the Successful Proposer. The Texas Lottery will withhold indemnified losses from payments to the Successful Proposer, or, if no payments are made, the Texas Lottery will make demand of payment of indemnified losses. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery's demand.

3.26 PERSONALITY RIGHTS

The Successful Proposer hereby warrants and represents to the Texas Lottery that individuals or characters appearing or depicted in any advertisement have provided their written consent for the use of their persona or personality rights, including name, biographical information, picture, portrait, likeness, performance, voice and/or identity ("Personality Rights"), and have been compensated for such Personality Rights, if appropriate. If such permission has been obtained for a limited time, the Successful Proposer shall be responsible for any costs associated with claims resulting from the use of the Personality Rights after the expiration of those time limits. The Successful Proposer agrees to hold the Texas Lottery harmless from any claims, including, without limitation, claims for invasion of privacy, infringement of the right of publicity, libel, unfair competition, false advertising, intentional or negligent infliction of emotional distress, copyright or trademark infringement, and/or claims for attorney's fees, resulting from use of the Personality Rights.



3.27 ACCOUNTING RECORDS

The Successful Proposer and its Subcontractors are required to maintain and retain their books, records, information and any and all other supporting fiscal documents relevant to showing any payments under the Contract were expended in accordance with the laws and regulations of the State of Texas, including, but not limited to, requirements of the Texas Comptroller of Public Accounts and the Texas State Auditor. These records shall be available to the Texas Lottery, its internal auditors or external auditors (and other designees) and the Texas State Auditor at all times during the Contract period and for a period of four (4) full years after (i) the expiration date of the Contract, or (ii) final payment under the Contract, whichever is later.

3.28 RIGHT TO AUDIT

The Successful Proposer understands that acceptance of state funds under this Contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The Successful Proposer further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Successful Proposer will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of the Successful Proposer relating to this Contract for any purpose.

3.29 INDEMNIFICATION

3.29.1 THE SUCCESSFUL PROPOSER SHALL INDEMNIFY, DEFEND AND HOLD THE TEXAS LOTTERY, ITS COMMISSION MEMBERS, THE STATE OF TEXAS, AND ITS AGENTS, ATTORNEYS, EMPLOYEES, REPRESENTATIVES AND ASSIGNS (THE "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES, LAWSUITS, LOSSES, DAMAGES, COSTS, EXPENSES OR ATTORNEYS' FEES (COLLECTIVELY, "CLAIM"), AND INCLUDING ANY LIABILITY OF ANY NATURE OR KIND ARISING OUT OF A CLAIM FOR OR ON ACCOUNT OF THE WORKS, OR OTHER GOODS, SERVICES OR DELIVERABLES PROVIDED AS THE RESULT OF THE CONTRACT, WHICH MAY BE INCURRED, SUFFERED, OR REQUIRED IN WHOLE OR IN PART BY AN ACTUAL OR ALLEGED ACT OR OMISSION OF THE SUCCESSFUL PROPOSER, OR A SUBCONTRACTOR OF THE SUCCESSFUL PROPOSER, OR ANY PERSON DIRECTLY OR INDIRECTLY EMPLOYED BY THE SUCCESSFUL PROPOSER OR A SUBCONTRACTOR OF THE SUCCESSFUL PROPOSER, WHETHER THE CLAIM IS BASED ON NEGLIGENCE, STRICT LIABILITY, INTELLECTUAL PROPERTY INFRINGEMENT OR ANY OTHER



CULPABLE CONDUCT, WHETHER FRIVOLOUS OR NOT. THE FOREGOING INDEMNITY OBLIGATIONS OF THE SUCCESSFUL PROPOSER SHALL NOT APPLY TO CLAIMS ARISING OUT OF OR RELATED TO THE EXCEPTIONS (Y) AND (Z) SET FORTH IN SECTION 3.23.1 ABOVE.

- 3.29.2 THE SUCCESSFUL PROPOSER'S LIABILITY SHALL EXTEND TO AND INCLUDE ALL REASONABLE COSTS, EXPENSES AND ATTORNEYS' FEES INCURRED OR SUSTAINED BY THE INDEMNIFIED PARTIES IN: (A) MAKING ANY INVESTIGATION AND IN PROSECUTING OR DEFENDING ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THE WORKS, OR OTHER GOODS, SERVICES OR DELIVERABLES PROVIDED UNDER THE CONTRACT (INCLUDING BUT NOT LIMITED TO ANY CLAIM THAT ALL OR ANY PORTION OF THE WORKS INFRINGES THE PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK, CONFIDENTIAL INFORMATION, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY); (B) OBTAINING OR SEEKING TO OBTAIN A RELEASE THEREFROM; OR (C) ENFORCING ANY OF THE PROVISIONS CONTAINED IN THIS RFP OR THE CONTRACT. THE TEXAS LOTTERY WILL WITHHOLD ALL INDEMNIFICATION COSTS AND RELATED EXPENSES AND FEES (INCURRED OR SUSTAINED BY THE INDEMNIFIED PARTIES) FROM PAYMENTS TO THE SUCCESSFUL PROPOSER UNDER THE CONTRACT, OR IF NO CONTRACT PAYMENTS ARE TO BE MADE, THE TEXAS LOTTERY WILL MAKE DEMAND OF PAYMENT FROM THE SUCCESSFUL PROPOSER OR SEEK RECOVERY AGAINST THE SUCCESSFUL PROPOSER'S PERFORMANCE BOND. THE INDEMNIFIED PARTIES, UPON GIVING NOTICE TO THE SUCCESSFUL PROPOSER, SHALL HAVE THE RIGHT IN GOOD FAITH TO PAY, SETTLE OR COMPROMISE, OR LITIGATE ANY CLAIM UNDER THE BELIEF THAT THE CLAIM IS WELL FOUNDED, WHETHER IT IS OR NOT, WITHOUT THE CONSENT OR APPROVAL OF THE SUCCESSFUL PROPOSER. THE TEXAS LOTTERY HAS SOLE DISCRETION AS TO THE CHOICE AND SELECTION OF ANY ATTORNEY WHO MAY REPRESENT THE TEXAS LOTTERY. TO THE EXTENT THAT THE SUCCESSFUL PROPOSER MAKES ANY PAYMENTS TO OR ON BEHALF OF THE INDEMNIFIED PARTIES UNDER THE CONTRACT, AND TO THE EXTENT PERMISSIBLE BY LAW, THE SUCCESSFUL PROPOSER SHALL BE FULLY SUBROGATED TO ALL RIGHTS AND CLAIMS OF THE INDEMNIFIED PARTIES IN CONNECTION THEREWITH. IN ANY EVENT, THE INDEMNIFIED PARTIES SHALL PROVIDE REASONABLE NOTICE TO THE SUCCESSFUL PROPOSER OF ANY CLAIM KNOWN TO THE INDEMNIFIED PARTIES TO ARISE OUT OF THE CONTRACT.**



3.30 INSURANCE

- 3.30.1 All required insurance must be issued by companies or financial institutions which are financially rated Excellent or better by A.M. Best Company and duly licensed, admitted, and authorized to do business in Texas by the Texas Department of Insurance.
- 3.30.2 Each insurance policy, except those for crime insurance, workers' compensation, employer's liability and professional liability, must name the Texas Lottery (and its officers, agents and employees) as an additional insured on the original policy and all renewals or replacements.
- 3.30.3 Each insurance policy except for crime insurance must include a waiver of subrogation in favor of the Texas Lottery, its officers, and employees for any and all insured losses, including bodily injury (including death) and property damage.
- 3.30.4 The insurance shall be evidenced by delivery to the Texas Lottery of certificates of insurance executed by the insurer or its authorized agency stating coverage, limits, expiration dates, and compliance with all applicable required provisions. Upon request, the Texas Lottery shall be entitled to receive, without expense, certified copies of the policies and all endorsements. Except as otherwise expressly provided herein, required coverage must remain in full force and effect throughout the term of the Contract and any extensions thereof, and provide adequate coverage for incidents discovered after termination of the Contract. Insurance coverage shall not be canceled, non-renewed or materially changed except after thirty (30) Days' notice by certified mail to the Texas Lottery.
- 3.30.5 The Successful Proposer must submit original certificates of insurance for each required insurance contract, and any renewals thereof, within fifteen (15) Days after Contract execution. Renewal certificates shall be submitted prior to or within fifteen (15) Days after expiration of the existing policy.

3.31 SELF INSURANCE

The Successful Proposer may not elect to provide entirely or in part for the insurance protections described in this RFP through self-insurance. A deductible provision contained in an insurance policy that meets the requirements of this RFP is not considered as self-insurance unless the deductible amount exceeds five percent (5%) of the face amount of the insurance policy.

3.32 COMMERCIAL GENERAL LIABILITY INSURANCE

The Successful Proposer must maintain general liability insurance coverage with limits of not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate, two million dollars (\$2,000,000) products/completed operations aggregate, one million dollars (\$1,000,000) personal and advertising injury, fifty thousand dollars (\$50,000) damage to premises rented to you, and five thousand dollars (\$5000) medical expense each person.



3.33 WORKERS' COMPENSATION & EMPLOYER'S LIABILITY INSURANCE

The Successful Proposer must maintain Workers' Compensation insurance coverage in accordance with statutory limits, and Employer's Liability insurance coverage with minimum limits for bodily injury:

- (a) \$1,000,000 per each accident;
- (b) by disease, \$1,000,000 per employee; and
- (c) by disease, policy limit \$1,000,000.

Coverage must include a waiver of subrogation in favor of the Texas Lottery Commission, its officers and employees.

3.34 PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS) INSURANCE

The Successful Proposer must maintain professional liability (including errors and omissions) insurance coverage including but not limited to loss due to any equipment error, machine error, system down time, communication problems or errors, and any error or omission caused by the Successful Proposer, its officers, employees, agents, or Subcontractors of the Successful Proposer regardless of negligence, with minimum limits of one million dollars (\$1,000,000) per occurrence, to be in full force and effect during the term of the Contract, including any extension thereof and one year thereafter. Coverage must indemnify the Texas Lottery for direct loss due to errors and omissions caused by the Successful Proposer, its officers, employees, agents, or Subcontractors of the Successful Proposer regardless of negligence.

3.35 PROPERTY INSURANCE

The Successful Proposer must maintain All Risk insurance on all furniture, fixtures, computer and communications equipment used in operating and supporting the Successful Proposer's operation in an amount equal to or greater than the actual replacement cost thereof. Coverage must include coverage against fire, theft, collision, flood, etc. The Texas Lottery will not be responsible for insuring any equipment or facilities included in or associated with the Successful Proposer's operations.

3.36 CRIME INSURANCE

The Successful Proposer must maintain crime insurance with a limit of not less than one million dollars (\$1,000,000) protecting the Texas Lottery against loss of property (including money, securities and Texas Lottery tickets) by robbery, burglary, or theft, or the loss of money, securities or Texas Lottery tickets because of destruction or disappearance and employee dishonesty. This policy shall cover loss of property to the Texas Lottery due to any fraudulent or dishonest act on the part of the officers and/or employees of the Successful Proposer and (through insurance carried by Subcontractors)



officers and/or employees of any Subcontractors. Policy(ies) must be endorsed to include third party property.

3.37 PERFORMANCE BOND

- 3.37.1 The Successful Proposer shall provide an original performance bond (as shown in Attachment F attached hereto and incorporated for all purposes) in the amount of one million dollars (\$1,000,000) within fifteen (15) Days of execution of the Contract. Failure to have and keep a bond in place shall constitute a breach of the Contract.
- 3.37.2 All required bonds must be issued by companies or financial institutions which are financially rated Excellent or better by A.M. Best Company and duly licensed, admitted, and authorized to do business in Texas by the Texas Department of Insurance. The Texas Lottery shall be named as the obligee in each required bond.
- 3.37.3 The bond must be maintained in full force and effect for the initial term and any renewal term of the Contract. The bond shall be forfeited to the Texas Lottery if the Successful Proposer fails to perform as required by the Contract, pay sanctions or liquidated damages, or indemnify the Texas Lottery. Any alterations to the bond language as shown in Attachment F must be approved in advance by the Texas Lottery.

3.38 DISCLOSURE OF LITIGATION

- 3.38.1 The Proposer must include in its Proposal a complete disclosure of any material civil or criminal litigation or indictment either threatened or pending involving the Proposer. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Proposer must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the gaming industry would consider relevant to any gaming operation or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the gaming industry and its operations, together with any litigation threatened or pending that may result in a substantial change in the Proposer's financial condition, as described in Section 4.6.
- 3.38.2 The Successful Proposer shall be required to file with the Texas Lottery comprehensive monthly reports regarding all threatened or pending litigation involving the Successful Proposer's Texas operations and all threatened or pending litigation that may be considered material to the overall operations of the Successful Proposer.

3.39 CHANGES IN OWNERSHIP

During the term of the Contract or any extension or renewal thereof, the Successful Proposer shall notify the Texas Lottery in writing of any substantial change in the



ownership or control of the Successful Proposer as soon as possible, but no later than fifteen (15) Days after its occurrence.

3.40 FORCE MAJEURE / DELAY OF PERFORMANCE

- 3.40.1 Except as otherwise provided, neither the Successful Proposer nor the Texas Lottery shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. For purposes of this RFP and the Contract, "force majeure" is defined as "an act of God or any other cause of like kind not reasonably within a party's control and which, by the exercise of due diligence of such party, could not have been prevented or is unable to be overcome." The Successful Proposer must inform the Texas Lottery in writing within three (3) Days of the existence of any such force majeure or otherwise waives this right as a defense.
- 3.40.2 The Successful Proposer shall immediately upon discovery notify the Executive Director in writing of any delays in performance regardless of responsibility, fault or negligence. If the Successful Proposer contends that the delay is the responsibility, fault or negligence of Texas Lottery staff, the Successful Proposer must provide written notice within three (3) Days of the discovery, and to the extent possible, identify the event or individual responsible so that the Executive Director may take appropriate action to remedy the situation. Failure to provide such notice to the Executive Director as required in this section shall constitute a waiver of the Successful Proposer's right to assert the Texas Lottery's action/inaction as a defense.

3.41 TAXES, FEES AND ASSESSMENTS

- 3.41.1 The Texas Lottery shall have no responsibility whatsoever for the payment of any federal, state or local taxes which become payable by the Successful Proposer or its Subcontractors, or their agents, officers or employees. The Successful Proposer shall pay and discharge when due all such taxes, license fees, levies, and other obligations or charges of every nature.
- 3.41.2 The Successful Proposer shall be responsible for payment of all taxes attributable to the Contract and any and all such taxes shall be identified under the Successful Proposer's federal tax identification number. The Successful Proposer shall pay all federal, state and local taxes of any kind, including without limitation income, franchise, ad valorem personal property, sales, use, lease, payroll, consumption, distribution and storage taxes, for the goods, services and systems relating thereto provided by the Successful Proposer, whether or not such taxes are in effect as of the date the Contract is signed or scheduled to go into effect, or become effective during the initial Contract term and any and all renewal terms, if any.



3.42 NEWS RELEASES

The Successful Proposer shall not issue any news releases or publish information to the public pertaining to this procurement process or the performance of the Contract without prior written approval of the Texas Lottery. For any required disclosure or any public release of information of any kind, including a non-required disclosure, that is under a deadline imposed by any statutory or regulatory authority, the Successful Proposer shall seek approval from the Texas Lottery no less than two (2) Working Days prior to the deadline for the release of the information. In any case in which a deadline for the release of information exists, approval of the release by the Texas Lottery shall neither be construed as an endorsement of the release, as assent to the content of the release, as an indication of the accuracy of the information in the release, nor as any admission of any kind regarding any subject covered in the release.

3.43 ADVERTISING

The Successful Proposer agrees not to use the Texas Lottery's name, logos, images, nor any data or results arising from this procurement process or the Contract as a part of any commercial advertising, or to promote the Successful Proposer in another jurisdiction's procurement process, without prior written approval by the Texas Lottery.

3.44 HIRING OF TEXAS LOTTERY PERSONNEL

- 3.44.1 At all times following issuance of this RFP and ending with either the award of a Contract or the rejection of all Proposals, prospective Proposers are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any Texas Lottery employee involved in the evaluation of Proposals, the Contract Award, or contract negotiations. A prospective Proposer making such an offer or proposition may be disqualified from further consideration.
- 3.44.2 At all times following the issuance of this RFP and ending with either the award of a Contract or the rejection of all Proposals, Proposers shall not engage the services of any State of Texas employee while such person remains employed by the State without the written consent of the Texas Lottery. During the term of the Contract, the Successful Proposer shall not engage the services of any State of Texas employee while such person remains employed by the State without the written consent of the Lottery.
- 3.44.3 Pursuant to Section 572.069 of the TEX. GOV'T CODE ANN., the Successful Proposer certifies that it has not employed and will not employ a former state officer or employee of the Texas Lottery who participated in a procurement or contract negotiation for the Texas Lottery involving the Successful Proposer before the second anniversary of the date the contract was signed or the procurement was terminated or withdrawn.



3.45 HIRING OF LOBBYIST, CONSULTANT AND/OR ADVISOR; SUPPLEMENTAL INFORMATION

The Proposer shall list the names, addresses and telephone numbers for all lobbyists, consultants, and/or advisors who will perform services related to the Proposer's operations or interests in the State of Texas, pursuant to previously executed contracts, or during the three (3) years prior to the issuance of the RFP, who have performed services related to the Proposer's operations or interests in the State of Texas for the Proposer or any Subcontractors of the Proposer. The Proposer shall immediately notify the Texas Lottery in the event of change of lobbyist, consultant, or advisor information.

3.46 NOTICES

The Proposer shall indicate in its Proposal the name and address of the person to whom any notices shall be given. Notices to the Texas Lottery shall be made by personal delivery or by certified (or registered) mail return receipt requested to the Texas Lottery at the address below unless the Proposer is notified in writing by the Texas Lottery of any change:

Texas Lottery Commission
Attention: Contracts Administration
P.O. Box 16630
Austin, Texas 78761-6630
Fax (512) 344-5058
Contracts@lottery.state.tx.us

3.47 NON-DISCLOSURE

The Successful Proposer shall maintain as confidential, and shall not disclose to third parties without the Texas Lottery's prior written consent, any Texas Lottery information including but not limited to the Texas Lottery's business activities, practices, systems, conditions, products, services, public information and education plans and related materials, and game and marketing plans.

3.48 USUFRUCT

If, for any reason other than breach of contract by the Texas Lottery, the Successful Proposer should lose its ability to service the Contract, the Texas Lottery shall acquire a usufruct in all contractual items owned by the Successful Proposer in conjunction with the Contract and which are necessary to provide such services. Said usufruct shall be limited to the right of the Texas Lottery to possess and make use of such contractual items solely for the use and benefit of the Texas Lottery in operating, maintaining, altering, replacing and improving the programs and systems being used by the Texas Lottery under the Contract. Such usufruct shall be limited in time to the duration of the Contract and any extension thereof, and in scope for programs, systems, and other items being used by the Texas Lottery under the Contract.



3.49 TICKET PURCHASE

- 3.49.1 In accordance with TEX. GOV'T CODE ANN. § 466.254 (Purchase of Ticket by or Payment of Prize to Certain Persons), no member, officer or employee of the Successful Proposer directly involved in selling or leasing the goods or performing the services that are the subject of the Contract shall purchase a Texas Lottery ticket or be paid a prize in any Texas Lottery game. No spouse, child, brother, sister, or parent of such member, officer or employee who resides in the same household in the principal place of residence of such member, officer or employee (collectively, "Family Members"), shall purchase a Texas Lottery ticket or be paid a prize in any Texas Lottery game. The Successful Proposer shall ensure that these statutory prohibitions are made known to each member, officer and employee of the Successful Proposer, prior to that person becoming involved in selling or leasing the goods or performing the services that are the subject of the Contract. The Successful Proposer shall require its members, officers and employees to make the statutory prohibition known to Family Members. The Successful Proposer shall promptly notify the Texas Lottery of any violation of TEX. GOV'T CODE ANN. § 466.254.
- 3.49.2 TLC considers "directly involved" to mean, by way of illustration only, responsible for and/or actively participating in (1) Contract negotiations (including Contract signatories); (2) Contract administration (e.g., regular or direct contact with TLC staff); or (3) Contract performance (including assigned project/team leaders and members and anyone else who oversees or performs the work or provides the services). Again, by way of illustration, support staff (such as clerical, accounting or delivery employees) are not considered to be "directly involved" unless they also serve in the roles listed above for "directly involved" employees.

3.50 LIQUIDATED DAMAGES

- 3.50.1 **General.** It is agreed by the Texas Lottery and the Successful Proposer that:
- (1) If the Successful Proposer does not provide or perform the requirements referred to or listed in this RFP or fulfill the obligations of the Contract, damage to the Texas Lottery will result;
 - (2) establishing the precise measure of damages in the event of default by the Successful Proposer may be (i) costly, (ii) time consuming, or (iii) difficult or impossible to calculate;
 - (3) the liquidated damage assessments contained herein represent a good faith effort to quantify the damages that could reasonably be anticipated at the time of execution of the Contract;
 - (4) the damages set forth herein are just and reasonable;
 - (5) nothing contained in this section shall be construed as relieving the Successful Proposer from performing all Contract requirements whether or not said requirements are set forth herein; and
 - (6) the Texas Lottery may, therefore, in its sole discretion, deduct damages from the compensation otherwise due to the Successful Proposer. All assessments of damages shall be within the sole discretion of the Texas Lottery.



- 3.50.2 **Liquidated Damages Assessment.** Once the Texas Lottery has determined that liquidated damages are to be assessed, the Executive Director or Executive Director's designee shall notify the Successful Proposer of the assessment(s). Failure to notify does not impact the Texas Lottery's assessment of damage and is not a condition precedent thereto. The Texas Lottery will withhold liquidated damages from payments to the Successful Proposer, or, if no payments have been made, the Texas Lottery will make demand of payment of liquidated damages. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery's demand. In the event the Successful Proposer fails to pay within the thirty (30) day period, the Texas Lottery may make a claim for payment against the performance bond, with or without notice to the Successful Proposer.
- 3.50.3 **Failure to Assess Liquidated Damages.** The failure of the Texas Lottery to assess liquidated damages in any instance where the Texas Lottery is entitled to liquidated damages pursuant to the terms of this RFP or Contract shall not constitute waiver in any fashion of the Texas Lottery's rights to assessment of liquidated damages.
- 3.50.4 **Severability of Individual Liquidated Damages Clauses.** If any portion of this liquidated damages provision is determined to be unenforceable, the other portions of this provision shall remain in full force and effect.
- 3.50.5 **Failure to Permit Examination, Produce Requested/Required Records or Information, or Provide an Answer.** Unless otherwise specified in this RFP or any Contract resulting therefrom, the Successful Proposer must permit an examination, produce requested records or information, or provide an answer in response to a Texas Lottery inquiry within five (5) business days. Failure to respond before the deadline may result in the assessment of liquidated damages in the amount of one hundred dollars (\$100) per Day for each Day the examination is not permitted, the information or records are not produced or the answer is not provided.
- 3.50.6 **Failure to Meet Production and/or Media Deadlines.** The failure of the Successful Proposer to meet production and/or media deadlines and to adhere to fixed campaign timelines or other events under the Contract may result in the assessment of liquidated damages in the amount of one thousand dollars (\$1,000) for each Day of delay, or any part thereof.

3.51 SANCTIONS AND REMEDIES SCHEDULE

- 3.51.1 **General.** Section 2261.101 of the TEX. GOV'T CODE ANN. requires that all state contracts contain a remedies schedule, a graduated sanctions schedule, or both. Pursuant to that statutory provision, sanctions and remedies will apply for the incidents specified in this section. The sanctions and remedies will be referred to as "sanctions."
- 3.51.2 **Assessment of Sanctions.** Once the Texas Lottery has determined that sanctions are to be assessed, the Executive Director or Executive Director's designee may notify the Successful Proposer of the assessment(s). Failure to notify does not impact the Texas Lottery's assessment of sanctions and is not a condition precedent thereto. The Texas Lottery will withhold sanctions from payments to the Successful Proposer, or, if no



payments are to be made, the Texas Lottery will make demand of payment of sanctions. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery's demand. In the event the Successful Proposer fails to pay within the thirty (30) day period, the Texas Lottery may make a claim for payment against the performance bond, with or without notice to the Successful Proposer.

- 3.51.3 ***Failure to Assess Sanctions.*** The failure of the Texas Lottery to assess sanctions in any instance where the Texas Lottery is entitled to sanctions pursuant to the terms of this RFP or the Contract shall not constitute waiver in any fashion of the Texas Lottery's rights to assess sanctions.
- 3.51.4 ***Severability of Individual Sanctions Clauses.*** If any portion of this sanctions provision is determined to be unenforceable, the other portions of this provision shall remain in full force and effect.
- 3.51.5 ***Failure to Disclose Litigation.*** The failure of the Successful Proposer to disclose litigation as required by section 3.38 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.
- 3.51.6 ***Failure to Obtain Prior Written Approval before Issuing News Release.*** The failure of the Successful Proposer to comply with RFP Section 3.42 regarding the issuance of news releases may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.
- 3.51.7 ***Purchase of Texas Lottery Tickets.*** The failure of the Successful Proposer to comply with RFP Section 3.49 regarding the purchase of Texas Lottery tickets may result in the Successful Proposer being assessed sanctions in the amount of five thousand dollars (\$5,000) per incident.
- 3.51.8 ***Failure to Comply with the RFP Code of Conduct Requirements and/or Report Significant Incidents and Anomalies.*** The failure of the Successful Proposer to comply with the code of conduct requirements in Section 3.61 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident. The failure of the Successful Proposer to report all significant incidents and anomalies to the Texas Lottery as required by Section 3.63 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per Day for each Day not reported.
- 3.51.9 ***Failure to Notify the Texas Lottery of a Change of Ownership or Control or Change in Financial Condition.*** The failure of the Successful Proposer to notify the Texas Lottery of a change of ownership or control or change in financial condition as required by RFP Sections 3.39 and 4.5 may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.
- 3.51.10 ***Unauthorized Disclosure.*** The failure of the Successful Proposer to comply with the non-disclosure requirement in Section 3.47 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of five thousand dollars (\$5,000) per incident.



- 3.51.11 ***Failure to Provide Written Notification of Staffing Changes Timely.*** The failure of the Successful Proposer to provide written notification of staffing changes as required by RFP section 3.11 may result in the Successful Proposer being assessed sanctions in the amount of one hundred dollars (\$100) per Day for each Day the written notification is not received.
- 3.51.12 ***Failure to Notify the Texas Lottery of changes in Lobbyist Information.*** The failure of the Successful Proposer to inform the Texas Lottery of any change of lobbyist information as required by RFP section 3.45 may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per Day for each Day that the filing is not provided.
- 3.51.13 ***Failure to Cooperate with and/or Produce Records or Information as part of Background Investigation.*** The failure of the Successful Proposer to cooperate with and/or produce records or information as part of a background investigation conducted pursuant to section 4.6 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one hundred dollars (\$100) per Day for each Day the records/information are not produced or answers are not provided.
- 3.51.14 ***Failure to Provide Annual Advertising Plan Timely.*** The failure of the Successful Proposer to provide an annual advertising plan as required by Section 7.3 may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident, plus five hundred dollars (\$500) per Day for each Day after the due date until the plan(s) is provided by the Successful Proposer and accepted by the Texas Lottery.
- 3.51.15 ***Failure to Provide Reports Required under RFP Section 7.5 Timely.*** The failure of the Successful Proposer to provide reports as required by Section 7.5 may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per incident, plus one hundred dollars (\$100) per Day for each Day after the due date until the report(s) is provided by the Successful Proposer and accepted by the Texas Lottery.
- 3.51.16 ***Unauthorized Release of Media Materials.*** The unauthorized release of media materials without the Texas Lottery's prior written approval may result in the Successful Proposer being assessed sanctions in the amount of ten thousand dollars (\$10,000) per incident.
- 3.51.17 ***Missing/Incomplete Intellectual Property Search.*** The failure of the Successful Proposer to adequately conduct an intellectual property search as required by Section 3.25 may result in the Successful Proposer being assessed sanctions in an amount equal to the cost of the Works (whether finished or in production stages) plus any additional expenses associated with expediting the production of replacement Works. The foregoing is in addition to and shall not supplant the other rights and remedies accorded to TLC, or the obligations of the Successful Proposer in the event of a Claim.

3.52 DISPUTE RESOLUTION

The dispute resolution process provided for in TEX. GOV'T CODE ANN., ch. 2260, and 16 TAC Ch. 403 must be used by the Successful Proposer to attempt to resolve any disputes brought by the Successful Proposer arising under this Contract.



3.53 CERTIFICATIONS

- 3.53.1 Pursuant to TEX. GOV'T CODE ANN. § 466.103, the Executive Director may not award a contract for the purchase or lease of facilities, goods or services related to lottery operations to a person who would be denied a license as a sales agent under TEX. GOV'T CODE ANN. § 466.155. All Proposers must read and be familiar with TEX. GOV'T CODE ANN. § 466.155, attached hereto as Attachment D. All Proposals shall include a completed Background Information Certification Form, attached hereto as Attachment D-1, which certifies that the Proposer has reviewed TEX. GOV'T CODE ANN. § 466.155 and neither the Proposer nor any of the following persons would be denied a license as a sales agent pursuant to said section: (a) Proposer's officers, directors, investors, owners, partners and other principals, as more particularly described in TEX. GOV'T CODE ANN. § 466.155 (collectively, Proposer Principals); or (b) any spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of the Proposer or any of the Proposer Principals.
- 3.53.2 Under Section 231.006 of the TEX. FAM. CODE ANN., the Proposer certifies that the individual or business entity named in the Proposal or Contract is not ineligible to receive the specified grant, loan or payment and acknowledges that the Contract may be terminated and payment may be withheld if this certification is inaccurate. Furthermore, any Proposer subject to Section 231.006 must include names and social security numbers of each person with at least 25% ownership of the business entity submitting the Proposal. This information must be provided prior to Contract Award.
- 3.53.3 Under § 2261.053 of the TEX. GOV'T CODE ANN., a state agency may not accept a bid or award a contract that includes proposed financial participation by a person who, during the five-year period preceding the date of the bid or award, has been: (1) convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005; or (2) assessed a penalty in a federal civil or administrative enforcement action in connection with a contract awarded by the federal government for relief, recovery, or reconstruction efforts as a result of Hurricane Rita, as defined by Section 39.459, Utilities Code, Hurricane Katrina, or any other disaster occurring after September 24, 2005. In submitting a Proposal under this RFP, the Proposer certifies as follows: "Under Section 2261.053 of the Texas Government Code, the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- 3.53.4 The Proposer certifies that: (a) the Proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Proposal; and (b) neither the Proposer nor the firm, corporation, partnership, or institution represented by the Proposer, nor anyone acting for such firm, corporation, partnership, or institution has violated the antitrust laws of the State of Texas (TEX. BUS.



& COMM. CODE ANN. Sec. 15.01, et seq.), or the antitrust laws of the United States (15 U.S.C.A. Section 1, et seq.), nor communicated directly or indirectly the submitted Proposal to any competitor or any other person engaged in such line of business.

- 3.53.5 The Proposer certifies that it is in compliance with TEX. GOV'T CODE ANN., Title 6, Subtitle B, Section 669.003, relating to contracting with the executive head of a state agency. If Section 669.003 applies, the Proposer will complete the following information in order for the Proposal to be evaluated:

Name of Former Executive
Name of State Agency
Date of Separation from State Agency
Position with Proposer
Date of Employment with Proposer

- 3.53.6 By signing this Proposal, the Proposer certifies that if a Texas address is shown as the address of the Proposer, the Proposer qualifies as a Texas Resident Bidder as defined in TEX. ADMIN. CODE, Title 34, Part 1, Chapter 20.
- 3.53.7 The Texas Lottery is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal Government's System for Award Management (SAM, <https://www.sam.gov/>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.
- 3.53.8 Pursuant to Section 2155.004 of the TEX. GOV'T CODE ANN., the Proposer has not received compensation from the Texas Lottery for participating in the preparation of the specifications for this RFP and certifies as follows: "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- 3.53.9 Pursuant to Section 2252.907 of the TEX. GOV'T CODE ANN., the Successful Proposer is required to make any information created or exchanged with the State pursuant to this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.
- 3.53.10 Pursuant to Section 2270.002 of the TEX. GOV'T CODE ANN., the Executive Director may not award a contract for goods or services unless the contract contains a written verification from the Proposer/Bidder that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. By signing and submitting a Proposal, the Proposer certifies that it does not boycott Israel and will not boycott Israel during the term of the Contract.
- 3.53.11 Under § 2252.152 of the TEX. GOV'T CODE ANN., a state agency may not award a contract to a company engaged in business with Iran, Sudan, or known to have contracts with or



provide supplies or services to a foreign terrorist organization. The Proposer certifies it is not ineligible to receive a state contract under § 2252.152.

3.54 PREFERENCES

Any bidder or Proposer entitled to a preference(s) under Texas law shall claim the preference(s) in its Proposal.

3.55 DECEPTIVE TRADE PRACTICES; UNFAIR BUSINESS PRACTICES

The Successful Proposer represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under TEX. BUS. & COM. CODE ANN., Chapter 17, or allegations of any unfair business practice in any administrative hearing or lawsuit and that the Successful Proposer has not been found to be liable for such practices in such proceedings. The Successful Proposer certifies that it has no officers who have served as officers of other entities that have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or lawsuit and that such officers have not been found to be liable for such practices in such proceedings.

3.56 IMMIGRATION

The Successful Proposer represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986, the Immigration Act of 1990 and the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 regarding employment of any individual who will perform labor or services under the Contract.

3.57 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY STANDARDS, AS REQUIRED BY 1 TAC CHAPTERS 206 AND 213 (APPLICABLE TO STATE AGENCY AND INSTITUTION OF HIGHER EDUCATION PURCHASES ONLY).

- 3.57.1 Effective September 1, 2006, state agencies and institutions of higher education shall procure products which comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapters 206 and 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.
- 3.57.2 Upon request, but not later than thirty (30) calendar days after request, the Successful Proposer shall provide TLC with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).



3.58 FALSE STATEMENTS; BREACH OF REPRESENTATIONS

By submitting a Proposal, the Proposer makes all the representations, warranties, guarantees, certifications and affirmations included in its Proposal. If a Proposer signed its Proposal with a false statement or is selected as the Apparent Successful Proposer and signs the Contract with a false statement, or it is subsequently determined that the Proposer has violated any of the representations, warranties, guarantees, certifications or affirmations included in the RFP or the Contract, the Proposer shall be in default and if the determination is made before Contract Award, the Texas Lottery may reject the Proposal or if the determination is made after Contract Award, the Texas Lottery may terminate the Contract for cause and pursue all other remedies available to the Texas Lottery under the RFP, the Contract and applicable law.

3.59 LIMITATION ON AUTHORITY; NO OTHER OBLIGATIONS

The Successful Proposer shall have no authority to act for or on behalf of the Texas Lottery or the State of Texas except as expressly provided for in this RFP or the Contract. The Successful Proposer is not authorized to sign any contract or subcontracts as the Texas Lottery's agent; any such contract or subcontract is invalid and cannot be enforced against the Texas Lottery. The Successful Proposer may not incur any debts, obligations, expenses or liabilities of any kind on behalf of the State of Texas or the Texas Lottery.

3.60 PROPOSER ASSIGNMENT

The Successful Proposer hereby assigns to the Texas Lottery any and all claims for overcharges associated with the Contract arising under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and the antitrust laws of the State of Texas, TEX. BUS. & COMM. CODE ANN. Sec. 15.01, et seq.

3.61 CODE OF CONDUCT

The Texas Lottery is an extremely sensitive enterprise because its success depends on maintaining the public trust by protecting and ensuring the security of lottery products. The Texas Lottery incorporates the highest standards of security and integrity in the management and sale of entertaining lottery products, and lottery vendors are held to the same standards. Therefore, it is essential that operation of the Texas Lottery, and the operation of other enterprises which would be linked to it in the public mind, avoid not only impropriety, but also the appearance of impropriety. Because of this, the Successful Proposer shall:

- (a) Offer goods and services only of the highest quality and standards.
- (b) Use its best efforts to prevent the industry from becoming embroiled in unfavorable publicity.



- (c) Make 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, do so in such a manner as to avoid unfavorable publicity for the industry.
- (d) Avoid activities, operations, and practices that could be interpreted as improper and cause embarrassment to the Texas Lottery and/or to the industry.
- (e) Report security problems or potential security problems with any services provided pursuant to this RFP immediately and only to the Texas Lottery.
- (f) Otherwise comply with the State Lottery Act (TEX. GOV'T CODE ANN., Ch. 466) and Texas Lottery rules, procedures and policies.
- (g) Provide best practices related to security and integrity standards within the industry.

3.62 CONTACT WITH TEXAS LOTTERY COMMISSION

- 3.62.1 Employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer may not offer or give a gift to a Texas Lottery employee. For purposes of this section, "gift" has the meaning as defined in TEX. GOV'T CODE ANN. § 467.001(4) and as may be subsequently changed or amended by acts of the Texas Legislature.
- 3.62.2 Employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer should not engage in nonprofessional socialization (socialization outside of a work context) with a Texas Lottery employee. There may be circumstances, however, in which nonprofessional socialization is acceptable, for example, because of family relationships, common acquaintances, or common outside activities. The restrictions on nonprofessional socialization are not meant to apply to unplanned, incidental social contact. In such circumstances, employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer should not discuss Texas Lottery business with any Texas Lottery employee.
- 3.62.3 Professional socialization at activities such as industry trade conferences and site visits is permitted.

3.63 INCIDENTS AND ANOMALIES

The Successful Proposer shall report immediately all significant incidents and anomalies to the Texas Lottery, followed by a written report to be submitted within one workday of the incident or anomaly. At a minimum, incident and anomaly reporting shall include a description of the incident, its cause, and corrective action taken. For purposes of this section, "significant" incidents include, by way of illustration only, any occurrence that affects the Texas Lottery, lottery retailers, or players, and deviation from established procedures and those items where sanctions or liquidated damages are applicable.



3.64 U.S. DEPARTMENT OF HOMELAND SECURITY'S E-VERIFY SYSTEM

By entering into this Contract, the Successful Proposer certifies and ensures that it utilizes and will continue to utilize, for the term of this Contract, the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of:

1. All persons employed to perform duties within Texas, during the term of the Contract; and
2. All persons (including subcontractors) assigned by the Successful Proposer to perform work pursuant to the Contract, within the United States of America.

3.65 NON-EXCLUSIVE CONTRACT

The Texas Lottery intends to enter into a non-exclusive contract with the Successful Proposer to provide the services described in this RFP and expressly reserves the right to engage other vendor(s) to perform similar services and/or to conduct such services itself.

3.66 SURVIVAL

Provisions of this RFP which of their nature and effect are necessary to enable the Lottery to function normally and to meet all of its obligations shall survive any termination of the Contract. These provisions include, but are not limited to, all of the warranties and representations and any provision that by its terms provides for applicability beyond the end of any Contract period.



4 REQUIRED INFORMATION

4.1 EXPERIENCE OF PROPOSER

- 4.1.1 Each Proposer should state why it believes it has the required experience to provide the goods and services required under this RFP. Proposers must demonstrate an understanding of Texas as a minority-majority state as well as the ability to effectively reach and speak to all Texans (ages 18+).
- 4.1.2 Each Proposer shall provide descriptions for all engagements of comparable complexity and sensitivity to the requirements of this RFP that have been conducted within the past five (5) years. The descriptions shall be detailed and cover the contracts the Proposer and any subcontractors have had and all experience similar to this Contract, including but not limited to:
- (a) Size of contract (including value).
 - (b) Reason for contract termination/expiration, if contract is no longer in effect.
 - (c) Types of services directly provided by the Proposer and whether the Proposer was the contractor or subcontractor.
 - (d) Term and type of contract, including effective dates.
 - (e) Any problems encountered.
- 4.1.3 The Proposer shall state whether or not any of the following have occurred during the last five (5) years:
- (a) The Proposer has had a contract terminated, and if so, shall provide full details, including the other party's name, address and telephone number.
 - (b) The Proposer has been assessed any penalties or liquidated damages under any existing or past contracts and if so, note the reason for and the amount of the penalty or liquidated damages for each incident.
 - (c) The Proposer was the subject of (i) any disciplinary action for substandard work and unethical practices or (ii) any order, judgment or decree of any federal or state authority barring, suspending or otherwise limiting the right of the Proposer to engage in any business, practice or activity.
 - (d) The Proposer has been involved in any litigation related to contract performance.

4.2 PROPOSER REFERENCES

A minimum of five (5) verifiable references must be provided that include contact person, name of company, phone and e-mail address. Proposers' references shall include references for which the Proposer has provided similar services as described in Part 7 of this RFP within the last five (5) years. The Texas Lottery reserves the right to verify all information in the Proposal submitted by the Proposer and seek other information it deems necessary to conduct a thorough review.



4.3 CONTACT PERSON

- 4.3.1 Each Proposer shall provide the name, address, telephone number, and email address of a person to contact concerning questions regarding its Proposal.
- 4.3.2 Each Proposer shall provide the name, address, telephone number, and email address of a person to contact (if different than the person identified in section 4.3.1) concerning the Contract.

4.4 CONFLICT OF INTEREST

- 4.4.1 The Proposer must disclose any actual, potential or perceived conflict of interest relative to the performance of the requirements of this RFP. The Proposer must disclose any personal or business relationship of (a) itself; (b) any of its principals, officers, directors, investors, owners, partners, and employees (collectively, Proposer Personnel); (c) any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any Proposer Personnel; (d) any affiliate; or (e) any Subcontractor with (1) any employee or representative of the Texas Lottery (including the Texas Lottery Executive Director and its commissioners) or (2) the Lottery's vendors with contracts over \$100,000. The list for all Texas Lottery contracts over \$100,000, including major and prime contracts, is regularly updated at the following website link:

[http://www.txlottery.org/export/sites/lottery/About_Us/Doing_Business_with_TLC/Contracts_Over_\\$100x000/](http://www.txlottery.org/export/sites/lottery/About_Us/Doing_Business_with_TLC/Contracts_Over_$100x000/).

Additionally, any such relationship that might be perceived or represented as a conflict must be disclosed. Failure to disclose any such relationship may be a cause for disqualification of a Proposal.

- 4.4.2 This is a continuing disclosure requirement. The Proposer shall disclose to the Texas Lottery in writing any actual, potential or perceived conflict of interest, relative to the performance of the requirements of this RFP, prior to Contract Award and for the Successful Proposer after Contract Award, at the time the conflict is identified. Failure to promptly notify the Texas Lottery may be a cause for rejecting the Proposal.

4.5 FINANCIAL SOUNDNESS

- 4.5.1 Each Proposer must provide evidence of financial responsibility and stability for performance of the Contract and must demonstrate the ability to finance the project described in its submission.
- 4.5.2 Each Proposer shall provide evidence of financial responsibility and stability based on any and/or all of the following:
 - 1. If the Proposer is the sole source of financial resources, the Proposer must submit financials showing the Proposer's ability to finance the project on its own with current resources;



2. If the Proposer is the subsidiary of a parent corporation and the parent corporation is providing financial resources or assurance, the parent corporation must complete Attachment B, and the Proposer must submit financials for both the Proposer and the parent;
3. If the Proposer is a joint venture or a group of affiliated companies, the Proposal must include financials for each member or affiliate of such joint venture or group, as applicable.

If 1, 2 or 3 applies, then the Proposer shall submit the following documentation with its Proposal:

- (a) Copies of audited financial statements and/or complete tax returns for each of the Proposer's (and its parent corporation, if applicable, or joint venture member or affiliate, if applicable) two (2) most recently ended fiscal years; and/or
 - (b) If documentation under (a) is not available, the Proposer shall provide other proof of financial assurance.
4. If the Proposer is relying on financial resources other than items 1 through 3 above, then the Proposer shall submit the following documentation with its Proposal:
 - (a) Other proof of financial assurance that is verified by a third party financial institution. Examples of such items are as follows:
 - i. Unaudited financial statements accompanied by a line of credit from a third party financial institution stating the credit amount and available balance.
 - ii. Unaudited financial statements accompanied by a bank statement provided by a third party financial institution confirming the Proposer's average bank balance for at least the previous six (6) months.
 - iii. Any other financial information Proposer would like to be considered.
- 4.5.3 If the information in Section 4.5.2 is not available at the time of submission, the Proposer shall provide other proof of financial responsibility acceptable to the Texas Lottery prior to the deadline for submission of Proposals.
 - 4.5.4 The Texas Lottery reserves the right to require any additional information necessary to determine the financial responsibility and stability of the Proposer.
 - 4.5.5 The Proposal must include a certification that the Proposer will notify the Texas Lottery of a change in financial condition during the Contract term and any renewal thereof. If a Proposer experiences a substantial change in its financial condition prior to the award of the Contract, or if the Successful Proposer experiences a substantial change in its financial condition during the term of the Contract or any extension thereof, the Texas Lottery must be notified of the change in writing at the time the change occurs or is identified. Failure



to notify the Texas Lottery of such substantial change in financial condition will be sufficient grounds for rejecting the Proposal or terminating the Contract. For the purposes of this section, examples of a substantial change in financial condition are events such as insolvency, bankruptcy or receivership.

4.6 BACKGROUND INVESTIGATIONS

- 4.6.1 **Vendor Background Investigation.** Under TEX. GOV'T CODE ANN. § 466.103, the Executive Director of the Texas Lottery is prohibited from awarding a contract for goods or services related to lottery operations to a person or legal entity who would not qualify for a sales agent license under the requirements of § 466.155.

The Texas Lottery Commission may initiate investigations into the backgrounds of (a) any Apparent Successful Proposer; (b) any of the Apparent Successful Proposer's officers, directors, investors, owners, partners and other principals, as more particularly described in TEX. GOV'T CODE ANN. § 466.155 (collectively, Apparent Successful Proposer Principals); (c) any of the Apparent Successful Proposer's employees; (d) any of the Apparent Successful Proposer's Subcontractors, or the Subcontractors' officers, directors, investors, owners, partners, principals or employees (collectively, Subcontractor Personnel); or (e) any other associates of the Apparent Successful Proposer it deems appropriate. The Texas Lottery Commission may also request background information for a spouse, child, brother, sister or parent residing as a member of the same household in the principal place of residence of the Apparent Successful Proposer, any Apparent Successful Proposer Principals, or Apparent Successful Proposer employees described above. Such background investigations may include fingerprint identification by the Texas Department of Public Safety and the Federal Bureau of Investigation, and any other law enforcement agency.

The Apparent Successful Proposer shall be obligated to provide such information about any Apparent Successful Proposer Principals, Apparent Successful Proposer employees, and Subcontractor Personnel as the Texas Lottery may prescribe. The Apparent Successful Proposer also agrees that the Texas Lottery may conduct background investigations of such persons. The Texas Lottery may reject a Proposal and/or terminate the Contract based solely upon the Apparent Successful Proposer's failure to provide information to complete a background investigation or the results of these background investigations.

- 4.6.2 **Contractually Defined Vendor Principal(s) Background Investigation.** The Texas Lottery may initiate background investigations on the Apparent Successful Proposer Principals who will be directly involved in selling or leasing the goods or performing the services that are the subject of this RFP or the Contract. This includes any oversight function performed by such individuals. For purposes of this section and the attachments, these individuals are called "contractually defined vendor principals."
- 4.6.3 **Vendor Employee Background Investigations.** The Successful Proposer agrees that, during the term of the Contract and any extension thereof, it shall be obligated to provide such information about any principals, employees, and Subcontractor Personnel as the



Texas Lottery may prescribe. The Successful Proposer also agrees that the Texas Lottery may conduct background investigations of such persons.

The Texas Lottery will conduct vendor employee background investigations on any of the Successful Proposer's principals, employees, and Subcontractor Personnel who meet one or more of the following criteria:

- they perform services that may impact the security and integrity of the core gaming business as determined by the Texas Lottery;
- they provide audit, financial, legal, or compliance services;
- they provide goods and/or services that control or monitor access to lottery premises;
- they have unescorted access to TLC facilities; and/or
- they have direct access to TLC information systems.

4.6.4 **Apparent Successful Proposer.** If requested by the Texas Lottery, the Apparent Successful Proposer may be required to complete and return the following forms within ten (10) Working Days, or as otherwise directed by the Texas Lottery, after the written Announcement of the Apparent Successful Proposer is issued:

- a. Vendor Background Investigation Form (Attachment E).
- b. Certified List of Vendor Principals Form (Attachment E-1).
- c. Certified List of Contractually Defined Vendor Principals Form (Attachment E-2).
- d. Consent to Background Investigation and Release of Personal Information Form (Attachment E-4). A separate form shall be completed for each vendor principal included on *Attachment E-2 Certified List of Contractually Defined Vendor Principals Form* and each vendor/Subcontractor employee included on *Attachment E-3 Vendor Employee Background Investigation List*.
- e. Vendor Employee Background Investigation List (Attachment E-3).

4.7 DISCLOSURE OF INTERESTED PARTIES

4.7.1 Pursuant to Section 2252.908 of the TEX. GOV'T CODE ANN., a governmental entity or state agency may not enter into certain contracts with a business entity unless the business entity submits a disclosure of interested parties (Form 1295) to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Ethics Commission (See <https://www.ethics.state.tx.us/legal/ch46.html>).

4.7.2 If requested by the Texas Lottery, the Apparent Successful Proposer may be required to complete and file the Form 1295 with the Ethics Commission after the written Announcement of the Apparent Successful Proposer is issued and prior to contract execution.





5 HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION

5.1 HSP Requirement

The Texas Lottery has adopted the rules promulgated by the Comptroller of Public Accounts (CPA) regarding Historically Underutilized Businesses (HUBs) in 34 Texas Administrative Code (TAC) §§ 20.281 – 20.298 (See [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D&div=1&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D&div=1&rl=Y)). By submitting a Proposal, the Proposer certifies that it has reviewed 34 TAC §§ 20.281 - 20.298. Rule 20.285 addresses the specific requirements of Historically Underutilized Business subcontracting plans (HSPs).

5.2 HSP SUBMISSION AND TEXAS LOTTERY REVIEW

- 5.2.1 All proposals must include an HSP (Attachment C, including Method A or B, if applicable) in the format required by the Comptroller of Public Accounts. Proposers may access the HSP forms on-line at the following CPA website link: <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>. The forms must be printed, signed and submitted with your Proposal. The HSP is a pass/fail requirement. PROPOSALS THAT DO NOT INCLUDE A COMPLETED HUB SUBCONTRACTING PLAN PREPARED IN ACCORDANCE WITH 34 TAC §20.285 SHALL BE REJECTED AND WILL NOT BE EVALUATED.
- 5.2.2 The HSP form is provided in Attachment C of this RFP. To determine whether a Proposer has performed a good faith effort in preparing its HSP as required by the Comptroller's HUB rules, the Texas Lottery may request clarifications, if necessary. The HSP will be reviewed based on the Proposer's submission and any clarifications requested by the agency.

5.3 ASSISTANCE FOR PREPARATION OF HSP

- 5.3.1 *Pre-Proposal Conference.* Proposers are encouraged to attend the pre-Proposal conference, which will include a brief overview of the HSP requirements. Proposers may ask questions at the pre-Proposal conference regarding the HSP. A copy of the TLC's Pre-Bid/Proposal Conference Booklet regarding HSP requirements is available on the agency's website at: http://www.txlottery.org/export/sites/lottery/About_Us/Doing_Business_with_TLC/Procurement/ Proposers should review the HSP booklet thoroughly to ensure they fill out and submit all forms correctly.
- 5.3.2 *HSP Quick Check List and HUB Subcontracting Opportunity Notification Form.* Attached to this RFP are an HSP Quick Check List (Attachment C-1) prepared by the Texas Comptroller and a HUB Subcontracting Opportunity Notification Form (Attachment C-2). Attachment C-1 is intended to assist Proposers in preparing the HSP forms, but is not



required to be submitted with Proposals. Proposers are encouraged to use Attachment C-2 when sending notice of subcontracting opportunities.

5.3.3 *Additional TLC Assistance.* As stated above, if an HSP is rejected, the Proposal will be disqualified and will not be considered. **Therefore, Proposers are strongly encouraged to start preparing HSP forms as soon as possible and take advantage of the following TLC assistance. Please note there are deadlines associated with this process and Proposers have a limited amount of time to cure any deficiencies.**

- Written questions regarding the HSP can be submitted at any time up until the Proposal deadline. The TLC will compile and post a separate HSP question-and-answer document on the TLC website. The document will be updated as questions are submitted. **It is the Proposer's responsibility to check the TLC website for this information.**
- The TLC will conduct one-on-one HSP workshops with Proposers upon request. The workshops will cover detailed information on how to complete the HSP forms. Workshops must be concluded by the date and time listed in the Schedule of Events. Workshops may be conducted in person or via telephone conference. **Proposers are responsible for contacting the Texas Lottery to schedule a workshop during the specified time period. Proposers may schedule a workshop either before or after the Pre-Proposal Conference.**
- The TLC will review and provide individual written feedback on draft HSP forms submitted by Proposers. Draft HSP forms must be submitted by the date and time listed in the Schedule of Events. Upon request, the TLC may also provide verbal feedback.

Note that "draft HSP forms" consist only of the forms included in Attachments C, C-1 and C-2 of the RFP and documentation related to performance of the good faith effort. In reviewing draft forms, the TLC will not comment on responses to Part 5 or to any other sections of the RFP, even if they are referred to in the HSP forms. Proposers are instructed not to submit any other portions of their Proposal to the TLC as part of the draft HSP.

One-on-one workshops and the TLC's review of draft HSP forms do not guarantee that the HSP submitted with the Proposal will pass.

5.4 REQUIREMENTS FOR COMPLETING THE HSP FORMS

5.4.1 TLC's HUB Participation Goal. The goods and/or services requested in this RFP are classified in the category of Other Services Contracts. The agency's HUB participation goal for this RFP is 26%.

5.4.2 Requirements of the HUB subcontracting plan. Each Proposer shall complete the HSP forms prescribed by the Comptroller (Attachment C) and provide the following:

- (A) a certification the Proposer has made a good faith effort to meet the requirements of 34 TAC § 20.285;



- (B) the names of the subcontractors that will be used during the course of the Contract;
- (C) the expected percentage of work to be subcontracted; and
- (D) the approximate dollar value of that percentage of work.

Each Proposer shall provide all documentation required by the agency to demonstrate the Proposer's compliance with the good faith effort requirements prior to Contract Award. If a Proposer fails to provide supporting documentation (phone logs, fax transmittals, electronic mail, etc.) by the deadline specified by the agency, the Proposal shall be rejected for material failure to comply with TEX. GOV'T CODE ANN. §2161.252 (b).

5.4.3 **Proposer Intends to Subcontract**

Proposers who intend to subcontract any portion of the Contract must indicate in the HSP form that they intend to subcontract, and must perform one of the three good faith effort methods identified below.

- **Method A (1): Using 100% HUB Subcontractors.** Proposer will use only Texas-certified HUBs for all identified subcontracting opportunities.
- **Method A (2): Meeting the Specified HUB Contract Goal.** Proposer will meet the HUB contract goal by using only Texas-certified HUBs with whom the Proposer has contracted for five years or less.
- **Method B: Good Faith Effort Outreach.** Proposer will perform good faith effort outreach for each identified subcontracting opportunity by contacting at least three Texas-certified HUBs and two trade organizations or development centers that serve members of the HUB groups. **Proposers using this method must perform the outreach even for areas where a Proposer has a pre-existing subcontracting relationship.**

PROPOSERS WHO INTEND TO SUBCONTRACT, AT A MINIMUM, MUST USE ONE OF THE METHODS OUTLINED ABOVE. FAILURE TO DO SO WILL RESULT IN DISQUALIFICATION.

5.4.4 **Proposer Does Not Intend to Subcontract**

Proposers who intend to fulfill the entire Contract using only their own existing resources and employees, without subcontracting, should check the appropriate box in Section 2 of the HSP form and complete Sections 3 and 4 of the form.

The Proposer must explain how all functions of the Contract will be performed without the use of Subcontractors and should refer to Section 3 of the HSP form.



5.5 SUBCONTRACTING OPPORTUNITIES

- 5.5.1 The Texas Lottery has identified the following potential subcontracting opportunities under this RFP. Proposers intending to subcontract any must perform the good faith effort detailed in the HSP instructions and include a compliant HSP with the Proposal.
- 5.5.2 After Contract Award, for any services denoted with an asterisk and in **bold/blue** font below that the Successful Proposer intends to subcontract, the Successful Proposer shall be required to perform the good faith effort and select a minimum of three potential subcontractors and, per section 7.13.2, obtain at least three competitive bids for expenditures that exceed \$5,000.

CLASS 037: AMUSEMENT, DECORATIONS, ENTERTAINMENT, GIFTS, TOYS, ETC.

Item Numbers and Commodity Descriptions:

- *037-25** **Carnival and Fair Equipment: Inflatables, Bounce Houses, Interactive Games**
- *037-52** **Novelties, Promotional and Specialty Products, Including Biodegradable**
- *037-78** **Souvenirs and Prizes: Promotional, Advertising, etc.**

CLASS 559: MASS TRANSPORTATION, RAIL VEHICLE PARTS AND ACCESSORIES

Item Numbers and Commodity Descriptions:

- *559-70** **Signage: Destination, Routing and Advertising**

CLASS 578: MISCELLANEOUS PRODUCTS (NOT OTHERWISE CLASSIFIED)

Item Numbers and Commodity Descriptions:

- *578-83** **Store Fixtures and Display Hardware, Retail**

CLASS 715: PUBLICATIONS, AUDIOVISUAL MATERIALS, BOOKS, TEXTBOOKS, PREPARED MATERIALS ONLY

Item Numbers and Commodity Descriptions:

- *715-30** **Display, Exhibit, and Promotional Materials**

CLASS 801: SIGNS, SIGN MATERIALS, SIGN MAKING EQUIPMENT, AND RELATED SUPPLIES

Item Numbers and Commodity Descriptions:

- *801-58** **Signs: Billboard, Advertising, etc.**



CLASS 915: COMMUNICATIONS AND MEDIA RELATED SERVICES

Item Numbers and Commodity Descriptions:

- 915-01 Advertising Agency Services
- 915-04 Advertising Services, Outdoor Billboard, etc.
- *915-06 Audio Production Services**
- 915-08 Audio Media Duplicating Services, Including Cassettes, CD ROMs, Tapes, etc.
- 915-09 Audio and Video Production Services
- 915-10 Advertising Digital
- 915-14 Broadcasting Services, Radio
- 915-15 Broadcasting Services, Television
- 915-26 EDI, Electronic Data Interchange, VAN, Value Added Network Services
- *915-27 Editorial Services**
- *915-42 Film, Slide and Tape Production Services**
- 915-48 Graphic Arts Services, Not Printing
- 915-58 Mailing Services: Addressing, Collating, Packaging, Sorting and Delivery
- 915-59 Mail Services, Express
- 915-71 Newspaper and Publication Advertising, Non-legal
- *915-72 Photography Services, Not Including Aerial Photography**
- *915-74 Radio Commercial Production Services**
- *915-78 Television Commercial Production Services**
- *915-82 Video Production Services**
- 915-90 Video Media Duplicating and Production Service, Including CD ROMs, Tapes, etc.
- 915-96 Web Page Design, Management and Maintenance Services

CLASS 918: CONSULTING SERVICES

Item Numbers and Commodity Descriptions:

- 918-07 Advertising Consulting
- 918-76 Marketing Consulting

CLASS 920: DATA PROCESSING, COMPUTER PROGRAMMING, AND SOFTWARE SERVICES

Item Numbers and Commodity Descriptions:

- 920-28 Emergency Back-up, Disaster Recovery Services and Facilities for Data Processing



CLASS 958: MANAGEMENT AND OPERATION SERVICES

Item Numbers and Commodity Descriptions:

958-84 Social Media Management Services

CLASS 961: MISCELLANEOUS SERVICES, NO. 1 (NOT OTHERWISE CLASSIFIED)

Item Numbers and Commodity Descriptions:

961-04 Artists: Digital, CAD, Disc Jockey

961-49 Legal Services, Attorneys

961-53 Marketing Services, Including Distribution, Public Opinion Surveys, Research, Sales Promotions, etc.

***961-66 Sign Making and Painting Services**

961-71 Talent Agency Services

961-73 Theatrical Services, Including Costume Design and Creation, Production, Scenery Design, Stage, etc.

961-75 Translation Services, All Languages

CLASS 962: MISCELLANEOUS SERVICES, NO. 2 (NOT OTHERWISE CLASSIFIED)

Item Numbers and Commodity Descriptions:

***962-05 Amusement and Entertainment Services, Including Performing Arts Professionals and DJ Services**

962-24 Courier/Delivery Services, Including Air Courier Services

***962-60 Party, Holiday, and Event Decorating and Planning Services**

***962-86 Transportation of Goods, Shipping and Handling, and Other Freight Services**

CLASS 965: PRINTING: PREPARATIONS, ETCHING, PHOTOENGRAVING, PREPARATION OF MATS, NEGATIVES AND PLATES AND PRINTING SERVICES

Item Numbers and Commodity Descriptions:

965-15 Artwork, Camera Ready

965-46 Graphic Design Services for Printing

965-70 Pre-Press: Color Separations, Composite Film, Stripping, Chromolin or Match-Print Proof, etc.



CLASS 966: PRINTING AND TYPESETTING SERVICES

Item Numbers and Commodity Descriptions:

- *966-25** Digital Printing
- *966-57** Offset Printing, General, Small Press Work (Quan. up to 25,000), One or More Colors, No. 4 Color Processes or Large Solids or Close Registration; up to 11 x 17 In.: Brochures, Newsletters, Covers, Posters, etc.
- *966-60** Offset Printing, Large Production Runs (Quan. up to 100,000); 4 Color Process or Close Registration Required: Color Brochures, Maps, etc.
- *966-84** Silk Screen Printing
- *966-86** Specialty Printing: Die Cutting, Laser, Plastic, Thermography, etc., Folders, Invitations, Tabs, Binders, Banners, Banner Displays, etc.

CLASS 971: REAL PROPERTY RENTAL OR LEASE

Item Numbers and Commodity Descriptions:

- 971-70 Storage Space Rental or Lease

The potential subcontracting opportunities listed above may or may not be areas that a Proposer would subcontract, depending on that Proposer's existing resources, employees, and business model. Further, Proposers are not limited to the list above, and may identify additional areas of subcontracting. Proposers who intend to subcontract are responsible for identifying all areas that will be subcontracted and shall submit a completed HSP demonstrating evidence of good faith effort in developing that plan.

- 5.5.3 A list of HUB vendors registered with the Comptroller of Public Accounts (CPA) for the subcontracting opportunities identified above is included under the HUB/CMBL tab of this RFP. This list is provided as a resource to assist Proposers in preparing and submitting a HSP. The Texas Lottery Commission does not endorse, recommend or attest to the capabilities of any company or individual listed. Note that currently active certified HUBs will have a status code of "A." All other status codes indicate that a vendor is inactive or not a HUB.
- 5.5.4 Please refer to the HUB/CMBL Directory Instructions and HUB Vendor Reference Lists under the HUB/CMBL tab of this RFP to locate potential HUB Subcontractors.

5.6 POST CONTRACT AWARD

5.6.1 Notification of Subcontractors

Following Contract Award, the Successful Proposer must provide notice to all subcontractors (HUBs and Non-HUBs) of their selection for the awarded Contract. The Successful Proposer is also required to provide a copy of each notice to the agency's point of contact for the Contract no later than ten (10) Working Days after the Contract is



awarded. Proposers should refer to Section 4 of the HSP form for additional information about this requirement.

5.6.2 HSP Changes

Following Contract Award, any proposed changes to the HSP must be submitted, in writing, by the Successful Proposer to the Texas Lottery for prior review and must be approved by the Texas Lottery in writing before becoming effective under the Contract.

5.6.3 HSP Reporting

Following Contract Award, if the Successful Proposer is subcontracting, the Successful Proposer shall maintain business records documenting compliance with the HSP and shall submit a monthly compliance report in the format required by the Texas Lottery. The monthly compliance report shall be submitted to the Texas Lottery by the 10th of the following month or on the date requested by the agency's HUB Coordinator or his/her designee. The submission of the monthly compliance report is required as a condition of payment.



6 ADVERTISING AGENCY STAFFING REQUIREMENTS

6.1 AD AGENCY STAFFING

- 6.1.1 It is crucial that the Successful Proposer and the team assigned to work on the Texas Lottery account demonstrate the experience and skills required to effectively reach and communicate with the diverse population of Texas including expertise marketing retail products across all advertising media and retail placement channels. Proposers shall provide detailed résumés for all personnel who will be assigned to the Texas Lottery account.
- 6.1.2 Proposers must provide an organizational chart which identifies all staff who will support the Texas Lottery account. The organizational chart should include the position titles (e.g., account service, media, creative, support staff, etc.), number of positions, and names of all personnel. The organizational chart should include corporate directors and/or officers who will provide direction or oversight to the Texas Lottery account.

6.2 AGENCY STAFF STRUCTURE

- 6.2.1 Proposers must submit an in-depth staffing plan, by department, for the Texas Lottery account. However, the Texas Lottery is not predisposed to any particular staffing model. Proposers are encouraged to propose staffing plans that offer the best value to the Texas Lottery, both in terms of account service and adequate staffing. If a different individual will not be assigned to each position, the Proposer must explain how service levels will be maintained and staffing needs met. This section identifies the staffing positions that have been previously used for the Texas Lottery account.
- 6.2.2 Proposers must provide a list of personnel to be assigned to the Texas Lottery account and include resumes for all personnel, including name, title and job description. Lists and resumes provided by Proposers must include, at a minimum, information regarding length of time spent doing present duties or related duties; a description of duties; projects accomplished, including scope and name of customer's company; and relevant continuing professional education. If duties were performed for an employer other than the Proposer, the Proposal must indicate that employer's name.
- 6.2.3 Account Service Staffing. Proposers shall identify the key personnel who will provide direction or oversight to the Texas Lottery account, at a minimum, to include an Account Director. The Proposer must demonstrate that these individuals have the background and experience required to coordinate the Proposer's activities for the Texas Lottery account, including special projects and activities. The Account Director should have a minimum of five (5) years account service experience, the Account Supervisor should have a minimum of three (3) years account service experience, and Account Executives should have a minimum of one (1) year of experience. Account Service staff may include the following:
- Account Director



- Account Supervisor
- Account Executive
- Junior Account Executive
- Account Coordinator

6.2.4 Account Planning. Each Proposer must describe the staffing levels and functions of its account planning department, and identify the personnel, including the number of years of experience for each, who will be assigned to the Texas Lottery account. The Account Planner should have a minimum of three (3) years of relevant market analysis experience. Account Planning staff may include the following:

- Account Planner
- Assistant Account Planner

6.2.5 Media Staffing. Each Proposer must describe the staffing levels and functions of its media department, and identify the personnel, including the number of years of experience for each, who will be assigned to the Texas Lottery account. The Media Director should have a minimum of five (5) years of relevant media experience and the Media Supervisor should have a minimum of three (3) years of relevant media experience. Media staff may include the following:

- Media Director
- Media Supervisor
- Media Planner
- Junior Media Planner
- Media Buyer
- Junior Media Buyer

6.2.6 Creative Staffing. Each Proposer must describe the staffing levels and functions of its creative department, and identify the personnel, including the number of years of experience for each, who will be assigned to the Texas Lottery account. The Creative Director should have a minimum of five (5) years of relevant creative experience. Creative staff may include the following:

- Creative Director
- Associate Creative Director
- Art Director
- Copywriter

6.2.7 Production Staffing. Each Proposer must describe the staffing levels and functions of its production department, and identify the personnel, including the number of years of experience for each, who will be assigned to the Texas Lottery account. Production staff may include the following:

- Production Manager
- Producer



- Production Coordinator
- Print Producer
- Traffic Manager
- Project Manager
- Translator
- Programming Specialist

6.2.8 Experiential Event Staffing. Each Proposer must describe the staffing levels and functions of its experiential department, and identify the personnel, including the number of years of experience for each, who will be assigned to the Texas Lottery account. The Experiential Manager should have a minimum of three (3) years of relevant experiential event and marketing activation negotiation and deliverable management experience. Experiential staff may include the following:

- Experiential Manager
- Experiential Coordinator

6.2.9 Finance Staff. Each Proposer must describe the staffing levels and functions of its finance department, and identify the personnel, including the number of years of experience for each, who will be assigned to the Texas Lottery account. Finance staff may include the following:

- Finance Manager
- Staff Accountant
- Billing Coordinator

6.3 AGENCY STAFF POSITION DEFINITIONS

Proposers shall identify all staff who will fill the following positions. If the Proposer plans to subcontract for these services, hourly rates should be included in the cost proposal, Attachment H.

6.3.1 Account Service

Account Director – Serves as the brand steward assisting to determine the Texas Lottery’s strategic brand objectives, assessing the brand position, and managing the internal team resources to best service the overall Texas Lottery account. Ensures the timely development and execution of plans, campaigns, and projects to assure goals are achieved. Supervises the development of the advertising activities in accordance with the Texas Lottery’s objectives and budget limitations. Provides oversight of all account service staff.

Account Supervisor – Initiates planning that will lead to execution of advertising activities. Consults with creative, media, production and experiential staff to be certain Texas Lottery objectives are clearly understood to develop strategic solutions. Supervises Account Executives.



Account Executive – Manages projects from start to finish and develops a strong working rapport to meet the Texas Lottery's needs and goals on every project.

Junior Account Executive – Provides support to the account service team to ensure projects are on strategy, meet deadlines and are within budget.

Account Coordinator – Provides administrative support to the account service team.

6.3.2 Account Planning

Account Planner – Leverages industry-available research and other information and inputs to bear on accounts in order to bring a greater degree of consumer insight to advertising.

Assistant Account Planner - Responsible for drafting, preparing and executing elements of the account planning process under the guidance and direction of an account planner.

6.3.3 Media

Media Director – Oversees management of all media strategies, planning and buying. Presents media plans, as needed, including objectives, strategic research and demographic analysis. Supervises the development and execution of media plans including digital and social.

Media Supervisor– Responsible for all media activities, including developing the media plan and selecting media to achieve marketing objectives within a predetermined budget. Supervises planners and buyers and serves as Texas Lottery contact.

Media Planner – Implements the process and assists with the management of the strategic and tactical execution of all media channels. Evaluates composition of a wide range of media vehicles to determine which would most effectively reach the intended audience.

Junior Media Planner – Responsible for drafting media recommendations and plans; gathering statistics; and studying demographic data and consumer profiles. May also track and analyze advertising expenditures.

Media Buyer – Negotiates with media sales representatives to buy and place advertising for the Texas Lottery, calculates rates and budgets, and ensures that ads appear as specified. Also responsible for negotiating added-value opportunities.

Junior Media Buyer – Assists the Media Buyer with negotiating media, entering rates and makegoods and following up on invoice discrepancies.

6.3.4 Creative



Creative Director – Oversees all creative projects and staff, and is responsible for the overall quality of work produced by the creative department. Manages creative projects from concept to completion and translates marketing objectives into creative strategies. Leads and directs the creative team in the production of advertising and marketing concepts. Responsible for creative execution across all channels including digital, social and experiential.

Associate Creative Director – Responsible for the preparation and production of advertising and marketing concepts. Establishes and maintains high internal quality by originating creative ideas, managing project timelines, adhering to creative briefs, and ensuring consistency of strategic branding.

Art Director – Develops advertising creative concepts in partnership with Copywriters. Must possess solid understanding of the market dynamics of assigned product(s).

Copywriter – Responsible for original concepts and producing clear, concise and convincing writing with grammatical and material accuracy. Conceives and executes advertising consistent with the agreed strategy.

6.3.5 Production

Production Manager – Manages production of a variety of projects. Duties include project planning, workflow management, vendor negotiations, cost control, quality control and logistical coordination.

Producer – Responsible for development and coordination of broadcast, digital and social productions.

Production Coordinator – Provides logistical support to production department. Duties may include tracking and scheduling projects and invoice management.

Print Producer – Manages and oversees logistics of printed marketing materials including point-of-sale, out-of-home, signage, press checks, etc. Responsible for developing effective and efficient print solutions while controlling cost and ensuring quality control.

Traffic Manager – Coordinates scheduling, processing and trafficking of advertising and other creative projects. Serves as a liaison between outside vendors and agency departments to coordinate efficient and timely creative project processing. Responsible for creating project schedules and job estimates, maintaining records of action and work flow on projects, and routing projects for approval.

Project Manager – Oversees the project from inception to completion, including creation of project schedule, managing resources for deliverables and ensuring adherence to the approval process.



Translator – Provides translation services primarily for Spanish with limited translation requirements for Chinese and potential translation for other languages.

Programming Specialist – Provides programming support to execute against marketing goals including the development of microsites, interactive components, etc.

6.3.6 Experiential

Experiential Manager – Creates and coordinates activities related to the development, negotiation, execution and evaluation of experiential events and marketing activations. Duties may include developing budgets, negotiating events and managing event activation deliverables.

Experiential Coordinator – Assists with coordinating the activities related to the development, execution and evaluation of experiential events and marketing activations. Duties may include acquiring event permits; securing emcees and/or ambassadors, and promotional giveaways; overseeing set-up and tear-down of event location; ensuring availability of proper equipment and supplies; and coordinating activities. May assist in on-site management of event activation deliverables.

6.3.7 Finance

Finance Manager – Responsible for ensuring the accuracy of all account transactions and the preparation of all financial reports. Maintains adequate controls of receipts and disbursements.

Staff Accountant – Oversees all billings and accounting functions on the account.

Billing Coordinator – Collects, assembles and processes invoices, estimates and overall accounting documentation.

6.4 AGENCY STAFF POSITION CHANGES

The Successful Proposer shall provide the same Account Director and Supervisor for all Texas Lottery projects.



7 SCOPE OF SERVICES

7.1 GENERAL DESCRIPTION OF SERVICES AND REQUIREMENTS

- 7.1.1 The Successful Proposer must be able to perform the functions of a full-service advertising agency, including, but not limited to, branding, creative concepting, production, planning and buying of broadcast, print, digital, social, out-of-home media, experiential event/marketing activations, and translation services.
- 7.1.2 The Successful Proposer shall exhibit a thorough understanding of Texas as a minority-majority state and must demonstrate the ability to effectively reach and speak to all adult (ages 18+) Texans.
- 7.1.3 Proposers are required to discuss their in-house advertising research capabilities, and/or access to advertising research resources for the Texas Lottery.

7.2 ADVERTISING SENSITIVITY

- 7.2.1 The Texas Lottery is an agency of the State of Texas, and all advertising efforts shall be conducted in a manner commensurate with the dignity and integrity of the State of Texas. Advertising should be consistent with the core values, mission and vision of the Texas Lottery. Further, in accordance with TEX. GOV'T CODE ANN. Sec. 466.110. (PROHIBITED ADVERTISEMENTS), "advertisements or promotions sponsored by the commission or the division for the lottery [must] not be of a nature that unduly influences any person to purchase a lottery ticket or number."
- 7.2.2 The following stipulations apply to all Texas Lottery advertising. Advertising should not:
 - (1) Unduly influence or over promise the benefits and features of the game or infer that anything other than random chance will result in winning the game via game names, callouts, features or other game elements.
 - (2) Depict or represent a change of lifestyle by presenting any Texas Lottery game as a potential means of relieving any person's financial or personal difficulty by emphasizing wins are a guarantee or substitute for employment.
 - (3) Display guns, alcohol, tobacco, improper attire or imply lewd or indecent language, images or actions.
 - (4) Portray product abuse, excessive play or preoccupation with gambling by glamorizing frequent or excessive play.
 - (5) Imply or portray any illegal activity.
 - (6) Make fun of other's pain, misfortune, impairment, or physique.
 - (7) Degrade the image or status of persons of any ethnic, minority or religious group.
 - (8) Show any form of cruelty and/or abuse of animals.
 - (9) Exploit a person, specific group or economic class.



- (10) Create the perception that the Texas Lottery has control over where winning tickets are sold and/or purchased.
- (11) Stereotype Texans.
- (12) Solicit children.

7.3 ADVERTISING PLAN

- 7.3.1 The Texas Lottery will provide the Successful Proposer with a marketing strategy including planned product flights as well as an overall budget. The strategy shall clearly define goals and communication objectives. The Texas Lottery and the Successful Proposer shall meet as needed to review the goals and objectives. The Texas Lottery may modify and/or amend the goals and objectives at any time.
- 7.3.2 Advertising Plan. The Successful Proposer shall be required to develop an annual advertising plan that is consistent with the Texas Lottery's marketing strategy and must be approved in writing by the Texas Lottery. The Texas Lottery's advertising plan should reach all adult (ages 18+) Texans. Unless otherwise specified by the Texas Lottery, the advertising plan, at a minimum, must include:
 - (1) Allocation of dollars by media and DMA with detailed rationale.
 - (2) Projected production and agency fee costs.
 - (3) Measurable metrics as appropriate for each medium (i.e., impressions, GRPs, etc.).
 - (4) Detailed media flowchart that specifies mediums, market tiers and costs.
 - (5) Experiential event and marketing activation opportunities and any other topics specified by the Texas Lottery.

The advertising plan should be based on the Texas Lottery's fiscal year (FY) (September 1 – August 31). The Successful Proposer shall submit an advertising plan for FY19 no later than four weeks after the Contract execution date, or as specified by the Texas Lottery. Advertising plans will be due annually thereafter no later than May 31 or as specified by the Texas Lottery.

7.4 BUDGET

- 7.4.1 The level of anticipated annual Fiscal Year spending will be determined by the Texas Lottery. The budget for Fiscal Years 2018 and 2019 is \$26,633,448 annually. The Successful Proposer shall develop a cost-efficient advertising plan that is responsive to the Texas Lottery's marketing needs.
- 7.4.2 The Successful Proposer shall make recommendations for savings wherever possible. The budget will be reviewed as needed and shall be revised as required by the Texas Lottery.
- 7.4.3 The Successful Proposer shall make no commitment on behalf of the Texas Lottery without prior written approval by the Texas Lottery.



7.5 REPORTS

The Successful Proposer shall provide the following reports to the Texas Lottery in a format approved or prescribed by the Texas Lottery. The Successful Proposer shall submit reports in accordance with the deadlines below, unless otherwise directed in writing by the Texas Lottery.

7.5.1 The following report is due every Wednesday:

- **Status Report.** This report documents all current media and production jobs, projects, experiential events, reporting, and meetings. Status Report will include: job by product, media, production, status of job, timeline of job, or as prescribed by the Texas Lottery. The report should also include a section for dynamic jackpot billboard maintenance. All timelines shall include a minimum of five (5) Working Days for approval by the Texas Lottery on each stage of each job or project, unless otherwise approved by the Texas Lottery.

7.5.2 The following reports are due by the 10th of each month:

- **The HUB Subcontracting Plan Prime Contractor Progress Assessment Report.** This report documents monthly payments made by the Successful Proposer to subcontractors under the Contract. The report may be due prior to the 10th of the month at the request of Texas Lottery.
- **Approved Expenditure Report.** A summary of all approved expenditures to date for the current fiscal year. The summary shall indicate the total amount available in the budget and the total amount currently committed. The summary also shall include current amounts invoiced, amounts invoiced but not paid, amounts owed for services performed but not invoiced, and current amounts paid, together with spending by media and production type.

7.5.3 The following report is due quarterly:

- **Print Audit.** No more than thirty (30) Days following the end of each calendar year quarter, the Successful Proposer shall submit quarterly print audits. Print audits will include name of publication, (paid or unpaid) circulation, DMA, year established, publication frequency, distribution sites, and publisher information.

7.5.4 The following reports are due on an annual basis:

- **Fiscal Year-End Added Value Report.** The Successful Proposer shall submit a fiscal year-end summary of added value achieved as a result of the previous fiscal year's media buy no later than January 31.
- **Production Inventory Report.** The Successful Proposer shall submit a current inventory report no later than September 30 for all broadcast and digital video production storage. The report shall include the date of inventory, job name, ISCI code and description, or as otherwise prescribed by the Texas Lottery.

7.5.5 The following reports are due prior to each campaign launch as follows:



- **Media Buys.** For each campaign, actual media buys will be required at least three weeks prior to the start of each flight. All media buys must include a summary of planned and purchased goals met and any cost savings achieved. Broadcast and out-of-home shall be reported per DMA.
- **Added Value.** For each campaign, the Successful Proposer shall provide an added value placement report in accordance with section 7.7.5. Reports will be required at least three weeks prior to the start of each flight.

7.5.6 The following report is due ninety (90) Days after campaign completion as follows:

- **Post Buy Report.** No more than ninety (90) Days following the end of the campaign flight, the Successful Proposer shall provide the Texas Lottery with a post-buy report indicating whether the planned measurable metrics of each buy were achieved within budget. If the broadcast and out-of-home goals were not achieved, the report shall contain a make-good report where bonus was issued.

7.5.7 The following report is due forty-five (45) Days after each experiential activation completion as follows:

- **Post Experiential Report.** This report provides a recap of each experiential activation as prescribed by the Texas Lottery.

7.5.8 At its sole discretion and with thirty (30) days' advance written notice to the Successful Proposer, the Texas Lottery may change the due dates of any required reports listed above. Failure to provide any reports as required (including in accordance with any revised due dates set by TLC) may result in the assessment of contract sanctions under Section 3.51.15.

7.5.9 **Ad Hoc Reports.** The Texas Lottery may require the Successful Proposer to develop advertising reports or analysis of advertising opportunities with mutually agreed upon dates for delivery.

7.6 CREATIVE SERVICES

7.6.1 The Successful Proposer shall be responsible for conceiving, creation and production of Texas Lottery advertising materials, including broadcast, digital, social, point-of-sale and print advertisements, out-of-home and such other materials and projects as may be required by the Texas Lottery. The Successful Proposer also may be required to develop comprehensive integrated campaigns and to assist the Texas Lottery in developing game names, product logos, or art for other use.

7.6.2 **Creative Concepts.** The Successful Proposer shall present at least three (3) creative concepts for each campaign and, upon Texas Lottery approval of the campaign concept, the Successful Proposer shall present three (3) creative options for each medium in the campaign unless otherwise specified by the Texas Lottery. If concepts or creative options are not approved by the Texas Lottery, the Successful Proposer, at the direction of the Texas Lottery, shall be required to develop and present additional creative executions.

7.6.3 **Creative Meetings.** The Successful Proposer shall schedule creative meetings with the Texas Lottery. Unless otherwise approved by the Texas Lottery, the Successful Proposer



shall provide at least five (5) Working Days' advance notice for all creative meetings. Creative meetings will be held on an as-needed basis.

- 7.6.4 Timelines. The Successful Proposer shall allow sufficient time for developing and presenting creative concepts, editing and revising selected options, obtaining final approvals from Texas Lottery staff, producing the final product, and distributing the finished product according to Texas Lottery specifications. Unless otherwise approved by the Texas Lottery, all timelines shall include a minimum of five (5) Working Days for approval by the Texas Lottery for each stage of each job or project. The Successful Proposer shall provide detailed production schedules with task milestones for each job. The Successful Proposer shall email all required materials to the Texas Lottery no later than four (4) hours before any scheduled meeting, unless otherwise approved by the Texas Lottery. The Texas Lottery will not be responsible for any additional production costs incurred as a result of the Successful Proposer's not adhering to set timelines.
- 7.6.5 Creative Approvals. The Successful Proposer shall obtain written approval from the Texas Lottery prior to producing any advertisement. When producing any creative work, the Successful Proposer shall not vary from approved scripts, story boards or print layouts without written approval from the Texas Lottery. Failure to adhere to approved scripts, story boards or layouts may void the Texas Lottery's approval of the estimate for the project. The Successful Proposer shall incorporate all changes required by the Texas Lottery, as well as submit any other alternative creative solutions deemed prudent by the Successful Proposer. The Successful Proposer shall be responsible for all unauthorized expenses.

7.7 MEDIA SERVICES

- 7.7.1 Media Buying Guidelines will be prepared by the Texas Lottery in cooperation with the Successful Proposer, and shall be agreed to by both parties in writing. The Guidelines may be updated annually or more often as necessary during the term of this Contract. The Successful Proposer shall be responsible for adhering to the Media Buying Guidelines.
- 7.7.2 Negotiation and Placement. The Successful Proposer shall be responsible for the placement and purchase of all media, including but not limited to broadcast, digital, social, out-of-home and print media. In negotiating media purchases, the Successful Proposer shall make the Texas Lottery aware of any savings that might be achieved through long-term commitments. Media placement shall be reimbursed at net cost with no mark-up. All broadcast stations are required to have a minimum ratings criteria defined by the Texas Lottery.
- 7.7.3 Stewardship. The Successful Proposer shall ensure that all media runs according to any contracts or insertion orders. This includes but is not limited to: order receipt/input confirmation, traffic instruction confirmation, reviewing pre-log times, negotiating makegoods of comparable or greater value, etc.
- 7.7.4 Placement Verification. The Successful Proposer shall review, process invoices and address any discrepancies prior to submitting to the Texas Lottery. This includes:



confirming traffic, rotation, flight dates to the purchased media channels. In addition, the Successful Proposer shall provide, at no cost to the Texas Lottery, affidavits, tear sheets or any other placement verification requested by the Texas Lottery.

- 7.7.5 Added Value Media Placements. The Successful Proposer shall negotiate added value for all media included in any Texas Lottery buy. The Texas Lottery shall establish a goal for added value media for each fiscal year.

7.8 PRODUCTION STORAGE

The Successful Proposer shall store past and current broadcast and digital/social video associated with the Texas Lottery in a manner consistent with industry standards. All storage costs will be reimbursed by the Texas Lottery for actual cost only. In accordance with Section 3.14.3, the Successful Proposer shall aid in any transition of broadcast and digital video for any new arrangement or service provider, if applicable.

7.9 GOODS AND EQUIPMENT

Notwithstanding anything herein to the contrary, after completion of the services to be provided on the Texas Lottery's behalf, the Successful Proposer shall be solely responsible for the proper disposition of all physical or tangible goods and/or equipment created in connection with the services or works provided to the Texas Lottery, and which are incidental to such services or works (e.g., props, set dressing, promotional equipment, signage, related equipment). The Texas Lottery will notify the Successful Proposer in the event that such incidental goods or equipment are to be returned to the Texas Lottery; otherwise, the Successful Proposer shall bear all storage, destruction and other costs in connection with disposition of such physical or tangible goods and equipment. Upon request of the Texas Lottery, the Successful Proposer shall be required to provide supporting documentation confirming disposal or destruction of such items. The Successful Proposer is expressly prohibited from reproducing, distributing, displaying, performing publicly, making copies or derivative works of, selling, using, re-using or otherwise conveying to other persons or entities any goods and/or equipment bearing any Texas Lottery mark without prior written approval by an authorized Texas Lottery representative.

7.10 PUBLIC SERVICE ANNOUNCEMENTS

At the Texas Lottery's request, the Successful Proposer shall develop print and/or broadcast public service announcements and work to secure placements. The announcements will run at no charge to the Texas Lottery. The Successful Proposer shall include a detailed post-buy report.

7.11 TRANSLATION SERVICES

Translation services may include translation in multiple languages, terminology creation and management, editing, proofreading, and cultural review. These services must be



available on request. In the past, the Texas Lottery has used translation services primarily for Spanish and limited translation requirements for Chinese.

7.12 EXPERIENTIAL MARKETING

- 7.12.1 The Texas Lottery works with the Lottery Operator to select promotional selling activations at fairs, festivals, other public events and in-store retailer promotions that create awareness and interest for Texas Lottery products among adult Texans. Experiential marketing efforts are intended to increase product trial and educate new and potential players about Lottery products.
- 7.12.2 At the Texas Lottery's request, the Successful Proposer shall assist in selecting, developing, negotiating and contracting for experiential activations in support of the Texas Lottery brand and products. This may include contracted services with third party vendors, equipment, supplies or other required components.
- 7.12.3 *Joint Promotions.* At the Texas Lottery's request, the Successful Proposer shall solicit and encourage joint advertising and promotional opportunities with potential co-sponsors. The Successful Proposer shall indicate the benefits to the Texas Lottery from any such joint promotion recommended.
- 7.12.4 *Free Tickets and Other Benefits.* Entitlements often carry with them an offer for free tickets to events, premium items and other special benefits. All such benefits provided in relation to experiential activations on behalf of the Texas Lottery shall be fully disclosed and documented. The Texas Lottery reserves the right to accept or reject the offer of any such items or benefits offered in association with an entitlement. The Successful Proposer may not utilize any such items for its own benefit or the benefit of other clients. No such item shall be provided to an employee of the Texas Lottery. The Successful Proposer shall maintain a listing of any or all items or benefits provided to the Texas Lottery, and shall make a recommendation for their use. Tickets, trips, premiums and other such items may be utilized for retailer incentives, for example. If, at the Texas Lottery's sole discretion, the Texas Lottery cannot make appropriate use of the items offered, it shall be the obligation of the Successful Proposer to negotiate lower rates or alternative benefits.
- 7.12.5 *Conventions, Trade Shows, Special Events and Meetings.* All Texas Lottery vendors are encouraged to stay current on industry trends by attending various conventions, trade shows, special events, HUB expos and related meetings. When the Successful Proposer's attendance is requested by the Texas Lottery, the Successful Proposer shall request prior written approval of expenses from the Texas Lottery. Expenses will be reimbursed pursuant to Texas State per diem rates (See Section 7.16).

7.13 EXPENDITURE APPROVAL

- 7.13.1 The Successful Proposer shall prepare written estimates for all expenditures and obtain prior written approval from the Texas Lottery before making any commitment on behalf of the Texas Lottery. The Texas Lottery will not be responsible for any expenditure unless pre-approved in writing by the Texas Lottery. Unless otherwise approved by the Texas



Lottery, the Successful Proposer shall provide at least five (5) Working Days for all estimate approvals. The Successful Proposer shall submit estimates in a format prescribed by the Texas Lottery.

- 7.13.2 For any service expenditures identified in Section 5.5.2 with an asterisk that exceed \$5,000, the Successful Proposer must obtain at least three (3) competitive bids to be used in the preparation of written estimates. In obtaining bids, the Successful Proposer must comply with the HSP requirements. The Successful Proposer shall be required to provide all supporting documentation of bids for each estimate.
- 7.13.3 For any production work to be conducted outside the State of Texas, the Successful Proposer must provide written documentation that demonstrates locations or facilities within the State of Texas are not adequate for the required production.
- 7.13.4 Estimate Revisions. Revisions to approved estimates must be pre-approved in writing by the Texas Lottery. All revised estimates shall contain the cost differential, including previous approved amounts.
- 7.13.5 Estimate Cancellations. For any previously approved estimate that is cancelled, the Successful Proposer shall submit a revised closed estimate reflecting all cancelled portions of the estimate to the Texas Lottery.

7.14 BILLING/INVOICES

- 7.14.1 In accordance with Section 3.8 and as further described herein, the Successful Proposer shall submit invoices to the Texas Lottery following delivery by the Successful Proposer of all goods and/or completion by the Successful Proposer of all services in accordance with a signed and pre-approved estimate.
- 7.14.2 The Successful Proposer shall submit invoices in duplicate every other Monday, or as prescribed by the Texas Lottery, together with supporting documentation to substantiate all expenses incurred. If the designated Monday is a State holiday, invoices will be due the next state business day. By submitting an invoice for payment, the Successful Proposer certifies that goods have been delivered and received or services have been rendered in accordance with the Contract.
- 7.14.3 The Successful Proposer must include, at a minimum, or as prescribed by the Texas Lottery the following with each invoice: (i) invoice statement including the invoice number, estimate number and any line items; flight dates; amount for each invoice submitted, current billed amount and balance remaining; (ii) all approved estimates and revisions; and (iii) supporting documentation (e.g., vendor invoices, tearsheets, affidavits, etc.).
- 7.14.4 No payment will be made without a signed and approved estimate. The Texas Lottery will only authorize payments upon the completion and acceptance of services or after the delivery and acceptance of goods.
- 7.14.5 Production and media estimates will be closed ninety (90) Days after the completion of the production and media flight. Once an estimate is closed, no further billing can be submitted.



The Successful Proposer is required to mark "Closed" on the final invoice submitted to the Texas Lottery for payment.

- 7.14.6 The State's fiscal year is September 1 through August 31. Any invoices submitted after August 31 for services performed during the previous fiscal year must be submitted to the Texas Lottery no later than October 30 of the immediately following fiscal year.
- 7.14.7 If no final invoice is received within ninety (90) Days after the termination or expiration of the Contract, the Successful Proposer waives the right to receive any further payments.
- 7.14.8 Any invoices submitted that do not have all required detail to process for payment will be disputed in accordance with TEX. GOV'T CODE ANN. § 2251.042 et. seq. ("Disputed Payment"). A disputed invoice will be processed for payment as soon as possible following settlement of dispute, but no sooner than thirty (30) Days from original invoice received date.
- 7.14.9 The Successful Proposer shall be required to reimburse the Texas Lottery for any overpayment determined as a result of an audit or inspection of records on work performed under the Contract. At the Texas Lottery's sole discretion, reimbursement may be in the form of a credit or actual payment made by the Successful Proposer.

7.15 SHIPPING/FREIGHT CHARGES

The Successful Proposer is expected to utilize the lowest cost to safely transport its shipments. The Successful Proposer shall be responsible for all additional costs incurred by the Texas Lottery as a result of the Successful Proposer's production delay.

7.16 TRAVEL

The Texas Lottery does not reimburse for travel-related expenses including the Successful Proposer's hourly agency fees associated with travel for regularly held meetings at Lottery Headquarters. If the TLC requires the Successful Proposer to travel, for production, event management or any other reason, travel costs will be reimbursed pursuant to Texas State per diem rates along with the Successful Proposer's hourly agency fees. Approved travel expenses and estimated billable hours shall not be reimbursed without a prior approved estimate. Travel related to production by the Successful Proposer's subcontractor staff shall be reimbursed at State per diem rates.

7.17 UNACCEPTABLE PRODUCTS

The Successful Proposer shall be responsible for all costs for products produced on behalf of the Texas Lottery that are misprinted, produced in error or which the Texas Lottery, in its sole discretion, determines are unacceptable, together with all costs for services rejected by the Texas Lottery because of delay, or rendered in a manner inconsistent with services approved by the Texas Lottery.



7.18 UNACCEPTABLE SERVICES

The Successful Proposer shall be responsible for any costs incurred in conjunction with services provided on behalf of the Texas Lottery which are deemed unacceptable due to failure to meet deadlines that warrant services unusable, or rendered in a manner inconsistent with the services approved by the Texas Lottery.

7.19 MEETINGS WITH TLC VENDORS

Any meetings or conference calls that are held between the Successful Proposer and any of the Texas Lottery's vendors must be approved by the Texas Lottery. Texas Lottery staff may attend any meeting or conference call the Successful Proposer and any of the Texas Lottery vendors may have.

7.20 OTHER ASSOCIATED SERVICES (OFFERED OPTION)

Offered Options are not identified in this RFP, but may be identified by the Proposer and included in the Proposal. This is an opportunity for Proposers to offer options the Texas Lottery may not have been aware of at the time this RFP was written. As an Offered Option, Proposers should describe in detail any other service(s) proposed to be provided to the Texas Lottery that are not specifically addressed in this RFP. The Proposer should include the cost or fee associated with an Offered Option, on a separate sheet to be included with the sealed cost proposal. The Proposer also should specify how those services would assist the Texas Lottery in achieving its objectives as outlined in this RFP.

7.21 AUSTIN OFFICE

The Successful Proposer is not required to maintain an office in Austin, Texas. However, appropriate staff will need to be available upon request to attend meetings at the Texas Lottery headquarters.



8 CREATIVE RESPONSE

8.1 CREATIVE ASSIGNMENT

- 8.1.1 The Texas Lottery is interested in the Proposer's process and approach to resolving communication challenges. The Texas Lottery will assess the Proposer's ability to utilize qualitative and quantitative data and translate the findings into a concise advertising strategy that produces effective marketing messages.
- 8.1.2 Introduction. The Texas Lottery's product mix consists of scratch ticket games and draw games. The Texas Lottery introduces approximately 90 scratch ticket games annually ranging in price point from \$1 to \$50, which account for approximately 79% of overall Texas Lottery sales. Draw games (Powerball, Mega Millions, Lotto Texas, Cash Five, Daily 4, Pick 3, All or Nothing, Texas Triple Chance and Texas Two Step) range in price point from \$.50 to \$2 and account for approximately 21% of Texas Lottery sales. Several of the draw games also offer optional purchase add-on features.
- 8.1.3 In 2008, the Texas Lottery launched the Texas Loteria scratch ticket. The scratch ticket is based on the colorful bingo-style game originating in Mexico. The images used on playing cards in the game have become iconic in Mexican culture and have crossed over into American pop culture as well. Over the past decade, Texas Loteria has consistently been one of the top selling scratch tickets at the \$3, \$5 and \$10 price points. Texas Loteria was also the first bilingual game launched by the Texas Lottery. For purposes of this creative assignment, the Texas Lottery plans to capitalize on the success of Texas Loteria by expanding the ticket into a suite of scratch tickets with price points at the \$1, \$3, \$5, \$10 and \$20 levels and supporting the suite with a comprehensive advertising campaign for the first time. The product goals for Texas Loteria suite creative are:
- 1) drive awareness of the suite of scratch tickets for both English and Spanish speakers throughout Texas
 - 2) encourage product trial for new or lapsed players
 - 3) maintain a strong Texas Lottery brand
- 8.1.4 ***The Assignment.*** Each Proposer shall create and submit as part of its Proposal, a Texas Loteria suite campaign designed to increase product awareness, trial and participation by adult (ages 18+) Texans. Each Proposer must consider and provide information in regard to how the campaign will execute successfully against the Texas Lottery's product and campaign goals. The Texas Lottery's media core audience is all Texans between the ages of 18 and 49.



The creative response, at a minimum, should include:

(a) *Advertising Strategy*

A solid and comprehensive strategy should be developed that addresses the assignment and meets the marketing objectives. The strategy should reflect a thorough understanding of Texas – its geographic markets, its diverse population and its status as a minority-majority state. The strategy shall be grounded in and substantiated by quantitative and qualitative data.

(b) *Media Plan*

The media plan should detail the mediums, planned goals (impressions, GRPs, etc.) and flight dates utilized to reach the intended audience and an experiential recommendation.

(c) *Budget and Flight*

The budget should include all production, media and experiential costs and shall not exceed \$3 million. The flight timing for consideration is September through November.

(d) *Creative*

The campaign's creative strategy should present original and engaging ideas that support the advertising strategy and goals. The creative response should include, at a minimum, one 30-second television spot, one 15-second digital/social video spot, one 30-second radio spot, one out-of-home execution, and point-of-sale pieces. The creative plan should include digital, social media and experiential recommendations. These specific creative executions are to demonstrate creative capabilities and strategic thinking and are not required to be part of the media plan.

All creative shall be in accordance with the State Lottery Act and the Texas Lottery's mission, vision, core values and advertising sensitivity guidelines as described in this RFP.

(e) *Evaluation of Campaign Effectiveness*

Methods to evaluate campaign effectiveness shall be included. Such methods for monitoring, tracking and measuring the campaign's success should point to the effectiveness and efficiency in meeting the communication goals.

(f) *Campaign Guidelines*

All discussion and examples related to the creative assignment should be included in the Proposal. Proposers invited for an oral presentation may use props and/or audio/visual aids.

The Texas Lottery has identified the following resources for use by Proposers in preparing the creative response. Proposers are encouraged to conduct additional quantitative and qualitative analysis. Resources:



- FY18 Media Flowchart Attachment I
- FY16 Sales/Revenue by Game, Attachment J
- Demographic Survey of Texas Lottery Players, available at: http://www.txlottery.org/export/sites/lottery/About_Us/Publications/Reports.html
- National Association of State and Provincial Lotteries (NASPL) website, www.naspl.org
- La Fleur's website, www.lafleurs.com
- The Texas Lottery Commission's 2018 Business Plan, available at: http://www.txlottery.org/export/sites/lottery/About_Us/Publications/Reports.html
- The Texas Lottery Commission's 2017-2021 Strategic Plan, available at: http://www.txlottery.org/export/sites/lottery/About_Us/Publications/Strategic_Plans.html

8.2 CLIENT CASE EXAMPLES

- 8.2.1 All Proposers shall provide examples of related client work from the past three years. The examples shall provide clear evidence of the thought process used to develop creative solutions to assignments similar to potential Texas Lottery projects. Proposers should clearly identify whether a client case example provided in their response is representative of the agency overall or the experience of a specific staff member. Examples should also include digital, social and experiential marketing case studies.
- 8.2.2 The Proposer shall fully describe how the client case examples address and demonstrate the Proposer's competency and understanding of the following issues: Overall Advertising Strategy, Creative Strategy, Media Plan, Cost Effectiveness, Creative Execution and Evaluation of Campaign Effectiveness.
- 8.2.3 Audio/video exhibits must be delivered on USB drives and clearly labeled, if submitted with the Proposal as part of client case examples.



**ATTACHMENT A
PROPOSER'S COMMITMENT**

I hereby commit _____

(Company Name)

to provide the goods and services described in the attached Proposal for Advertising Services required by the Request for Proposals for the Texas Lottery Commission.

Signature: _____

Title: _____

Date: _____



ATTACHMENT B FINANCIAL COMMITMENT AND RESPONSIBILITY

This financial commitment and responsibility statement is to be completed by the parent corporation's chief financial officer.

_____ is a fully-owned subsidiary of
(Subject)

_____ and that as such _____
(Parent) (Parent)

is fully responsible for any and all financial obligations of

_____.
(Subject)

Signature: _____

Title: _____

Date: _____



ATTACHMENT C
HUB SUBCONTRACTING PLAN



HUB Subcontracting Plan (HSP)

In accordance with Texas Gov't Code §2161.252, the contracting agency has determined that subcontracting opportunities are probable under this contract. Therefore, all respondents, including State of Texas certified Historically Underutilized Businesses (HUBs) must complete and submit this State of Texas HUB Subcontracting Plan (HSP) with their response to the bid requisition (solicitation).

NOTE: Responses that do not include a completed HSP shall be rejected pursuant to Texas Gov't Code §2161.252(b).

The HUB Program promotes equal business opportunities for economically disadvantaged persons to contract with the State of Texas in accordance with the goals specified in the 2009 State of Texas Disparity Study. The statewide HUB goals defined in 34 Texas Administrative Code (TAC) §20.284 are:

- **11.2 percent for heavy construction other than building contracts,**
- **21.1 percent for all building construction, including general contractors and operative builders' contracts,**
- **32.9 percent for all special trade construction contracts,**
- **23.7 percent for professional services contracts,**
- **26.0 percent for all other services contracts, and**
- **21.1 percent for commodities contracts.**

- - Agency Special Instructions/Additional Requirements - -

In accordance with 34 TAC §20.285(d)(1)(D)(iii), a respondent (prime contractor) may demonstrate good faith effort to utilize Texas certified HUBs for its subcontracting opportunities if the total value of the respondent's subcontracts with Texas certified HUBs meets or exceeds the statewide HUB goal or the agency specific HUB goal, whichever is higher. When a respondent uses this method to demonstrate good faith effort, the respondent must identify the HUBs with which it will subcontract. If using existing contracts with Texas certified HUBs to satisfy this requirement, only the aggregate percentage of the contracts expected to be subcontracted to HUBs with which the respondent does not have a continuous contract in place for more than five (5) years shall qualify for meeting the HUB goal. This limitation is designed to encourage vendor rotation as recommended by the 2009 Texas Disparity Study.*

SECTION 1: RESPONDENT AND REQUISITION INFORMATION

- a. Respondent (Company) Name: _____ State of Texas VID #: _____
Point of Contact: _____ Phone #: _____
E-mail Address: _____ Fax #: _____
- b. Is your company a State of Texas certified HUB? ☐ - Yes ☐ - No
- c. Requisition #: _____ Bid Open Date: _____
(mm/dd/yyyy)

Enter your company's name here: _____ Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS

After dividing the contract work into reasonable lots or portions to the extent consistent with prudent industry practices, and taking into consideration the scope of work to be performed under the proposed contract, including all potential subcontracting opportunities, the respondent must determine what portions of work, **including contracted staffing, goods and services will be subcontracted**. Note: In accordance with 34 TAC §20.282, a "Subcontractor" means a person who contracts with a prime contractor to work, to supply commodities, or to contribute toward completing work for a governmental entity.

a. Check the appropriate box (Yes or No) that identifies your subcontracting intentions:

- ☐ - *Yes*, I will be subcontracting portions of the contract. (If *Yes*, complete Item b of this SECTION and continue to Item c of this SECTION.)
- ☐ - *No*, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources, including employees, goods and services. (If *No*, continue to SECTION 3 and SECTION 4.)

b. List all the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to HUBs with which you have a continuous contract* in place for more than five (5) years .	Percentage of the contract expected to be subcontracted to non-HUBs.
1		%	%	%
2		%	%	%
3		%	%	%
4		%	%	%
5		%	%	%
6		%	%	%
7		%	%	%
8		%	%	%
9		%	%	%
10		%	%	%
11		%	%	%
12		%	%	%
13		%	%	%
14		%	%	%
15		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

(Note: If you have more than fifteen subcontracting opportunities, a continuation sheet is available online at <https://www.comptroller.texas.gov/purchasing/vendor/hub/forms.php>.)

c. Check the appropriate box (Yes or No) that indicates whether you will be using **only** Texas certified HUBs to perform **all** of the subcontracting opportunities you listed in SECTION 2, Item b.

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to Item d, of this SECTION.)

d. Check the appropriate box (Yes or No) that indicates whether the aggregate expected percentage of the contract you will subcontract **with Texas certified HUBs** with which you **do not** have a **continuous contract*** in place with for **more than five (5) years**, **meets or exceeds** the HUB goal the contracting agency identified on page 1 in the "Agency Special Instructions/Additional Requirements."

- *Yes* (If *Yes*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method A (Attachment A)" for **each** of the subcontracting opportunities you listed.)
- *No* (If *No*, continue to SECTION 4 and complete an "HSP Good Faith Effort - Method B (Attachment B)" for **each** of the subcontracting opportunities you listed.)

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 2: RESPONDENT'S SUBCONTRACTING INTENTIONS (CONTINUATION SHEET)

This page can be used as a continuation sheet to the HSP Form's page 2, Section 2, Item b. Continue listing the portions of work (subcontracting opportunities) you will subcontract. Also, based on the total value of the contract, identify the percentages of the contract you expect to award to Texas certified HUBs, and the percentage of the contract you expect to award to vendors that are not a Texas certified HUB (i.e., Non-HUB).

Item #	Subcontracting Opportunity Description	HUBs		Non-HUBs
		Percentage of the contract expected to be subcontracted to HUBs with which you do not have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.

Enter your company's name here: _____

Requisition #: _____

SECTION 3: SELF PERFORMING JUSTIFICATION (If you responded "No" to SECTION 2, Item a, you must complete this SECTION and continue to SECTION 4.) If you responded "No" to SECTION 2, Item a, in the space provided below **explain how** your company will perform the entire contract with its own employees, supplies, materials and/or equipment.

SECTION 4: AFFIRMATION

As evidenced by my signature below, I affirm that I am an authorized representative of the respondent listed in SECTION 1, and that the information and supporting documentation submitted with the HSP is true and correct. Respondent understands and agrees that, if awarded any portion of the requisition:

- The respondent will provide notice as soon as practical to all the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor for the awarded contract. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity they (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.
- The respondent must submit monthly compliance reports (Prime Contractor Progress Assessment Report – PAR) to the contracting agency, verifying its compliance with the HSP, including the use of and expenditures made to its subcontractors (HUBs and Non-HUBs). (The PAR is available at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls>).
- The respondent must seek approval from the contracting agency prior to making any modifications to its HSP, including the hiring of additional or different subcontractors and the termination of a subcontractor the respondent identified in its HSP. If the HSP is modified without the contracting agency's prior approval, respondent may be subject to any and all enforcement remedies available under the contract or otherwise available by law, up to and including debarment from all state contracting.
- The respondent must, upon request, allow the contracting agency to perform on-site reviews of the company's headquarters and/or work-site where services are being performed and must provide documentation regarding staffing and other resources.

Signature_____
Printed Name_____
Title_____
Date
(mm/dd/yyyy)

Reminder:

- If you responded "Yes" to SECTION 2, Items c or d, you must complete an "HSP Good Faith Effort - Method A (Attachment A)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.
- If you responded "No" SECTION 2, Items c and d, you must complete an "HSP Good Faith Effort - Method B (Attachment B)" for each of the subcontracting opportunities you listed in SECTION 2, Item b.

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IMPORTANT: If you responded “Yes” to **SECTION 2, Items c or d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method A (Attachment A)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-a.pdf>

Item Number: Description:

[illegible]

Page 1 of 1
(Attachment A)

HSP Good Faith Effort - Method B (Attachment B)

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Enter your company's name here: _____ Requisition #: _____

IMPORTANT: If you responded “No” to **SECTION 2, Items c and d** of the completed HSP form, you must submit a completed “HSP Good Faith Effort - Method B (Attachment B)” for **each** of the subcontracting opportunities you listed in **SECTION 2, Item b** of the completed HSP form. You may photo-copy this page or download the form at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/hub-sbcont-plan-gfe-achm-b.pdf>.

SECTION B-1: SUBCONTRACTING OPPORTUNITY

Enter the item number and description of the subcontracting opportunity you listed in SECTION 2, Item b, of the completed HSP form for which you are completing the attachment.

Item Number: _____ Description: _____

SECTION B-2: MENTOR PROTÉGÉ PROGRAM

If respondent is participating as a Mentor in a State of Texas Mentor Protégé Program, submitting its Protégé (Protégé must be a State of Texas certified HUB) as a subcontractor to perform the subcontracting opportunity listed in **SECTION B-1**, constitutes a good faith effort to subcontract with a Texas certified HUB towards that specific portion of work.

Check the appropriate box (Yes or No) that indicates whether you will be subcontracting the portion of work you listed in SECTION B-1 to your Protégé.

- Yes (If Yes, continue to SECTION B-4.)
- No / Not Applicable (If No or Not Applicable, continue to SECTION B-3 and SECTION B-4.)

SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

When completing this section you **MUST** comply with items **a, b, c and d**, thereby demonstrating your Good Faith Effort of having notified Texas certified HUBs and trade organizations or development centers about the subcontracting opportunity you listed in SECTION B-1. Your notice should include the scope of work, information regarding the location to review plans and specifications, bonding and insurance requirements, required qualifications, and identify a contact person. When sending notice of your subcontracting opportunity, you are encouraged to use the attached HUB Subcontracting Opportunity Notice form, which is also available online at <https://www.comptroller.texas.gov/purchasing/docs/hub-forms/HUBSubcontractingOpportunityNotificationForm.pdf>.

Retain supporting documentation (i.e., certified letter, fax, e-mail) demonstrating evidence of your good faith effort to notify the Texas certified HUBs and trade organizations or development centers. Also, be mindful that a working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be “day zero” and does not count as one of the seven (7) working days.

- a.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1, to three (3) or more Texas certified HUBs. Unless the contracting agency specified a different time period, you must allow the HUBs at least seven (7) working days to respond to the notice prior to you submitting your bid response to the contracting agency. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas’ Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbldsearch/index.jsp>. HUB status code “A” signifies that the company is a Texas certified HUB.
- b.** List the **three (3) Texas certified HUBs** you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the company’s Texas Vendor Identification (VID) Number, the date you sent notice to that company, and indicate whether it was responsive or non-responsive to your subcontracting opportunity notice.

Company Name	Texas VID (Do not enter Social Security Numbers.)	Date Notice Sent (mm/dd/yyyy)	Did the HUB Respond?
			- Yes - No
			- Yes - No
			- Yes - No

- c.** Provide written notification of the subcontracting opportunity you listed in SECTION B-1 to two (2) or more trade organizations or development centers in Texas to assist in identifying potential HUBs by disseminating the subcontracting opportunity to their members/participants. Unless the contracting agency specified a different time period, you must provide your subcontracting opportunity notice to trade organizations or development centers at least seven (7) working days prior to submitting your bid response to the contracting agency. A list of trade organizations and development centers that have expressed an interest in receiving notices of subcontracting opportunities is available on the Statewide HUB Program’s webpage at <https://www.comptroller.texas.gov/purchasing/vendor/hub/resources.php>.
- d.** List two (2) trade organizations or development centers you notified regarding the subcontracting opportunity you listed in SECTION B-1. Include the date when you sent notice to it and indicate if it accepted or rejected your notice.

Trade Organizations or Development Centers	Date Notice Sent (mm/dd/yyyy)	Was the Notice Accepted?
		- Yes - No
		- Yes - No

HSP Good Faith Effort - Method B (Attachment B) Cont.

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Enter your company's name here: _____ Requisition #: _____

SECTION B-4: SUBCONTRACTOR SELECTION

Enter the item number and description of the subcontracting opportunity you listed in **SECTION 2, Item b**, of the completed HSP form for which you are completing the attachment.

- a. Enter the item number and description of the subcontracting opportunity for which you are completing this Attachment B continuation page.

Item Number: _____ Description: _____

- b. List the subcontractor(s) you selected to perform the subcontracting opportunity you listed in **SECTION B-1**. Also identify whether they are a Texas certified HUB and their Texas Vendor Identification (VID) Number or federal Employer Identification Number (EIN), the approximate dollar value of the work to be subcontracted, and the expected percentage of work to be subcontracted. When searching for Texas certified HUBs and verifying their HUB status, ensure that you use the State of Texas' Centralized Master Bidders List (CMBL) - Historically Underutilized Business (HUB) Directory Search located at <http://mycpa.cpa.state.tx.us/tpasscmbsearch/index.jsp>. HUB status code "A" signifies that the company is a Texas certified HUB.

Company Name	Texas certified HUB	Texas VID or federal EIN <small>Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.</small>	Approximate Dollar Amount	Expected Percentage of Contract
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%
	- Yes - No		\$	%

- c. If any of the subcontractors you have selected to perform the subcontracting opportunity you listed in **SECTION B-1** is not a Texas certified HUB, provide written justification for your selection process (attach additional page if necessary):

REMINDER: As specified in SECTION 4 of the completed HSP form, if you (respondent) are awarded any portion of the requisition, you are required to provide notice as soon as practical to **all** the subcontractors (HUBs and Non-HUBs) of their selection as a subcontractor. The notice must specify at a minimum the contracting agency's name and its point of contact for the contract, the contract award number, the subcontracting opportunity it (the subcontractor) will perform, the approximate dollar value of the subcontracting opportunity and the expected percentage of the total contract that the subcontracting opportunity represents. A copy of the notice required by this section must also be provided to the contracting agency's point of contact for the contract no later than ten (10) working days after the contract is awarded.



**ATTACHMENT C-1
HSP QUICK CHECK LIST**



HUB Subcontracting Plan (HSP)

QUICK CHECKLIST

While this HSP Quick Checklist is being provided to merely assist you in readily identifying the sections of the HSP form that you will need to complete, it is very important that you adhere to the instructions in the HSP form and instructions provided by the contracting agency.

- **If you will be awarding all of the subcontracting work you have to offer under the contract to only Texas certified HUB vendors, complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors.
 - Section 2 c. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years meets or exceeds the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - Yes
 - Section 4 - Affirmation
 - GFE Method A (Attachment A) - Complete an Attachment A for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will be subcontracting any portion of the contract to Texas certified HUB vendors and Non-HUB vendors or only to Non-HUB vendors, and the aggregate percentage of all the subcontracting work you will be awarding to the Texas certified HUB vendors with which you do not have a continuous contract* in place for more than five (5) years does not meet or exceed the HUB Goal the contracting agency identified in the "Agency Special Instructions/Additional Requirements", complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - Yes, I will be subcontracting portions of the contract.
 - Section 2 b. - List all the portions of work you will subcontract, and indicate the percentage of the contract you expect to award to Texas certified HUB vendors and Non-HUB vendors.
 - Section 2 c. - No
 - Section 2 d. - No
 - Section 4 - Affirmation
 - GFE Method B (Attachment B) - Complete an Attachment B for each of the subcontracting opportunities you listed in Section 2 b.
- **If you will not be subcontracting any portion of the contract and will be fulfilling the entire contract with your own resources (i.e., employees, supplies, materials and/or equipment), complete:**
 - Section 1 - Respondent and Requisition Information
 - Section 2 a. - No, I will not be subcontracting any portion of the contract, and I will be fulfilling the entire contract with my own resources.
 - Section 3 - Self Performing Justification
 - Section 4 - Affirmation

***Continuous Contract:** Any existing written agreement (including any renewals that are exercised) between a prime contractor and a HUB vendor, where the HUB vendor provides the prime contractor with goods or service, to include under the same contract for a specified period of time. The frequency the HUB vendor is utilized or paid during the term of the contract is not relevant to whether the contract is considered continuous. Two or more contracts that run concurrently or overlap one another for different periods of time are considered by CPA to be individual contracts rather than renewals or extensions to the original contract. In such situations the prime contractor and HUB vendor are entering (have entered) into "new" contracts.



ATTACHMENT C-2
HUB SUBCONTRACTING OPPORTUNITY NOTIFICATION FORM



HUB Subcontracting Opportunity Notification Form

In accordance with Texas Gov't Code, Chapter 2161, each state agency that considers entering into a contract with an expected value of \$100,000 or more shall, before the agency solicits bids, proposals, offers, or other applicable expressions of interest, determine whether subcontracting opportunities are probable under the contract. The state agency I have identified below in Section B has determined that subcontracting opportunities are probable under the requisition to which my company will be responding.

34 Texas Administrative Code, §20.285 requires all respondents (prime contractors) bidding on the contract to provide notice of each of their subcontracting opportunities to at least three (3) Texas certified HUBs (who work within the respective industry applicable to the subcontracting opportunity), and allow the HUBs at least seven (7) working days to respond to the notice prior to the respondent submitting its bid response to the contracting agency. In addition, at least seven (7) working days prior to submitting its bid response to the contracting agency, the respondent must provide notice of each of its subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code §20.282(19)(C).

We respectfully request that vendors interested in bidding on the subcontracting opportunity scope of work identified in Section C, Item 2, reply no later than the date and time identified in Section C, Item 1. Submit your response to the point-of-contact referenced in Section A.

SECTION A: PRIME CONTRACTOR'S INFORMATION

Company Name: _____
Point-of-Contact: _____
E-mail Address: _____

State of Texas VID #: _____
Phone #: _____
Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____
Point-of-Contact: _____
Requisition #: _____

Phone #: _____
Bid Open Date: _____
(mm/dd/yyyy)

SECTION C: SUBCONTRACTING OPPORTUNITY RESPONSE DUE DATE, DESCRIPTION, REQUIREMENTS AND RELATED INFORMATION

1. Potential Subcontractor's Bid Response Due Date:

If you would like for our company to consider your company's bid for the subcontracting opportunity identified below in Item 2,

we must receive your bid response no later than _____ on _____
Central Time Date (mm/dd/yyyy)

In accordance with 34 TAC §20.285, each notice of subcontracting opportunity shall be provided to at least three (3) Texas certified HUBs, and allow the HUBs at least seven (7) working days to respond to the notice prior to submitting our bid response to the contracting agency. In addition, at least seven (7) working days prior to us submitting our bid response to the contracting agency, we must provide notice of each of our subcontracting opportunities to two (2) or more trade organizations or development centers (in Texas) that serves members of groups (i.e., Asian Pacific American, Black American, Hispanic American, Native American, Woman, Service Disabled Veteran) identified in Texas Administrative Code, §20.282(19)(C).

(A working day is considered a normal business day of a state agency, not including weekends, federal or state holidays, or days the agency is declared closed by its executive officer. The initial day the subcontracting opportunity notice is sent/provided to the HUBs and to the trade organizations or development centers is considered to be "day zero" and does not count as one of the seven (7) working days.)

2. Subcontracting Opportunity Scope of Work:

3. Required Qualifications:

- Not Applicable

4. Bonding/Insurance Requirements:

- Not Applicable

5. Location to review plans/specifications:

- Not Applicable



ATTACHMENT D
V.T.C.A., GOVERNMENT CODE § 466.155

(a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

(1) is an individual who:

(A) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(B) is or has been a professional gambler;

(C) is married to an individual:

(i) described in Paragraph (A) or (B); or

(ii) who is currently delinquent in the payment of any state tax;

(D) is an officer or employee of the commission or a lottery operator; or

(E) is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of a person described by Paragraph (D);

(2) is not an individual, and an individual described in Subdivision (1):

(A) is an officer or director of the applicant or sales agent;

(B) holds more than 10 percent of the stock in the applicant or sales agent;

(C) holds an equitable interest greater than 10 percent in the applicant or sales agent;

(D) is a creditor of the applicant or sales agent who holds more than 10 percent of the applicant's or sales agent's outstanding debt;

(E) is the owner or lessee of a business that the applicant or sales agent conducts or through which the applicant will conduct a ticket sales agency;

(F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent; or

(G) participates in managing the affairs of the applicant or sales agent;

(3) has been finally determined to be:

(A) delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

(B) in default on a loan made under Chapter 52, Education Code; or

(C) in default on a loan guaranteed under Chapter 57, Education Code;

(4) is a person whose location for the sales agency is:

(A) a location licensed for games of bingo under Chapter 2001, Occupations Code;

(B) on land that is owned by:

(i) this state; or

(ii) a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or



(C) a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code; or

(5) has violated this chapter or a rule adopted under this chapter.

(b) If the director proposes to deny an application for a license or the commission proposes to suspend or revoke a license under this section, the applicant or sales agent is entitled to written notice of the time and place of the hearing. A notice may be served on an applicant or sales agent personally or sent by certified or registered mail, return receipt requested, to the person's mailing address as it appears on the commission's records. A notice must be served or mailed not later than the 20th day before the date of the hearing. The commission shall provide for a formal administrative hearings process.

(b-1) A hearing under this section must be conducted by the State Office of Administrative Hearings and is subject to Section 2001.058(e).

(c) At a hearing, an applicant or sales agent must show by a preponderance of the evidence why the application should not be denied or the license suspended or revoked.

(d) The director shall give an applicant or sales agent written notice of a denial of an application or a suspension or revocation of a license.

(e) The director may not issue a license to a person who has previously had a license under this chapter revoked unless the director is satisfied the person will comply with this chapter and the rules adopted under this chapter. The director may prescribe the terms under which a suspended license will be reissued.

(f) The director may not issue a license to an applicant who fails to certify to the director the applicant's compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 et seq.).

(g) For purposes of Subsection (a)(3), the comptroller, Texas Workforce Commission, Texas Alcoholic Beverage Commission, Texas Higher Education Coordinating Board, and Texas Guaranteed Student Loan Corporation shall each provide the executive director with a report of persons who have been finally determined to be delinquent in the payment of any money owed to or collected by that agency. The commission shall adopt rules regarding the form and frequency of reports under this subsection.

Added by Acts 1993, 73rd Leg., ch. 107, Sec. 4.03(b), eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 6.21, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 696, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1275, Sec. 51, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 394, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.760, eff. Sept. 1, 2001; Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. 2197), Sec. 5, eff. September 1, 2013; Acts 2017, 85th Leg., ch. 141 (H.B. 1555), § 1, eff. May 26, 2017.



ATTACHMENT D-1
BACKGROUND INFORMATION CERTIFICATION

Texas Government Code ANN. § 466.155

Pursuant to Texas Government Code ANN. §466.103, the Executive Director of the Texas Lottery Commission may not award a contract for the purchase or lease of facilities, goods or services related to lottery operations to a person who would be denied a license as a sales agent under Texas Government Code ANN. §466.155.

(Company Name)

certifies that it has reviewed Texas Government Code ANN. §466.155 and that it would not be denied a license as a sales agent pursuant to said section.

(signature of person authorized to contractually bind the Proposer)

(printed name)

(title)

(date)



ATTACHMENT E TEXAS LOTTERY COMMISSION VENDOR BACKGROUND INVESTIGATION FORM

NOTE: This form is to be completed by the Apparent Successful Proposer, including the parent or subsidiary of the Apparent Successful Proposer.

GENERAL INFORMATION

- The Texas Lottery is authorized to obtain criminal history records from the Texas Department of Public Safety, the Federal Bureau of Investigation or any other law enforcement agency.
- This form is open to public inspection during normal business hours as required by the Texas Public Information Act, Tex. Gov't. Code ANN., §552.021.
- **For Assistance**, please call the Enforcement Division of the Texas Lottery at 512-344-5000.

SALES AGENT ELIGIBILITY STANDARDS

Section 466.103 of the Texas Government Code states that the Executive Director may not award a Contract to a person who would be denied a license as a sales agent under section 466.155 of the Texas Government Code. An individual is not eligible for a sales license if:

- a. The individual or the individual's spouse has been convicted of a felony, criminal fraud, gambling or a gambling-related offense or a misdemeanor involving moral turpitude and less than 10 years have passed since the end of the sentence, parole, mandatory supervision or probation served for the conviction.
- b. The individual or the individual's spouse is a professional gambler.
- c. The individual's spouse is currently delinquent in the payment of any state tax.
- d. The individual is an officer or employee of the Texas Lottery Commission or a lottery operator.
- e. The individual's spouse, child, brother, sister or parent (1) lives in the same principal place of residence as the individual and (2) is an officer or employee of the Texas Lottery Commission or a lottery operator.
- f. The individual is delinquent in the payment of a tax or other money collected by the Texas Comptroller of Public Accounts, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission; in default on a loan made under Chapter 52 of the Texas Education Code; or in default on a loan guaranteed under Chapter 57 of the Texas Education Code.

An entity is not eligible for a sales license if the entity includes any of the following individuals who would be ineligible for a sales license under item a, b, c, d or e above:

- An officer or director of the entity;
- An individual who holds more than 10 percent of the stock in the entity;
- An individual who holds an equitable interest greater than 10 percent in the entity;
- The creditor of the entity who holds more than 10 percent of the entity's outstanding debt;
- The owner or lessee of a business conducted by the entity or through which the entity will conduct a ticket sales agency;
- An individual who shares or will share in the profits, other than stock dividends, of the entity; or
- An individual who participates in managing the affairs of the entity.



An applicant is not eligible for a sales license if the proposed ticket sales location is:

- A location licensed for games of bingo, or
- On land that is owned by:
 - This state, or
 - On which is located a public primary or secondary school, an institution of higher education, or an agency of the state.

By signing below, I certify that the information provided on this form is correct to the best of my knowledge and [company name] is not ineligible for a sales license under the eligibility standards described above. I understand that providing false or incomplete information may be grounds for termination of any contract. [company name] has read and agrees to abide by the requirements of section 466.155 of the Texas Government Code. I understand that owners /officers /partners /directors, as designated by the Texas Lottery, must furnish a complete legible set of fingerprints, and that failure to do so will result in the termination of any contract. The Texas Lottery is authorized to obtain criminal history records.

sign
here

Signature of person
authorized to contractually bind Proposer

Title

Date

Corporation or Legal Business Name

**OWNERSHIP INFORMATION FOR APPARENT SUCCESSFUL PROPOSER**

1. Corporation or Legal Business Name:	
2. Business Ownership (check one):	<input type="checkbox"/> Sole Owner <input type="checkbox"/> Partnership <input type="checkbox"/> Texas Corporation <input type="checkbox"/> Foreign Corporation <input type="checkbox"/> Other (explain) _____
3. If Texas Corporation, enter:	Charter Number: _____ Charter Date (MM/DD/YYYY): ____/____/____
4. If your business is a foreign corporation, enter:	Home State: _____ Charter Number: _____ Texas Certificate of Authority Number: _____ Texas Certificate of Authority Date (MM/DD/YYYY): ____/____/____
5. If limited partnership, enter:	Home State: _____ Identification Number: _____
6. Federal Employer's Identification (FEI) Number, if any:	_____
7. Taxpayer number for reporting any Texas tax OR your Texas Vendor Identification Number if you now have, or have ever had, one.	_____



**ATTACHMENT E-1
VENDOR BACKGROUND INVESTIGATION
CERTIFIED LIST OF VENDOR PRINCIPALS**

NOTE: This form is to be completed by the Apparent Successful Proposer, including the parent or subsidiary of the Apparent Successful Proposer.

The following is a list of vendor principals for _____ [*company name*] _____ as defined by Texas Government Code Ann. §466.155 (attach additional sheets if necessary).

Name	Title
------	-------

(signature of person authorized to contractually bind the Proposer)

(title)

(printed name)

(date)



ATTACHMENT E-2
VENDOR BACKGROUND INVESTIGATION
CERTIFIED LIST OF CONTRACTUALLY DEFINED VENDOR
PRINCIPALS

NOTE: This form is to be completed by the Apparent Successful Proposer, including the parent or subsidiary of the Apparent Successful Proposer.

The following is a list of vendor principals for _____ [*company name*] _____ who will be directly involved in selling or leasing the goods or performing the services that are the subject of the Contract with the Texas Lottery. This includes any oversight function performed by the vendor principal(s). These individuals also must meet eligibility requirements under §466.155.

(The contractually defined vendor principals noted below should also appear on *Attachment E-1 Certified List of Vendor Principals*.)

Name	Title
------	-------

(signature of person authorized to contractually bind the Proposer)

(title)

(printed name)

(date)



ATTACHMENT E-3

VENDOR EMPLOYEE BACKGROUND INVESTIGATION LIST

NOTE: This form is to be completed by the Apparent Successful Proposer and shall include any principals, employees, and Subcontractor Personnel who meet the criteria defined below.

The following is a list of vendor employees for _____ [*company name*]_____.

Include on the list below all principals, employees, and Subcontractor Personnel who meet the following criteria and will perform the services or provide the goods identified in this RFP:

- perform services that may impact the security and integrity of the core gaming business as determined by the Texas Lottery;
- provide audit, financial, legal, or compliance services;
- provide goods and/or services that control or monitor access to Texas Lottery premises;
- have unescorted access to Texas Lottery premises;
- have direct access to Texas Lottery information systems.

Name	Title
------	-------

(signature of person authorized to contractually bind the Proposer)

(title)

(printed name)

(date)



ATTACHMENT E-4

CONSENT TO BACKGROUND INVESTIGATION AND RELEASE OF PERSONAL INFORMATION

NOTE: A separate Consent to Background Investigation and Release of Personal Information form must be completed for each person listed on *Attachment E-2* and *Attachment E-3*. The Texas Lottery may request this form for all Vendor Principals identified on *Attachment E-1 Certified List of Vendor Principals*.

All persons contracting with the Texas Lottery Commission must meet the requirements of Texas Government Code ANN. §466.155. Print or type all information in blue or black ink.

Vendor Principal - ☐ Vendor Employee/Subcontractor Employee - ☐

Company Name

Name _____
Last First Middle

Other Names Used _____ Phone # _____
(Maiden, Nicknames, Previous Married Names, etc.)
Alternate Phone # _____

Place of Birth: _____ Social Security No.: _____ Country of Citizenship _____

Driver's License # _____ State _____ Type _____

DOB: _____ Race _____ Sex _____ Ethnicity _____

Height _____ Weight _____ Eye Color _____ Hair Color _____

Scars, Marks, Tattoos, Amputations: _____

Current Address: _____

City _____ State/Country: _____ Zip code: _____

I understand and agree that:

The Texas Lottery Commission shall conduct an investigation of my personal background to include criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation, Identification Division, or any other law enforcement agency. The Executive Director may request that I provide a complete set of legible fingerprints and I further understand that I may be precluded from providing services for the Texas Lottery Commission for failing to provide such fingerprints on request.

I hereby give my voluntary consent to any investigation or any other inquiry into information described above. Further, I hereby consent to the release of any information including academic records to the Texas Lottery Commission, Enforcement Division, or persons conducting an investigation or inquiry on their behalf. I understand that certain information obtained through this investigation or inquiry may preclude me from providing services for the Texas Lottery Commission.

I further hold harmless and release the Texas Lottery Commission, its agents, officers or employees, from any and all liability for this investigation or inquiry, and any action taken as result of information obtained through the investigation or inquiry. I further hold harmless and release any person providing information in good faith to the Texas Lottery Commission or to any person conducting an investigation or inquiry on their behalf.

I further understand that any person or employee who intentionally, knowingly, recklessly, or with criminal negligence makes a material incorrect or deceptive oral or written statement to a person conducting an investigation commits a misdemeanor.

Signature

Date



ATTACHMENT F SAMPLE PERFORMANCE BOND

Bond No. _____

[company name, address], as Principal, and [surety company], a corporation licensed to do business in the State of Texas and admitted to write bonds, as Surety, are held and firmly bound unto the Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, as Obligee, in the full sum of [written amount] Dollars (\$) for the payment of which said Principal and Surety bind themselves, and their respective heirs, administrators, executors, successors, assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a written Contract with Obligee dated the ____ day of _____, _____, for [type of services], which Contract is hereby referred to, as if fully and to the same extent as if copied at length herein.

NOW THEREFORE, the condition of this obligation is such that, if during the term of this Contract (or annual bond), the Principal shall faithfully perform such Contract, or shall indemnify and save harmless the Obligee from all cost and damage by reason of Principal's failure to do so, then this obligation shall be null and void, otherwise it shall remain in full force and effect.
(If annual bond, add this paragraph.)

The term of this obligation is for the period commencing on _____ and expiring at 12:00 a.m. on _____. This bond may be renewed on an annual basis at the option of the Surety. If the Surety does not choose to renew this obligation, it will so notify the Obligee and Principal not later than 30 days prior to its expiration.

IN WITNESS WHEREOF, the Principal and Surety have signed and sealed this instrument this ____ day of _____, _____.

(seal)	Principal:	_____
	By:	_____
	Surety:	_____
(seal)	By:	_____
		Attorney-in-Fact



ATTACHMENT G SCORING MATRIX

Advertising Services RFP	Possible Points	% of Total	Points Awarded
The Proposer's price to provide the goods or services.	500	25%	
Cost Proposal Subtotal	500	25%	
The probable quality of the offered goods and/or services.	900	45%	
The agency's evaluation of the likelihood of the Proposal to produce the desired outcome for the agency, considering:			
The quality of the Proposer's past performance in contracting with the Texas Lottery Commission, with other state entities, or with private sector entities.	200	10%	
The qualifications of the Proposer's personnel.	250	12.5%	
The experience of the Proposer in providing the requested goods or services.	150	7.5%	
The financial status of the Proposer.	Pass/Fail	-	
Whether the Proposer performed the good faith effort required by the HUB subcontracting plan.	Pass/Fail	-	
Technical Proposal Subtotal	1500	100%	
TOTAL	2000		

The following formula will be used in scoring cost proposals:

$$\text{Lowest Cost Proposal Amount} / \text{Other Cost Proposal Amount} = \% \text{ of total points available for the Cost Proposal.}$$



ATTACHMENT H COST PROPOSAL

Proposer's Name

NOTE TO ALL PROPOSERS: THE COST PROPOSAL MUST BE SUBMITTED IN A SEPARATE AND LABELED SEALED ENVELOPE AND ATTACHED TO THE ORIGINAL PROPOSAL. PROPOSERS SHOULD ONLY SUBMIT ONE ORIGINAL OF THE COST PROPOSAL (NO COPIES ARE REQUIRED).

Each Proposer must complete the cost proposal stating the hourly rates for the services stated in the RFP. Each hourly rate field must be completed with a value. Each field value amount must be greater than zero. "Not applicable" and "n/a" are not acceptable responses.

Please refer to the attached FY18 media flowchart (Attachment I) for an estimate of the production and media hours that will be required to service this account. The Texas Lottery's actual needs may vary from the sample media flowchart.

Hourly rates must include all direct and indirect costs, including all expenses associated with providing Contract services, e.g., salaries, overhead, general, and administrative mechanical print and expenses, and profit. Please refer to Section 2.10.

Proposers should consider the following items when determining hourly rates in response to the RFP:

- Production and experiential costs will be reimbursed at actual invoice cost.
- Media placement will be reimbursed at net cost with no mark-up.
- Travel expenditures will be reimbursed pursuant to the terms of this RFP and compliant with State per diem rates.

Please note: The Texas Lottery will not pay travel time or separately reimburse any travel expenses, overnight stays, or per diem for, or resulting from, travel to and from Austin, Texas. For any travel request outside of Austin, Texas, deemed reasonable and necessary by the Texas Lottery, the Texas Lottery will reimburse the Successful Proposer in accordance with the Texas State Travel Guidelines. All travel requests must be pre-approved by the Texas Lottery.

Services listed on this chart may be subcontracted (i.e., media planning/buying, digital, social, translation, etc.). If the Proposer plans to subcontract for these services, hourly rates shall be listed in the chart that follows. Refer to sections 6.2 Agency Staff Structure and 6.3 Agency Staff Position Definitions. In addition, if one person is performing multiple functions, hourly rates should be billed under the title for the function being performed.



	TITLE	HOURLY RATE
Account Service	Account Director	
	Account Supervisor	
	Account Executive	
	Junior Account Executive	
	Account Coordinator	
Account Planning	Account Planner	
	Assistant Account Planner	
Media	Media Director	
	Media Supervisor	
	Media Planner	
	Junior Media Planner	
	Media Buyer	
	Junior Media Buyer	
Creative	Creative Director	
	Associate Creative Director	
	Art Director	
	Copywriter	
Production	Production Manager	
	Producer	
	Production Coordinator	
	Print Producer	
	Traffic Manager	
	Project Manager	
	Translator	
	Programming Specialist	
Experiential	Experiential Manager	
	Experiential Coordinator	
Finance	Finance Manager	
	Staff Accountant	
	Billing Coordinator	



Offered Options

Proposers are not required to submit specifications and pricing for Offered Options. However, if any options are offered, the cost or fee shall be listed in this section.

(signature of person authorized to contractually bind the Proposer)

(printed name)

(title)

(date)



ATTACHMENT I MEDIA FLOW CHART



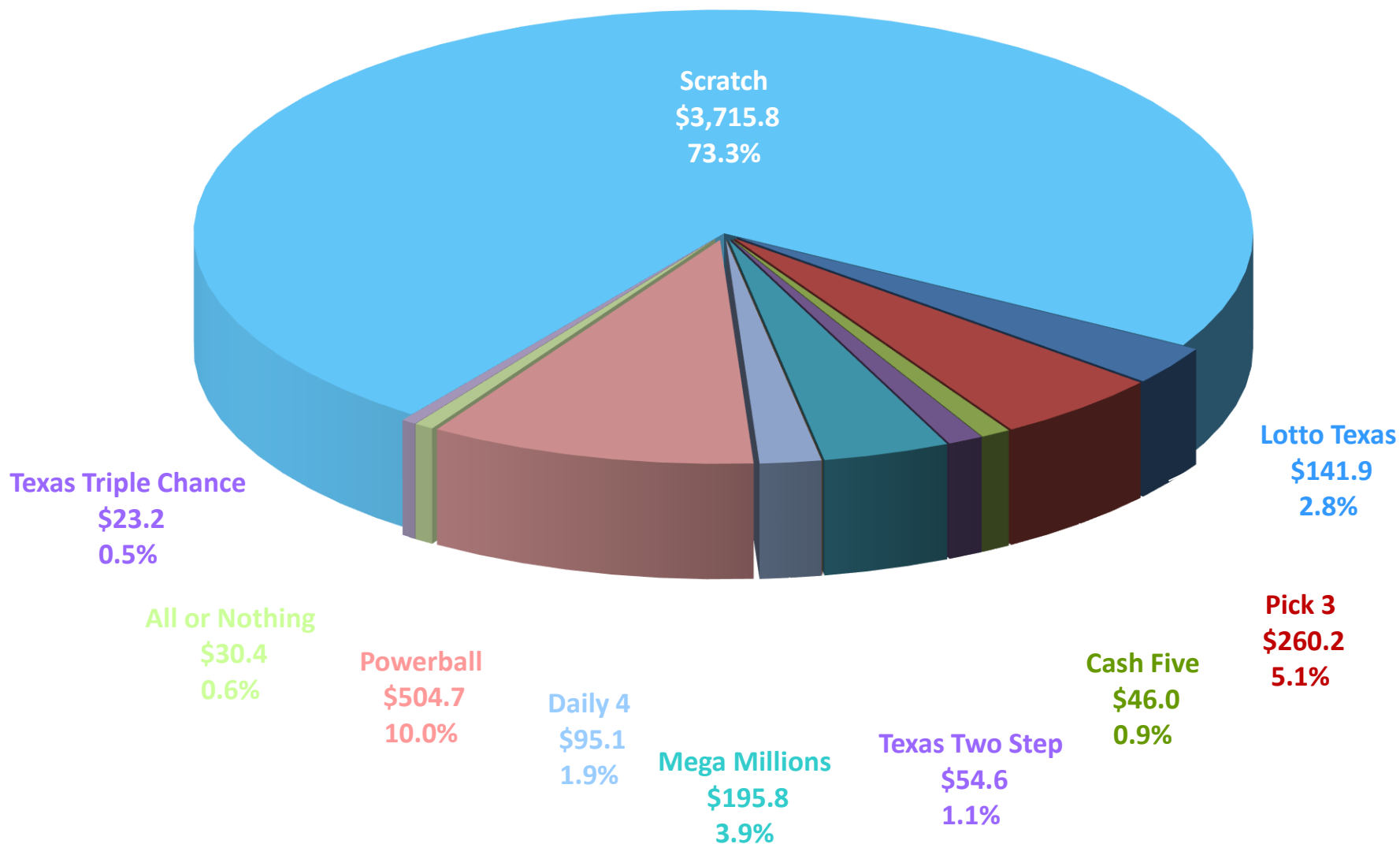


ATTACHMENT J
FY 16 SALES/REVENUE BY GAME

Texas Lottery Commission

Sales by Game-FY 2016

(in Millions)



Fiscal Year Sales: \$5.07 Billion

Note: Add on sales are included with base game