



TEXAS LOTTERY COMMISSION
REQUEST FOR PROPOSALS FOR
INSTANT TICKET MANUFACTURING AND SERVICES

#362-12-0001

RESPONSES TO PROPOSERS'
QUESTIONS
(Round 2)

AND

RFP AMENDMENTS

January 13, 2012

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DATE: January 13, 2012

Note to All Prospective Proposers:

The following responses include questions submitted in writing by the required deadline for the second round of written questions.

In its answers to the following questions, the Texas Lottery has attempted to provide both accurate and thorough responses. Some answers may clarify or modify the RFP, and every Prospective Proposer is on notice of each answer's content. Answers that modify the RFP are so noted. Answers apply only to the facts as presented in each specific question.

Proposers shall review all sections of the RFP along with this document to ensure a complete understanding of the requirements. Any exceptions to the RFP shall be noted in the proposal, as required under Section 2.8 of the RFP.

WRITTEN QUESTIONS RECEIVED BY JANUARY 3, 2012 @ 4:00 P.M.

1. **Sec. 3.26** – The language regarding intellectual property right acquired by license with right to sublicense is ambiguous and vague.
To clarify, is the intent that the Lottery and the Successful Proposer would enter a sublicense for such rights embodied in a product or service provided to the Lottery? If not, what is the intent of this language?

RESPONSE: The Texas Lottery declines to amend the RFP.

2. **Sec. 3.26.3** – The language regarding ownership of intellectual property rights in products and services provided to the Lottery is ambiguous and vague.
To clarify, is this ownership limited to the actual product and service delivered to the Lottery?

RESPONSE: The Texas Lottery declines to amend the RFP.

3. **Sec. 3.27** – Does “pre-existing” rights include the rights of the Successful Proposer? If so, does that conflict with Section 3.26.3?

RESPONSE: See response to Question 15 from the first round of responses to questions.

4. **Section 3.33.2** – To clarify the response of the Lottery in Response to Proposers’ Questions, dated December 16, 2011, Response No. 20(b) – is the “value of the goods/services provided” meant to cover the goods/services provided by that particular subcontractor?

RESPONSE: Yes.

5. **Section 8.33, Invited Options, page 86 Item (11)** of the invited options list is “thermal ink imaging.”

Question: We are unfamiliar with this term (thermal ink imaging). Would the Lottery please describe, with some detail, the technical specifications and use of this option so we can more precisely respond to the cited print related product?

RESPONSE: Please see Amendment No. 9 to the RFP.

6. **Section 8.3.20, Ink Colors, page 70** Section 8.3.20 specifies that “the Successful Proposer must be able to produce a total of up to ten (10) colors projected to be five (5) front display colors, with one display color being a full bleed, one (1) back color, three (3) overprint colors and one (1) ultraviolet ink for benday patterns. **Attachment H, Base Price, page 106** states “specifically base price shall include insertion of 4” x 4” POS cards in each pack, four color processing, expanded imaging and any additional spot colors to produce the game tickets as represented in the executed working papers.”

Question: Would the Lottery please confirm that the base ticket price includes a total of ten colors?

RESPONSE: Yes.

7. **Section 2.11.1, Producer’s Cost Proposal, page 12** Section 2.11.1 specifies that “Pricing agreed to in any resulting Contract shall be firm and remain constant through the life of the Contract.” **Section 3.16.4 Term of Contract, page 20**, states “The Texas Lottery reserves the right to re-negotiate prices *at any time during the Contract term* or any renewal period.”

Question: These two sections would seem to be providing contradictory pricing term information. Would the Lottery please clarify with respect to pricing – what is the term of validity for negotiated pricing that may be the result of this procurement?

RESPONSE: The Texas Lottery reserves the right to re-negotiate prices at any time during the Contract term and any change in pricing must be mutually agreed to by the parties.

General Pricing Questions

- a) Would the Lottery please provide information regarding the source of any pricing information that will be used by the Lottery during pricing negotiations with vendors in an effort to establish Common Pricing?

RESPONSE: Please refer to Sections 1.1.9 and 6.3.4.

- b) As is a common practice in the instant game manufacturing process, establishing vendor pricing for specific instant ticket size and game volume is a function of the entire volume and number of games expected to be produced for a Lottery during a specific time period. Without any guidelines as to what specific volumes of games and ticket sizes may be required in the course of a specific timeframe adds to the complexity of vendor costing and therefore increases unknowns in the equation.

- i) To minimize the potential variables for vendors in their internal pricing determination exercises, will the Texas Lottery confirm the anticipated vendor allotment of games should all three potential RFP respondents achieve Apparent Successful Vendor Status (there being no IP related impediments to vendor production of games in this scenario – what is the anticipated annual allotment of instant games; even allotment across all instant ticket sizes/volumes/price points , etc.)?

RESPONSE: The Texas Lottery's methodology for determining the allocation of games is detailed in Part 1.1 Purpose and Part 6 Texas Lottery's Objectives, Goals and Expectations of the RFP. Proposers should review in particular sections 1.1.7 through 1.1.9 and section 6.3.4 related to this question. The Texas Lottery initially intends to award a comparable number of games to all Successful Proposers offering the common price. However, the Texas Lottery does not intend to establish comparability by price point, ticket size, print quantities, and other factors as determined by the Texas Lottery among Successful Proposers.

- ii) With vendor internal costs associated with productive capacity allocated in support of an account volume and internal personnel infrastructure demands being highly variable in the current proposed Texas Lottery Common Price scenario, can the Lottery provide any further information that would permit vendors to more precisely anticipate the expected volume and support requirements as a Common Price participating Apparent Successful Vendor versus a non-Common Price participating Apparent Successful Vendor? This improved level of information would by necessity improve the ability by vendors

to accurately determine internal costs and lead to a more competitive pricing submission by all vendors.

RESPONSE: Proposers should review the response in question 7 (b)i above along with section 1.1.10 of the RFP in response to this question.

8. Clarification: Bonds and Insurance (Section 3.33.1, pages 29-30)

With regard to the requirement that the Texas Lottery must be named as an additional insured on the Successful Proposer's insurance policies, with the exception of the workers' compensation, employer's liability and professional liability policies:

Would the Lottery also include the crime policy (required under section 3.38) as an exception? By requiring the Lottery to be added as an additional insured to the crime policy, in theory, the Successful Proposer's crime policy would be open to the Lottery for coverage of any fraudulent acts committed by Lottery personnel, regardless whether the Successful Proposer's personnel were involved in the act or not, which is not consistent with the description of coverage required under Section 3.38.

RESPONSE: Please see Amendment No. 10 to the RFP.

From our research, we are not aware of any insurance company that allows a Successful Proposer to add the Texas Lottery as an additional insured to its crime policy. The Lottery could be added as a **loss payee** to the policy, but when the question of whether the Lottery could be added as a loss payee rather than additional insured in the previous Q&A (Question 18), this was answered "No." Could the Lottery please confirm that we may add the Texas Lottery as a loss payee rather than additional insured specifically on the crime policy?

RESPONSE: The Successful Proposer may add the Texas Lottery as loss payee to crime insurance.

9. Request: Bonds and Insurance (Section 3.35.1-2, page 30)

In response to the first round of questions and answers, the Texas Lottery indicated it is not willing to change the wording of the performance bond clause. In light of this, it will not be possible for our usual surety company to provide a performance guarantee. Would the Lottery either:

- (a) kindly change the formulation of the bond text to an acceptable industry-standard wording; or
- (b) accept from vendors an unconditional and irrevocable Bank Guarantee as a performance security?

RESPONSE: Please see Amendment No. 11 to the RFP. Please note the Texas Lottery will work with the Successful Proposer to obtain an acceptable performance bond, including possible modifications to bond requirements.

Texas Government Code Section 466.102 requires liquidated damages and performance bonds in Texas Lottery contracts. Therefore, the Texas Lottery cannot accept other forms of security in lieu of a performance bond.

10. General Request: Sealed Cost Proposal (Attachment H, pages 105-113)

In an effort to present the Lottery with a version of Attachment H that closely resembles the original RFP, could the Lottery please provide either an unlocked PDF capable of having text copied from it, or a Word Document version, of Attachment H?

RESPONSE: Please see the spreadsheet located on the ESB and TLC websites.

11. Clarification: Pricing, Invited Options (Section 8.33, page 86)

Since many factors together influence pricing of break-open tickets, in the interests of competitively pricing these, could the Lottery please provide the following guidance on its anticipated specifications of the following?

- ticket sizes
- paper stocks
- deal sizes
- bar coding requirements
- order quantities
- number of games annually

RESPONSE: The Texas Lottery has not previously purchased or offered for sale break-open tickets. Further, the Texas Lottery does not anticipate a dramatic shift to the use of this product option. However, the Texas Lottery seeks to have pricing from proposers for unique industry products should it determine to pursue the offering of such products over the term of this contract. It should be noted that Proposers are not required to provide responses to Invited Options.

AMENDMENTS TO RFP

The following have been adopted by Amendment to the RFP, as permitted by Section 2.13 of the RFP.

Amendment No. 9

8.33 Invited Options

As an invited option, Proposers may offer the following instant ticket manufacturing options:

- (1) Die cut tickets
- (2) Additional inserts in each pack of tickets
- (3) Pouch Tickets
- (4) Holograms
- (5) Continuous image four color process– unbroken graphic image covers entire ticket including rub-off area.
- (6) Four-color process printing on ticket back
- (7) Stub tickets with horizontal or vertical perforations with or without imaging
- (8) Scored tickets
- (9) Scented tickets
- (10) Break-open tickets with perforated window
- ~~(11) Thermal ink imaging.~~

ATTACHMENT H SEALED COST PROPOSAL

INVITED OPTIONS

Proposers are **not required** to submit specifications and pricing for Invited Options. Each Proposer should indicate the additional cost per thousand (1,000) tickets, if any, for any options, including those listed below. Pricing should be noted as cost per square inch, if appropriate.

1. Cost per thousand for die-cut tickets. \$ _____
2. Cost per pack, if any, for additional inserts in each pack of tickets. \$ _____
3. Cost per thousand for pouch tickets. \$ _____
4. Cost per thousand for holograms on tickets. \$ _____
5. Cost per thousand for continuous four color process covering entire ticket.
\$ _____
6. Cost per thousand for four-color printed on ticket back. \$ _____

7. Cost per thousand for perforated stub, with either horizontal or vertical perforations and with or without imaging.

Without Imaging \$ _____

With Imaging \$ _____

8. Cost per thousand for scored tickets. \$ _____

9. Cost per thousand for scented tickets. \$ _____

10. Cost per thousand for break-open tickets with perforated window. \$ _____

- ~~11. Cost per thousand for thermal ink imaging. \$ _____~~

In addition, each Proposer should indicate the additional cost, if any, for the options listed below:

Merchandise fulfillment for non-licensed property games

\$ _____

Amendment No. 10

3.33 Bonds and Insurance

- 3.33.1 All required bonds and insurance must be issued by companies or financial institutions which are financially rated Excellent or better as rated by A.M. Best Company and duly licensed, admitted, and authorized to do business in the State of Texas. The Texas Lottery shall be named as the obligee in each required bond. Each insurance policy, except those for **crime**, 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. Insurance coverage must include a waiver of subrogation in favor of the Texas Lottery, its officers, and employees for bodily injury (including death), property damage or any other loss. 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. 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. Proposers must submit required bonds when and as provided in sections of this RFP outlining bond requirements.

- 3.33.2 The Successful Proposer shall be responsible for ensuring that any subcontractor(s) used in the performance of the Contract maintains the required insurance as stated in Sections 3.33 – 3.39 (covering all goods and services provided by such subcontractors) throughout the Contract term and any renewals thereof.

Amendment No. 11

3.35 PERFORMANCE BOND

- 3.35.1** 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 the bond in place shall constitute a breach of any Contract entered into as a result of this RFP.
- 3.35.2 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~~ **and shall be immediately available** 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.