



TEXAS DEPARTMENT OF LICENSING AND REGULATION

REQUEST FOR PROPOSALS

FOR

INTERNAL CONTROL SYSTEM AND RELATED SERVICES

ISSUED OCTOBER 30, 2025, CENTRAL TIME
Request for Proposal No. 452-2026-0001



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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 capitalized 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 Days	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.
Business Hours	The Texas Lottery Program’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.
Contract Term	The time period when the Contract is in effect, which unless otherwise indicated includes any extension period.
CPA	Texas Comptroller of Public Accounts.
Day	A calendar Day.
Executive Director	The Executive Director of the Texas Department of Licensing and Regulation or an employee of the Texas Department of Licensing and Regulation authorized to act on behalf of the Executive 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 women, and/or Veteran (as defined by 38 U.S.C. Section 101(2)) who have 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 Comptroller of Public Accounts (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 Department of Licensing and Regulation Rule, 16 TAC § 140.540 (See Attachment C).



Incident	An event or occurrence.
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, enhancement or improvement, including any patents, trade secrets, and know-how; (ii) any work of authorship, including any copyrights, moral rights, reversionary rights or neighboring rights; and any derivative work thereto (iii) any trademark, service mark, trade dress, trade name, or other indicia of source or origin; (iv) domain names (v) any other proprietary or similar rights, and (vi) any applications, provisionals, registrations, renewals, continuations, continuations-in-part, or divisionals relating thereto. 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.
Internal Control System, ICS, or System	Independent system that processes all daily sales, validation, inventory, claims and retailer management and accounting activity for auditing, balancing and reporting purposes. The Internal Control System includes the Primary, Secondary, Backup and Development/Test systems.
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.
Lottery Gaming System	The system provided by the Lottery Operator that includes the set of Lottery software, Lottery network, Lottery equipment and any other components that perform all Lottery functions, including, but not limited to, sales, validations, inventory and retailer management, claims processing, marketing support, Instant Ticket warehousing and distribution, and reporting. These systems will provide the ability to control, monitor and report all lottery activity.
Lottery Operator	The contracted vendor providing Lottery operations and services, including the Lottery Gaming System.
Lottery Products	All games presently offered by the Texas Lottery, together with new games introduced during the Contract term.
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 media services, lottery drawings certified public accounting services, drawings studio and production services, promotional products, Texas Lottery warehouse lease, internal audit services, internal control system and related services, security management system and monitoring services, risk review and compliance monitoring services, website hosting services, retailer bonus payment management services, trademark license and promotional agreements with the Dallas Cowboys, trademark license agreement with Houston Texans, promotional and sponsorship agreement with the National Medal of Honor Museum Foundation. The Texas Lottery may add or delete major or prime contracts at its sole option.



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.
Operating Hours	The period of time during a Day that the Texas Lottery designates, in its sole discretion, that Lottery Products sales, validations, reporting, and management functions are available. The Texas Lottery's current operating hours are daily from 12:30 a.m. to midnight Central Time.
Primary Data Center	The computer facility that supports the Lottery Gaming System located in Austin, Texas, which is maintained and operated by the Lottery Operator.
Proposal	All information and materials submitted by a Proposer in response to this RFP. This includes the sealed 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 solely by the Texas Lottery.
Retailer	A Texas Lottery sales agent, licensed by the Texas Lottery to sell lottery tickets, as contemplated by Texas Government Code, Chapter 466.
RFP	This Request for Proposals.
Sales	Sales are defined as sold tickets processed by the Lottery Gaming System, less any tickets that have been canceled or returned, less any promotional tickets or promotional coupons and less any retailer adjustments.
SPD	Statewide Procurement Division (SPD) is a division of the Texas Comptroller of Public Accounts.
Specified Option	A Specified Option shall be proposed by the Proposer; however, the Texas Lottery does not commit to any quantity or timing for acquisition of a Specified Option. A Proposal may be rejected if a Specified Option is not included.
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 Department of Licensing and Regulation, Department, or TDLR	The agency created by chapter 51 of the Texas Occupations Code that oversees the Texas Lottery Program. The Texas Department of Licensing and Regulation may be referred to as the Department or TDLR throughout this document.
Texas Lottery Program, Texas Lottery, or Lottery	The program created by chapter 466 of the Texas Government Code. The Texas Lottery Program may be referred to as the Texas Lottery or Lottery throughout this document.
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 the Texas Lottery 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 and any derivative works thereto), (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, enhancements 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 the Texas Lottery under the Contract, and (viii) all Intellectual Property Rights in any of the foregoing.



1. GENERAL INFORMATION

1.1. Purpose

- 1.1.1. The Texas Department of Licensing and Regulation is issuing this Request for Proposals (RFP) to solicit proposals from interested vendors to develop, implement, and support an Internal Control System (ICS) for the Lottery Gaming System. The Internal Control System will independently process lottery transactions, including, but not limited to, daily sales, validation, inventory, claims, retailer management and accounting activity, for auditing, balancing, and reporting purposes.
- 1.1.2. The Texas Department of Licensing and Regulation currently contracts with Brightstar Global Solutions Corporation (the Lottery Operator) for lottery operations and services. The Lottery Operator provides a Lottery Gaming System that supports real-time processing of all sales, validation, management, and inventory transactions. The Internal Control System shall provide independent verification of all lottery transactions.
- 1.1.3. Proposers shall provide information in their Proposals that will permit awarding a Contract in a manner that provides the best value to the Texas Department of Licensing and Regulation. A Proposer's failure to respond in the manner required in this RFP may result in disqualification of its Proposal.
- 1.1.4. Proposals submitted in response to this RFP shall reflect the objective of the Texas Department of Licensing and Regulation that all operations shall emphasize security and integrity by maintaining public confidence in the fair and ethical operation of the Texas Lottery Program and its games.

1.2. Agency Objectives

- 1.2.1. The Texas Department of Licensing and Regulation has the following objectives under this RFP and the resulting Contract:
- 1.2.2. Obtain an Internal Control System that will meet the needs of the Texas Lottery Program for the term of the Contract.
- 1.2.3. Obtain an Internal Control System and services that are operationally sound, incorporate the highest level of integrity and security, and minimize risk for the Texas Lottery Program.
- 1.2.4. Obtain an Internal Control System that is sufficiently flexible/expandable to meet the Texas Lottery Program's evolving requirements and needs.
- 1.2.5. Ensure that the Internal Control System is operational by the agreed-upon schedule.



- 1.2.6. Ensure the integrity of the Texas Lottery Program's games by logging and verifying all transactions on the Internal Control System.
- 1.2.7. Meet the fault tolerance requirements for an Internal Control System for all Texas Lottery Program games, including multijurisdictional games offered by the Texas Lottery Program (e.g., Mega Millions and Powerball).

1.3. Our Vision and Mission

- 1.3.1. Texas Lottery Vision – To be the preeminent Lottery and Charitable Bingo agency through innovative leadership.
- 1.3.2. 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.
- 1.3.3. Texas Lottery 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.
- 1.3.4. Texas Department of Licensing and Regulation Vision - To be the best at creating 'next' practices that deliver low-cost licensing and regulatory services and an exceptional customer experience.
- 1.3.5. Texas Department of Licensing and Regulation Mission - To earn the trust of Texans every day by providing innovative regulatory solutions for our licensees and those they serve.

1.4. Our Core Values

- 1.4.1. Integrity and Responsibility — The Texas Lottery Program 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.
- 1.4.2. 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 shall 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.



- 1.4.3. 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.
- 1.4.4. Customer Responsiveness — The Texas Lottery Program 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.
- 1.4.5. 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.
- 1.4.6. Excellence — We strive for excellence by taking a position of leadership on issues that impact the Texas Department of Licensing and Regulation and achieve challenging goals by focusing on our core values.
- 1.4.7. The Texas Department of Licensing and Regulation Core Values
- Accountable to Texans
 - Create an exceptional customer service experience.
 - Integrity in all we do
 - Lead through innovation
 - Open and free communication
 - Respect for all
 - Teamwork built on individual strengths and ingenuity.

1.5. Schedule of Events

The following time periods are set forth for informational and planning purposes only. The Texas Department of Licensing and Regulation reserves the right to change any of the time periods and will post all changes on the Electronic State Business Daily, <https://www.txsmartbuy.gov/esbd> and/or the Texas Department of Licensing and Regulation website, <https://www.texaslottery.com> (Click on About, Doing Business with TDLR, Procurement).

Date	Event
October 30, 2025 (4:00 p.m., CENTRAL TIME)	Issuance of RFP



November 6, 2025 (1:30 p.m., CENTRAL TIME)	Pre-Proposal Conference (Virtual conference - see Section 2.3)
November 12, 2025 (4:00 p.m., CENTRAL TIME) (Late Questions will not be answered)	Written Questions Due
On or before November 20, 2025	Responses to Written Questions Issued
November 21, 2025 (4:00 p.m., CENTRAL TIME)	Final date for submission of draft HSP forms and final date to conduct one-on-one workshops (Zoom, TEAMS, or telephone conference)
December 8, 2025 (4:00 p.m., CENTRAL TIME) (Late Proposals will not be considered)	Deadline for Proposals
On or before January 20, 2026 (or as soon as possible thereafter)	Announcement of Apparent Successful Proposer

1.6. Successful Proposer's / Agency Relationship

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

1.7. Procurement Authority

This RFP and all activities leading toward the execution of a written contract under this RFP are being conducted in accordance with the State Lottery Act (Tex. Gov't Code ch. 466), as amended; the Texas Lottery's administrative regulations (16 TAC ch. 140); and other applicable laws of the State of Texas. All Proposers should read and be familiar with the State Lottery Act and 16 TAC §§ 140.101–103.

1.8. Proposals Subject to The Texas Public Information Act

- 1.8.1. The Texas Department of Licensing and Regulation is subject to the Texas Public Information Act (Act) (Chapter 552, Government Code). Proposals submitted to the Texas Department of Licensing and Regulation in response to this RFP are subject (in their entirety) to release by the Texas Department of Licensing and Regulation 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 Office of 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. Additionally, see Sec. 552.0222 of the Act relating to contracting information that is considered public and shall be released.

- 1.8.2. The Texas Department of Licensing and Regulation assumes no responsibility for asserting legal arguments to the Attorney General on behalf of Proposers.
- 1.8.3. 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.
- 1.8.4. The requirements of Subchapter J of the Act may apply to this Proposal and the Successful Proposer, contractor, or vendor agrees that the Contract can be terminated if the Successful Proposer, contractor, or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. See Attachment H.

1.9. Misunderstanding or Lack of Information

By submitting a Proposal, a Proposer 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 Department of Licensing and Regulation. The decision of the Executive Director shall be conclusive, and subject to protest under Section 2.17 of this RFP.



1.10. 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 Department of Licensing and Regulation to award a contract. The Texas Department of Licensing and Regulation 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.

1.11. Ownership of Proposals

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

1.12. Incurred Expenses

The Texas Department of Licensing and Regulation 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.

1.13. Proposal Tenure

All Proposals shall be valid for a period of two hundred and seventy (270) Days from the deadline for submitting Proposals.

1.14. No Texas Department of Licensing and Regulation Obligations

The Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation'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 1.8 above).

1.15. 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.



1.16. Captions

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

1.17. 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

- 2.1.1. The sole point of contact for communications concerning this RFP will be Sonja Elizondo, whose mailing address and email address, are as follows:

Sonja Elizondo MPA, CTCD, CTCM
Contracts Specialist
Texas Lottery Program
P. O. Box 16630
Austin, TX 78761-6630
Phone (512) 344-5349
contracts@lottery.state.tx.us

- 2.1.2. The Texas Lottery's physical address for deliveries is:

Sonja Elizondo CTCD, CTCM
Contracts Specialist
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2.2. Prohibition Against Unauthorized Contact

- 2.2.1. The Texas Department of Licensing and Regulation 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 her sole discretion, disqualify a Proposer.

2.3. Pre-Proposal Conference

Prospective Proposers should plan to attend a virtual Pre-Proposal Conference. 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 link to the virtual Pre-Proposal Conference will be posted on the Texas Lottery Program website at <https://www.texaslottery.com> and on the Electronic State Business Daily (ESBD), <https://www.txsmartbuy.gov/esbd> in advance of the day and time listed in the Schedule of Events. The Texas Department of Licensing and Regulation intends to use Microsoft TEAMS for the conference. A video of the Pre-Proposal Conference will be posted on the Texas Lottery Program website.

2.4. Questions

2.4.1. Written questions concerning this RFP will be accepted and responses posted on the Electronic State Business Daily (ESBD), <https://www.txsmartbuy.gov/esbd>, and the Texas Lottery Program website, <https://www.texaslottery.com> according to the timetable established in the Schedule of Events. Questions received after the deadlines set in the Schedule of Events may be reviewed by the Texas Department of Licensing and Regulation but will not be answered. Any addenda or amendments, whether made as a result of a prospective Proposer's written questions or otherwise, will be posted on the ESBD and the Texas Lottery Program website. It is the responsibility of the Proposer to check these websites for any additional information regarding this RFP.

2.4.2. Questions shall be submitted by email by the question submission deadline to:

contracts@lottery.state.tx.us

2.4.3. A Proposer shall submit questions in writing and is responsible for obtaining 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 the Contract, the Proposer shall be deemed to have waived any claim to contest the Texas Department of Licensing and Regulation's interpretation thereof.

2.5. Submission of Proposal

2.5.1. *Electronic Delivery Submission.* Electronic responses shall be sent via email to Procurement@lottery.state.tx.us. Proposers shall place the RFP Name and Number, along with the Proposer Name into the subject line of their email. Electronic responses shall be received no later than the deadline established in the Schedule of Events. Late Proposals will not be considered. No exceptions will be made. Proposal shall not exceed three hundred (300) pages total. For electronic submissions, Proposers shall submit one (1) signed original of its Proposal, one (1) copy of evidence of Financial Soundness, one (1) signed original of its Cost Proposal and one (1) signed original of its Part 5, that shall be in a searchable and unprotected portable document format (PDF). Each PDF file



attachment shall be a separate document and clearly named. The Texas Lottery takes no responsibility for electronic submissions that are captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any the Texas Lottery anti-virus or other security software. To confirm receipt of all electronic submissions, Proposers should request confirmation by email.

- 2.5.2. If a Proposer submits multiple versions of the proposal document to ensure receipt, the last received version that arrives before the Proposal deadline will be considered the official version designated for evaluation by the Evaluation Committee.
- 2.5.3. All Proposals shall be organized and arranged to correspond directly with the numbered sections of this RFP, and all pages shall 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, unless a section requires a specific detailed answer from the Proposer. For Parts 4 and 6 only, Proposers shall provide a section-by-section response to the RFP. For Part 5, Proposers shall follow the instructions for completing and submitting an HSP.
- 2.5.4. If a Proposer is claiming any part(s) of its Proposal is confidential, the Proposer shall provide a detailed response to Section 1. and mark the material as "Confidential".
- 2.5.5. A Proposer may not amend a commitment to comply with a specific section of this RFP by a later reference back to that section.
- 2.5.6. 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 attachment shall be included with the original Proposal.
- 2.5.7. Proposers are required to propose a complete solution to the Texas Department of Licensing and Regulation's requirements in their Technical Proposal. Any items not specifically requested, but integral to the requested services, shall be included in a Proposer's Proposal and identified in the appropriate sections thereof.
- 2.5.8. Proposers responding to this RFP shall fully and completely address all goods, services, and other requirements as described by this RFP. Incomplete or partial Proposals will not be considered. A Proposer shall provide all information that the Proposer believes would be helpful to the Texas Department of Licensing and Regulation in evaluating the Proposer's ability to fulfill the RFP requirements.
- 2.5.9. Proposals that have been copyrighted by any Proposer are unacceptable and may be rejected as non-responsive.



2.6. Response Format & Contents

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

- a. Letter of Transmittal.
- b. Executive Summary.
- c. Section-by-section response to the RFP (see Section 2.5.3 above).
- d. Evidence of Financial Soundness (one (1) separate PDF).
- e. HUB Subcontracting Plan (one (1) separate PDF).
- f. Cost Proposal (one (1) separate PDF).
- g. Proposer's Commitment (Attachment A); and
- h. Background Information Certification (Attachment D-1).

2.7. Letter of Transmittal

- 2.7.1. Proposers shall 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 Department of Licensing and Regulation in this RFP. The Letter of Transmittal shall state that the Proposal is valid for two hundred and seventy (270) Days from the Day after the date that the Proposal is delivered to the Texas Department of Licensing and Regulation. Any Proposal containing a term of less than two hundred and seventy (270) Days for acceptance shall be rejected. The Letter of Transmittal shall 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 Department of Licensing and Regulation in this RFP.
- 2.7.2. The Letter of Transmittal shall 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 shall 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 shall provide an executive summary of the 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 shall 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 shall 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 shall demonstrate its understanding of the requested goods and services and shall address specifically, in writing, the Proposer's approach to providing each requirement in this RFP.
- 2.8.3. The Executive Summary shall 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 shall 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 shall 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 services is to be presented only in the format set forth in Attachment G of the RFP. 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 (1) Proposal. If a Proposer submits more than one (1) Proposal, all Proposals from that Proposer may be rejected.

2.12. Changes, Modifications and Cancellation

The Texas Department of Licensing and Regulation reserves the right to make changes to and/or cancel this RFP. Texas Department of Licensing and Regulation will post all



changes and modifications, whether made as a result of a potential Proposer's written questions or otherwise, and any cancellation notices on the Electronic State Business Daily and the Texas Department of Licensing and Regulation 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 Texas Department of Licensing and Regulation 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 execution of a Contract, the Proposer is under a continuing obligation to notify the Texas Department of Licensing and Regulation in writing of any updates or changes to information offered in support of its Proposal that might reasonably be expected to affect the Texas Department of Licensing and Regulation'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 Department of Licensing and Regulation 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 Department of Licensing and Regulation employees or outside individuals with expertise in particular areas. In addition, the Texas Department of Licensing and Regulation's Lottery General Counsel, other in-house legal counsel, and outside legal counsel may assist by advising the evaluation committee. Texas Department of Licensing and Regulation 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 submitted in response to this RFP which conforms to the RFP in all material respects, as determined solely by the Texas Department of Licensing and Regulation. Evaluation committee members may seek, obtain, and consider the opinions of other committee members or subject matter experts (including Texas Department of Licensing and Regulation staff, staff from other Texas agencies and consultants retained by the Texas Department of Licensing and Regulation) 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 § 140.101.
- 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 and/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 §2262.055.
- A copy of the scoring matrix is included as Attachment F.
- 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. Site Visits And/or Oral Presentations

The Texas Department of Licensing and Regulation, in its sole discretion, reserves the right to conduct site visits and/or to require Proposers to make oral presentations prior to the Contract Award and may consider such presentations and visits when evaluating Proposals. Proposers will be notified in writing and will be provided with equal advance notification of site visits and/or oral presentation assignments and guidelines.

2.17. Protest Procedure

Any protest shall be governed by Tex. Gov't Code § 466.101 and 16 TAC §§ 140.102–103.



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 Department of Licensing and Regulation reserves the right to incorporate additional provisions in the Contract in the best interest of the Texas Department of Licensing and Regulation.

3.2. Governing Law and Venue

The procurement process, the award procedure, and the Contract shall be governed by, and 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 Department of Licensing and Regulation and the Successful Proposer will follow the general format specified by the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation has determined that subcontracting opportunities are probable under this RFP. Therefore, the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation, 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation, 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 Department of Licensing and Regulation under the 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 Texas Department of Licensing and Regulation Intent

It is the responsibility of the Successful Proposer to address and resolve all questions with the Texas Department of Licensing and Regulation's designated points of contact, and to achieve a clear understanding of all Texas Department of Licensing and Regulation requirements during each stage of the Contract Term. The Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation staff will be available to the Successful Proposer on a reasonable basis, but may not be available on weekends, or State or national holidays, as defined in Tex. Gov't Code § 662.003.

3.7. Relationship of the Parties

The Successful Proposer and the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation from any



costs or damages, including attorney's fees, sustained by the Texas Department of Licensing and Regulation resulting from the Successful Proposer's breach of its obligations under this section. The Texas Department of Licensing and Regulation will withhold indemnified losses from payments to the Successful Proposer, or, if no payments are made, the Texas Department of Licensing and Regulation will make demand of payment of indemnified losses. The Successful Proposer shall make payment within thirty (30) Days of the Texas Department of Licensing and Regulation's demand.

3.8. Payment

- 3.8.1. All payments will be made in accordance with Texas Government Code chapter 2251 ("Payments for Goods and Services"). Invoices for ICS installation/conversion and maintenance will be billed separately. The Texas Department of Licensing and Regulation will pay the Successful Proposer for ICS installation/conversion in installments according to the payment schedule in section 3.8.2. The Successful Proposer shall submit monthly invoices for maintenance and support services, noting the Contract number and detailing services rendered and date of services.
- 3.8.2. The Texas Department of Licensing and Regulation will pay the Successful Proposer for ICS installation and conversion as follows:
 - a. One-fourth (1/4) of the ICS installation/conversion total charge in the Cost Proposal will be due and payable within 30 Days of the start of User Acceptance Testing (UAT).
 - b. One-half (1/2) of the ICS installation/conversion total charge in the Cost Proposal will be due and payable within 30 Days of completion of User Acceptance Testing;
 - c. The remaining one-fourth (1/4) of the ICS installation/conversion total charge in the Cost Proposal will be due and payable within 30 Days of the ICS conversion date.
- 3.8.3. Invoices may be submitted by mail to the Texas Department of Licensing and Regulation, P. O. Box 16630, Austin, Texas 78761-6630, Attn: Accounts Payable or by email to AccountsPayable@lottery.state.tx.us. Emailed invoices are preferred. Payments will be made only upon the completion of services or after the delivery of goods authorized in an approved invoice.
- 3.8.4. Under Tex. Gov't Code § 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation receives an invoice for the goods or services, according to Tex. Gov't Code § 2251.021. Services are "completed" when accepted by the Texas Department of Licensing and Regulation.
- 3.8.5. The Successful Proposer agrees that if the Texas Comptroller of Public Accounts is prohibited from issuing a warrant to the Successful Proposer under Tex. Gov't Code §



403.055, 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 Department of Licensing and Regulation, 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. The Successful Proposer is prohibited from subletting, conveying, assigning, or otherwise disposing of all or any portion of the Contract, its rights, title, or interest therein, or its power to execute such agreement without the previous written approval of the Texas Department of Licensing and Regulation. If any part of the Contract between the Texas Department of Licensing and Regulation and the Successful Proposer is to be subcontracted, the Successful Proposer shall obtain prior written approval from the Texas Department of Licensing and Regulation, and each Subcontractor shall comply with all applicable requirements of the Texas Department of Licensing and Regulation and the Contract. The Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation 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 Department of Licensing and



Regulation will make demand of payment of indemnified losses. The Successful Proposer shall 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 § 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. "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. (See Section 3.12.) The Successful Proposer shall be responsible to the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation written notification and justification within three (3) Business Days of any personnel changes involving key management positions, as defined in Section 4.2.3. The Successful Proposer shall provide the Texas Department of Licensing and Regulation the resume of the person who is hired or placed and shall receive written approval from the Texas Department of Licensing and Regulation prior to the person working on the account. The Texas Department of Licensing and Regulation shall approve key management personnel leaving the Texas Department of Licensing and Regulation account for another position within the Successful Proposer's company.
- 3.11.3. Notwithstanding anything herein to the contrary, any person employed by the Successful Proposer shall, at the written request of the Texas Department of Licensing and Regulation, and within the Texas Department of Licensing and Regulation'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 § 466.103, the Executive Director of the Texas Department of Licensing and Regulation 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 Tex. Gov't Code § 466.155. (See Attachment D)



- 3.12.2. The Texas Department of Licensing and Regulation 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 § 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation may terminate the Contract based solely upon the results of these background investigations. (See Attachment D-1.)
- 3.12.3. The Successful Proposer agrees that, during the Contract Term, it shall be obligated to provide such information about any Successful Proposer Principals, Successful Proposer employees, and Subcontractor Personnel as the Texas Department of Licensing and Regulation may prescribe. The Successful Proposer also agrees that the Texas Department of Licensing and Regulation may conduct background investigations of such persons.
- 3.12.4. Upon notification by the Texas Department of Licensing and Regulation to the Successful Proposer that the Texas Department of Licensing and Regulation objects to an employee based on the results of a background investigation, the Successful Proposer shall prevent that employee from working on the Texas Department of Licensing and Regulation account and shall deny that employee access to the Texas Department of Licensing and Regulation systems. The Successful Proposer also agrees that the Texas Department of Licensing and Regulation may conduct background investigations of such persons at the expense of the Successful Proposer.

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. Any Contract resulting from this RFP will be effective upon execution and continue through August 31, 2031, subject to the termination provisions in this RFP and subject to the Texas Department of Licensing and Regulation being continued and funded by the Texas Legislature.



- 3.14.2. The Texas Department of Licensing and Regulation reserves the right to extend any Contract resulting from this RFP, at its sole discretion, for up to one (1) additional three-year period and three (3) additional one year periods at the Contract rate or rates as modified during the Contract Term.
- 3.14.3. At the Texas Department of Licensing and Regulation's request, at the end of the original term, if both parties agree, the Successful Proposer shall provide a technology refresh on a mutually agreed schedule.
- 3.14.4. At the end of the Contract Term, or upon earlier termination under any provision of the 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 Department of Licensing and Regulation.
- 3.14.5. The Successful Proposer shall complete production and delivery of the Internal Control System and related services for which a work order has been executed prior to contract termination or expiration, even if such production and delivery extends beyond the initial Contract period or any extension thereof.

3.15. Termination at Will

The Texas Department of Licensing and Regulation, in its sole discretion, may terminate the Contract, in whole or in part, at will and without cause, upon no less than thirty (30) Days' advance written notice. The Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation is in jeopardy, and it is in the best interest of the Texas Department of Licensing and Regulation to do so. The Texas Department of Licensing and Regulation'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 Department of Licensing and Regulation 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 files a case under the Federal Bankruptcy Code or is seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, receivership, or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against it under any such law; or
- c. 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 fifty thousand dollars (\$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 thirty-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
- d. 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
- e. The Successful Proposer fails to communicate with the Texas Department of Licensing and Regulation as required by the Contract, or
- f. The Successful Proposer fails to remove any person from work relating to the Contract upon written notice from the Texas Department of Licensing and Regulation; or
- g. The Successful Proposer breaches the RFP's standard of confidentiality with respect to this RFP or the goods or services provided thereunder; or
- h. The Texas Department of Licensing and Regulation makes a written determination that the Successful Proposer has failed to substantially perform under the Contract and specifies the events resulting in the Texas Department of Licensing and Regulation's determination thereof; or
- i. The Successful Proposer fails to comply with any of the terms, conditions, or provisions of the Contract, in any manner whatsoever; or
- j. 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 Department of Licensing and Regulation, Texas Lottery Program games, the Successful Proposer, or the State of Texas.

3.17. Termination Related to Availability of Legislative Appropriations

All obligations of the Texas Department of Licensing and Regulation are subject to the availability of legislative appropriations and are subject to statutory restrictions of the Texas Legislature and the Texas Constitution. The Successful Proposer acknowledges the ability of the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation's continual ability to make payments under the Contract is contingent upon the funding levels appropriated to the agency. The Texas Department of Licensing and Regulation will use all reasonable and lawful efforts to ensure funds are available. The Successful Proposer agrees if future levels of funding for the Texas Department of Licensing and Regulation are not sufficient to continue operations without operational reductions, the Texas Department of Licensing and Regulation, in its sole discretion, may terminate the Contract, either in whole or in part. In the event of such termination, the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation 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

Under Tex. Gov't Code § 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 § 466.155. (See Attachments D and D-1).

3.19. No Liability Upon Termination

If the Contract is terminated for any reason, the Texas Department of Licensing and Regulation 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 ch. 2260.



3.20. Effect of Termination

3.20.1. Upon any termination or expiration of this Contract, the following terms shall apply:

- a. The permissions, licenses, and authorizations granted by the Successful Proposer to the Texas Department of Licensing and Regulation pursuant to the terms of this RFP or any resulting Contract shall remain in full force and effect. The Successful Proposer, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Texas Department of Licensing and Regulation to evidence more fully the transfer of such permissions, licenses, and authorizations and to ensure the Texas Department of Licensing and Regulation's continued and uninterrupted use – including, but not limited to, the execution, acknowledgement, and delivery of such further documents in a form determined by the Texas Department of Licensing and Regulation.
- b. The Texas Department of Licensing and Regulation may, at its option, purchase the Internal Control System equipment at its depreciated value as determined by the lower of the GAAP basis or Federal Tax basis.
- c. The Successful Proposer shall immediately surrender to the Texas Department of Licensing and Regulation all memoranda, notes, records, drawings, manuals, computer software, and other documents or materials (and all copies of same) pertaining to the Works, reports, and other data or materials generated or developed by the Successful Proposer or furnished by the Texas Department of Licensing and Regulation to the Successful Proposer, including all materials embodying any Texas Department of Licensing and Regulation confidential information, regardless of whether the Works or materials are complete or incomplete; provided, however, that as to memoranda, notes, records, drawings, manuals, computer software and other documents or materials pertaining to the Works, the Successful Proposer shall be required to provide only copies thereof, and the Successful Proposer shall be entitled to retain copies thereof to facilitate its exploitation of the Works as permitted by this Contract. This section shall apply to all materials made or compiled by the Successful Proposer, as well as to all materials furnished to the Successful Proposer by the Texas Department of Licensing and Regulation or by anyone else that pertain to the Works.
- d. If this Contract is terminated for cause by the Texas Department of Licensing and Regulation, the Texas Department of Licensing and Regulation shall be entitled to receive delivery of the source code for all of the software necessary for operation of the Internal Control System from the source code escrow established pursuant to the requirements contained in this Contract.



3.21. Warranties

- 3.21.1. 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.
- 3.21.2. 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.
- 3.21.3. 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.
- 3.21.4. 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.
- 3.21.5. 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.
- 3.21.6. 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 Department of Licensing and Regulation.
- 3.21.7. The Successful Proposer warrants that it is eligible for a sales agent license under Tex. Gov't Code § 466.155. (See Attachments D and D-1)
- 3.21.8. 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.
- 3.21.9. All of the above warranties contained in this Section 3.21 shall survive expiration or termination of the Contract.



3.22. Licenses and Permits

The Successful Proposer shall obtain, maintain, and pay for all licenses, permits and certificates, including all professional licenses required by any statute, ordinance, rule, or regulation. The Successful Proposer shall immediately notify the Texas Department of Licensing and Regulation of any suspension, revocation, or other detrimental action against its licenses, permits, or certificates.

3.23. Successful Proposer Site Visits

The Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation or representatives as designated by the Texas Department of Licensing and Regulation. The Texas Department of Licensing and Regulation 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.

3.24. Intellectual Property Rights

- 3.24.1. *Ownership.* As between the Successful Proposer and the Texas Department of Licensing and Regulation, the Works and Intellectual Property Rights in the Works are and shall be owned exclusively by the Texas Department of Licensing and Regulation, 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 Department of Licensing and Regulation. 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works, subject to any provisions in this Section 3.24 or Section 3.25 below specifically applicable to pre-existing or third party rights.
- 3.24.2. *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 Department of Licensing and Regulation prior to the issuance of this RFP or execution of the Contract, or during the term of the Contract, (e.g., copyrights,



trademarks, etc.) shall continue to be exclusively owned by the Texas Department of Licensing and Regulation, 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 (and to authorize Subcontractors to do the same) solely for the purposes set forth in this RFP or the Contract, including for sales, marketing, promotion, and promotional event purposes, and only for the duration of such Contract.

3.24.3. *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 Department of Licensing and Regulation 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 tangible and intangible items relating to the goods and/or services set forth herein or under the Contract, including the Intellectual Property Rights in those tangible or intangible items, that were 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 tangible or intangible items are not considered "Works" as defined above, shall be, and are, licensed to the Texas Department of Licensing and Regulation on a non-exclusive, perpetual, irrevocable, royalty-free, worldwide basis, to allow the Texas Department of Licensing and Regulation 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 (to the extent necessary to complete providing such goods and/or services; e.g., to sell through existing inventory).

3.24.4. *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 Department of Licensing and Regulation to evidence more fully the transfer of ownership of all Works to the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation. In the event the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation 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.

3.24.5. *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, the right to object to any modification, translation or use of the Works, any automatic reversion or right to demand a reversion of ownership of the Works or Intellectual Property Rights therein from the Texas Department of Licensing and Regulation to the Successful Proposer, 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.

- 3.24.6. *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 Department of Licensing and Regulation, 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 Department of Licensing and Regulation.
- 3.24.7. *Injunctive Relief.* The RFP and the Contract are intended to protect the Texas Department of Licensing and Regulation'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 Department of Licensing and Regulation'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 Department of Licensing and Regulation, without requiring a bond or proof of irreparable injury, as same should be presumed.
- 3.24.8. *Return of Works.* Upon the request of the Texas Department of Licensing and Regulation, but in any event upon expiration or termination of the Contract, the Successful Proposer shall surrender to the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation to the Successful Proposer, including all materials embodying the Works, any Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation or by anyone else that pertains to the Works.
- 3.24.9. *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.



3.25. Pre-Existing and Third-Party Rights

- 3.25.1. To the extent that any pre-existing rights and/or third-party rights (including any limitations on such rights) are embodied, contained, reserved, or reflected in the Works, such rights shall not be considered "Works"; however, in such instances the Successful Proposer shall (a) grant to the Texas Department of Licensing and Regulation 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 or third-party rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Texas Department of Licensing and Regulation'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, X, YouTube, etc.) and (ii) authorize others to do any or all of the foregoing; or (b) if obtaining the rights under (a) is not reasonably practical or feasible, provide written notice to the Texas Department of Licensing and Regulation of such pre-existing or third-party rights, request the Texas Department of Licensing and Regulation's approval of such 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 Department of Licensing and Regulation's written approval of such pre-existing or third party rights and the limited use of same. The Successful Proposer shall provide the Texas Department of Licensing and Regulation 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.
- 3.25.2. The Successful Proposer shall indemnify, defend, and hold the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation either (y) exceeded the scope of the limited license that was previously obtained by the Successful Proposer and agreed to by the Texas Department of Licensing and Regulation, 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.
- 3.25.3. The Successful Proposer agrees that it shall have and maintain, during its 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 Department of Licensing and Regulation promptly upon request.

3.26. 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 Department of Licensing and Regulation with continued and uninterrupted use of the Works and Intellectual Property Rights therein: (a) obtain for the Texas Department of Licensing and Regulation the right to continue the use of the alleged infringing Works at no additional cost to the Texas Department of Licensing and Regulation, 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 Department of Licensing and Regulation, and subject to the acceptance of the Texas Department of Licensing and Regulation in its sole discretion.

3.27. 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 Department of Licensing and Regulation and do not infringe the Intellectual Property Rights of any third person or entity. The Successful Proposer holds the Texas Department of Licensing and Regulation harmless from the infringement of such Works, as set forth above. The Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation will withhold indemnified losses from payments to the Successful Proposer, or, if no payments are made, the Texas Department of Licensing and Regulation will make demand of payment of indemnified losses. The Successful Proposer shall make payment within thirty (30) Days of the Texas Department of Licensing and Regulation's demand.

3.28. 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 Department of Licensing and Regulation, 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 seven (7) full years after (i) the expiration date of the Contract, or (ii) final payment under the Contract, whichever is later.

3.29. Right to Audit

The Successful Proposer understands that acceptance of state funds under the Contract acts as acceptance of the authority of the State Auditor's Office, or its designee, to conduct an audit, other assurance services, 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, other assurance services, or investigation, including providing all records requested. The Successful Proposer will ensure that this provision 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, work papers, and records of the Successful Proposer relating to the Contract for any purpose.

3.30. Audit Requirements

The Successful Proposer shall meet specific auditing obligations:

- a. The Successful Proposer shall be required to have a complete financial audit conducted annually. A copy of the Successful Proposer's audited financial statements shall be provided to the Texas Department of Licensing and Regulation annually.
- b. In addition, a complete internal control audit, in compliance with Statement on Auditing Standards No. 70 (SAS 70) requirements, of the Successful Proposer's Texas operations shall be conducted annually by an independent certified public accounting firm. The Successful Proposer shall pay for all audit services. This audit shall be conducted pursuant to SAS 70, as issued by the American Institute of Certified Public Accountants as it may be updated or amended from time to time. The Texas Department of Licensing and Regulation reserves the right to specify the type of report and the control objectives to be examined as well as the accounting firm to perform the audit. The Texas Department of Licensing and Regulation reserves the right to designate the annual period to be covered by the report relating to the internal control audit. The Successful Proposer agrees (i) to fully cooperate with any auditor retained to perform such audit; (ii) to generally release and waive any and all claims against the auditor other than those based upon intentional misconduct occurring during such audit; and (iii) to indemnify and hold harmless any auditor retained to perform such audit. The Successful Proposer agrees that any such auditor is a direct and intended third party beneficiary of this provision.
- c. The Texas Department of Licensing and Regulation's internal auditor or external auditors (and other designees) and the Texas State Auditor shall be given the right to



review the work papers of the audits conducted by any independent certified public accounting firm, if considered necessary or desirable by the Texas Department of Licensing and Regulation.

- d. The Texas Department of Licensing and Regulation's internal auditor and Executive Director shall be given a copy of all reports including any management letters issued as a result of the specified audits within ten (10) Days of issuance. Additional copies of all reports shall be made available to the Texas Department of Licensing and Regulation upon request.

3.31. Right to Additionally Audit the Successful Proposer's Texas Operations

- 3.31.1. The Texas Department of Licensing and Regulation reserves the right to audit the Successful Proposer's records and operations as they relate to the Texas Department of Licensing and Regulation. The Successful Proposer's records are subject to audit by the Texas Department of Licensing and Regulation and the Texas State Auditor. For the purpose of this provision, the Texas Department of Licensing and Regulation or Texas State Auditor may examine all books, records, papers, or other objects, as well as data and systems that the Texas Department of Licensing and Regulation or Texas State Auditor determines are necessary for conducting a complete examination. The Texas Department of Licensing and Regulation or Texas State Auditor may also examine under oath any officer, director, or employee of the Successful Proposer. The Texas Department of Licensing and Regulation or Texas State Auditor may conduct an examination at the principal office or any other office of the Successful Proposer or may require the Successful Proposer to produce the records at the office of the Texas Department of Licensing and Regulation or Texas State Auditor. If the Successful Proposer refuses to permit an examination or to answer any question during the course of an audit, the Successful Proposer is subject to sanctions as provided in the Contract.
- 3.31.2. The Successful Proposer agrees (i) to fully cooperate with any auditor retained to perform such audit; (ii) to generally release and waive any and all claims against the auditor other than those based upon intentional misconduct occurring during such audit, and (iii) to indemnify and hold harmless any auditor retained to perform such audit. The Successful Proposer agrees that any such auditor is a direct and intended third party beneficiary of this provision.

3.32. Indemnification

- 3.32.1. The Successful Proposer shall indemnify, defend, and hold the Texas Department of Licensing and Regulation, 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 3.25.2 above.

3.32.2. 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation has sole discretion as to the choice and selection of any attorney who may represent the Texas Department of Licensing and Regulation. 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.

3.33. Insurance

3.33.1. At minimum, at all times during the Contract, the Successful Proposer shall maintain the insurance coverage required in RFP Sections 3.33–3.37. The Successful Proposer shall not cause any insurance required under the Contract to cancel nor permit any insurance to lapse during the term of the Contract.

3.33.2. All required insurance shall 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.



- 3.33.3. Each insurance policy, except those for crime insurance, workers' compensation, employer's liability property and professional liability, shall name the Texas Department of Licensing and Regulation (and its officers, agents, and employees) as an additional insured on the original policy and all renewals or replacements.
- 3.33.4. Each insurance policy except for crime and property insurance shall include a waiver of subrogation in favor of the Texas Department of Licensing and Regulation, its officers, and employees for any and all insured losses, including bodily injury (including death) and property damage.
- 3.33.5. The insurance shall be evidenced by delivery to the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation shall be entitled to receive, without expense, certified copies of the policies and all endorsements. Except as otherwise expressly provided herein, required coverage shall remain in full force and effect throughout the Contract Term, and provide adequate coverage for Incidents discovered after termination of the Contract. Successful Proposer shall provide the Texas Department of Licensing and Regulation thirty (30) Days written notice of erosion of any aggregate limit. Insurance coverage shall not be canceled, non-renewed, or materially changed except after thirty (30) Days' notice by certified mail to the Texas Department of Licensing and Regulation. Actual losses not covered by insurance as required by the Contract shall be paid by the Successful Proposer.
- 3.33.6. The Successful Proposer shall 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.
- 3.33.7. The Texas Department of Licensing and Regulation reserves the right to review the insurance requirements of this section during the effective period of the Contract and to make reasonable adjustments to insurance coverage and its limits when deemed necessary and prudent by the Texas Department of Licensing and Regulation based upon changes in statutory law, court decisions, or the claims history of the industry as well as the Successful Proposer (such adjustments shall be commercially available to the Successful Proposer).

3.34. 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.



3.35. Commercial General Liability Insurance

The Successful Proposer shall 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, one million dollars (\$1,000,000) products/completed operations aggregate, one million dollars (\$1,000,000) personal and advertising injury.

3.36. Professional Liability (Errors and Omissions) Insurance

The Successful Proposer shall maintain professional liability errors and omissions insurance of not less than one million dollars (\$1,000,000), to be in force and effect during the term of the Contract including any extension thereof and one year thereafter. Coverage shall indemnify the Texas Department of Licensing and Regulation for direct loss due to errors, omissions, or problems of any type arising out of the performance of or failure to perform system services or out of the failure of hardware or software to perform the function or serve the purpose intended, for which the Successful Proposer is legally liable.

3.37. Workers' Compensation & Employer's Liability Insurance

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

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

Coverage shall include a waiver of subrogation in favor of the Texas Department of Licensing and Regulation, its officers, and employees.

3.38. Performance Bond

3.38.1. The Successful Proposer shall provide an original performance bond (as shown in Attachment E attached hereto and incorporated herein for all purposes) in the amount of twenty-five thousand dollars (\$25,000) within fifteen (15) Days of execution of the Contract. Failure to have and keep the required bond in place shall constitute a breach of the Contract.

3.38.2. The 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 thirty (30) Days prior to its expiration. Such notification, by itself, shall not constitute a breach of or default under the Contract.



- 3.38.3. All required bonds shall 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 Department of Licensing and Regulation shall be named as the obligee in each required bond.
- 3.38.4. The bond shall be maintained in full force and effect for the Contract Term. The bond shall be forfeited to the Texas Department of Licensing and Regulation if the Successful Proposer fails to perform as required by the Contract, pay sanctions or liquidated damages, or indemnify the Texas Department of Licensing and Regulation. Any alterations to the bond language as shown in Attachment E shall be approved in advance by the Texas Department of Licensing and Regulation.

3.39. Disclosure of Litigation

- 3.39.1. The Proposer shall 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 shall also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers to, 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 threatened or pending litigation that may result in a substantial change in the Proposer's financial condition, as described in Section 4.6.
- 3.39.2. This is a continuing disclosure requirement. Any litigation threatened or commencing after submission of a Proposal (and, for the Successful Proposer, after Contract Award and throughout the Contract Term) shall be disclosed in a written statement to the Texas Department of Licensing and Regulation's Lottery Program's General Counsel within fifteen (15) Days of its occurrence.
- 3.39.3. The Successful Proposer shall be required to file with the Texas Department of Licensing and Regulation 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, as well as all procurement protests or responses to procurement protests involving the Successful Proposer or its parents, subsidiaries, or affiliates.



3.40. Disclosure of Sanctions and Liquidated Damages

The Proposer shall include in its Proposal a complete list of all sanctions and liquidated damages assessed against the Proposer during the last five (5) years prior to submission of the Proposal. The Proposer shall also include in its Proposal a complete account of all goods or services provided in consideration of contractual sanctions or liquidated damages that would have been assessed, including the jurisdiction, the reason for the penalty or liquidated damages and the goods or services provided in lieu of the assessment. This is a continuing disclosure requirement, any sanctions or liquidated damages assessed after submission of the Proposal shall be disclosed in writing within fifteen (15) Days of its occurrence. The Texas Department of Licensing and Regulation reserves the right to request an updated report of all sanctions and/or liquidated damages assessed against the Successful Proposer during the term of any Contract resulting from this RFP.

3.41. Changes in Ownership

During the Contract Term, the Successful Proposer shall notify the Texas Department of Licensing and Regulation 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.

3.42. Force Majeure / Delay of Performance

- 3.42.1. Except as otherwise provided in the Contract, neither the Successful Proposer nor the Texas Department of Licensing and Regulation 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 shall inform the Texas Department of Licensing and Regulation in writing within three (3) Days of the existence of any such force majeure or otherwise waives this right as a defense.
- 3.42.2. 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 Department of Licensing and Regulation staff, the Successful Proposer shall 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 Department of Licensing and Regulation's action/inaction as a defense.

3.43. Security Requirements

- 3.43.1. Prior to beginning operations under any Contract awarded pursuant to this RFP, the Successful Proposer shall establish a security program, subject to the prior written approval of the Texas Department of Licensing and Regulation as specified in this RFP.
- 3.43.2. The Texas Department of Licensing and Regulation reserves the right to require at any time such further and additional security measures as deemed necessary or appropriate to ensure the integrity of the Successful Proposer's goods and services.

3.44. Taxes, Fees, and Assessments

- 3.44.1. The Texas Department of Licensing and Regulation 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.
- 3.44.2. 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 hereunder, whether or not such taxes are in effect as of the date the Contract is signed or become effective during the Contract Term.

3.45. Media Releases

The Successful Proposer shall not issue any media releases or publish information to the public, including on social media platforms, pertaining to this procurement process or the performance of the Contract without prior written approval of the Texas Department of Licensing and Regulation. 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 Department of Licensing and Regulation no less than two (2) Business Days prior to the deadline for the release of the information. In any instance where there is a deadline for the release of information, approval of the release by the Texas Department of Licensing and Regulation 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.

3.46. Advertising

Except as expressly authorized in this RFP, the Successful Proposer agrees not to use the Texas Department of Licensing and Regulation including Texas Lottery Program 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 Department of Licensing and Regulation.

3.47. Hiring of Texas Department of Licensing and Regulation Personnel

- 3.47.1. 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 Department of Licensing and Regulation 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.
- 3.47.2. 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 Department of Licensing and Regulation. During the Contract Term, 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.
- 3.47.3. Under Tex. Gov't Code § 572.069, the Successful Proposer certifies that it has not employed and will not employ a former state officer or employee of the Texas Department of Licensing and Regulation or the former Texas Lottery Commission who participated in a procurement or contract negotiation for the Texas Department of Licensing and Regulation or the former Texas Lottery Commission involving the Successful Proposer before the second anniversary of the date the contract was signed or the procurement was terminated or withdrawn.

3.48. 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 (i) will perform services related to the Proposer's operations or interests in the State of Texas under previously executed contracts, or (ii)



during the three (3) years prior to the issuance of the RFP, 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 Successful Proposer, after Contract Award and throughout the Contract Term, shall immediately notify the Texas Department of Licensing and Regulation in the event of a change of lobbyist, consultant, or advisor information.

3.49. 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 Department of Licensing and Regulation shall be made by personal delivery, commercial carrier, email, and/or by certified (or registered) mail return receipt requested to the Texas Department of Licensing and Regulation at the address below unless the Proposer is notified in writing by the Texas Department of Licensing and Regulation of any change:

Texas Department of Licensing and Regulation
Attention: Procurement & Contracts Management
P.O. Box 16630
Austin, Texas 78761-6630
Fax (512) 344-5064
Contracts@lottery.state.tx.us

3.50. Non-Disclosure

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

3.51. Usufruct

If, for any reason other than breach of contract by the Texas Department of Licensing and Regulation, the Successful Proposer should lose its ability to service the Contract, the Texas Department of Licensing and Regulation shall acquire a usufruct in all contractual assets, rights, and other 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 Department of Licensing and Regulation to possess and make use of such contractual items solely for the use and benefit of the Texas Department of Licensing and Regulation in operating, maintaining, altering, replacing, and improving the programs and systems being used by the Texas Department of Licensing and Regulation under the Contract. Such usufruct shall be limited in time to



the duration of the Contract Term, and in scope to programs, systems, and other items being used by the Texas Department of Licensing and Regulation under the Contract.

3.52. Ticket Purchase

3.52.1. Under Tex. Gov't Code § 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 Program ticket or be paid a prize in any Texas Lottery Program 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 Program 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 Department of Licensing and Regulation of any violation of Tex. Gov't Code § 466.254.

3.52.2. The Texas Lottery 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 Texas Department Of Licensing And Regulation 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.

3.53. End of Contract Conversion

The Successful Proposer shall cooperate fully with the Texas Department of Licensing and Regulation throughout the period in which the administration of responsibilities under the Contract is transitioned or turned over to the Texas Department of Licensing and Regulation or a third party. The Successful Proposer shall continue to provide all goods and services required under the Contract without interruption or degradation in service levels during the turnover period. The Successful Proposer shall support the successor, including the sharing of files, until the Texas Department of Licensing and Regulation determines that the successor can satisfactorily maintain contract services without interruption. The Successful Proposer shall provide to the Texas Department of Licensing and Regulation or its designee promptly and without delay, at no cost, copies of all current software specifications, data files, job control language, program designs, procedures, and all other elements required to install and operate the Internal Control



System in machine readable form and/or to perform the other services required of the successor. Required technical, user, and programmer documentation, as the Texas Department of Licensing and Regulation may require, shall also be provided promptly and without delay by the Successful Proposer to the Texas Department of Licensing and Regulation or its designee. The Texas Department of Licensing and Regulation will determine when the Successful Proposer's transition services are not necessary and will provide written notice to the Successful Proposer. Through the conversion period, the Successful Proposer shall provide sufficient experienced personnel, resources, and facilities to assure that the system and services called for by the Contract are maintained at a high level of proficiency.

3.54. Equipment

The Successful Proposer hereby represents and warrants that all equipment provided shall be new, shall be free from defects in materials and workmanship, shall be merchantable and fit for the purpose for which it is intended, and shall meet or exceed the performance standards and specifications required in this Contract. Any equipment, or component thereof, used by the Successful Proposer pursuant hereto that does not conform to the foregoing shall be repaired or replaced by the Successful Proposer without cost to the Texas Department of Licensing and Regulation in addition to other amounts the Texas Department of Licensing and Regulation may be entitled to in law or in equity, or as specified in the Contract.

3.55. Programs

- 3.55.1. The Successful Proposer represents and warrants that all systems analysis, systems design, and programming prepared or done, or to be prepared or done, by the Successful Proposer, its Subcontractors, or its officers, employees, or agents in providing all required goods and services under the Contract has been and shall be prepared or done in a professional manner. All systems analysis, systems design, and programs shall be fully documented. All documentation shall also include a security risk and analysis. The Successful Proposer further hereby represents and warrants that all programs provided under the Contract shall meet the performance standards required in the Contract and shall correctly and accurately perform their intended functions.
- 3.55.2. The Successful Proposer hereby warrants that all Internal Control System software is maintainable and reusable. The Successful Proposer warrants and represents that all software used by the Successful Proposer in the performance of any and all Contract requirements in the ICS shall be written in languages that can be maintained and supported by the Texas Department of Licensing and Regulation and/or any third- party contractor selected by the Texas Department of Licensing and Regulation. The Successful Proposer hereby warrants that all Internal Control System software shall be documented. The Successful Proposer hereby warrants that all software developed for the Texas Department of Licensing and Regulation and all modifications to existing software developed pursuant



to this Contract will be delivered in a format including both source code and object code, such that such software can be readily modified, compiled, and maintained by the Texas Department of Licensing and Regulation and/or a third-party contractor selected by the Texas Department of Licensing and Regulation; provided however, that delivery of the source code format, to the extent such software does not constitute Works, will be only into escrow pursuant to Section 3.55.5, and subject to the terms and conditions of the Source Code Escrow Agreement contemplated by said Section 3.55.5.

- 3.55.3. Programming languages, tools, and methodologies used by the Successful Proposer in performance of Contract obligations shall be approved as supportable by the Texas Department of Licensing and Regulation prior to their use by the Successful Proposer. The Successful Proposer shall support all Internal Control System software for the term of the Contract and any extension thereof. If the programming support software is not available in the open normal data processing market, then the Successful Proposer shall be required to supply to persons designated by the Texas Department of Licensing and Regulation all compilers and all normal programming support software, which is available to the Successful Proposer's software staff, as well as appropriate and necessary training.
- 3.55.4. The Successful Proposer shall deliver copies of all Works to the Texas Department of Licensing and Regulation promptly after they are completed. If the Works include computer software, the Successful Proposer shall deliver copies of source code as well as object code of such software, and entity relationship diagrams, in addition to technical documentation sufficient for an average programmer to understand, modify, compile, and execute the software. The Successful Proposer shall clearly label the media containing any Works to identify the Works contained in the media.
- 3.55.5. The Successful Proposer shall enter into a source code escrow agreement with the Texas Department of Licensing and Regulation and designate an escrow agent acceptable to the Texas Department of Licensing and Regulation for the source code and system and/or technical documentation for those portions of the software that do not constitute Works (the Source Code Escrow Agreement). The Successful Proposer shall be responsible for all charges associated with the escrow of the source code. The Successful Proposer shall continuously maintain and perform all of the respective obligations of the Source Code Escrow Agreement in accordance with the terms of the Source Code Escrow Agreement. At a minimum, the Source Code Escrow Agreement shall provide for release of the source code to the Texas Department of Licensing and Regulation in the event of termination for cause of this Contract under Section 3.16. The Source Code Escrow Agreement shall not permit the Successful Proposer to give contrary instructions to the escrow agent in the event that the Texas Department of Licensing and Regulation sends the agent a certified letter indicating that a release condition has occurred. The Texas Department of Licensing and Regulation shall have full rights of inspection during the term of the Source Code Escrow Agreement. By executing the Contract, the Successful Proposer grants the Texas Department of Licensing and Regulation a non-exclusive, worldwide, perpetual, irrevocable, and royalty-free right and license to use, have used, modify, have modified, compile, have compiled, execute, have executed, display, have displayed, and operate and



have operated the source code for the software necessary to operate the Internal Control System; it being understood, however, that the Texas Department of Licensing and Regulation shall only exercise its rights under this license with respect to the source code released from the source code escrow pursuant to the terms and conditions of the Source Code Escrow Agreement. In such event, the Texas Department of Licensing and Regulation may allow access to the source code by third-party contractors, but only if the Texas Department of Licensing and Regulation enters into a non-disclosure agreement with such third party requiring the third party to maintain the source code in confidence, not to use the source code for any other purpose other than to support the Texas Department of Licensing and Regulation, and naming the Successful Proposer as a third-party beneficiary of such non-disclosure agreement. The Texas Department of Licensing and Regulation and the Successful Proposer intend that the Texas Department of Licensing and Regulation shall have all rights afforded to licensees under section 365(n) of the U.S. Bankruptcy Code (and any successor thereto) in connection with any bankruptcy of the Successful Proposer.

3.56. Internal Control System Purchase Option

In the event that the Texas Department of Licensing and Regulation exercises its option to purchase the Internal Control System equipment pursuant to section 3.20(b) of this RFP or any resulting Contract, the Texas Department of Licensing and Regulation shall have an irrevocable, perpetual, worldwide, royalty-free right and exclusive license to use third-party software or software developed by the Successful Proposer and received by the Texas Department of Licensing and Regulation from the Successful Proposer under the Contract in order to operate in Texas any equipment provided under the Contract by the Successful Proposer.

3.57. Liquidated Damages

3.57.1. **General.** It is agreed by the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation will result;
2. Establishing the precise measure of damages in the event of a default by the Successful Proposer relating to matters listed in the liquidated damages schedule will be (i) costly, (ii) time consuming, and/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;



6. The Texas Department of Licensing and Regulation may, therefore, in its sole discretion, deduct damages from the compensation otherwise due to the Successful Proposer. All assessments of liquidated damages shall be within the sole discretion of the Texas Department of Licensing and Regulation; and
7. Liquidated damages are not intended to be exclusive of any other available remedy or penalty under the Contract.

3.57.2. **Liquidated Damages Assessment.** Once the Texas Department of Licensing and Regulation 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 Department of Licensing and Regulation's assessment of damage and is not a condition precedent thereto. The Texas Department of Licensing and Regulation will withhold liquidated damages from payments to the Successful Proposer, or, if no payments have been made, the Texas Department of Licensing and Regulation will make demand of payment of liquidated damages. The Successful Proposer shall make payment within thirty (30) Days of the Texas Department of Licensing and Regulation's demand. In the event the Successful Proposer fails to pay within the thirty (30) Day period, the Texas Department of Licensing and Regulation may make a claim for payment against the performance bond under Section 3.38, with or without notice to the Successful Proposer.

3.57.3. **Failure to Assess Liquidated Damages.** The failure of the Texas Department of Licensing and Regulation to assess liquidated damages in any instance where the Texas Department of Licensing and Regulation is entitled to liquidated damages pursuant to the terms of this RFP or the Contract shall not constitute a waiver in any fashion of the Texas Department of Licensing and Regulation's right to assess liquidated damages.

3.57.4. **Severability of Individual Liquidated Damages Clauses.** If any portion of these liquidated damages provisions or the schedule is determined to be unenforceable, the other portions of these provisions and the schedule shall remain in full force and effect.

3.57.5. **Out-of-Balance Condition Between ICS and Lottery Gaming Systems.** If an out-of-balance condition exists in transactions or amounts between ICS and the Lottery Gaming System during nightly transaction processing due to the failure of the ICS, the Successful Proposer may be assessed liquidated damages in the amount of one thousand dollars (\$1,000) per incident.

3.57.6. **Inability of the Internal Control System to Provide Interface Files or Reports.** If the Internal Control System fails to provide interface files for Texas Department of Licensing and Regulation or third party applications as required under Section 6.9.4 of this RFP or produce reports as required under Section 6.17.2 of this RFP due to failure of the ICS, the Successful Proposer may be assessed liquidated damages in the amount of one hundred dollars (\$100) per Day or part of a Day until the interface file is completed or the report has been provided.



- 3.57.7. ***Failure to Respond to a Service Request from the Texas Department of Licensing and Regulation within Fifteen (15) Minutes.*** The failure of the Successful Proposer to respond to a service request from the Texas Department of Licensing and Regulation within fifteen (15) minutes, pursuant to Section 6.10 of this RFP, may result in the Successful Proposer being assessed liquidated damages in the amount of five hundred dollars (\$500) per service request for the initial 15 minutes of delay and one hundred dollars (\$100) for each 15 minutes thereafter until the Successful Proposer has provided a response. No assessment for any single service request will exceed one thousand dollars (\$1,000).
- 3.57.8. ***Failure to Meet Conversion Deadlines.*** The failure of the Successful Proposer to meet the conversion deadlines as set in the Project Work Plan required under Section 6.20 of this RFP may result in the Successful Proposer being assessed liquidated damages in the amount of \$5,000 five thousand dollars (\$5,000) per incident, plus \$1,000 for each additional Day of delay until the deadline is met. Liquidated damages for any single incident (under this subsection) will not exceed ten thousand dollars (\$10,000).
- 3.57.9. ***Inability of the Ticket Inquiry Application to Verify the Authenticity of Winning Tickets.*** If the ticket inquiry application fails to verify the authenticity of valid winning tickets or fails to meet any other software requirements, the Successful Proposer may be assessed liquidated damages in the amount of one thousand dollars (\$1,000) per incident.

3.58. Sanctions and Remedies Schedule

- 3.58.1. ***General.*** Tex. Gov't Code § 2261.101 requires that all state contracts contain a remedies schedule, a graduated sanctions schedule, or both, for breach of contract or substandard performance. 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." Sanctions are not intended to be exclusive of any other available remedy or penalty under the Contract.
- 3.58.2. ***Assessment of Sanctions.*** Once the Texas Department of Licensing and Regulation 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 or delay in notifying does not impact the Texas Department of Licensing and Regulation's assessment of sanctions and providing notice is not a condition precedent thereto. The Texas Department of Licensing and Regulation will withhold sanctions from payments to the Successful Proposer, or, if no payments are to be made, the Texas Department of Licensing and Regulation will make demand of payment of sanctions. The Successful Proposer shall make payment within thirty (30) Days of the Texas Department of Licensing and Regulation's demand. In the event the Successful Proposer fails to pay within the thirty (30) Day period, the Texas Department of Licensing and Regulation may make a claim for payment against the performance bond under Section 3.38, with or without notice to the Successful Proposer.



- 3.58.3. ***Failure to Assess Sanctions.*** The failure of the Texas Department of Licensing and Regulation to assess sanctions in any instance where the Texas Department of Licensing and Regulation is entitled to sanctions pursuant to the terms of this RFP or the Contract shall not constitute a waiver in any fashion of the Texas Department of Licensing and Regulation's right to assess sanctions.
- 3.58.4. ***Severability of Individual Sanctions Clauses.*** If any portion of this sanction provision or the schedule is determined to be unenforceable, the other portions of this provision and the schedule shall remain in full force and effect.
- 3.58.5. ***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 3.12 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.
- 3.58.6. ***Failure to Disclose Litigation, Sanctions or Liquidated Damages.*** The failure of the Successful Proposer to disclose litigation, sanctions, or liquidated damages as required by sections 3.40 and 3.41 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per incident.
- 3.58.7. ***Failure to Obtain Prior Written Approval before Issuing Media Release.*** The failure of the Successful Proposer to comply with the requirements in Section 3.45 of this RFP regarding the issuance of news releases may result in the Successful Proposer being assessed sanctions in the amount of one hundred dollars (\$100) per incident.
- 3.58.8. ***Purchase of Texas Lottery Program Tickets.*** The failure of the Successful Proposer to comply with the requirements of RFP Section 3.52 regarding the purchase of Texas Lottery Program tickets may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.
- 3.58.9. ***Failure to Report Significant Incidents and Anomalies and/or to Comply with the RFP Code of Conduct Requirements.*** The failure of the Successful Proposer to report all significant incidents and anomalies to the Texas Department of Licensing and Regulation as required in Section 3.71 of this RFP and or comply with the code of conduct requirements in Section 3.69 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of five hundred dollars (\$500) per incident.
- 3.58.10. ***Failure to Notify the Texas Department of Licensing and Regulation of a Change in Financial Condition or Change of Ownership or Control.*** The failure of the Successful Proposer to notify the Texas Department of Licensing and Regulation of a change in financial condition or change of ownership or control as required by Section 4.6 this RFP may result in the Successful Proposer being assessed sanctions in the amount of one hundred dollars (\$100) per incident.



- 3.58.11. ***Failure to Permit an Examination, Produce Requested Records/Information or Reports, or Provide an Answer.*** Unless otherwise specified in this RFP or any Contract resulting therefrom, the Successful Proposer shall permit an examination, produce requested records/reports or information, or provide an answer in response to a Texas Department of Licensing and Regulation inquiry within five (5) Business Days. Failure to respond before the deadline may result in the Successful Proposer being assessed sanctions in the amount of one hundred (\$100) per Day for each Day the examination is not permitted, the information or records/reports are not produced, or the answer is not provided.
- 3.58.12. ***Unauthorized Disclosure.*** The failure of the Successful Proposer to comply with the non-disclosure requirement in Section 3.5047 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of ten thousand dollars (\$10,000) per incident.

3.59. Dispute Resolution

The dispute resolution process provided for in Tex. Gov't Code ch. 2260 and 16 Tex. Admin. Code ch. 140 shall be used by the Successful Proposer to attempt to resolve any disputes brought by the Successful Proposer arising under the Contract.

3.60. Certifications

- 3.60.1. Under Tex. Gov't Code § 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 § 466.155. All Proposers shall read and be familiar with Tex. Gov't Code § 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 § 466.155 and neither the Proposer nor any of the following persons would be denied a license as a sales agent under said section: (a) Proposer's officers, directors, investors, owners, partners and other principals, as more particularly described in Tex. Gov't Code § 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.
- 3.60.2. Under Tex. Fam. Code § 231.006, 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 § 231.006 shall include names and social security numbers of each person with at least twenty-five percent (25%) ownership of the business entity submitting the Proposal. This information shall be provided prior to Contract Award.
- 3.60.3. Under Tex. Gov't Code § 2261.053, 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; or convicted of any offense related to the direct support or promotion of human trafficking. In submitting a Proposal under this RFP, the Proposer certifies as follows: "Under Section 2261.053, 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 the Contract may be terminated, and payment withheld if this certification is inaccurate."

- 3.60.4. 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 §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.
- 3.60.5. The Proposer certifies that it is in compliance with Tex. Gov't Code § 669.003, relating to contracting with the executive head of a state agency. If § 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

- 3.60.6. 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. Gov't Code § 2252.001.
- 3.60.7. The Texas Department of Licensing and Regulation 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.



- 3.60.8. Under Tex. Gov't Code § 2155.004, the Proposer has not received compensation from the Texas Department of Licensing and Regulation 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 the Contract may be terminated and payment withheld if this certification is inaccurate."
- 3.60.9. Under Tex. Gov't Code § 2252.907, the Successful Proposer is required to make and shall make any information created or exchanged with the State under the 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.
- 3.60.10. Under Tex. Gov't Code § 2271.002, the Executive Director may not award a contract for goods or services unless the contract contains a written verification from the Proposer that it: (1) meets exemption criteria under §2271.002; or (2) will not boycott Israel during the term of the contract. Proposer shall state any facts that make it exempt from the boycott certification in its Proposal. 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.
- 3.60.11. Under Tex. Gov't Code § 2252.152, a state agency may not award a contract to a person engaged in business with Iran, Sudan, or a known foreign terrorist organization as defined in § 2252.151. The Proposer certifies it is not ineligible to receive a State contract under § 2252.152.
- 3.60.12. Under Tex. Gov't Code § 2155.0061, a state agency may not accept a Proposal or award a contract if the Contract includes the financial participation by a person who, within a five-year period from the date of the Proposal or award, has been convicted of any offense related to the direct support or promotion of human trafficking. The Proposer certifies that the individual or business entity named in this Proposal is not ineligible to receive the specified contract and acknowledges that the Contract may be terminated, and payment withheld if this certification is inaccurate.
- 3.60.13. Under Tex. Gov't Code § 2276.002, a state agency may not award a contract for goods or services unless the Contract contains a written verification from the bidder that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the Contract. By signing and submitting a Proposal, the Proposer certifies that it does not boycott energy companies and will not boycott energy companies during the term of the Contract.
- 3.60.14. Under Tex. Gov't Code § 2274.002, a state agency may not award a contract for goods or services unless the Contract contains a written verification from the bidder that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the Contract against a firearm entity or firearm trade association. By signing and submitting a Proposal, the Proposer certifies that it does not discriminate against a firearm entity or firearm trade



association and will not discriminate against a firearm entity or firearm trade association during the term of the Contract.

- 3.60.15. The Proposer agrees to comply with Tex. Gov't Code § 2155.4441, pertaining to service contract use of products produced in the State of Texas.
- 3.60.16. Under Texas Health and Safety Code § 161.0085, a state agency may not enter a contract payable with state funds with a business in this state that requires a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive services. By signing and submitting a Proposal, the Proposer certifies that, if it is a business in this state, it does not require a customer to provide any documentation certifying a customer's COVID-19 vaccination or post-transmission recovery upon entry to, to gain access to, or to receive services and will not require such during the term of the Contract.
- 3.60.17. Pursuant to the Governor's Executive Order (EO) GA-48, issued November 19, 2024, the Proposer certifies that neither it, nor its holding companies or subsidiaries, is:
- (a) Listed in Section 889 of the 2019 National Defense Authorization Act;
 - (b) Listed in Section 1260H of the 2021 National Defense Authorization Act; or
 - (c) Owned by the government of a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4; or
 - (d) Controlled by any governing or regulatory body located in a country on the U.S. Department of Commerce's foreign adversaries list under 15 C.F.R Section 791.4.

3.61. Preferences

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

3.62. 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, 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.



3.63. 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.

3.64. 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).

- 3.64.1. 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.
- 3.64.2. Upon request, but not later than thirty (30) Days after request, the Successful Proposer shall provide the Texas Department of Licensing and Regulation 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 of 1973).

3.65. Cybersecurity Training, Cloud Computing, Data Protection and Security

- 3.65.1. As required by Tex. Gov't Code § 2063.104, any contractor with access to a Texas Department of Licensing and Regulation computer system or database shall complete a cybersecurity training program certified under § 2063.104. The Successful Proposer shall verify completion and sign the Texas Department of Licensing and Regulation's Information Security Agreement prior to receiving access to computer systems or databases.
- 3.65.2. The Successful Proposer agrees that it will not utilize any Prohibited Technologies on any of the Successful Proposer's or its employees' personally-owned devices used to access state- owned data, including cell phones, tablets, desktop and laptop computers, and other internet-capable devices. "Prohibited Technologies" refers to software applications and hardware products with security concerns made by manufacturers on the prohibited technologies list (as it may be updated over time) located on the Texas Department of Information Resources' (DIR) website at: <https://dir.texas.gov/information-security/prohibited-technologies>. In addition to the DIR list, the Texas Department of Licensing and Regulation in its sole discretion may designate additional prohibited technologies. The Successful Proposer's employees may be required to review the Texas



Department of Licensing and Regulation's Information Technology Security Manual and sign the Texas Department of Licensing and Regulation's Information Security Agreement.

- 3.65.3. Under Tex. Gov't Code § 2063.408, any cloud computing services utilized by the Successful Proposer under the Contract resulting from this RFP shall comply with the requirements of the state risk and authorization management program. The Successful Proposer shall maintain program compliance and certification throughout the Contract Term and shall be required to demonstrate compliance with program requirements upon the Texas Department of Licensing and Regulation's request.
- 3.65.4. In accordance with Tex. Gov't Code § 2054.138, the Successful Proposer certifies that it will comply with the security controls established by the Texas Department of Licensing And Regulation and will maintain records and make them available to the Texas Department Of Licensing And Regulation upon request as evidence of Respondent's compliance with the required controls.
- 3.65.5. The Successful Proposer agrees that all products and/or services provided under the Contract that are equipped with data storage (i.e. computers, telephones, printers, fax machines, scanners, multifunction devices, etc.) shall have the capability to securely erase data written to the data storage device prior to final disposition of such products and/or services, either at the end of the product's useful life or the end of the related services contract for such products and/or services, in accordance with 1 TAC Chapter 202.

3.66. 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 having made 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 Department of Licensing and Regulation may reject the Proposal or if the determination is made after Contract Award, the Texas Department of Licensing and Regulation may terminate the Contract for cause and pursue all other remedies available to the Texas Department of Licensing and Regulation under the RFP, the Contract, and applicable law.

3.67. Limitation on Authority; No Other Obligations

The Successful Proposer shall have no authority to act for or on behalf of the Texas Department of Licensing and Regulation 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 as the Texas Department of Licensing and Regulation's agent; any such contract is invalid and cannot be enforced against the Texas Department of Licensing



and Regulation. 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 Department of Licensing and Regulation.

3.68. Proposer Assignment

The Successful Proposer hereby assigns to the Texas Department of Licensing and Regulation 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 §15.01, et seq.

3.69. Code of Conduct

The Texas Department of Licensing and Regulation 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 Program 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 Program, 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 or the Contract immediately and only to the Texas Department of Licensing and Regulation.
- f. Otherwise comply with the State Lottery Act (Tex. Gov't Code ch. 466) and Texas Department of Licensing and Regulation rules, procedures, and policies.
- g. Provide best practices related to security and integrity standards within the industry.

3.70. Contact with Texas Department of Licensing and Regulation

3.70.1. 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 Department of Licensing and Regulation employee. For purposes of this section, "gift" has



the meaning set forth at Tex. Occ. Code § 51.001(2-a) as that definition may be amended by acts of the Texas Legislature.

- 3.70.2. 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 Department of Licensing and Regulation 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 Department of Licensing and Regulation business with any Texas Department of Licensing and Regulation employee.
- 3.70.3. Professional socialization at activities, such as industry trade conferences and site visits, is permitted.

3.71. Incidents and Anomalies

The Successful Proposer shall report immediately all significant Incidents and anomalies to the Texas Department of Licensing and Regulation, followed by a written report to be submitted within one (1) Business Day 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 Department of Licensing and Regulation, lottery retailers, or players, and deviation from established procedures and those items where sanctions or liquidated damages are applicable.

3.72. Third-Party Systems, Terminals, or Products

- 3.72.1. The Texas Department of Licensing and Regulation reserves the right to require the Successful Proposer to allow any required access to, and provide support to, the Texas Department of Licensing and Regulation and to any Texas Department of Licensing and Regulation vendor regarding the Internal Control System or otherwise installing products or systems other than those required by this RFP.
- 3.72.2. The Successful Proposer shall supply the Texas Department of Licensing and Regulation specifications to permit products other than products produced by the Successful Proposer to attach to the Internal Control System and carry out all functions and capabilities required by the Texas Department of Licensing and Regulation. The Successful Proposer shall provide support and access to the Texas Department of Licensing and Regulation vendor for additional products including, but not limited to, providing facilities and support to allow other parties to attach, install and/or test products. The Texas Department of Licensing and Regulation will monitor progress to ensure full cooperation.



3.72.3. The Successful Proposer is solely responsible for ensuring its interests in its intellectual property are protected by appropriate confidentiality agreements. Should the Texas Department of Licensing and Regulation propose to add any products or systems not provided for in this RFP or the Contract but for which the Successful Proposer would be responsible, appropriate compensation to the Successful Proposer would be negotiated.

3.73. Records Retention

The Successful Proposer shall review the Records Retention Schedule prepared by the Texas Department of Licensing and Regulation and approved by the Texas State Library and Archives Commission (the "Retention Schedule"), including periodic revisions thereto, and, in cooperation with the Texas Department of Licensing and Regulation, determine which records generated or held by the Successful Proposer are subject to the Retention Schedule. The Records Retention Schedule will be provided to the Successful Proposer after Contract Award. The Successful Proposer shall conform to the Retention Schedule and other applicable law regarding retention of records, including Texas Government Code sections 441.180–.205. The Successful Proposer shall give the Texas Department of Licensing and Regulation at least thirty (30) Days advance notice of any planned destruction of records subject to the Retention Schedule. No record subject to the Retention Schedule or Texas Government Code chapter 441 shall be destroyed without prior written approval from the Texas Department of Licensing and Regulation.

3.74. U.S. Department of Homeland Security's E-Verify System

By entering into the Contract, the Successful Proposer certifies and ensures that it utilizes and will continue to utilize, for the Contract Term, 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.

3.75. Non-Exclusive Contract

The Texas Department of Licensing and Regulation 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.



3.76. Survival

Provisions of this RFP which of their nature and effect are necessary to enable the Texas Department of Licensing and Regulation to carry out its functions in the normal course of business and to meet all of its obligations shall survive any termination or expiration 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 the Contract Term.



4. REQUIRED INFORMATION

4.1. Experience of Responding Firm and Product

The Proposer shall provide the following information relating to its experience:

- 4.1.1. Years of Experience. The Proposer shall indicate the number of years' experience the Proposer has in providing the services as specified in this RFP and shall include detailed descriptions documenting its experience for all engagements of comparable complexity and scale for the past five (5) years.
- 4.1.2. Proposers shall indicate any previous lottery experience or other relevant experience providing similar services to governmental or private entities, including name of the entity, type of work performed, and duration of project.
- 4.1.3. The description of experience shall be detailed and cover all contracts and engagements the Proposer and any subcontractors have or have had that provided experience of comparable complexity and sensitivity to the requirements of this RFP which qualifies the Proposer to meet the requirements of this Contract. The description of comparable engagements and contracts shall be detailed and cover the contracts the Proposer and any subcontractors have had and all experience similar to this Contract which qualifies the Proposer to meet the requirements of this Contract, including, but not limited to:
 - (a) Size of contract (including dollar 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 proposer or subcontractor.
 - (d) Term and type of contract, including effective dates.
 - (e) Any problems encountered.
- 4.1.4. The Proposer shall state in its Proposal 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 sanctions or liquidated damages under any existing or past contracts with any state, provincial, or other lottery, and if so, note the jurisdiction, the reason for and the amount of the sanction or liquidated



damages for each incident. (See Section 3.40 for continuing disclosure requirement.)

- (c) The Proposer has had any material or significant audit findings.
- (d) 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.
- (e) The Proposer has been involved in any material civil or criminal litigation or indictment either threatened or pending as fully described in Section 3.39.
- (f) The Proposer has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a gaming license of any kind, or had fines, penalties, sanctions, or liquidated damages assessed against its gaming license, contract, or operation, and the disposition of such in each such state or jurisdiction. If any lottery or gaming license or contract has been revoked or terminated or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six (6) months, all of the facts and circumstances underlying the revocation, termination, non-renewal, or the failure to receive such a license shall be disclosed.

4.2. Experience of Personnel

- 4.2.1. Proposers shall provide sufficient detail and support information to demonstrate the Proposer's ability to perform the services specified in this RFP. Proposers shall demonstrate experience providing and administering an Internal Control System for high volume and secure transactions. All key management personnel should be experienced in providing and supporting internal control systems.
- 4.2.2. Proposers shall include specific experience and expertise providing and supporting internal control systems including networking, security, systems administration, database administration and application server administration.
- 4.2.3. Proposers shall provide resumes for all key management staff who will support the Texas Lottery Program account. This should include, without limitation, the following positions:
 - (a) Account Manager and any other officers or key personnel who will provide direction or oversight to the Texas Lottery Program account.
 - (b) Software Development Manager and any other staff who will have development or oversight of system operations for the Texas Lottery Program account.
 - (c) Implementation and conversion staff, including the technical project manager who will be on-site during critical times of acceptance testing and conversion, as determined by the Lottery.



- 4.2.4. Each resume shall include (i) the proposed position to which the individual will be assigned for the Contract; (ii) the position such individual currently holds with the Proposer or its subcontractor(s); (iii) a brief description of such individual's responsibilities for the Contract; and (iv) a description of the experience that qualifies the individual to perform such responsibilities, including any previous lottery experience.
- 4.2.5. Texas Department of Licensing and Regulation reserves the right to verify all information in the resumes submitted by the Proposer, including contacting previous employers or firms for which work experience is indicated. Intentional or negligent misstatements of experience, scope of prior projects or results of work on prior projects may be grounds for disqualification of the Proposal.

4.3. Proposer References

A minimum of five (5) verifiable references shall be provided that include the contact person, name of company, phone, email address and descriptions of services provided. Proposers' references shall include references for which the Proposer has provided similar services as described in Part 6 of this RFP within the last five (5) years. Texas Department of Licensing and Regulation 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.

4.4. Contact Person

- 4.4.1. Each Proposer shall provide the name, address, telephone number, and email address of a person to contact concerning questions regarding its Proposal.
- 4.4.2. 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 4.4.1) concerning the Contract.

4.5. Conflict of Interest

- 4.5.1. The Proposer shall disclose any actual, potential, or perceived conflict of interest relative to the performance of the requirements of this RFP. The Proposer shall 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 Texas Department of Licensing and Regulation (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 Department of Licensing and Regulatory and Texas Lottery Program contracts over \$100,000, including major and prime contracts, is found at the following website links:



<https://www.tdlr.texas.gov/misc/Contracts-and-Purchase-Orders-report.xlsx>

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

Failure to promptly disclose any such relationship may be a cause for disqualification of a Proposal.

- 4.5.2. This is a continuing disclosure requirement for all Proposers throughout the procurement. For the Successful Proposer, there is also a continuing disclosure requirement after Contract Award and throughout the Contract Term to 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 and the Contract at the time such conflict is identified. Failure to promptly notify the Texas Lottery may be a cause for rejecting the Proposal, sanctioning the Successful Proposer, or exercising any other appropriate remedy under the Contract.

4.6. Financial Soundness

- 4.6.1. Each Proposer shall provide evidence of financial responsibility and stability for performance of the Contract and shall demonstrate the ability to finance the project described in its submission.
- 4.6.2. 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 shall 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 shall complete Attachment B, and the Proposer shall 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 shall 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:

- 4.6.3. Unaudited financial statements accompanied by a line of credit from a third-party financial institution stating the credit amount and available balance.
- 4.6.4. 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.
- 4.6.5. Any other financial information Proposer would like to be considered.
- 4.6.6. If the information in Section 4.6.2 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.
- 4.6.7. The Texas Lottery reserves the right to require any additional information necessary to determine the financial responsibility and stability of the Proposer.
- 4.6.8. The Proposal shall include a certification that the Proposer will notify the Texas Lottery of a change in financial condition during the Contract Term. 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 shall 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.

4.7. Background Investigations

- 4.7.1. Vendor Background Investigation. Under Tex. Gov't Code § 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 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 § 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 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.

- 4.7.2. 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."
- 4.7.3. 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 (1) 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 Texas Lottery facilities; and/or
- they have direct access to Texas Lottery information systems.

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

4.8. Disclosure of Interested Parties

Under Tex. Gov't Code § 2252.908, 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/filinginfo/1295/>). 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. HUB 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 https://texas-sos.appianportalsgov.com/rules-and-meetings?chapter=20&division=1&interface=VIEW_TAC&part=1&subchapter=D&title=34). 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 shall include an HSP (Attachment C, including Method A or B, if applicable) in the format required by the CPA. 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 shall 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 CPA'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 Texas Lottery's Pre-Bid/Proposal Conference Booklet regarding HSP requirements is available on the agency's website at:



https://www.texaslottery.com/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 CPA 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 Texas Lottery 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 Texas Lottery 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. Texas Lottery Program will compile and post a separate HSP question-and-answer document on the Texas Lottery Program website. The document will be updated as questions are submitted. It is the Proposer's responsibility to check the Texas Lottery Program website for this information.
 - The Texas Lottery 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 shall be concluded by the date and time listed in the Schedule of Events. Workshops may be conducted via Zoom, TEAMS or telephone conference. Proposers are responsible for contacting the Texas Lottery to schedule a workshop during the specified time period. Proposers may schedule workshops up until the final date listed in the Schedule of Events.
 - The Texas Lottery will review and provide individual written feedback on draft HSP forms submitted by Proposers. Draft HSP forms shall be submitted by the date and time listed in the Schedule of Events. Upon request, the Texas Lottery may also provide verbal feedback.

Note that "draft HSP forms" consist only of the forms included in Attachments C, and C-2 of the RFP and documentation related to performance of the good faith effort. In reviewing draft forms, the Texas Lottery will not comment on responses 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 Texas Lottery as part of the draft HSP.

One-on-one workshops and the Texas Lottery'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. Texas Lottery's HUB Utilization 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 21.60%.

5.4.2. Requirements of the HUB subcontracting plan. Each Proposer shall complete the HSP forms prescribed by the CPA (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 § 2161.252(b).

5.4.3. Proposer Intends to Subcontract

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

(1) Solicitation Method. To complete the solicitation method, the Proposer shall comply with all requirements of this clause.

(A) The Proposer shall divide the work into reasonable lots or portions consistent with prudent industry practices.

(B) The Proposer shall notify, in writing, at least two trade organizations or development centers that serve economically disadvantaged persons, of the subcontracting opportunities that the Proposer intends to subcontract.

(C) The Proposer shall notify, in writing, at least three HUBs of the subcontracting opportunities that the Proposer intends to subcontract. The Proposer shall provide the notice described in this subclause to three or more HUBs per subcontracting opportunity that provide the type of work required.



(D) The notices required by subparagraphs (B) and (C) of this paragraph shall include the scope of work, information regarding location to review plans and specifications, information about bonding and insurance requirements, required qualifications, and other contract requirements and identify a contact person.

(E) The Proposer shall provide the notices required by subparagraphs (B) and (C) of this paragraph at least seven Business days prior to submission of the response. **Neither the day on which the notice is sent nor the day on which the Proposer submits its response count as one of the required seven Business days.** A state agency may determine that circumstances require a different time period than seven Business days but shall notify potential vendors of the requirement and document the justification in the contract file.

(F) The Proposer shall submit documentation of having provided the notices required by subparagraphs (B) and (C) of this paragraph, including copies of relevant correspondence with the recipients, with its HUB subcontracting plan.

(G) If the Proposer selects a non-HUB business to perform a subcontract instead of a HUB that bid for the same subcontract work, the Proposer shall include a written justification for the selection in its HUB subcontracting plan.

(H) The Proposer shall retain documentation of its compliance with each aspect of the solicitation method and submit it to the state agency upon request.

(2) All-HUB-Subcontractors Method. The Proposer may use the all-HUB-subcontractors method to demonstrate a good faith effort for any subcontracting opportunity by submitting documentation that 100% of subcontracting opportunities will be performed by HUBs.

(3) Meeting-or-Exceeding-HUB-Goal Method. The Proposer may use the meeting-or-exceeding-HUB-goal method to demonstrate a good faith effort for any subcontracting opportunity by submitting documentation that it will utilize one or more HUBs to perform subcontracts with a total value that will meet or exceed the HUB utilization goal identified in section 5.4.1.

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

5.4.4. Proposer Does Not Intend to Subcontract

Self-performing Method. The Proposer may use the self-performing method to demonstrate a good faith effort for any subcontracting opportunity by providing a statement of how it intends to fulfill the entire contract, including each subcontracting opportunity, with its own equipment, supplies, materials, and employees. The Proposer shall provide the following if requested:



- (A) evidence of existing staffing to meet contract objectives;
- (B) monthly payroll records showing employees engaged in the contract;
- (C) on-site reviews of company headquarters or work site where services are to be performed; and
- (D) documentation proving employment of qualified personnel holding the necessary licenses and certificates required to perform the work.

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 shall perform the good faith effort detailed in the HSP instructions and include a compliant HSP with the Proposal.

Class 206: COMPUTER HARDWARE AND PERIPHERALS FOR MAINFRAMES AND SERVERS

Items Numbers and Commodity Descriptions:

- *61 - Monitors, Color and Monochrome, CGA, VGA, SVGA, LCD, etc.
- *87 – Servers, Mainframe Computer, Application, Database, File, Mail, Network, Web, etc.
- *89 - Storage Devices, Electronic, Disk Drive Compatible, Network Attached Storage (NAS), Storage Attached Network (SAN)

Class 209: COMPUTER SOFTWARE FOR MAINFRAMES AND SERVERS, PREPROGRAMMED

Items Numbers and Commodity Descriptions:

- *13 – Application Software, Servers
- *28 - Communications: Networking, Linking, etc., Mainframes and Servers
- *37 - Data Processing Software, Mainframes and Servers
- *38 - Database Software, Mainframes and Servers
- *43 - EDI (Electronic Data Interchange) Translator Software, Mainframes and Servers
- *91 - Utilities: Back-up, Batch File, Menus, Network Management, Operating System, Recovery, Screen, Security, Virus Protection, etc., Mainframes and Servers

Class 918 - CONSULTING SERVICES

Items Numbers and Commodity Descriptions:

- *28 - Computer Hardware Consulting
- *29 - Computer Software Consulting
- *30 - Computer Network Consulting
- *71 - IT Consulting, (Not Otherwise Classified)
- *90 - Strategic Planning and Consulting



*93 – Security and Safety Consulting

Class 920 - DATA PROCESSING, COMPUTER, PROGRAMMING, AND SOFTWARE SERVICES

Items Numbers and Commodity Descriptions:

- *24 - Data Conversion Services
- *28 - Emergency Back-up, Disaster Recovery Services and Facilities for Data Processing
- *31 - Installation of Computers, Peripherals, and Related Equipment (Including Software)
- *37 - Networking Services, Including installation, Security and Maintenance
- *40 - Programming Services, Computer, Including Mobile Device Applications
- *45 - Software Maintenance and Support Services and Updates and Data Hosting Services
- *46 - Software Updating and Upgrading Services
- *91 - Training, Computer Based, Software Supported

Class 924 - EDUCATIONAL AND TRAINING SERVICES

Items Numbers and Commodity Descriptions:

- 35 - In-Service Training, Employees
- *40 - Instructor-led, Classroom Training, Technical

Class 939 - EQUIPMENT MAINTENANCE AND REPAIR SERVICES FOR COMPUTERS, OFFICE, PHOTOGRAPHIC, RADIO AND TELEVISION EQUIPMENT

Items Numbers and Commodity Descriptions:

- *21 - Computers, Data Processing Equipment and Accessories, Not Word Processing Equipment, Maintenance and Repair

Class 990 - SECURITY, FIRE, SAFETY, AND EMERGENCY SERVICES, INCLUDING DISASTER DOCUMENT RECOVERY

Items Numbers and Commodity Descriptions:

- *29 - Disaster Preparedness and Emergency Planning Services

(*) **Automated Information Systems (AIS)**

- 5.5.2. 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 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 an HSP. The Texas Lottery does not endorse, recommend or attest to the capabilities of any company or individual listed. Note that currently active Texas-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 shall 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 HUB Coordinator for the Contract no later than ten (10) Business 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 shall be submitted, in writing, by the Successful Proposer to the Texas Lottery for prior review and shall 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. SCOPE OF SERVICES

6.1. Background

- 6.1.1. The Texas Department of Licensing and Regulation is issuing this Request for Proposals (RFP) to solicit proposals from interested vendors to develop, implement, and support an Internal Control System (ICS) for the Lottery Gaming System. The Internal Control System will independently process lottery transactions, including, but not limited to, daily sales, validation, inventory, claims, retailer management and accounting activity, for auditing, balancing, and reporting purposes.
- 6.1.2. The TDLR currently contracts with Brightstar (the Lottery Operator) for lottery operations and services. The Lottery Operator provides a Lottery Gaming System that supports real-time processing of all sales, validation, management, and inventory transactions. The Internal Control System provides independent verification of all lottery transactions processed by the Lottery Operator.
- 6.1.3. The Lottery Operator contracts with Elsym Consulting, Inc., to provide and support the TDLR's Internal Control System.
- 6.1.4. The current Lottery Operator contract expires August 31, 2028, and the TDLR anticipates the conversion to any new Lottery Gaming System to last approximately twelve (12) months. The TDLR expects the Successful Proposer's Internal Control System to be developed in coordination with the new Lottery Gaming System and both systems to be fully operational on or before, or as otherwise directed by TDLR.
- 6.1.5. The Successful Proposer shall provide and support an Internal Control System for TDLR's Lottery Program.
- 6.1.6. The goods and services to be provided by the Successful Proposer include providing the hardware and software to support a Primary, Secondary, Backup and Development/Test Internal Control System, as well as ongoing support for the associated operation, development, maintenance, security, and software enhancements of the System.
- 6.1.7. The goods and services to be provided by the Successful Proposer include providing software and support for an independent ticket inquiry application for the purpose of searching and verifying the authenticity of winning tickets.
- 6.1.8. The Successful Proposer shall coordinate with the TDLR, the Lottery Operator and the current ICS vendor to migrate from the current Internal Control System to the System provided by the Successful Proposer.



6.2. Internal Control System General Requirements

- 6.2.1. The Internal Control System shall support all Lottery Products and shall be flexible, scalable, and tailored to the business needs and rules of TDLR.
- 6.2.2. The Internal Control System shall be capable of receiving data from the Lottery Operator in near-real time for processing, without impact to any and all other functionality (e.g., balancing, auditing, reporting, etc.).
- 6.2.3. The Internal Control System shall receive data from the Lottery Operator in accordance with TDLR approved protocols, which shall include, but not be limited to, daily sales, validation, inventory, claims, and retailer management and accounting activity.
- 6.2.4. The Internal Control System shall validate the Lottery Gaming System for the following functions, but not limited to, independently reprocessing transactions, allowing auditing of the daily transactions, winner selection/verification, prize payout calculations, sales summaries, and various inquiry and reconciliation activities.
- 6.2.5. The Successful Proposer shall cooperate fully with the Lottery Operator and provide any necessary resources to maintain the linkage between the Internal Control System and the Lottery Gaming System.
- 6.2.6. The Successful Proposer's System shall adhere to all TDLR rules, regulations, all applicable banking regulations, and state and federal laws.

6.3. Out of Balance Conditions

- 6.3.1. The Successful Proposer's System shall provide automated balancing between the ICS and the Lottery Gaming System. The requirement is that there should never be an out-of-balance situation between ICS and the Lottery Gaming System. Proposers shall describe the method and timing for automated balancing processes and ensure proper support. The Successful Proposer shall provide an initial response to an out-of-balance notification within 15 minutes, updates must be provided every hour, and resolution must occur within 6 hours of notification.
- 6.3.2. An out-of-balance includes, but is not limited to, any difference in the transaction counts or dollar amounts between the Internal Control System and the Lottery Gaming System.
- 6.3.3. The Successful Proposer shall have written procedures to identify and resolve out-of-balance situations between the Lottery Gaming System and ICS and shall provide these procedures to TDLR.
- 6.3.4. Upon notification from TDLR, the Successful Proposer shall immediately investigate any out-of-balance condition, identify all data that is affected and provide recommendations to TDLR for promptly resolving the out-of-balance condition. The Successful Proposer shall



communicate the results of the investigation in writing to TDLR. TDLR will assess the impact on Lottery operations and make the final decision on whether the problem shall be solved before normal processing is resumed.

- 6.3.5. The Successful Proposer shall provide TDLR an incident report, including a root-cause analysis, any time an out-of-balance or error condition occurs. The report is due no later than close of business the first business day after the out-of-balance or error condition occurs.

6.4. ICS Application Development and Maintenance

- 6.4.1. The Successful Proposer shall develop and provide an ICS application that independently processes lottery transactions received from the Lottery Gaming System. The application shall support, including, but not limited to, daily sales, validation, inventory, claims, and retailer management and accounting transactions for auditing, balancing, and reporting purposes.
- 6.4.2. 6.4.2 The Successful Proposer shall develop, provide, and support an independent ticket inquiry application to search and verify the authenticity of winning tickets, including but not limited to Multi-State Lottery Association (MUSL) games offered in Texas. The ticket inquiry application uses data captured and secured before the draw and is based on MUSL requirements for an out-of-balance event during a draw.
- 6.4.3. The Successful Proposer shall provide programming and software application support which includes, but is not limited to, all application development, software modifications required as a result of changes to the Lottery Gaming System or TDLR internal systems, and software modifications required to correct applications to implement functional requirements.

6.5. System Architecture

- 6.5.1. New and Unused Equipment. All proposed equipment shall be new and unused. All hardware models and software versions installed at System start-up shall be the most current model and latest stable software versions.
- 6.5.2. System Configuration. TDLR requires an Internal Control System configuration capable of handling the Lottery's immediate and long-range needs throughout the Contract term and all renewal periods (if applicable). The Internal Control System shall consist of at least four (4) computer systems including hardware and software installed at two (2) different locations (Lottery Program headquarters and the Lottery's disaster recovery facility).
- 6.5.3. Proposers shall provide configuration block diagrams, down to the component level, of the proposed Internal Control System. Proposers shall identify each hardware and software item by manufacturer, product name, and model number, as applicable. For software, version numbers shall be provided. Proposers shall disclose and explain any deviations



from the suppliers' standard hardware and software products. Installation of any such deviations would require prior written approval by the TDLR.

- 6.5.4. Proposers shall describe their technical solution for an Internal Control System in detail. Proposals shall include a hardware and software technical architecture design document which clearly details all hardware components, operating system platforms, hosted software application versions/editions, database, and integration points. The design document shall include a detailed explanation of how capacity, performance, availability, reliability, and recoverability requirements will be achieved.
- 6.5.5. The Successful Proposer shall furnish, install, and maintain at least four (4) systems. The four (4) systems are: Primary, Secondary, Backup, and Development/Test. The system will include computer hardware, operating system, and application software. The Primary, Secondary and Development/Test systems will reside at Lottery headquarters and Backup system will reside at the Lottery's disaster recovery facility. The Internal Control System will receive near real time feeds from the Lottery Gaming System. The Backup Internal Control System will be for use by TDLR if the Primary and Secondary ICS should ever fail. The purpose of the Backup ICS is to ensure that TDLR can rapidly process data if the Primary and Secondary ICS fail or suffer loss of communications.
- 6.5.6. Server-Class Architecture. The Successful Proposer shall host the Internal Control System on a server class system, including server class data storage and data archival elements. The Successful Proposer shall host the Internal Control System on a robust and proven operating system platform.
- 6.5.7. Operations Procedures. The Successful Proposer shall provide TDLR's computer operations staff with written procedures including, but not limited to, day-to-day operations and failure situations. The procedures shall be clear and straightforward. Proposers shall include an example of a typical failure scenario and describe the procedures that operators would use for corrections.
- 6.5.8. Time Synchronization. All systems in the Internal Control System configuration shall have a time synchronizing mechanism to ensure consistent time recording and reporting for events and transactions. Synchronization with an external time standard is required.
- 6.5.9. Data Exchange Between Systems. During ordinary production operations, the Primary and Secondary ICS and the Lottery Gaming System will transfer data to the Backup ICS. The Backup ICS will always contain recent transactions in case a failover and recovery is needed. The System shall be able to demonstrate on a scheduled basis that the Backup ICS is fully functional by operating in production mode upon TDLR's request. In case the Backup ICS has taken over, then the Successful Proposer shall update the Primary and Secondary ICS as soon as the Primary and Secondary systems return to service, restoring the duplex/failover functionality of the Internal Control System.



- 6.5.10. ICS Backup Sizing and Architecture. The Backup ICS shall be of the same processing capacity and architecture as TDLR's Primary and Secondary ICS.
- 6.5.11. Lottery Development/Test System. The Development/Test System shall be identical in architecture and capacity to the Primary/Secondary and Backup ICS and shall include all the same software and features as does live production. In the event of failures of active production systems, the Development/Test system shall be able to be updated and activated for production.
- 6.5.12. The Successful Proposer shall not conduct software development or its own quality assurance activities on the Primary, Secondary or Backup systems, but rather shall employ its own separate development system or testing system at a location convenient for the Successful Proposer. Any system used by the Successful Proposer shall employ the same architecture and capacity as TDLR's active production System to ensure compatibility upon release for acceptance testing.

6.6. Software, Database Licenses and Hardware Maintenance

- 6.6.1. The Successful Proposer shall provide all licenses required to support the ICS and a ticket inquiry application, including upgrades necessary to support the latest available production release of all software components of the ICS. At minimum, but not limited to, the Successful Proposer shall provide licenses for operating systems, database servers, application servers, storage systems, data replication systems, backup systems, business continuity systems, and monitoring systems.
- 6.6.2. The Successful Proposer also shall service and maintain the ICS.

6.7. ICS Quantitative Performance Criteria

- 6.7.1. *Throughput.* The ICS shall be able to accept up to two hundred thousand (200,000) sales transactions per minute and up to three thousand (3,000) combined cash (validation) and cancel transactions per minute, concurrently, from the Lottery Gaming System.
- 6.7.2. *Scope.* The ICS shall have the as-delivered capacity in all hardware and software aspects to support at a minimum one hundred thousand (100,000) active and cancelled Retailers, a minimum of two hundred (200) concurrent Texas Lottery scratch ticket games, and multiple Texas Lottery draw game jackpots up to ten billion dollars (\$10,000,000,000).



6.8. Operating Hours Availability

The ICS shall accommodate near twenty-four (24) hour-a-Day sales operations as required by TDLR. Current operating hours are 12:30am - midnight (Central Time) for Draw Sales and validations. Scratch ticket sales are 24 hours-a-day.

6.9. ICS Network Interfaces

- 6.9.1. *Connection to the Lottery Gaming System.* The ICS Primary, Secondary, and Backup systems shall be configured to receive transactions from both the primary and backup systems of the Lottery Gaming System.
- 6.9.2. *Connection to TDLR's Internal Network.* All four (4) systems of the ICS will be connected to TDLR's internal network. TDLR will employ its own workstations to operate the ICS. TDLR shall provide firewall protection for these network connections.
- 6.9.3. *Near Real Time Feed and Standalone Operation.* The ICS shall receive and process near-real time feeds of gaming transactions from the Lottery Gaming System over the network connections described. In the event the network transmission fails, the ICS shall be capable of using physical media from the Lottery Gaming System as the source of ICS data and operate in a standalone mode. Proposers shall describe the ICS process that will occur in the event of a network failure.
- 6.9.4. *Interface Files.* The Internal Control System shall interface with and provide files for other Lottery or Lottery-approved third-party applications, based on TDLR's business requirements. Such interfaces may include, but are not limited to, the Lottery's retailer management, financial accounting, web pages and data warehouse systems. The Successful Proposer shall add new or modify interfaces within thirty (30) Days of written request by TDLR at no additional cost to TDLR.

6.10. Maintenance and Support

- 6.10.1. The Successful Proposer shall provide TDLR a dedicated hotline to be available seven (7) days per week, twenty-four (24) hours per Day, to address and respond to out-of-balance conditions and resolve high priority or escalated issues. The Successful Proposer shall respond to a service request within fifteen (15) minutes of being notified by TDLR.
- 6.10.2. The Successful Proposer shall provide TDLR an account liaison. The account liaison should be familiar with the day-to-day business of TDLR. The liaison will serve as the primary point of contact to TDLR.



6.11. Change management

- 6.11.1. Proposers shall describe their software change management process and procedure. This should include, at minimum, documentation (including release notes) and back-out plans in the event of System failure.
- 6.11.2. All changes to the Internal Control System shall first be tested and approved by TDLR prior to production deployment.
- 6.11.3. The Successful Proposer shall track all changes made to System components, provide reports showing when and by whom a change was made and for what purpose, and shall avoid update conflicts. Change logs shall reference associated planning documents and approvals.
- 6.11.4. The Successful Proposer shall provide an online backup of the current ICS configuration to ensure the Internal Control System can be restored quickly and limit the time period where the System would be operating in a non-redundant configuration.
- 6.11.5. The Successful Proposer shall provide and maintain to TDLR comprehensive ICS documentation including, but not limited to: ICS security standards and processes, multi-jurisdictional security standards compliance documents, change control processes and procedures, daily balancing procedures, draw balancing, data dictionaries, third party licensing documentation, etc.
- 6.11.6. The Successful Proposer shall receive written approval from TDLR prior to implementation of any changes to the Internal Control System.

6.12. System Security

- 6.12.1. Access Control Features. All systems and users requiring access to the Internal Control System for any purpose shall be approved in writing by TDLR. TDLR will perform user account administration for ICS operating systems, databases, and applications. The Successful Proposer shall provide all other systems, databases, application administration, and maintenance tasks as part of its support obligations as described in this RFP. The Internal Control System shall include controls and procedures, including, but not limited to, strong password requirements and expiration periods, audit logs, reporting, permissions, and access controls, that will allow TDLR to audit all system access.
- 6.12.2. Server Security. Proposers shall provide a description of security standards, procedures, and controls that will be provided to protect the data, services, and availability of the ICS server equipment. Descriptions shall include information related to the patch management, procedures, and activities performed in order to maintain security of the ICS equipment and to ensure that all system and data modifications are made only by properly authorized individuals.



- 6.12.3. Data Communications Security. Proposers shall provide a description of security standards, procedures, and controls that are provided or supported to protect the security and privacy of data transmissions to and from yTDLR Internal Control System.
- 6.12.4. Compliance with Security Requirements. The Internal Control System shall be compliant with all security and fault tolerance requirements for all Texas Lottery games.
- 6.12.5. Protection against Unauthorized Access or Service Disruption. The Successful Proposer shall ensure that the Internal Control System is not vulnerable to unauthorized access or Malware. Proposers shall specify the methods by which the System will be protected against emerging and future Malware and other attacks.
- 6.12.6. TDLR will provide physical security for the servers.

6.13. Security Plan

- 6.13.1. The Successful Proposer should share the Lottery's commitment to security and integrity and shall maintain the ICS in a confidential, highly secure manner. For example, at minimum, the System shall have controls that mitigate such threats as insider fraud.
- 6.13.2. The Successful Proposer shall present a final security plan to TDLR for prior approval no later than ninety (90) Days after execution of the Contract. Approval of this plan is an entry criterion for acceptance testing. The Successful Proposer shall update the plan annually and shall cooperate with TDLR in security exercises.
- 6.13.3. A draft security plan shall be included with all Proposals and shall include, at minimum, the following sections:
- a) Business Impact Analysis
 - b) Risk, Threat, and Vulnerability Analysis
 - c) Security Strategy
 - d) Personnel Security Practices
 - e) Physical Security
 - f) Data Security
 - g) Systems Security
 - h) Application and Database Security
 - i) Patch Management
 - j) Incident Response
 - k) Protection of Software and Other Copyrighted Materials
 - l) Plan Evaluation
 - m) Training
 - n) Plan Maintenance

The final security plan shall be approved in writing by TDLR and shall comply with all applicable security requirements for Texas Lottery games.



6.14. Support for Draw Games Drawings

- 6.14.1. Draw Close. The Internal Control System shall check that all transactions before the game close transaction apply to the forthcoming drawing and all transactions after the game close transaction apply to the subsequent drawing.
- 6.14.2. Drawing Information. The System shall identify drawing information including, but not limited to:
- a) Wagers (including cancellations)
 - b) Pool Status (Game Information)
- 6.14.3. Winning Numbers Entry. The Internal Control System shall allow manual entry of winning numbers and be able to accept winning numbers passed from the Lottery Gaming System and other Lottery Program or Lottery Program-approved third-party applications.

6.15. Support for Scratch Ticket Games

One purpose of the ICS is to reconcile Texas Lottery scratch ticket activity to the production Lottery Gaming System. The ICS shall process scratch ticket transactions from the Lottery Gaming System in a near real-time manner to ensure accuracy. These transactions may include, but are not limited to, the following:

- a) Sales amounts - based on activations, returns and adjustment
- b) Inventory levels - based on shipments, activations, settlements, returns, stolen and missing tickets, as well as other adjustments
- c) Validation totals - based on validations
- d) Prize liability - based on pack settlements and prize validations
- e) Game close - based on actual settlements, validations, and remaining inventory

6.16. Support for Draw Games and Scratch Ticket Promotional Transactions

The Internal Control System shall be capable of supporting a broad range of Texas Lottery Program promotional transactions as implemented under the Lottery Gaming System. These transactions may include, but are not limited to, free plays; cross promotions; second-chance drawings; Retailer clerk incentives; external coupons; and Lottery Gaming System-generated coupons.

6.17. Reporting

- 6.17.1. All Proposers shall describe their proposed System's reporting functions. At minimum, this shall include the ability of the Internal Control System to produce a variety of reports as well as permit TDLR staff to create ad-hoc reports using user-friendly report development tools including graphical reporting capabilities.



- 6.17.2. TDLR will provide the Successful Proposer a list of reports to be developed during the transition period. The Successful Proposer shall add new or modify existing reports within thirty (30) calendar Days of written request by TDLR.

6.18. System Disaster Recovery Plan

The Successful Proposer shall provide, and annually update, a disaster recovery and contingency plan for the Primary, Secondary, Backup and Development/Test Internal Control System. The plan shall ensure continuation of the Internal Control System functionality in the event of system failures or disasters impacting the ability to operate either the Primary, Secondary, Backup and Development/Test Internal Control System. The Successful Proposer also shall be responsible for the safe, secure off-site storage of original software, current systems configuration and data backups, software and configuration changes and other System documentation.

6.19. Lottery Staff Training

TDLR personnel will be responsible for the operation of the Internal Control System. Therefore, the Successful Proposer shall train TDLR personnel at Texas Lottery Program headquarters on the use and operation of the System prior to user acceptance testing. This includes, but is not limited to, operation of the ICS hardware, application software, balancing procedures, and out-of-balance procedures. Upon request by TDLR, follow-up training shall be provided when changes are made to the Internal Control System. The Successful Proposer shall provide TDLR all procedure manuals at System start-up and all updates when any change is made.

6.20. Transition and Conversion

- 6.20.1. TDLR requires the Successful Proposer, the Lottery Operator and the current ICS vendor to work together to implement an expedient, seamless, and uninterrupted transition of services from the current environment to the Successful Proposer's System. The transition shall be planned for and accomplished by the Successful Proposer in such a way as to minimize any adverse effect upon any TDLR system user.
- 6.20.2. Proposers shall provide a transition plan and a conversion plan, including timelines, necessary conversion steps, milestones, and testing approaches. The Successful Proposer shall be responsible for transitioning from the current Internal Control System to its proposed environment.
- 6.20.3. The Successful Proposer shall work with TDLR, the Lottery Operator, and the current ICS vendor to convert, from the existing ICS or the current Lottery Operator's database, the daily transaction history/files for the past ten (10) years, at a minimum.
- 6.20.4. The Successful Proposer's System shall be able to access, present, and report on archived ICS files for the past ten (10) years.



6.20.5. Project Work Plan. Within five (5) Business Days after execution of any Contract resulting from this RFP, and prior to the Successful Proposer's beginning of any work or ordering of any materials, representatives of TDLR and the Successful Proposer shall meet at a time and place designated by TDLR to discuss the following:

- a. Project administration and Project Work Plan (Plan), and
- b. Resources required by TDLR and the Successful Proposer to ensure a smooth transition.

6.20.6. The Plan shall be prepared by the Successful Proposer in conjunction with TDLR and shall be agreed to by both parties in writing. The Plan shall be finalized within twenty (20) Business Days of Contract execution. The Successful Proposer shall be responsible for updating the Plan against actual progress and shall provide written reports to TDLR management at jointly agreed times and in a jointly agreed format.

6.21. Installation and Lottery User Acceptance Testing (UAT)

6.21.1. The Successful Proposer shall support any and all user acceptance testing performed by TDLR.

6.21.2. **Schedule for Lottery acceptance testing.** To support acceptance testing, the Successful Proposer shall have the Internal Control System and software installed, configured, and operational no later than August 31, 2026, or as otherwise may be required by TDLR. For acceptance testing, the Internal Control System shall be interfaced to the Lottery Gaming System.

6.21.3. **Documentation and Support.** The Successful Proposer shall provide TDLR with training and operations manuals and documentation prior to the delivery of the Internal Control System for acceptance testing. Upon request by TDLR, the Successful Proposer shall provide staff on-site as a resource to support TDLR during acceptance testing.

6.21.4. **Release Notes.** The Successful Proposer shall provide TDLR with release notes to accompany each release of software for acceptance testing. The release notes shall follow the change management requirements and process in Section 6.11.

6.21.5. **Acceptance Testing Approval.** TDLR will have successfully completed its acceptance testing when all components of the Internal Control System have been tested, and all issues have been resolved by the Successful Proposer and validated by TDLR, in TDLR's sole discretion. The Successful Proposer and TDLR shall develop and agree upon detailed systems acceptance criteria that shall be met prior to the Internal Control System conversion.



ATTACHMENT A PROPOSER'S COMMITMENT

I hereby commit _____

(Company Name)

to provide the goods and services described in the attached Proposal for Internal Control System and Related Services required by the Request for Proposals for the Texas Department of Licensing and Regulation.

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		%	%	%
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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:
1	100% Cotton T-Shirt
2	100% Cotton T-Shirt
3	100% Cotton T-Shirt
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96	100% Cotton T-Shirt
97	100% Cotton T-Shirt
98	100% Cotton T-Shirt
99	100% Cotton T-Shirt
100	100% Cotton T-Shirt

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/tpasscmbsearch/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 Do not enter Social Security Numbers. If you do not know their VID / EIN, leave their VID / EIN field blank.	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		\$	%
	- 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: _____

State of Texas VID #: _____

Point-of-Contact: _____

Phone #: _____

E-mail Address: _____

Fax #: _____

SECTION B: CONTRACTING STATE AGENCY AND REQUISITION INFORMATION

Agency Name: _____

Point-of-Contact: _____

Phone #: _____

Requisition #: _____

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

TEXAS GOVERNMENT CODE § 466.155

(a) After a hearing, the executive director shall deny an application for a license or the department shall suspend or revoke a license if the executive director or department, 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 department 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 delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

(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 malt beverage retailer's permit, mixed beverage permit, mixed beverage permit with a retailer late hours certificate, private club registration permit, or private club registration permit with a retailer late hours certificate issued under Chapter [25](#), [28](#), [29](#), or [32](#), Alcoholic Beverage Code, other than a location for which a person holds a wine and malt beverage retailer's permit issued under Chapter [25](#), Alcoholic Beverage Code, that derives less than 30 percent of the location's gross receipts from the sale or service of alcoholic beverages; or

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

(b) If the executive director proposes to deny an application for a license or the department 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 department's records. A notice must be served or mailed not later than the 20th day before the date of the hearing. The department 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 executive director may not issue a license to a person who has previously had a license under this chapter revoked unless the executive director is satisfied the person will comply with this chapter and the rules adopted under this chapter. The executive director may prescribe the terms under which a suspended license will be reissued.



(f) The executive director may not issue a license to an applicant who fails to certify to the executive 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, and Texas Alcoholic Beverage Commission 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.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. [2197](#)), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 141 (H.B. [1555](#)), Sec. 1, eff. May 26, 2017.

Acts 2019, 86th Leg., R.S., Ch. 506 (S.B. [37](#)), Sec. 6, eff. June 7, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1359 (H.B. [1545](#)), Sec. 391, eff. September 1, 2021.

Acts 2025, 89th Leg., R.S., Ch. 1160 (S.B. [3070](#)), Sec. 24, eff. June 20, 2025.



ATTACHMENT D-1 BACKGROUND INFORMATION CERTIFICATION

Texas Government Code § 466.155

Under Texas Government Code § 466.103, the Executive Director of the Texas Department of Licensing and Regulation 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 § 466.155.

(Company Name)

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

(Signature of person authorized to contractually bind the Proposer)

(Printed name)

(Title)

(Date)



ATTACHMENT E 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 Department of Licensing and Regulation, 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 the 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 calendar days prior to its expiration.

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

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



ATTACHMENT F SCORING MATRIX

Internal Control System and Related Services RFP	Possible Points	% of Total	Points Awarded
The Proposer's price to provide the goods or services.	200	20%	
Cost Proposal Subtotal	200	20%	
The probable quality of the offered goods and/or services.	400	40%	
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 former Texas Lottery Commission, with other state entities, and/or with private sector entities.	150	15%	
The qualifications of the Proposer's personnel.	150	15%	
The experience of the Proposer in providing the requested goods or services.	100	10%	
The financial status of the Proposer.	Pass/Fail	n/a	
Whether the Proposer performed the good faith effort required by the HUB subcontracting plan.	Pass/Fail	n/a	
Technical Proposal Subtotal	800	80%	
TOTAL	1000	100%	

The following formula will be used in scoring Cost Proposals:

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



Proposer's Name

COSTS PROPOSED MUST BE ALL INCLUSIVE, COVERING ALL REQUIREMENTS SET FORTH IN THE RFP, INCLUDING, BUT NOT LIMITED TO, TRANSITION, INSTALLATION, 24/7 SERVICE AND REPAIR, OVERHEAD, ADMINISTRATIVE EXPENSES, INITIAL TRAINING, AND TRAVEL. THE TEXAS LOTTERY WILL NOT REIMBURSE ANY TRAVEL COSTS RELATED TO THESE SERVICES, ABOVE THOSE INCLUDED IN THE PROPOSER'S COST PROPOSAL.

Monthly Maintenance and Support Services Cost (re: Section 2.10) \$ _____

Date _____



**ATTACHMENT H
TEXAS GOVERNMENT CODE
CHAPTER 552
SUBCHAPTER J.
ADDITIONAL PROVISIONS RELATED TO CONTRACTING
INFORMATION**

Sec. 552.371. CERTAIN ENTITIES REQUIRED TO PROVIDE CONTRACTING INFORMATION TO GOVERNMENTAL BODY IN CONNECTION WITH REQUEST. (a) This section applies to an entity that is not a governmental body that executes a contract with a governmental body that:

(1) has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body; or

(2) results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the governmental body in a fiscal year of the governmental body.

(b) This section applies to a written request for public information received by a governmental body that is a party to a contract described by subsection (a) for contracting information related to the contract that is in the custody or possession of the entity and not maintained by the governmental body.

(c) A governmental body that receives a written request for information described by subsection (b) shall request that the entity provide the information to the governmental body. The governmental body must send the request in writing to the entity not later than the third business day after the date the governmental body receives the written request described by subsection (b).

(d) Notwithstanding section 552.301:

(1) a request for an attorney general's decision under section 552.301(b) to determine whether contracting information subject to a written request described by subsection (b) falls within an exception to disclosure under this chapter is considered

timely if made not later than the 13th business day after the date the governmental body receives the written request described by subsection (b);

(2) the statement and copy described by section 552.301(d) is considered timely if provided to the requestor not later than the 13th business day after the date the governmental body receives the written request described by subsection (b);

(3) a submission described by section 552.301(e) is considered timely if submitted to the attorney general not later than the 18th business day after the date the governmental body receives the written request described by subsection (b); and

(4) a copy described by section 552.301(e-1) is considered timely if sent to the requestor not later than the 18th business day after the date the governmental body receives the written request described by subsection (b).

(e) Section 552.302 does not apply to information described by subsection (b) if the governmental body:

(1) complies with the requirements of subsection (c) in a good faith effort to obtain the information from the contracting entity;



(2) is unable to meet a deadline described by subsection (d) because the contracting entity failed to provide the information to the governmental body not later than the 13th business day after the date the governmental body received the written request for the information; and

(3) if applicable and notwithstanding the deadlines prescribed by sections 552.301(b), (d), (e), and (e-1), complies with the requirements of those subsections not later than the eighth business day after the date the governmental body receives the information from the contracting entity.

(f) Nothing in this section affects the deadlines or duties of a governmental body under section 552.301 regarding information the governmental body maintains, including contracting information.

Sec. 552.372. BIDS AND CONTRACTS. (a) A contract described by section 552.371 must require a contracting entity to:

(1) preserve all contracting information related to the contract as provided by the records retention requirements applicable to the governmental body for the duration of the contract;

(2) promptly provide to the governmental body any contracting information related to the contract that is in the custody or possession of the entity on request of the governmental body; and

(3) on completion of the contract, either:

(A) provide at no cost to the governmental body all contracting information related to the contract that is in the custody or possession of the entity; or

(B) preserve the contracting information related to the contract as provided by the records retention requirements applicable to the governmental body.

(b) Unless section 552.374(c) applies, a bid for a contract described by section 552.371 and the contract must include the following statement: "the requirements of subchapter j, chapter 552, government code, may apply to this (include "bid" or "contract" as applicable) and the contractor or vendor agrees that the contract can be terminated if the contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter."

(c) A governmental body may not accept a bid for a contract described by section 552.371 or award the contract to an entity that the governmental body has determined has knowingly or intentionally failed to comply with this subchapter in a previous bid or contract described by that section unless the governmental body determines and documents that the entity has taken adequate steps to ensure future compliance with the requirements of this subchapter.

Sec. 552.373. NONCOMPLIANCE WITH PROVISION OF SUBCHAPTER.

A governmental body that is the party to a contract described by Section 552.371 shall provide notice to the entity that is a party to the contract if the entity fails to comply with a requirement of this subchapter applicable to the entity. The notice must:

(1) be in writing;

(2) state the requirement of this subchapter that the entity has violated; and

(3) unless section 552.374(c) applies, advise the entity that the governmental body may terminate the contract without further obligation to the entity if the entity does not cure the violation on or before the 10th business day after the date the governmental body provides the notice.



Sec. 552.374. TERMINATION OF CONTRACT FOR NONCOMPLIANCE.

(a) Subject to subsection (c), a governmental body may terminate a contract described by section 552.371 if:

(1) the governmental body provides notice under Section 552.373 to the entity that is party to the contract;

(2) the contracting entity does not cure the violation in the period prescribed by section 552.373;

(3) the governmental body determines that the contracting entity has intentionally or knowingly failed to comply with a requirement of this subchapter; and

(4) the governmental body determines that the entity has not taken adequate steps to ensure future compliance with the requirements of this subchapter.

(b) For the purpose of subsection (a), an entity has taken adequate steps to ensure future compliance with this subchapter if:

(1) the entity produces contracting information requested by the governmental body that is in the custody or possession of the entity not later than the 10th business day after the date the governmental body makes the request; and

(2) the entity establishes a records management program to enable the entity to comply with this subchapter.

(c) A governmental body may not terminate a contract under this section if the contract is related to the purchase or underwriting of a public security, the contract is or may be used as collateral on a loan, or the contract's proceeds are used to pay debt service of a public security or loan.

Sec. 552.375. OTHER CONTRACT PROVISIONS. Nothing in this subchapter prevents a governmental body from including and enforcing more stringent requirements in a contract to increase accountability or transparency.

Sec. 552.376. CAUSE OF ACTION NOT CREATED. This subchapter does not create a cause of action to contest a bid for or the award of a contract with a governmental body.

Acts of May 23, 2019, R.S., ch. 1216, §1, 2019 *Vernon's Texas Session Law Service*, effective January 1, 2020.