



# **TEXAS LOTTERY COMMISSION**

## ***REQUEST FOR PROPOSALS***

### ***FOR***

## ***ADVERTISING MEDIA SERVICES***

ISSUED SEPTEMBER 13, 2022, 4:00 P.M. CENTRAL TIME  
Request for Proposal No. 362-2023-0002



## TABLE OF CONTENTS

Table of Contents .....	i
Glossary of Terms.....	7
1. General Information .....	10
1.1. Purpose .....	10
1.2. Our Vision and Mission .....	11
1.3. Our Core Values .....	11
1.4. Schedule of Events .....	12
1.5. Successful Proposer’s / Lottery Relationship .....	12
1.6. Procurement Authority .....	13
1.7. Proposals Subject to The Texas Public Information Act.....	13
1.8. Misunderstanding or Lack of Information .....	14
1.9. Rejection of Proposals and Cancellation of RFP .....	14
1.10. Ownership of Proposals .....	14
1.11. Incurred Expenses .....	14
1.12. Proposal Tenure .....	14
1.13. No Texas Lottery Obligations .....	15
1.14. Successful Proposer’s Obligations .....	15
1.15. Captions .....	15
1.16. Parts Incorporated .....	15
2. Proposal Process .....	16
2.1. Contact Person .....	16
2.2. Prohibition Against Unauthorized Contact .....	16
2.3. Pre-Proposal Conference .....	16
2.4. Inquiries .....	17
2.5. Submission of Proposal.....	17
2.6. Response Format & Contents .....	19
2.7. Letter of Transmittal .....	19
2.8. Executive Summary.....	19
2.9. Proposer’s Contracting Authority .....	20



2.10.	Proposer's Cost Proposal .....	20
2.11.	Multiple Proposals .....	20
2.12.	Changes, Modifications and Cancellation .....	20
2.13.	Updates to Information Supporting a Proposal .....	21
2.14.	Additional Information.....	21
2.15.	Proposal Evaluation and Contract Award .....	21
2.16.	Site Visits and/or Oral Presentations .....	22
2.17.	Protest Procedure .....	23
3.	Contractual Terms and Conditions .....	24
3.1.	Introduction .....	24
3.2.	Governing Law and Venue .....	24
3.3.	Contract Elements.....	24
3.4.	Amendments.....	25
3.5.	Non-Waiver .....	25
3.6.	Clarification of Texas Lottery's Intent .....	25
3.7.	Relationship of the Parties.....	25
3.8.	Payment .....	26
3.9.	Assignments .....	27
3.10.	Subcontracting .....	27
3.11.	Lottery Approval of Staffing.....	27
3.12.	Background Investigations .....	28
3.13.	Compliance .....	29
3.14.	Term of Contract.....	29
3.15.	Termination at Will .....	29
3.16.	Termination for Cause .....	30
3.17.	Termination Related to Availability of Legislative Appropriations .....	31
3.18.	Termination Without Penalty .....	31
3.19.	No Liability Upon Termination .....	32
3.20.	Warranties .....	32
3.21.	Licenses and Permits.....	33
3.22.	Successful Proposer Site Visits .....	33



3.23. Intellectual Property Rights .....	33
3.24. Pre-existing and Third-Party Rights.....	35
3.25. Remediation .....	36
3.26. Accounting Records .....	37
3.27. Right to Audit .....	37
3.28. Indemnification .....	37
3.29. Insurance.....	39
3.30. Self-Insurance .....	40
3.31. Commercial General Liability Insurance .....	40
3.32. Workers’ Compensation & Employer’s Liability Insurance.....	40
3.33. Professional Liability (Errors and Omissions) Insurance .....	40
3.34. Crime Insurance .....	41
3.35. Performance Bond .....	41
3.36. Disclosure of Litigation.....	41
3.37. Changes in Ownership .....	42
3.38. Force Majeure / Delay of Performance .....	42
3.39. Taxes, Fees and Assessments.....	43
3.40. Media Releases .....	43
3.41. Advertising .....	43
3.42. Hiring of Texas Lottery Personnel .....	43
3.43. Hiring of Lobbyist, Consultant and/or Advisor; Supplemental Information .....	44
3.44. Notices .....	44
3.45. Non-Disclosure.....	45
3.46. Usufruct.....	45
3.47. Ticket Purchase .....	45
3.48. Liquidated Damages.....	46
3.49. Sanctions and Remedies Schedule.....	47
3.50. Dispute Resolution .....	49
3.51. Certifications .....	50
3.52. Preferences .....	52
3.53. Deceptive Trade Practices; Unfair Business Practices .....	53



3.54.	Immigration.....	53
3.55.	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). ....	53
3.56.	Cybersecurity Training, Cloud Computing and Data Protection .....	53
3.57.	False Statements; Breach of Representations .....	54
3.58.	Limitation on Authority; No Other Obligations .....	54
3.59.	Proposer Assignment .....	55
3.60.	Code of Conduct.....	55
3.61.	Contact with Texas Lottery Commission.....	55
3.62.	Incidents and Anomalies.....	56
3.63.	U.S. Department of Homeland Security’s E-Verify System .....	56
3.64.	Non-Exclusive Contract .....	56
3.65.	Survival.....	56
<b>4.</b>	<b>REQUIRED INFORMATION .....</b>	<b>58</b>
4.1.	Experience of Proposer .....	58
4.2.	Proposer References .....	58
4.3.	Contact Person .....	59
4.4.	Conflict of Interest .....	59
4.5.	Financial Soundness .....	59
4.6.	Background Investigations .....	61
4.7.	Disclosure of Interested Parties .....	63
<b>5.</b>	<b>HISTORICALLY UNDERUTILIZED BUSINESS (HUB) PARTICIPATION .....</b>	<b>64</b>
5.1.	HUB Requirement .....	64
5.2.	HSP Submission and Texas Lottery Review.....	64
5.3.	Assistance for Preparation of HSP .....	64
5.4.	Requirements for Completing the HSP Forms .....	65
5.5.	Subcontracting Opportunities.....	67
5.6.	Post-Contract Award .....	69
<b>6.</b>	<b>ADVERTISING AGENCY STAFFING REQUIREMENTS .....</b>	<b>70</b>
6.1.	Ad Agency Staffing .....	70
6.2.	Agency Staff Structure .....	70
<b>7.</b>	<b>SCOPE OF SERVICES .....</b>	<b>72</b>



7.1.	General Description of Services and Requirements .....	72
7.2.	Advertising Sensitivity .....	72
7.3.	Media Plan .....	72
7.4.	Budget .....	73
7.5.	Reports .....	73
7.6.	Media Services .....	75
7.7.	Media Evaluations .....	76
7.8.	Out-Of-Home Production .....	76
7.9.	Goods and Equipment .....	76
7.10.	Sponsorship Activations and Entitlements .....	77
7.11.	Conventions and Meeting .....	77
7.12.	Expenditure Approval .....	77
7.13.	Billing/Invoices .....	78
7.14.	Travel .....	79
7.15.	Unacceptable Services .....	79
7.16.	Meetings with TLC Vendors .....	80
7.17.	Media Review .....	80
7.18.	Other Associated Services (Offered Option) .....	80
7.19.	Office Location .....	80
<b>8.</b>	<b>MEDIA RESPONSE .....</b>	<b>81</b>
8.1.	Media Plan Assignment .....	81
<b>ATTACHMENT A PROPOSER'S COMMITMENT .....</b>		<b>83</b>
<b>ATTACHMENT B FINANCIAL COMMITMENT AND RESPONSIBILITY .....</b>		<b>84</b>
<b>ATTACHMENT C HUB SUBCONTRACTING PLAN .....</b>		<b>85</b>
<b>ATTACHMENT C-1 HSP QUICK CHECK LIST .....</b>		<b>86</b>
<b>ATTACHMENT C-2 HUB SUBCONTRACTING OPPORTUNITY NOTIFICATION FORM .....</b>		<b>87</b>
<b>ATTACHMENT D TEXAS GOVERNMENT CODE §466.155 .....</b>		<b>88</b>
<b>ATTACHMENT D-1 BACKGROUND INFORMATION CERTIFICATION .....</b>		<b>90</b>
<b>ATTACHMENT E TEXAS LOTTERY COMMISSION VENDOR BACKGROUND INVESTIGATION FORM .....</b>		<b>91</b>
<b>ATTACHMENT E-1 VENDOR BACKGROUND INVESTIGATION CERTIFIED LIST OF VENDOR PRINCIPALS .....</b>		<b>93</b>



---

<b>ATTACHMENT E-2 VENDOR BACKGROUND INVESTIGATION CERTIFIED LIST OF CONTRACTUALLY DEFINED VENDOR PRINCIPALS .....</b>	<b>94</b>
<b>ATTACHMENT E-3 VENDOR EMPLOYEE BACKGROUND INVESTIGATION LIST .....</b>	<b>95</b>
<b>ATTACHMENT E-4 CONSENT TO BACKGROUND INVESTIGATION AND RELEASE OF PERSONAL INFORMATION .....</b>	<b>96</b>
<b>ATTACHMENT F SAMPLE PERFORMANCE BOND .....</b>	<b>97</b>
<b>ATTACHMENT G SCORING MATRIX .....</b>	<b>98</b>
<b>ATTACHMENT H COST PROPOSAL .....</b>	<b>99</b>
<b>ATTACHMENT I TEXAS GOVERNMENT CODE CHAPTER 552 SUBCHAPTER J. ADDITIONAL PROVISIONS RELATED TO CONTRACTING INFORMATION .....</b>	<b>101</b>
<b>ATTACHMENT J FY23 MEDIA FLOWCHART .....</b>	<b>104</b>
<b>ATTACHMENT K FY21 SALES BY GAME/ REVENUE .....</b>	<b>105</b>
<b>ATTACHMENT L FY22 SALES BY DESIGNATED MARKET AREA (DMA) .....</b>	<b>106</b>
<b>ATTACHMENT M SENSITIVITY GUIDELINES .....</b>	<b>107</b>
<b>ATTACHMENT N MEDIA BUYING GUIDELINES .....</b>	<b>108</b>
<b>.....</b>	



## GLOSSARY OF TERMS

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

<b>Term</b>	<b>Definition</b>
<b>Apparent Successful Proposer</b>	The Proposer recommended by the evaluation committee and approved by the Executive Director, subject to the execution of a completed contract.
<b>Business Hours</b>	The Texas Lottery's business hours are 8:00 a.m. to 5:00 p.m. CT, Monday through Friday, except State holidays.
<b>Contract</b>	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.
<b>Contract Award</b>	The day of the contract announcement after the signing of a Contract between the Texas Lottery and the Successful Proposer.
<b>CPA</b>	Texas Comptroller of Public Accounts.
<b>Day</b>	A calendar day.
<b>Executive Director</b>	The Executive Director of the Texas Lottery Commission or an employee of the Texas Lottery Commission authorized to act on behalf of the Executive Director.
<b>Executive Management</b>	The Executive Director of the Texas Lottery Commission and the Charitable Bingo Operations Director.
<b>Fiscal Year</b>	The Texas Lottery's fiscal year, which begins on September 1 and ends on August 31 of the following year.
<b>Historically Underutilized Business (HUB)</b>	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.
<b>HSP</b>	The Historically Underutilized Business Subcontracting Plan (HSP) required by Chapter 2161 of the Texas Government Code and by Texas Lottery Commission Rule, 16 TAC §403.301 (See Attachment C.).
<b>Incident</b>	An event or occurrence.
<b>Intellectual Property Rights</b>	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.
<b>Major And Prime Contracts</b>	The following Texas Lottery® contracts are considered major or prime contracts: lottery operations and services, scratch (instant) ticket manufacturing and services, advertising services, lottery drawings certified public accounting services, drawings studio and production services, promotional products, TLC warehouse lease, internal control system, security management system and monitoring services, risk review and compliance monitoring services, website hosting services, Houston claim center lease, retailer bonus payment management services, promotional and sponsorship agreement for Toyota Music Factory, trademark license and promotional agreements with the Dallas Cowboys and the Houston Texans. The Texas Lottery may add or delete major or prime contracts at its sole option.
<b>Offered Option</b>	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.
<b>Proposal</b>	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.
<b>Proposer</b>	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.
<b>Responsive Proposal</b>	A Proposal submitted which conforms in all material respects to the RFP, as determined solely by the Texas Lottery.
<b>RFP</b>	This Request for Proposals.
<b>SPD</b>	Statewide Procurement Division (SPD) is a division of the Texas Comptroller of Public Accounts.
<b>State</b>	The State of Texas and its agencies, boards and commissions, officers and employees.
<b>Subcontractor</b>	A person who contracts with the Successful Proposer to work, to supply commodities, or contribute toward completing work for the Texas Lottery.



<b>Successful Proposer</b>	The Proposer with whom the Texas Lottery executes a Contract to provide the goods and services that this RFP requires.
<b>Texas Lottery Commission, Texas Lottery, Lottery or TLC</b>	That agency created by Chapters 466 and 467, Texas Government Code. The Texas Lottery Commission may be referred to as the Texas Lottery, Lottery or TLC throughout this document.
<b>Working Days</b>	Business days occurring Monday through Friday except for the legal holidays observed by the State of Texas. The terms “working days” and “business days” may be used interchangeably.
<b>Works</b>	Any tangible or intangible items or things that have been or will be prepared, created, maintained, serviced or developed by a Successful Proposer (or such third parties as the Successful Proposer may be permitted to engage) at any time following the effective date of the Contract, for or on behalf of TLC under the Contract, including but not limited to any (i) works of authorship (such as literary works, musical works, dramatic works, choreographic works, pictorial, graphic and sculptural works, motion pictures and other audiovisual works, sound recordings and architectural works, which includes but is not limited to lottery games, game names, game designs, ticket format and layout, manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer software, scripts, object code, source code or other programming code, HTML code, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works 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 TLC 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 Lottery Commission is issuing this Request for Proposals (RFP) to obtain proposals from qualified vendors to provide advertising media services for the Texas Lottery with the objective of responsibly communicating information to all adult (ages 18+) Texans. The intent is to promote Texas Lottery® games and enhance awareness of the mission of the Texas Lottery to generate revenue for the State's designated beneficiaries including Texas public education and veterans.
- 1.1.2. The Successful Proposer shall be required to perform services as specified in this RFP and shall fully understand the Texas Lottery's history and background, and support the Texas Lottery's vision, mission, core values and goals. Proposers are encouraged to review the following:
- FY23 Media Flowchart Attachment J
  - FY21 Sales by Game/Revenue, Attachment K
  - 2020 Demographic Study of Texas Lottery Players, available at: [https://www.texaslottery.com/export/sites/lottery/About\\_Us/Publications/Reports.html](https://www.texaslottery.com/export/sites/lottery/About_Us/Publications/Reports.html)
  - National Association of State and Provincial Lotteries (NASPL) website, [www.naspl.org](http://www.naspl.org)
  - La Fleur's website, [www.lafleurs.com](http://www.lafleurs.com)
  - The Texas Lottery Commission's 2022-2023 Comprehensive Business Plan, available at: [https://www.texaslottery.com/export/sites/lottery/About\\_Us/Publications/Reports.html](https://www.texaslottery.com/export/sites/lottery/About_Us/Publications/Reports.html)
  - The Texas Lottery Commission's 2023-2027 Agency Strategic Plan, available at: [https://www.texaslottery.com/export/sites/lottery/About\\_Us/Publications/Strategic\\_Plans.html](https://www.texaslottery.com/export/sites/lottery/About_Us/Publications/Strategic_Plans.html)
  - FY 22 Sales by Designated Market Area (DMA) Attachment L
- 1.1.3. Proposers must demonstrate an understanding of Texas as a minority-majority state as well as the ability to effectively reach and speak to all adult (ages 18+) Texans.
- 1.1.4. The Successful Proposer must be able to perform the functions of an advertising media planning and buying agency, including, but not limited to, planning, buying and stewardship of broadcast, newspaper, digital, social, out-of-home media, and sponsorship activations.



## **1.2. Our Vision and Mission**

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

## **1.3. Our Core Values**

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



- 1.3.5. Teamwork — We are committed to creating an environment of mutual respect where open, honest communication is our cornerstone. We embrace the diversity of our team and individual perspectives in working together to achieve our common goals.
- 1.3.6. Excellence — We strive for excellence by taking a position of leadership on issues that impact the Texas Lottery Commission and achieve challenging goals by focusing on our core values.

## 1.4. Schedule of Events

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

Date	Event
September 13, 2022 (4:00 p.m., CENTRAL TIME)	Issuance of RFP
September 27, 2022 (1:30 p.m., CENTRAL TIME)	Pre-Proposal Conference (Virtual conference see Section 2.3)
October 4, 2022 (4:00 p.m., CENTRAL TIME) (Late Questions will not be answered)	Written Questions Due
On or before October 12, 2022	Responses to Written Questions Issued
October 19, 2022 (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)
November 1, 2022 (4:00 p.m., CENTRAL TIME) (Late Proposals will not be considered)	Deadline for Proposals
January 9 – 13, 2023 and January 16 – 20, 2023	Oral Presentations
On or before February 3, 2023 (or as soon as possible thereafter)	Announcement of Apparent Successful Proposer

## 1.5. Successful Proposer's / Lottery Relationship

The Texas Lottery Commission is a part of the Executive Branch of Texas State Government. The Texas Lottery will not relinquish control over lottery operations. The



Successful Proposer shall function under the supervision of the Texas Lottery. Its operations will be subject to the same scrutiny and oversight that would apply if all operations were performed by Texas Lottery employees. Accordingly, all operations must be conducted in adherence to applicable statutes and the highest ethical standards.

## 1.6. Procurement Authority

- 1.6.1. 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. §§ 466.001, et seq.), as amended; the Texas Lottery's administrative regulations (16 TAC §§ 401.101, et seq.); and other applicable laws of the State of Texas. All Proposers should read and be familiar with the State Lottery Act and 16 TAC §401.101.

## 1.7. Proposals Subject to The Texas Public Information Act

- 1.7.1. The Texas Lottery is subject to the Texas Public Information Act (Act) (Chapter 552, Government Code). Proposals submitted to the Texas Lottery in response to this RFP are subject (in their entirety) to release by the Texas Lottery as public information. A Proposal, or specific parts thereof, may, however, be shown by the Proposer to fall within one or more of the exceptions to disclosure provided in the Act, the State Lottery Act or other applicable law. **Marking an entire Proposal as “confidential” or “copyrighted” is unacceptable.** If a Proposer believes that parts of its Proposal are confidential under the Act, it should specify the confidential information by marking “Confidential” on each page or by each paragraph containing such information prior to submitting the Proposal to the Texas Lottery. In response to this section, Proposers shall provide the Texas Lottery with specific and detailed reasons for each item marked “Confidential”. Vague and general claims to confidentiality are not acceptable. This detail is necessary so that the Texas Lottery will have sufficient information to provide to the Attorney General of Texas, if a ruling regarding the confidentiality of such information is requested. Failure of a Proposer to respond to such notification may result in the release of all or part of the Proposal as public information. It is the Proposer’s obligation to submit briefing to the Attorney General setting forth the basis upon which the requested information should remain confidential. The Attorney General may determine all or part of a Proposal to be public information even though parts of the Proposal were marked “Confidential” by the Proposer. Additionally, see Sec. 552.0222 of the Act relating to contracting information that is considered public and must be released.
- 1.7.2. The Texas Lottery assumes no responsibility for asserting legal arguments to the Attorney General on behalf of Proposers.
- 1.7.3. Proposers are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.



- 1.7.4. The requirements of Subchapter J of the Act may apply to this Proposal and the Proposer, contractor, or vendor agrees that the contract can be terminated if the Proposer, contractor or vendor knowingly or intentionally fails to comply with a requirement of that subchapter. See Attachment I.

## **1.8. Misunderstanding or Lack of Information**

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

## **1.9. Rejection of Proposals and Cancellation of RFP**

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

## **1.10. Ownership of Proposals**

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

## **1.11. Incurred Expenses**

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

## **1.12. Proposal Tenure**

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



### **1.13. No Texas Lottery Obligations**

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

### **1.14. Successful Proposer's Obligations**

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

### **1.15. Captions**

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

### **1.16. Parts Incorporated**

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





## **2. PROPOSAL PROCESS**

### **2.1. Contact Person**

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

Roxanne Koltermann CTCD, CTCM  
Contracts Coordinator  
Texas Lottery Commission  
P. O. Box 16630  
Austin, TX 78761-6630  
Phone (512) 344-5184  
contracts@lottery.state.tx.us

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

Roxanne Koltermann CTCD, CTCM  
Contracts Management and Procurement  
George H.W. Bush State Office Building  
Texas Lottery Commission  
1801 N. Congress Avenue  
Austin, TX 78701

### **2.2. Prohibition Against Unauthorized Contact**

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

### **2.3. Pre-Proposal Conference**

Prospective Proposers should plan to attend a 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® website at <https://www.texaslottery.com> and on the Electronic State Business Daily (ESBD), <https://www.txsmartbuy.com/esbd> in advance of the day and time listed in the Schedule of Events. The Texas Lottery intends to use Microsoft Teams for the conference. A video of the Pre-Proposal Conference will be posted on the Texas Lottery website. All prospective Proposers are highly encouraged to view the video.

## **2.4. Inquiries**

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

2.4.2. Inquiries shall be submitted by email by the inquiry submission deadline to:

contracts@lottery.state.tx.us

2.4.3. A Proposer shall inquire in writing and should obtain clarification as to any ambiguity, conflict, discrepancy, exclusionary specification, omission or error in this RFP (collectively, errors) prior to submitting a Proposal, but in no event shall be entitled to additional compensation, relief or time by reason of any error or its later correction. If a Proposer fails to obtain written clarification of any errors, the Proposer shall submit a Proposal at its own risk; and, if awarded a Contract, the Proposer shall be deemed to have waived any claim to contest the Texas Lottery's interpretation thereof.

## **2.5. Submission of Proposal**

2.5.1. Proposals must be delivered to Roxanne Koltermann at the address provided in Section 2.1 and received no later than the deadline established in the Schedule of Events. Late Proposals will not be considered. No exceptions will be made.

2.5.2. The Texas Lottery headquarters has moved to 1801 N. Congress Ave. to the George H.W. Bush Building. This is a secure building and all visitors must check in at the front desk. If you are hand delivering a Proposal, please allow adequate time to check in and for TLC staff to retrieve your Proposal timely prior to the submission time listed in the Schedule of Event. Any updates will be provided on the ESBD and the TLC websites.



- 2.5.3. The Proposer shall submit one (1) signed original and seven (7) copies of its Proposal. For Part 5 only, Proposers shall provide one (1) signed original and two (2) copies of all required HSP documentation. All Proposals submitted must be bound in a three-ring binder, organized and arranged to correspond directly with the numbered sections of this RFP, and all pages must be numbered. For Parts 1, 2 and 3 only, Proposers may provide a blanket acknowledgment and acceptance in lieu of a section-by-section response, unless a section requires a specific detailed answer from the Proposer. For Parts 4, 6, 7 and 8 only, Proposers shall provide a section-by-section response to the RFP. For Part 5, Proposers shall follow the instructions for completing and submitting an HSP.
- 2.5.4. If a Proposer is claiming any part(s) of its Proposal is confidential, the Proposer must provide a detailed response to Section 1.7 and clearly mark each item of the claimed 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 attachments must be included with the original Proposal.
- 2.5.7. Proposers are required to propose a complete solution, in their Proposal, to the Texas Lottery's requirements. Any items not specifically requested, but integral to the requested services, shall be included in the Proposal and identified in the appropriate sections thereof.
- 2.5.8. Proposers responding to this RFP must fully and completely address all goods, services and other requirements described in this RFP. Incomplete or partial Proposals will not be considered. The Proposer shall provide all information that the Proposer believes would be helpful to the Texas Lottery in evaluating the Proposer's ability to fulfill the RFP requirements.
- 2.5.9. In addition to the printed Proposal, the Proposer must also submit one copy of the entire Proposal, excluding the Sealed Cost Proposal, on a USB drive in a searchable PDF file. If there is any disparity between the contents of the printed Proposal and the contents of the Proposal contained on the USB drive, the contents of the printed Proposal shall take precedence. The content on the USB drive or soft copy required herein will not be accepted in lieu of the signed original and copies as required in Section 2.5.2.
- 2.5.10. Proposals that have been copyrighted, in whole or in part, by any Proposer are unacceptable and may be rejected as non-responsive.



## **2.6. Response Format & Contents**

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

- a. Letter of Transmittal;
- b. Executive Summary;
- c. Section-by-section response to the RFP (see Section 2.5.3 above);
- d. Sealed Cost Proposal (Attachment to the original proposal only);
- e. Proposer's Commitment (Attachment A); and
- f. Background Information Certification (Attachment D-1).

## **2.7. Letter of Transmittal**

- 2.7.1. Proposers must submit a Letter of Transmittal that identifies the entity submitting the Proposal and includes a commitment by that entity to provide the goods and services required by the Texas Lottery in this RFP. The Letter of Transmittal must state that the Proposal is valid for one hundred and eighty (180) Days from the Day after the deadline for submitting Proposals. Any Proposal containing a term of less than one hundred and eighty (180) Days for acceptance shall be rejected. The Letter of Transmittal must be signed by a person(s) legally authorized to bind the Proposer to the representations in the Proposal. The Proposer should also indicate, in its Letter of Transmittal, why it believes it is the most qualified Proposer to provide the goods and services required by the Texas Lottery in this RFP.
- 2.7.2. The Letter of Transmittal must include a statement of acceptance of the terms and conditions set forth in Part 3 of this RFP that will be included in the Contract. If the Proposer takes exception to any of the proposed terms and conditions, those exceptions must be noted in the Letter of Transmittal. Proposers shall provide specific and detailed reasons for each exception, together with suggested alternative language. Vague and general exceptions are not acceptable. Proposers should realize, however, that failure to accept the terms and conditions specified in Part 3 of the RFP may result in disqualification of the Proposal.

## **2.8. Executive Summary**

- 2.8.1. Proposers must provide an executive summary of their Proposal (excluding cost information) that asserts that the Proposer is providing, in its Proposal, all the requirements of this RFP. If the Proposer is providing goods or services beyond those specifically requested, those goods or services must be identified. If the Proposer is offering goods or services that do not meet the specific requirements of this RFP, but in the opinion of the Proposer are equivalent or superior to those specifically requested, any such differences must be noted in the Executive Summary. The Proposer should realize, however, that failure to provide the goods and services specifically requested may result in disqualification.



2.8.2. The Proposer must demonstrate its understanding of the requested goods and services and must address specifically, in writing, the Proposer's approach to providing each requirement in this RFP.

2.8.3. The Executive Summary must not exceed five (5) pages and should represent a full and concise summary of the contents of the Proposal.

## **2.9. Proposer's Contracting Authority**

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

## **2.10. Proposer's Cost Proposal**

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

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

## **2.11. Multiple Proposals**

Each Proposer may submit only one (1) Proposal. If a Proposer submits more than one Proposal, all Proposals from that Proposer may be rejected.

## **2.12. Changes, Modifications and Cancellation**

The Texas Lottery reserves the right to make changes to and/or cancel this RFP and will post all changes and modifications, whether made as a result of a potential Proposer's written inquiries or otherwise, and cancellation notices on the Electronic State Business Daily and the Texas Lottery websites. **It is the responsibility of the Proposer to check these websites for any additional information regarding this RFP. If the Proposer**



**fails to monitor the ESBD and TLC websites for any changes or modifications to the RFP, such failure will not relieve the Proposer of its obligation to fulfill the requirements as posted.**

### **2.13. Updates to Information Supporting a Proposal**

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

### **2.14. Additional Information**

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

### **2.15. Proposal Evaluation and Contract Award**

- 2.15.1. The Texas Lottery Commission intends to conduct a fair, comprehensive and impartial evaluation of all Proposals received in response to this RFP using an evaluation committee. The evaluation committee will be selected by the Executive Director and may consist of Texas Lottery employees or outside individuals with expertise in particular areas. In addition, the Texas Lottery's General Counsel, other in-house legal counsel, and outside legal counsel may assist by advising the evaluation committee. Texas Lottery employees and consultants may also assist in the process as technical non-voting members of the evaluation committee.
- 2.15.2. Each member of the evaluation committee will independently score each Proposal responsive to this RFP. Evaluation committee members may seek, obtain and consider the opinions of other committee members or subject matter experts (including Texas Lottery staff, staff from other Texas agencies and consultants retained by the Texas Lottery) when evaluating and independently scoring particular areas of the Proposals.



2.15.3. The evaluation committee may request clarification of information or representations in a Proposal before completing the initial evaluation. Requests for clarification and responses to requests for clarification will be in writing and will become part of the evaluation record.

2.15.4. The procurement process will be conducted in accordance with 16 TAC §401.101.

2.15.5. At a minimum, the factors to be considered by the evaluation committee in evaluating Proposals shall include:

- (i) the proposer's price to provide the goods or services;
- (ii) the probable quality of the offered goods or services;
- (iii) The agency's evaluation of the likelihood of the proposal to produce the desired outcome for the agency, considering, among other criteria:
  - (I) the quality of the proposer's past performance in contracting with the agency, with other state entities, or with private sector entities;
  - (II) the qualifications of the proposer's personnel;
  - (III) the experience of the proposer in providing the requested goods or services;
  - (IV) the financial status of the proposer; and
- (iv) whether the proposer performed the good faith effort required by the HUB subcontracting plan, when the agency has determined that subcontracting is probable.

The evaluation committee also may consider vendor performance reviews maintained by the Texas Comptroller of Public Accounts under Tex. Gov't Code §2262.055.

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

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

## **2.16. Site Visits and/or Oral Presentations**

2.16.1. Proposers shall be required to make oral presentations which may be in person or virtual to the evaluation committee. See the Schedule of Events for dates.

2.16.2. Proposers invited for an oral presentation will be notified in advance with expectations and guidelines. Oral presentations will not exceed forty-five (45) total minutes, including any time for set-up, presentation, and breaks. There will also be up to fifteen (15) minutes of



Q&A and tear down. Proposers may be required, as part of the presentation, to respond to questions developed by the evaluation committee.

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

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

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

## **2.17. Protest Procedure**

Any protest shall be governed by Tex. Gov't Code §466.101 and 16 TAC §§ 401.102-103.





## **3. CONTRACTUAL TERMS AND CONDITIONS**

### **3.1. Introduction**

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

### **3.2. Governing Law and Venue**

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

### **3.3. Contract Elements**

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



### **3.4. Amendments**

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

### **3.5. Non-Waiver**

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

### **3.6. Clarification of Texas Lottery's Intent**

It is the responsibility of the Successful Proposer to address and resolve all questions with the Texas Lottery's designated points of contact, and to achieve a clear understanding of all Texas Lottery requirements during each stage of the Contract term. The Texas Lottery will use reasonable efforts to provide timely responses to questions of policy or procedure as they may affect the Successful Proposer's performance. Key Texas Lottery staff will be available to the Successful Proposer on a reasonable basis, but may not be available on 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 Lottery agree and understand that the Successful Proposer shall render the goods, services and requirements under the Contract as an independent contractor, and nothing contained in the Contract will be construed to create or imply a joint venture, partnership, employer/employee relationship, principal agent relationship or any other relationship between the parties. Employees of the Successful Proposer will not be considered employees of the Texas Lottery within the meaning of any federal, state, or local law, ordinance, or regulation including, but not limited to, laws, ordinances, or regulations concerning unemployment insurance, social security benefits, workers compensation, or withholding requirements. The Successful Proposer shall be responsible for complying with any such laws, ordinances, or regulations, and shall indemnify and hold harmless the Texas Lottery from any costs or damages,



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

### 3.8. Payment

- 3.8.1. All payments will be made in accordance with Tex. Gov't Code. ch. 2251 (Payments for Goods and Services). The Successful Proposer shall submit invoices in accordance with Section 7.13 and as prescribed by the Texas Lottery. Each invoice shall note the contract number, services rendered and date of services. Invoices may be submitted by mail to the Texas Lottery Commission, P. O. Box 16630, Austin, Texas 78761-6630, Attn: Accounts Payable or by e-mail to [AccountsPayable@lottery.state.tx.us](mailto:AccountsPayable@lottery.state.tx.us). Payments will be made only upon the completion of services or after the delivery of goods authorized in an approved invoice.
- 3.8.2. 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 Lottery receives the goods covered by the contract; (2) the date the performance of service under the contract is completed; or (3) the date the Texas Lottery receives an invoice for the goods or services, according to Tex. Gov't Code §2251.021. Services are "completed" when accepted by the Texas Lottery.
- 3.8.3. The Successful Proposer acknowledges that the State of Texas requires consistent, high quality performance during the entire term of any Contract resulting from this RFP and during any transition to an alternate or successor provider. The Successful Proposer agrees that to ensure such consistent, high quality performance, and an orderly transition to a new vendor, the Texas Lottery may withhold the last four (4) payments due during the last year of any Contract resulting from this RFP (**Hold Back**). In the event that the Successful Proposer fully and completely performs all of its duties under any Contract resulting from this RFP, and a successful transition to an alternative provider is completed, then upon such completion the Texas Lottery shall pay the Hold Back to the Successful Proposer. In the event that the Successful Proposer fails to fully and completely perform all of its duties under any Contract resulting from this RFP, or the transition to an alternative vendor is unsuccessful, and such failure is proximately caused in whole or part by any act or omission of the Successful Proposer, the Texas Lottery shall be entitled to retain the Hold Back or such portion as the Executive Director deems equitable.
- 3.8.4. The Successful Proposer agrees that if the Texas Comptroller of Public Accounts is prohibited from issuing a warrant to the Successful Proposer under 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 Lottery, and in the event of any such approval, the terms and conditions hereof shall apply to and bind the party or parties to whom the right or obligation is assigned as fully and completely as the Successful Proposer is hereunder bound and obligated. No assignment shall operate to release the Successful Proposer from its liability for the timely and effective performance of its obligations hereunder. Assignments made in violation of this provision shall be null and void.
- 3.9.2. Subject to the limitations on assignment contained herein, the Contract shall inure to the benefit of, and be binding upon, the successors and assigns of the respective parties hereto.

### **3.10. Subcontracting**

- 3.10.1. If any part of the Contract between the Texas Lottery and the Successful Proposer is to be subcontracted, the Successful Proposer must obtain prior written approval from the Texas Lottery, and the Subcontractor must comply with all applicable requirements of the Texas Lottery. The Texas Lottery reserves the sole right to require the Successful Proposer to terminate any Subcontractor with or without cause.
- 3.10.2. In the event the Texas Lottery approves the use of any Subcontractor under an approved HUB Subcontracting Plan in accordance with Part 5, the Successful Proposer is not relieved of its responsibility and obligation to meet all the requirements of this RFP.
- 3.10.3. The Texas Lottery will incur no additional obligations and the obligations of the Successful Proposer will not be reduced as a result of any such subcontracts.
- 3.10.4. The Successful Proposer agrees to indemnify and hold the Texas Lottery harmless from all claims and actions of the Successful Proposer's Subcontractors. The Texas Lottery will withhold indemnified losses from payments to the Successful Proposer, or, if no payments are made, the Texas Lottery will make demand of payment of indemnified losses. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery's demand.
- 3.10.5. The Successful Proposer's obligation to pay Subcontractors is governed by Tex. Gov't Code §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 Lottery for the acts and omissions of the Successful Proposer's employees, agents (including, but not limited to, lobbyists) and Subcontractors and the Successful Proposer shall enforce strict discipline among the Successful Proposer's employees, agents (including, but not limited to, lobbyists) and Subcontractors performing the services under the Contract.

3.11.2. The Successful Proposer shall provide the Texas Lottery written notification and justification within three (3) Working Days of any changes involving the Successful Proposer's media staffing personnel assigned to the Texas Lottery account. The Successful Proposer shall provide the Texas Lottery with the resume of the person who is to be hired or placed on the Texas Lottery account and must receive written approval from the Texas Lottery prior to the person's working on the account.

3.11.3. Notwithstanding anything herein to the contrary, any person employed by the Successful Proposer shall, at the written request of the Texas Lottery, and within the Texas Lottery's sole discretion, be removed immediately by the Successful Proposer from work relating to the Contract.

### **3.12. Background Investigations**

3.12.1. Under Tex. Gov't Code §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 Tex. Gov't Code §466.155.

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



Texas Lottery may terminate the Contract based solely upon the results of these background investigations. (See Attachment D.)

- 3.12.3. The Successful Proposer agrees that, during the term of the Contract and any renewal thereof, it shall be obligated to provide such information about any Successful Proposer Principals, Successful Proposer employees, and Subcontractor Personnel as the Texas Lottery may prescribe. The Successful Proposer also agrees that the Texas Lottery may conduct background investigations of such persons.
- 3.12.4. Upon notification by the Texas Lottery to the Successful Proposer that the Texas Lottery objects to an employee based on the results of a background investigation, the Successful Proposer shall prevent that employee from working on the Texas Lottery account and shall deny that employee access to the Texas Lottery systems.

### **3.13. Compliance**

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

### **3.14. Term of Contract**

- 3.14.1. The Contract will commence upon execution and continue through August 31, 2028 subject to the termination provisions in this RFP and subject to the Texas Lottery being continued and funded by the Texas Legislature.
- 3.14.2. At the end of the initial term or any renewal period, the Texas Lottery, at its sole discretion, reserves the right to extend the Contract for up to six (6) additional months, in one-month intervals, at the Contract rate or rates as modified during the term of this Contract.
- 3.14.3. At the end of the Contract term, or upon earlier termination under any provision of this Contract, the Successful Proposer shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and provider, if requested by the Texas Lottery.

### **3.15. Termination at Will**

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





### 3.16. Termination for Cause

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

- a. A receiver, conservator, liquidator or trustee of the Successful Proposer, or of any of its property, is appointed by order or decree of any court or agency or supervisory authority having jurisdiction; or an order for relief is entered against the Successful Proposer under the Federal Bankruptcy Code; or the Successful Proposer is adjudicated bankrupt or insolvent; or any portion of the property of the Successful Proposer is sequestered by court order and such order remains in effect for more than thirty (30) Days after such party obtains knowledge thereof; or a petition is filed against the Successful Proposer under any state, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation, or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within thirty (30) Days, or
- b. The Successful Proposer makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee, or liquidator of the Successful Proposer or of all or any part of its property; or judgment for the payment of money in excess of 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
- c. A court of competent jurisdiction finds that the Successful Proposer has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or
- d. The Successful Proposer fails to communicate with the Texas Lottery as required by the Contract, or
- e. The Successful Proposer fails to remove any person from work relating to the Contract upon written notice from the Texas Lottery, or
- f. The Successful Proposer breaches the RFP's standard of confidentiality with respect to this RFP or the goods or services provided thereunder, or



- g. The Texas Lottery makes a written determination that the Successful Proposer has failed to substantially perform under the Contract and specifies the events resulting in the Texas Lottery's determination thereof, or
- h. The Successful Proposer fails to comply with any of the terms, conditions or provisions of the Contract, in any manner whatsoever, or
- i. The Successful Proposer engages in any conduct that results in a negative public impression including, but not limited to, creating even an appearance of impropriety with respect to the Texas Lottery, Texas Lottery games, the Successful Proposer, or the State of Texas.

### **3.17. Termination Related to Availability of Legislative Appropriations**

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

### **3.18. Termination Without Penalty**

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 Lottery and the State of Texas shall not be liable to the Successful Proposer for any damages, losses, financial obligations, breach of contract, or any other claims or amounts arising from or related to any such termination. However, the Successful Proposer may be entitled to the remedies provided in Tex. Gov't Code ch. 2260.

### **3.20. Warranties**

- 3.20.1. The Successful Proposer warrants and agrees that it is lawfully organized and constituted under all applicable national, international, state and local laws, ordinances and other authorities of its domicile and is otherwise in full compliance with all legal requirements of its domicile.
- 3.20.2. The Successful Proposer warrants and agrees that it has the legal authority and capacity to enter into and perform the Contract, and that it has the financial ability to perform its obligations under such Contract.
- 3.20.3. The Successful Proposer warrants and agrees that it is duly authorized to operate and do business in all places where it will be required to do business under the Contract; that it has obtained or will obtain all necessary licenses and permits required in connection with such Contract; and that it will fully comply with all laws, decrees, labor standards and regulations of its domicile and wherever performance occurs during the term of such Contract.
- 3.20.4. The Successful Proposer warrants and agrees that it has no present interest and shall not acquire, or assign to any third party, any interest that would conflict in any manner with its duties and obligations under the Contract.
- 3.20.5. The Successful Proposer warrants and agrees that all goods and services it supplies in its performance under the Contract shall meet the performance standards required thereunder and shall be performed in a prompt, high quality, professional and competent manner using only qualified personnel.
- 3.20.6. The Successful Proposer warrants and agrees that it shall not take any action inconsistent with any of the terms, conditions, agreements, or covenants set forth in this RFP without the express written consent of the Texas Lottery.
- 3.20.7. The Successful Proposer warrants that it is eligible for a sales agent license under Tex. Gov't Code §466.155. (See Attachment D and D-1)
- 3.20.8. The Successful Proposer warrants and agrees that it shall not sell, assign, lease, transfer, pledge, hypothecate, or otherwise dispose of any component of any goods or system proposed



in response to the RFP or any interest therein, or permit any of it to become a fixture or accession to other goods or property.

### **3.21. 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 Lottery of any suspension, revocation or other detrimental action against its licenses, permits or certificates.

### **3.22. Successful Proposer Site Visits**

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

### **3.23. Intellectual Property Rights**

3.23.1. *Ownership.* As between the Successful Proposer and the Texas Lottery, the Works and Intellectual Property Rights in the Works are and shall be owned exclusively by the Texas Lottery, and not the Successful Proposer. The Successful Proposer specifically agrees that all Works shall be considered “works made for hire” and that the Works shall, upon creation, be owned exclusively by the Texas Lottery. To the extent that the Works, under applicable law, may not be considered works made for hire, the Successful Proposer hereby agrees that the Contract transfers, grants, conveys, assigns, and relinquishes exclusively to the Texas Lottery all right, title and interest in and to the Works, and all Intellectual Property Rights in the Works, without the necessity of any further consideration, and the Texas Lottery shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Works, subject to any exceptions with respect to pre-existing or third party rights as set forth below.

3.23.2. *Ownership of Prior Rights by the Texas Lottery.* All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the Texas Lottery prior to the issuance of this RFP or execution of the Contract



(e.g., copyrights, trademarks, etc.) shall continue to be exclusively owned by the Texas Lottery, and the Successful Proposer shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible and intangible items solely for the purposes set forth in this RFP or the Contract, if any, and only for the duration of such Contract.

3.23.3. *Ownership of Prior Rights by the Successful Proposer.* All property and tangible or intangible items, including the Intellectual Property Rights therein, that were created, developed or owned by the Successful Proposer prior to the issuance of this RFP shall continue to be exclusively owned by the Successful Proposer, and the Texas Lottery shall have no ownership thereof, and no rights thereto, other than the limited, non-exclusive right to use such property or tangible or intangible items solely for the purposes set forth in this RFP or the Contract. All intellectual property relating to the goods and/or services set forth herein or under the Contract, including the Intellectual Property Rights in those goods and/or services, that was created, developed or licensed by the Successful Proposer prior to the issuance of this RFP or the execution of the Contract, or during the term of the Contract, to the extent such intellectual property is not considered “Works” as defined above, shall be, and is, licensed to the Texas Lottery on a non-exclusive, perpetual, irrevocable, royalty-free, worldwide basis, to allow the Texas Lottery or its designees to provide, and continue to provide, the goods and services set forth herein or under the Contract, including after the expiration or termination of the Contract.

3.23.4. *Further Actions.* The Successful Proposer, upon request and without further consideration, shall perform any acts that may be deemed necessary or desirable by the Texas Lottery to evidence more fully the transfer of ownership of all Works to the Texas Lottery to the fullest extent possible, including but not limited to the execution, acknowledgement and delivery of such further documents in a form determined by the Texas Lottery. In the event the Texas Lottery shall be unable for any reason to obtain the Successful Proposer’s signature on any document necessary for any purpose set forth in the foregoing sentence, the Successful Proposer hereby irrevocably designates and appoints the Texas Lottery and its duly authorized officers and agents as the Successful Proposer’s agent and the Successful Proposer’s attorney-in-fact to act for and in the Successful Proposer’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by the Successful Proposer.

3.23.5. *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 Lottery 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.

3.23.6. *Confidentiality.* All Works and all materials forwarded to the Successful Proposer by the Texas Lottery for use in and preparation of the Works, shall be deemed the confidential information of the Texas Lottery, and the Successful Proposer shall not use, disclose, or permit any person to use or obtain the Works, or any portion thereof, in any manner without the prior written approval of the Texas Lottery.

3.23.7. *Injunctive Relief.* The RFP and the Contract are intended to protect the Texas Lottery's proprietary rights pertaining to the Works, and the Intellectual Property Rights therein, and any misuse of such rights would cause substantial and irreparable harm to the Texas Lottery's business. Therefore, the Successful Proposer acknowledges and stipulates that a court of competent jurisdiction should immediately enjoin any material breach of the intellectual property, licensing, and confidentiality provisions of the RFP or Contract, upon a request by the Texas Lottery, without requiring a bond or proof of irreparable injury as same should be presumed.

3.23.8. *Return of Works.* Upon the request of the Texas Lottery, but in any event upon expiration or termination of the Contract, the Successful Proposer shall surrender to the Texas Lottery all documents and things pertaining to the Works, including but not limited to drafts, memoranda, notes, records, drawings, manuals, computer software, reports, data, and all other documents or materials (and copies of same) generated or developed by the Successful Proposer or furnished by the Texas Lottery to the Successful Proposer, including all materials embodying the Works, any Texas Lottery confidential information, or Intellectual Property Rights, regardless of whether complete or incomplete. This section is intended to apply to all Works made or compiled by the Successful Proposer, as well as to all documents and things furnished to the Successful Proposer by the Texas Lottery or by anyone else that pertains to the Works.

3.23.9. *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 assert its copyright on any products, equipment or any other goods provided under the Contract.

## **3.24. Pre-existing and Third-Party Rights**

3.24.1. To the extent that any pre-existing rights and/or third-party rights or limitations are embodied, contained, reserved or reflected in the Works, the Successful Proposer shall either (a) grant to the Texas Lottery the irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to (i) use, execute, reproduce, display, perform, distribute copies of, and prepare derivative works based upon such pre-existing rights and any derivative works thereof in connection with the sale, offering for sale, marketing, advertising, and promotion of the Texas Lottery's goods and services, and in all forms of media, media channels and/or publicity that may now exist or hereafter be created or developed, including but not limited



to television, radio, print, Internet, and social media (e.g., Facebook, Twitter, YouTube, etc.) and (ii) authorize others to do any or all of the foregoing, **or (b) where the obtaining of the aforementioned rights is not reasonably practical or feasible, provide written notice to the Texas Lottery of such pre-existing or third party rights** or limitations, request the Texas Lottery's approval of the use of materials containing such pre-existing or third party rights, obtain a limited right and license to use such pre-existing or third party rights on such terms as may be reasonably negotiated, and obtain the Texas Lottery's written approval of such pre-existing or third party rights and the limited use of same. The Successful Proposer shall provide the Texas Lottery with documentation indicating a third party's written approval for the Successful Proposer to use any pre-existing or third-party rights that may be embodied, contained, reserved or reflected in the Works. The Successful Proposer shall indemnify, defend and hold the Texas Lottery harmless from and against any and all claims, demands, regulatory proceedings and/or causes of action, and all losses, damages, and costs (including attorneys' fees and settlement costs) arising from or relating to, directly or indirectly, any claim or assertion by any third party that the Works infringe any third party rights. The foregoing indemnity obligation shall not apply to instances in which the Texas Lottery either (y) exceeded the scope of the limited license that was previously obtained by the Successful Proposer and agreed to by the Texas Lottery, or (z) obtained information or materials, independent of the Successful Proposer's involvement or creation, and provided such information or materials to the Successful Proposer for inclusion in the Works, and such information or materials were included by the Successful Proposer, in an unaltered and unmodified fashion, in the Works.

- 3.24.2. The Successful Proposer agrees that it shall have and maintain, during performance of the Contract, written agreements with all employees, Subcontractors, or agents engaged by the Successful Proposer in performance hereunder, granting the Successful Proposer rights sufficient to support all performance and grants of rights by the Successful Proposer. Copies of such agreements shall be provided to the Texas Lottery promptly upon request.

### **3.25. Remediation**

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



### 3.26. Accounting Records

The Successful Proposer and its Subcontractors are required to maintain and retain their books, records, information and any and all other supporting fiscal documents relevant to showing any payments under the Contract were expended in accordance with the laws and regulations of the State of Texas, including, but not limited to, requirements of the Texas Comptroller of Public Accounts and the Texas State Auditor. These records shall be available to the Texas Lottery, its internal auditors or external auditors (and other designees) and the Texas State Auditor at all times during the Contract period and for a period of seven (7) full years after (i) the expiration date of the Contract, or (ii) final payment under the Contract, whichever is later.

### 3.27. Right to Audit

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

### 3.28. Indemnification

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



**THE SUCCESSFUL PROPOSER, WHETHER THE CLAIM IS BASED ON NEGLIGENCE, STRICT LIABILITY, INTELLECTUAL PROPERTY INFRINGEMENT OR ANY OTHER CULPABLE CONDUCT, WHETHER FRIVOLOUS OR NOT. THE FOREGOING INDEMNITY OBLIGATIONS OF THE SUCCESSFUL PROPOSER SHALL NOT APPLY TO CLAIMS ARISING OUT OF OR RELATED TO THE EXCEPTIONS (Y) AND (Z) SET FORTH IN SECTION 3.24.1 ABOVE.**

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





### **3.29. Insurance**

- 3.29.1. At minimum, at all times during the Contract, the Successful Proposer shall maintain the insurance coverage required in RFP Sections 3.29 – 3.35. 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.
- 3.29.2. All required insurance must be issued by companies or financial institutions which are financially rated Excellent or better by A.M. Best Company and duly licensed, admitted, and authorized to do business in Texas by the Texas Department of Insurance.
- 3.29.3. Each insurance policy, except those for crime insurance, workers' compensation, employer's liability and professional liability, must name the Texas Lottery (and its officers, agents and employees) as an additional insured on the original policy and all renewals or replacements.
- 3.29.4. Each insurance policy except for crime insurance must include a waiver of subrogation in favor of the Texas Lottery, its officers, and employees for any and all insured losses, including bodily injury (including death) and property damage.
- 3.29.5. The insurance shall be evidenced by delivery to the Texas Lottery of certificates of insurance executed by the insurer or its authorized agency stating coverage, limits, expiration dates, and compliance with all applicable required provisions. Upon request, the Texas Lottery shall be entitled to receive, without expense, certified copies of the policies and all endorsements. Except as otherwise expressly provided herein, required coverage must remain in full force and effect throughout the term of the Contract and any extensions thereof, and provide adequate coverage for incidents discovered after termination of the Contract. Successful Proposer shall provide the Texas Lottery 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 Lottery. Actual losses not covered by insurance as required by this Contract shall be paid by the Successful Proposer.
- 3.29.6. The Successful Proposer must submit original certificates of insurance for each required insurance contract, and any renewals thereof, within fifteen (15) Days after Contract execution. Renewal certificates shall be submitted prior to or within fifteen (15) Days after expiration of the existing policy.
- 3.29.7. The Texas Lottery 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 Lottery 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).





### **3.30. 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.

### **3.31. Commercial General Liability Insurance**

The Successful Proposer must maintain general liability insurance coverage with limits of not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate, two million dollars (\$2,000,000) products/completed operations aggregate, one million dollars (\$1,000,000) personal and advertising injury, fifty thousand dollars (\$50,000) damage to premises rented to you, and five thousand dollars (\$5,000) medical expense each person.

### **3.32. Workers' Compensation & Employer's Liability Insurance**

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

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

### **3.33. Professional Liability (Errors and Omissions) Insurance**

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



### **3.34. Crime Insurance**

- 3.34.1. The Successful Proposer must maintain crime insurance with a limit of not less than one million dollars (\$1,000,000) protecting the Texas Lottery against losses, including lost income, lost profits, extra expenses and other consequential losses suffered by the Texas Lottery, resulting from loss of property (including money, securities and Texas Lottery tickets) by robbery, burglary, or theft, or the loss of money, securities or Texas Lottery tickets because of destruction or disappearance and employee dishonesty. This policy shall cover any loss to the Texas Lottery due to any fraudulent or dishonest act on the part of the officers and/or employees of the Successful Proposer and (through insurance carried by Subcontractors) officers and/or employees of any Subcontractors. Policy(ies) must be endorsed to include third party property.

### **3.35. Performance Bond**

- 3.35.1. The Successful Proposer shall provide an original performance bond (as shown in Attachment F attached hereto and incorporated for all purposes) in the amount of five hundred thousand dollars (\$500,000) within fifteen (15) Days of execution of the Contract. Failure to have and keep a bond in place shall constitute a breach of the Contract.
- 3.35.2. All required bonds must be issued by companies or financial institutions which are financially rated Excellent or better by A.M. Best Company and duly licensed, admitted, and authorized to do business in Texas by the Texas Department of Insurance. The Texas Lottery shall be named as the obligee in each required bond.
- 3.35.3. The bond must be maintained in full force and effect for the initial term and any renewal term of the Contract. The bond shall be forfeited to the Texas Lottery if the Successful Proposer fails to perform as required by the Contract, pay sanctions or liquidated damages, or indemnify the Texas Lottery. Any alterations to the bond language as shown in Attachment F must be approved in advance by the Texas Lottery.

### **3.36. Disclosure of Litigation**

- 3.36.1. The Proposer must include in its Proposal a complete disclosure of any material civil or criminal litigation or indictment either threatened or pending involving the Proposer. "Threatened litigation" as used herein shall include governmental investigations and civil investigative demands. "Litigation" as used herein shall include administrative enforcement actions brought by governmental agencies. The Proposer must also disclose any material litigation threatened or pending involving Subcontractors, consultants, and/or lobbyists. For purposes of this section, "material" refers, but is not limited, to any action or pending action that a reasonable person knowledgeable in the gaming industry would consider relevant to any gaming operation or any development such a person would want to be aware of in order to stay fully apprised of the total mix of information relevant to the gaming industry and its



operations, together with any litigation threatened or pending that may result in a substantial change in the Proposer's financial condition, as described in Section 4.5.

3.36.2. This is a continuing disclosure requirement; any litigation commencing after submission of a Proposal (and for the Successful Proposer, after Contract Award) must be disclosed in a written statement to the Texas Lottery's General Counsel within fifteen (15) Days of its occurrence.

3.36.3. The Successful Proposer shall be required to file with the Texas Lottery comprehensive monthly reports regarding all threatened or pending litigation involving the Successful Proposer's Texas operations and all threatened or pending litigation that may be considered material to the overall operations of the Successful Proposer.

### **3.37. Changes in Ownership**

During the term of the Contract or any extension or renewal thereof, the Successful Proposer shall notify the Texas Lottery in writing of any substantial change in the ownership or control of the Successful Proposer as soon as possible, but no later than fifteen (15) Days after its occurrence.

### **3.38. Force Majeure / Delay of Performance**

3.38.1. Except as otherwise provided, neither the Successful Proposer nor the Texas Lottery shall be liable to the other for any delay in, or failure of performance of, any covenant contained herein caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance in the exercise of reasonable diligence until after the causes of delay or failure have been removed. For purposes of this RFP and the Contract, "force majeure" is defined as "an act of God or any other cause of like kind not reasonably within a party's control and which, by the exercise of due diligence of such party, could not have been prevented or is unable to be overcome." The Successful Proposer must inform the Texas Lottery in writing within three (3) Days of the existence of any such force majeure or otherwise waives this right as a defense.

3.38.2. The Successful Proposer shall immediately upon discovery notify the Executive Director in writing of any delays in performance regardless of responsibility, fault or negligence. If the Successful Proposer contends that the delay is the responsibility, fault or negligence of Texas Lottery staff, the Successful Proposer must provide written notice within three (3) Days of the discovery, and to the extent possible, identify the event or individual responsible so that the Executive Director may take appropriate action to remedy the situation. Failure to provide such notice to the Executive Director as required in this section shall constitute a waiver of the Successful Proposer's right to assert the Texas Lottery's action/inaction as a defense.



### **3.39. Taxes, Fees and Assessments**

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

### **3.40. 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 Lottery. For any required disclosure or any public release of information of any kind, including a non-required disclosure, that is under a deadline imposed by any statutory or regulatory authority, the Successful Proposer shall seek approval from the Texas Lottery no less than two (2) Working Days prior to the deadline for the release of the information. In any case in which a deadline for the release of information exists, approval of the release by the Texas Lottery shall neither be construed as an endorsement of the release, as assent to the content of the release, as an indication of the accuracy of the information in the release, nor as any admission of any kind regarding any subject covered in the release.

### **3.41. Advertising**

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

### **3.42. Hiring of Texas Lottery Personnel**

- 3.42.1. At all times following issuance of this RFP and ending with either the award of a Contract or the rejection of all Proposals, prospective Proposers are prohibited from officially or unofficially making any employment offer or proposing any business arrangement whatsoever to any Texas Lottery employee involved in the evaluation of Proposals, the



Contract Award, or contract negotiations. A prospective Proposer making such an offer or proposition may be disqualified from further consideration.

3.42.2. At all times following the issuance of this RFP and ending with either the award of a Contract or the rejection of all Proposals, Proposers shall not engage the services of any State of Texas employee while such person remains employed by the State without the written consent of the Texas Lottery. During the term of the Contract, the Successful Proposer shall not engage the services of any State of Texas employee while such person remains employed by the State without the written consent of the Lottery.

3.42.3. 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 Lottery who participated in a procurement or contract negotiation for the Texas Lottery involving the Successful Proposer before the second anniversary of the date the contract was signed or the procurement was terminated or withdrawn.

### **3.43. Hiring of Lobbyist, Consultant and/or Advisor; Supplemental Information**

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

### **3.44. Notices**

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

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



### **3.45. Non-Disclosure**

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

### **3.46. Usufruct**

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

### **3.47. Ticket Purchase**

- 3.47.1. 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 ticket or be paid a prize in any Texas Lottery game. No spouse, child, brother, sister, or parent of such member, officer or employee who resides in the same household in the principal place of residence of such member, officer or employee (collectively, Family Members), shall purchase a Texas Lottery ticket or be paid a prize in any Texas Lottery game. The Successful Proposer shall ensure that these statutory prohibitions are made known to each member, officer and employee of the Successful Proposer, prior to that person becoming involved in selling or leasing the goods or performing the services that are the subject of the Contract. The Successful Proposer shall require its members, officers and employees to make the statutory prohibition known to Family Members. The Successful Proposer shall promptly notify the Texas Lottery of any violation of Tex. Gov't Code §466.254.
- 3.47.2. TLC considers "directly involved" to mean, by way of illustration only, responsible for and/or actively participating in (1) Contract negotiations (including Contract signatories); (2) Contract administration (e.g., regular or direct contact with TLC staff); or (3) Contract performance (including assigned project/team leaders and members and anyone else who oversees or performs the work or provides the services). Again, by way of illustration,





support staff (such as clerical, accounting or delivery employees) are not considered to be “directly involved” unless they also serve in the roles listed above for “directly involved” employees.

### **3.48. Liquidated Damages**

3.48.1. **General.** It is agreed by the Texas Lottery and the Successful Proposer that:

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

3.48.2. **Liquidated Damages Assessment.** Once the Texas Lottery has determined that liquidated damages are to be assessed, the Executive Director or Executive Director’s designee shall notify the Successful Proposer of the assessment(s). Failure to notify does not impact the Texas Lottery’s assessment of damage and is not a condition precedent thereto. The Texas Lottery will withhold liquidated damages from payments to the Successful Proposer, or, if no payments have been made, the Texas Lottery will make demand of payment of liquidated damages. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery’s demand. In the event the Successful Proposer fails to pay within the thirty (30) day period, the Texas Lottery may make a claim for payment against the performance bond, with or without notice to the Successful Proposer.

3.48.3. **Failure to Assess Liquidated Damages.** The failure of the Texas Lottery to assess liquidated damages in any instance where the Texas Lottery is entitled to liquidated damages under the terms of this RFP or Contract shall not constitute waiver in any fashion of the Texas Lottery’s rights to assessment of liquidated damages.



- 3.48.4. ***Severability of Individual Liquidated Damages Clauses.*** If any portion of these liquidated damages provisions are determined to be unenforceable, the other portions of these provisions shall remain in full force and effect.
- 3.48.5. ***Failure to Permit Examination, Produce Requested/Required Records or Information, or Provide an Answer.*** Unless otherwise specified in this RFP or any Contract resulting therefrom, the Successful Proposer must permit an examination, produce requested records or information, or provide an answer in response to a Texas Lottery inquiry within five (5) business days. Failure to respond before the deadline may result in the assessment of liquidated damages in the amount of one hundred dollars (\$100) per day for each day the examination is not permitted, the information or records are not produced, or the answer is not provided.
- 3.48.6. ***Failure to Meet Media Buys, Media Services, Sponsorship Activations, Media Evaluations and/or Out-of-Home Production Deadlines.*** The failure of the Successful Proposer to meet the media buys, media evaluations and sponsorship activations under RFP Sections 7.5.6 , 7.7 and 7.10 for each campaign as planned, media services under RFP Sections 7.6 for each campaign as planned, and/or out-of-home production under RFP Sections 7.8 for each campaign as planned under the Contract may result in the assessment of liquidated damages in the amount of one thousand dollars (\$1,000) for each Day of delay, or any part thereof.
- 3.48.7. ***Failure to Provide Written Notification of Media Staffing Changes Timely.*** The failure of the Successful Proposer to provide written notification of media staffing changes as required by RFP Section 3.11 may result in the Successful Proposer being assessed liquidated damages in the amount of one hundred dollars (\$100) per Day for each Day the written notification is not received.
- 3.48.8. ***Failure to Provide Annual Media Plan Timely.*** The failure of the Successful Proposer to provide an annual media plan as required by Section 7.3 may result in the Successful Proposer being assessed liquidated damages in the amount of one thousand dollars (\$1,000) per incident, plus five hundred dollars (\$500) per Day for each Day after the due date until the plan(s) is provided by the Successful Proposer and accepted by the Texas Lottery.
- 3.48.9. ***Failure to Provide Reports Required under RFP Section 7.5 Timely.*** The failure of the Successful Proposer to provide reports as required by Section 7.5 may result in the Successful Proposer being assessed liquidated damages in the amount of five hundred dollars (\$500) per incident, plus one hundred dollars (\$100) per Day for each Day after the due date until the report(s) is provided by the Successful Proposer and accepted by the Texas Lottery.

### **3.49. Sanctions and Remedies Schedule**

- 3.49.1. ***General.*** Section 2261.101 of Tex. Gov't Code requires that all state contracts contain a remedies schedule, a graduated sanctions schedule, or both. Pursuant to that





statutory provision, sanctions and remedies will apply for the incidents specified in this section. The sanctions and remedies will be referred to as “sanctions.” Sanctions are not intended to be exclusive of any other available remedy or penalty under the Contract.

- 3.49.2. ***Assessment of Sanctions.*** Once the Texas Lottery has determined that sanctions are to be assessed, the Executive Director or Executive Director’s designee may notify the Successful Proposer of the assessment(s). Failure to notify does not impact the Texas Lottery’s assessment of sanctions and is not a condition precedent thereto. The Texas Lottery will withhold sanctions from payments to the Successful Proposer, or, if no payments are to be made, the Texas Lottery will make demand of payment of sanctions. The Successful Proposer must make payment within thirty (30) Days of the Texas Lottery’s demand. In the event the Successful Proposer fails to pay within the thirty (30) day period, the Texas Lottery may make a claim for payment against the performance bond, with or without notice to the Successful Proposer.
- 3.49.3. ***Failure to Assess Sanctions.*** The failure of the Texas Lottery to assess sanctions in any instance where the Texas Lottery is entitled to sanctions under the terms of this RFP or the Contract shall not constitute waiver in any fashion of the Texas Lottery’s rights to assess sanctions.
- 3.49.4. ***Severability of Individual Sanctions Clauses.*** If any portion of these sanctions provisions are determined to be unenforceable, the other portions of these provisions shall remain in full force and effect.
- 3.49.5. ***Purchase of Texas Lottery Tickets.*** The failure of the Successful Proposer to comply with the requirements of RFP Section 3.47 regarding the purchase of Texas Lottery tickets may result in the Successful Proposer being assessed sanctions in the amount of five thousand dollars (\$5,000) per incident.
- 3.49.6. ***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 Lottery as required by Section 3.62 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per Day for each Day not reported. The failure of the Successful Proposer to comply with the code of conduct requirements in Section 3.60 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.
- 3.49.7. ***Failure to Notify the Texas Lottery of a Change of Ownership or Control or Change in Financial Condition.*** The failure of the Successful Proposer to notify the Texas Lottery of a change of ownership or control or change in financial condition as required by RFP Sections 3.37 and 4.5 may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.



- 3.49.8. ***Unauthorized Disclosure.*** The failure of the Successful Proposer to comply with the non-disclosure requirement in Section 3.45 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of five thousand dollars (\$5,000) per incident.
- 3.49.9. ***Failure to Disclose Litigation.*** The failure of the Successful Proposer to disclose litigation as required by Section 3.36 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.
- 3.49.10. ***Failure to Cooperate with and/or Produce Records or Information as part of Background Investigation.*** The failure of the Successful Proposer to cooperate with and/or produce records or information as part of a background investigation conducted pursuant to Section 4.6 of this RFP may result in the Successful Proposer being assessed sanctions in the amount of one hundred dollars (\$100) per Day for each Day the records/information are not produced, or answers are not provided.
- 3.49.11. ***Failure to Obtain Prior Written Approval before Issuing Media Release.*** The failure of the Successful Proposer to comply with RFP Section 3.40 regarding the issuance of media releases may result in the Successful Proposer being assessed sanctions in the amount of one thousand dollars (\$1,000) per incident.
- 3.49.12. ***Failure to Notify the Texas Lottery of Changes in Lobbyist Information.*** The failure of the Successful Proposer to inform the Texas Lottery of any change of lobbyist information as required by RFP Section 3.43 may result in the Successful Proposer being assessed sanctions in the amount of one hundred dollars (\$100) per Day for each Day that the filing is not provided.
- 3.49.13. ***Unauthorized Release of Media Materials.*** The unauthorized release of media materials without the Texas Lottery's prior written approval may result in the Successful Proposer being assessed sanctions in the amount of ten thousand dollars (\$10,000) per incident.
- 3.49.14. ***Missing/Incomplete Intellectual Property Search.*** The failure of the Successful Proposer to adequately conduct an intellectual property search as required by this RFP may result in the Successful Proposer being assessed sanctions in the amount of five thousand dollars (\$5,000) per incident. The foregoing is in addition to and shall not supplant the other rights and remedies accorded to TLC, or the obligations of the Successful Proposer in the event of a Claim.

### **3.50. Dispute Resolution**

The dispute resolution process provided for in Tex. Gov't Code ch. 2260, and 16 TAC Ch. 403 must be used by the Successful Proposer to attempt to resolve any disputes brought by the Successful Proposer arising under this Contract.



### 3.51. Certifications

- 3.51.1. 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 must 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.
- 3.51.2. Under §231.006 of the Tex. Fam. Code, 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 must 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 must be provided prior to Contract Award.
- 3.51.3. Under §2261.053 of the Tex. Gov't Code, 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 of the Texas Government Code, the contractor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."
- 3.51.4. 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.

- 3.51.5. 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

- 3.51.6. 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.

- 3.51.7. The Texas Lottery is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal Government's System for Award Management (SAM, <https://www.sam.gov/>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

- 3.51.8. Under §2155.004 of the Tex. Gov't Code, the Proposer has not received compensation from the Texas Lottery for participating in the preparation of the specifications for this RFP and certifies as follows: "Under Section 2155.004, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

- 3.51.9. Under §2252.907 of the Tex. Gov't Code, the Successful Proposer is required to make any information created or exchanged with the State under this Contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State.

- 3.51.10. Under §2271.002 of the Tex. Gov't Code, 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 bid. 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.



- 3.51.11. Under §2252.152 of the Tex. Gov't Code, a state agency may not award a contract to a company engaged in business with Iran, Sudan, or known to have contracts with or provide supplies or services to a foreign terrorist organization. The Proposer certifies it is not ineligible to receive a state contract under §2252.152.
- 3.51.12. Under §2155.0061 of the Tex. Gov't Code, a state agency may not accept a proposal or award a contract if the contract includes the financial participation 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 this contract may be terminated, and payment withheld if this certification is inaccurate.
- 3.51.13. 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 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.
- 3.51.14. 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.
- 3.51.15. 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.
- 3.51.16. Under §161.0085 of the Health and Safety Code, a state agency may not enter into 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.

### **3.52. Preferences**

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



### **3.53. 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.

### **3.54. 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.

### **3.55. 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).**

3.55.1. 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.

3.55.2. Upon request, but not later than thirty (30) calendar days after request, the Successful Proposer shall provide TLC with a completed Voluntary Product Accessibility Template (VPAT) of the specified product or a URL to the VPAT for reviewing compliance with the State Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act).

### **3.56. Cybersecurity Training, Cloud Computing and Data Protection**

3.56.1. Under Tex. Gov't Code §2054.5192, any contractor with access to a TLC computer system or database shall complete a cybersecurity training program certified under §2054.519. The



Successful Proposer shall verify completion and sign the Texas Lottery's Information Security Agreement with TLC prior to receiving access to computer systems or databases.

- 3.56.2. Under Tex. Gov't Code §2054.0593, any cloud computing services utilized by the Proposer under the Contract resulting from this RFP shall comply with the requirements of the state risk and authorization management program. The Proposer shall maintain program compliance and certification throughout any Contract term and shall be required to demonstrate compliance with program requirements upon request by the TLC.
- 3.56.3. Under Tex. Gov't Code §2054.138, any Proposer authorized to access, transmit, use, or store data for the TLC shall meet the designated security controls as established by TLC and determined to be proportionate with the contract risk and the sensitivity of the data. The Proposer must periodically provide evidence of compliance with the security controls required under the Contract upon request by the TLC.
- 3.56.4. The Successful Proposer agrees that all products and/or services provided hereunder 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 §202.

### **3.57. False Statements; Breach of Representations**

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

### **3.58. Limitation on Authority; No Other Obligations**

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





### **3.59. Proposer Assignment**

The Successful Proposer hereby assigns to the Texas Lottery any and all claims for overcharges associated with the Contract arising under the antitrust laws of the United States, 15 U.S.C.A. Section 1, et seq., and the antitrust laws of the State of Texas, Tex. Bus. & Comm. Code §15.01, et seq.

### **3.60. Code of Conduct**

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

- a. Offer goods and services only of the highest quality and standards.
- b. Use its best efforts to prevent the industry from becoming embroiled in unfavorable publicity.
- c. Make presentations in a responsible manner and when it is felt necessary to point out the superiority of its goods or services over those of its competitors, do so in such a manner as to avoid unfavorable publicity for the industry.
- d. Avoid activities, operations, and practices that could be interpreted as improper and cause embarrassment to the Texas Lottery and/or to the industry.
- e. Report security problems or potential security problems with any services provided pursuant to this RFP immediately and only to the Texas Lottery.
- f. Otherwise comply with the State Lottery Act (Tex. Gov't Code Ch. 466) and Texas Lottery rules, procedures and policies.
- g. Provide best practices related to security and integrity standards within the industry.

### **3.61. Contact with Texas Lottery Commission**

3.61.1. Employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer may not offer or give a gift to a Texas Lottery employee. For purposes of this section, "gift" has the meaning as defined in Tex. Gov't Code §467.001(4) and as may be subsequently changed or amended by acts of the Texas Legislature.

3.61.2. Employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer should not engage in nonprofessional





socialization (socialization outside of a work context) with a Texas Lottery employee. There may be circumstances, however, in which nonprofessional socialization is acceptable, for example, because of family relationships, common acquaintances, or common outside activities. The restrictions on nonprofessional socialization are not meant to apply to unplanned, incidental social contact. In such circumstances, employees, Subcontractors and agents of all prospective Proposers and employees, Subcontractors and agents of the Successful Proposer should not discuss Texas Lottery business with any Texas Lottery employee.

3.61.3. Professional socialization at activities, such as industry trade conferences and site visits, is permitted.

### **3.62. Incidents and Anomalies**

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

### **3.63. U.S. Department of Homeland Security’s E-Verify System**

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

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

### **3.64. Non-Exclusive Contract**

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

### **3.65. Survival**

Provisions of this RFP which of their nature and effect are necessary to enable the Lottery to function normally and to meet all of its obligations shall survive any termination of



the Contract. These provisions include, but are not limited to, all of the warranties and representations and any provision that by its terms provides for applicability beyond the end of any Contract period.



## 4. REQUIRED INFORMATION

### 4.1. Experience of Proposer

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

### 4.2. Proposer References

A minimum of seven (7) verifiable references must be provided that include the contact person, name of company, phone, e-mail address and descriptions of services provided. Proposers' references shall include references for which the Proposer has provided similar services as described in Parts 7 and 8 of this RFP within the last five (5) years.



The Texas Lottery reserves the right to verify all information in the Proposal submitted by the Proposer and seek other information it deems necessary to conduct a thorough review.

### **4.3. Contact Person**

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

### **4.4. Conflict of Interest**

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

[https://www.texaslottery.com/export/sites/lottery/About\\_Us/Doing\\_Business\\_with\\_TLC/Contracts\\_Over\\_\\$100x000/](https://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.

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

### **4.5. Financial Soundness**

- 4.5.1. Each Proposer must provide evidence of financial responsibility and stability for performance of the Contract and must demonstrate the ability to finance the project described in its submission.



4.5.2. Each Proposer shall provide evidence of financial responsibility and stability based on any and/or all of the following:

1. If the Proposer is the sole source of financial resources, the Proposer must submit financials showing the Proposer's ability to finance the project on its own with current resources;
2. If the Proposer is the subsidiary of a parent corporation and the parent corporation is providing financial resources or assurance, the parent corporation must complete Attachment B, and the Proposer must submit financials for both the Proposer and the parent;
3. If the Proposer is a joint venture or a group of affiliated companies, the Proposal must include financials for each member or affiliate of such joint venture or group, as applicable.

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

(a) Copies of audited financial statements and/or complete tax returns for each of the Proposer's (and its parent corporation, if applicable, or joint venture member or affiliate, if applicable) two (2) most recently ended fiscal years; and/or

(b) If documentation under (a) is not available, the Proposer shall provide other proof of financial assurance.

4. If the Proposer is relying on financial resources other than items 1 through 3 above, then the Proposer shall submit the following documentation with its Proposal:

(a) Other proof of financial assurance that is verified by a third-party financial institution. Examples of such items are as follows:

- I. Unaudited financial statements accompanied by a line of credit from a third-party financial institution stating the credit amount and available balance.
- II. Unaudited financial statements accompanied by a bank statement provided by a third-party financial institution confirming the Proposer's average bank balance for at least the previous six (6) months.
- III. Any other financial information Proposer would like to be considered.

4.5.3. If the information in Section 4.5.2 is not available at the time of submission, the Proposer shall provide other proof of financial responsibility acceptable to the Texas Lottery prior to the deadline for submission of Proposals.



- 4.5.4. The Texas Lottery reserves the right to require any additional information necessary to determine the financial responsibility and stability of the Proposer.
- 4.5.5. The Proposal must include a certification that the Proposer will notify the Texas Lottery of a change in financial condition during the Contract term and any renewal thereof. If a Proposer experiences a substantial change in its financial condition prior to the award of the Contract, or if the Successful Proposer experiences a substantial change in its financial condition during the term of the Contract or any extension thereof, the Texas Lottery must be notified of the change in writing at the time the change occurs or is identified. Failure to notify the Texas Lottery of such substantial change in financial condition will be sufficient grounds for rejecting the Proposal or terminating the Contract. For the purposes of this section, examples of a substantial change in financial condition are events such as insolvency, bankruptcy or receivership.

## **4.6. Background Investigations**

- 4.6.1. **Vendor Background Investigation.** Under Tex. Gov't Code §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 Tex. Gov't Code §466.155.

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

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



information to complete a background investigation or the results of these background investigations.

**4.6.2. Contractually Defined Vendor Principal(s) Background Investigation.** The Texas Lottery may initiate background investigations on the Apparent Successful Proposer Principals who will be directly involved in selling or leasing the goods or performing the services that are the subject of this RFP or the Contract. This includes any oversight function performed by such individuals. For purposes of this section and the attachments, these individuals are called “contractually defined vendor principals.”

**4.6.3. Vendor Employee Background Investigations.** The Successful Proposer agrees that, during the term of the Contract and any extension thereof, it shall be obligated to provide such information about any principals, employees, and Subcontractor Personnel as the Texas Lottery may prescribe. The Successful Proposer also agrees that the Texas Lottery may conduct background investigations of such persons.

The Texas Lottery will conduct vendor employee background investigations on any of the Successful Proposer’s principals, employees, and Subcontractor Personnel who meet one (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 TLC facilities; and/or
- they have direct access to TLC information systems.

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

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



#### **4.7. Disclosure of Interested Parties**

Tex. Gov't Code §2252.908 states that 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/rules/commission/ch46.php>). 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 [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac\\_view=5&ti=34&pt=1&ch=20&sch=D&div=1&rl=Y](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=34&pt=1&ch=20&sch=D&div=1&rl=Y)). By submitting a Proposal, the Proposer certifies that it has reviewed 34 TAC §§ 20.281 - 20.298. Rule 20.285 addresses the specific requirements of Historically Underutilized Business subcontracting plans (HSPs).

### 5.2. HSP Submission and Texas Lottery Review

- 5.2.1. All proposals must include an HSP (Attachment C, including Method A or B, if applicable) in the format required by the 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 must be printed, signed and submitted with your Proposal. The HSP is a pass/fail requirement. PROPOSALS THAT DO NOT INCLUDE A COMPLETED HUB SUBCONTRACTING PLAN PREPARED IN ACCORDANCE WITH 34 TAC §20.285 SHALL BE REJECTED AND WILL NOT BE EVALUATED.
- 5.2.2. The HSP form is provided in Attachment C of this RFP. To determine whether a Proposer has performed a good faith effort in preparing its HSP as required by the 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 TLC's Pre-Bid/Proposal Conference Booklet regarding HSP requirements is available on the agency's website at: [http://www.txlottery.com/export/sites/lottery/About\\_Us/Doing\\_Business\\_with\\_TLC/Procurement/](http://www.txlottery.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 TLC Assistance.* As stated above, if an HSP is rejected, the Proposal will be disqualified and will not be considered. **Therefore, Proposers are strongly encouraged to start preparing HSP forms as soon as possible and take advantage of the following TLC assistance. Please note there are deadlines associated with this process and Proposers have a limited amount of time to cure any deficiencies.**

- Written questions regarding the HSP can be submitted at any time up until the Proposal deadline. The TLC will compile and post a separate HSP question-and-answer document on the TLC website. The document will be updated as questions are submitted. It is the Proposer's responsibility to check the TLC website for this information.
- The TLC will conduct one-on-one HSP workshops with Proposers upon request. The workshops will cover detailed information on how to complete the HSP forms. Workshops must be concluded by the date and time listed in the Schedule of Events. Workshops due to gathering restrictions 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 a workshop up until the final date listed in the Schedule of Events.
- The TLC will review and provide individual written feedback on draft HSP forms submitted by Proposers. Draft HSP forms must be submitted by the date and time listed in the Schedule of Events. Upon request, the TLC may also provide verbal feedback.

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

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

## 5.4. Requirements for Completing the HSP Forms

5.4.1. TLC's HUB Participation Goal. The goods and/or services requested in this RFP are classified in the category of Other Services Contracts. The agency's HUB participation goal for this RFP is 24.30%.



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

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

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

5.4.4. **Proposer Does Not Intend to Subcontract**

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



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

## **5.5. Subcontracting Opportunities**

- 5.5.1. The Texas Lottery has determined there are no subcontracting opportunities for broadcast, newspaper, digital, social, out-of-home media, and sponsorship activations vendors. For example, if you are the primary (only) advertising media planning and buying agency to provide buying and stewardship, with a media vendor such as TV stations or Instagram this is not considered a subcontracting opportunity. However, if you are using more than one (1) advertising media planning and buying agency to provide services under this RFP, this is considered subcontracting. Another example is buying out-of-home media, including production of any billboard vinyl from the media vendor is not considered subcontracting. However, if using a non-media vendor to produce the vinyl separately, this is considered subcontracting.
- 5.5.2. The Texas Lottery has identified the following potential subcontracting opportunities under this RFP. Proposers intending to subcontract any must perform the good faith effort detailed in the HSP instructions and include a compliant HSP with the Proposal.

### **CLASS 559: MASS TRANSPORTATION, RAIL VEHICLE PARTS AND ACCESSORIES**

#### **Item Numbers and Commodity Descriptions:**

559-70 Signage: Destination, Routing and Advertising

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

#### **Item Numbers and Commodity Descriptions:**

801-58 Signs: Billboard, Advertising, etc.

### **CLASS 915: COMMUNICATIONS AND MEDIA RELATED SERVICES**

#### **Item Numbers and Commodity Descriptions:**

915-01 Advertising Agency Services

915-04 Advertising Services, Outdoor Billboard, etc.

915-10 Advertising, Digital

915-59 Mail Services, Express

915-71 Newspaper and Publication Advertising, Non-legal

### **CLASS 918: CONSULTING SERVICES**

#### **Item Numbers and Commodity Descriptions:**



918-07 Advertising Consulting

918-76 Marketing Consulting

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

**Item Numbers and Commodity Descriptions:**

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

**CLASS 958: MANAGEMENT AND OPERATION SERVICES (NOT OTHERWISE CLASSIFIED)**

**Item Numbers and Commodity Descriptions:**

958-84 Social Media Management Services

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

**Item Numbers and Commodity Descriptions:**

961-49 Legal Services, Attorneys

961-66 Sign Making and Painting Services

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

**Item Numbers and Commodity Descriptions:**

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

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

**CLASS 971: REAL PROPERTY RENTAL OR LEASE**

**Item Numbers and Commodity Descriptions:**

971-70 Storage Space Rental or Lease

5.5.3. 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.

5.5.4. 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 Commission does not endorse, recommend or attest to the capabilities of any company or individual listed. Note that currently active certified HUBs will have a status code of "A." All other status codes indicate that a vendor is inactive or not a HUB.

5.5.5. Please refer to the HUB/CMBL Directory Instructions and HUB Vendor Reference Lists under the HUB/CMBL tab of this RFP to locate potential HUB Subcontractors.

## **5.6. Post-Contract Award**

### **5.6.1. Notification of Subcontractors**

Following Contract Award, the Successful Proposer must provide notice to all subcontractors (HUBs and Non-HUBs) of their selection for the awarded Contract. The Successful Proposer is also required to provide a copy of each notice to the agency's HUB Coordinator for the Contract no later than ten (10) Working Days after the Contract is awarded. Proposers should refer to Section 4 of the HSP form for additional information about this requirement.

### **5.6.2. HSP Changes**

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

### **5.6.3. HSP Reporting**

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



## **6. ADVERTISING AGENCY STAFFING REQUIREMENTS**

### **6.1. Ad Agency Staffing**

- 6.1.1. It is crucial that the Successful Proposer and the team assigned to work on the Texas Lottery account demonstrate the experience and skills required to effectively reach and communicate with the diverse population of Texas.
- 6.1.2. Proposers must provide an organizational chart which identifies all staff, including media planning and/or media buying subcontracting personal who will support the Texas Lottery account. The organizational chart should include the position titles, number of positions, and names of all personnel. The organizational chart should include corporate directors and/or officers who will provide direction or oversight to the Texas Lottery account.

### **6.2. Agency Staff Structure**

- 6.2.1. Proposers must submit an in-depth staffing plan for the Texas Lottery account. However, the Texas Lottery is not predisposed to any particular staffing model. Proposers are encouraged to propose staffing plans that offer the best value to the Texas Lottery. If a different individual will not be assigned to each position, the Proposer must explain how service levels will be maintained and staffing needs met.
- 6.2.2. Proposers must provide a list of personnel, including media planning and/or media buying subcontracting personnel to be assigned to the Texas Lottery account and include detailed resumes for all personnel, which include, at minimum name: title and job description; number of years of experience; description of current duties, and length of time spent doing present (or related) duties; projects accomplished, including scope and name of customer's company; and relevant continuing professional education. If duties were performed for an employer other than the Proposer, the Proposal must indicate that employer's name.
- 6.2.3. Media Staffing. Each Proposer must describe the staffing levels and functions of its media department, identify the personnel assigned to each function, and cross reference to the personnel list as necessary, The Media Director should have a minimum of seven (7) years of relevant media experience and the Media Supervisor should have a minimum of five (5) years of relevant media experience. Media staff may include the following:
  - Media Director
  - Media Supervisor
  - Senior Media Planner
  - Media Planner
  - Junior Media Planner



- Senior Media Buyer
- Media Buyer
- Junior Media Buyer

6.2.4. Other Staff. Each Proposer must describe the staffing levels and functions of any other departments and identify the personnel, including media planning and/or media buying subcontractors assigned to the Texas Lottery account. The Proposal should include or cross-reference to information reflecting the number of years of experience and the job description for each.





## **7. SCOPE OF SERVICES**

This section defines the scope of the services to be performed by the Successful Proposer as part of this RFP for Advertising Media Services.

### **7.1. General Description of Services and Requirements**

- 7.1.1. The Successful Proposer must be able to perform the functions of an advertising media planning and buying agency, including, but not limited to, planning, buying and stewardship of broadcast, newspaper, digital, social, out-of-home media, and sponsorship activations.
- 7.1.2. The Successful Proposer shall exhibit a thorough understanding of Texas as a minority-majority state and must demonstrate the ability to effectively reach all adult Texans (ages 18+).

### **7.2. Advertising Sensitivity**

- 7.2.1. The Texas Lottery is an agency of the State of Texas, and all advertising efforts shall be conducted in a manner commensurate with the dignity and integrity of the State of Texas. Advertising should be consistent with the core values, mission and vision of the Texas Lottery. Further, in accordance with Tex. Gov't Code §466.110. (Prohibited Advertisements), "advertisements or promotions sponsored by the commission or the division for the lottery [must] not be of a nature that unduly influences any person to purchase a lottery ticket or number."
- 7.2.2. Please refer to (Attachment M) for detailed sensitivity guidelines.

### **7.3. Media Plan**

- 7.3.1. The Texas Lottery will provide the Successful Proposer with planned product flights, overall budget, any pre-existing media commitments and projected sales goals for each fiscal year. The Successful Proposer shall provide the media strategy, media goals and communication objectives. The Texas Lottery and the Successful Proposer shall meet as needed to review the goals and objectives. The Texas Lottery may modify the goals and objectives at any time.
- 7.3.2. Media Plan. The Successful Proposer shall be required to develop an annual media plan that is consistent with the Texas Lottery's sales and media goals and communication objectives and must be approved in writing by the Texas Lottery. The Texas Lottery's media plan should reach all adult Texans (ages 18+). Unless otherwise specified by the Texas Lottery, the media plan, at a minimum, must include:



- (1) Allocation of dollars by media, DMA and/or measured geography with detailed rationale.
- (2) Billboard production projected costs. (Section 7.8)
- (3) Measurable metrics as appropriate for each medium (i.e., impressions, GRPs, etc.).
- (4) Detailed media flowchart that specifies mediums, markets and costs.
- (5) Any other topics specified by the Texas Lottery.

The media plan should be based on the Texas Lottery's fiscal year (FY) (September 1 – August 31). The Successful Proposer shall submit a media plan for FY24 no later than four weeks after the Contract execution date, or as specified by the Texas Lottery. Media plans will be due annually thereafter no later than May 31 or as specified by the Texas Lottery.

#### **7.4. Budget**

- 7.4.1. The level of anticipated annual FY spending will be determined by the Texas Lottery. The budget for FY 2023 is \$10,000,000 net. The Successful Proposer shall develop a cost-efficient and effective media plan that is responsive to the Texas Lottery's marketing needs.
- 7.4.2. The Successful Proposer shall make recommendations for savings wherever possible. The budget will be reviewed as needed and shall be revised as required by the Texas Lottery.
- 7.4.3. The Successful Proposer shall make no commitment on behalf of the Texas Lottery without prior written approval by the Texas Lottery.

#### **7.5. Reports**

- 7.5.1. The Successful Proposer shall provide the following reports to the Texas Lottery in a format approved or prescribed by the Texas Lottery. The Successful Proposer shall submit reports in accordance with the deadlines below, unless otherwise directed in writing by the Texas Lottery.
- 7.5.2. The following report is due by the 10th of each month:
  - The HUB Subcontracting Plan Prime Contractor Progress Assessment Report. This report documents monthly payments made by the Successful Proposer to subcontractors under the Contract.
- 7.5.3. The following report is due the first Wednesday of each month:
  - Approved Expenditure Report. A summary of all approved expenditures to date for the current fiscal year by media type. The summary shall indicate the total amount available in the budget and the total amount currently committed. The summary may also include



current amounts invoiced, amounts invoiced but not paid, remaining amounts committed but not invoiced, current amounts paid, and closed dates.

7.5.4. The following report is due quarterly:

- Quarterly Print Audit Report. All newspapers must have a current compliant print audit to be eligible for consideration. No more than thirty (30) Days following the end of each quarter, the Successful Proposer shall submit a quarterly print audit report. Print audit report will include name of publication, circulation, DMA, year established, publication frequency, distribution sites, audit information (status, method/firm, relevant dates), as well as publisher contact information.

7.5.5. The following report is due on an annual basis:

- Fiscal Year-End Added Value Report. The Successful Proposer shall submit a fiscal year-end summary of actual added value achieved as a result of the previous fiscal year's media buys no later than December 15 or as otherwise prescribed by the Texas Lottery.

7.5.6. The following reports are due no later than three (3) weeks prior to each campaign launch as follows:

- Media Buys. All media buys must include a summary of planned and purchased goal metrics met by purchased geography, and any cost savings achieved.
- Added Value. In accordance with Section 7.6.7, added value reports are required with the media buys or as prescribed by the Texas Lottery. These reports must include description, quantity and net value by purchased geography.

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

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

7.5.8. The following report is due no later than thirty (30) Days after each sponsorship activation completion:

- Post Sponsorship Report. This report provides a recap of each sponsorship activation as prescribed by the Texas Lottery.



- 7.5.9. At its sole discretion and with thirty (30) days' advance written notice to the Successful Proposer, the Texas Lottery may change the due dates of any required reports listed above. Failure to provide any reports as required (including in accordance with any revised due dates set by TLC) may result in the assessment of liquated damages under Section 3.48.9.
- 7.5.10. Ad Hoc Reports. The Texas Lottery may require the Successful Proposer to develop media reports or analysis of advertising opportunities with mutually agreed upon dates for delivery.

## **7.6. Media Services**

- 7.6.1. Media Buying Guidelines will be prepared by the Texas Lottery in cooperation with the Successful Proposer and shall be agreed to by both parties in writing. (See Attachment N) The Guidelines may be updated annually or more often as necessary during the term of this Contract. The Successful Proposer shall be responsible for adhering to the Media Buying Guidelines.
- 7.6.2. Planning. The Successful Proposer shall be responsible for the planning of the media budget. Allocation will be agreed upon by both parties. Proposers are required to discuss their access to advertising research, both quantitative and qualitative, for the Texas Lottery.
- 7.6.3. Negotiation and Placement. The Successful Proposer shall be responsible for the placement and purchase of all media, which may include: broadcast, digital, social, out-of-home and newspaper media as directed by the Texas Lottery. In negotiating media purchases, the Successful Proposer shall make the Texas Lottery aware of any savings that might be achieved through long-term commitments. Media vendors shall be invoiced at net cost with no mark-up. All broadcast stations are required to have a minimum ratings criterion defined by the Texas Lottery.
- 7.6.4. Trafficking of Media. The Successful Proposer shall be responsible for the trafficking of all creative assets to media vendors in a timely manner and adhere to all deadlines with receipt confirmation. The Successful Proposer must provide the Texas Lottery with detailed creative asset specifications and creative due dates in a timeline as prescribed by the Texas Lottery. The Texas Lottery will provide all creative assets.
- 7.6.5. Stewardship. The Successful Proposer shall ensure that all media runs according to any contracts or insertion orders. This includes but is not limited to: order receipt/input confirmation, traffic instruction confirmation, reviewing pre-log times, negotiating makegoods of comparable or greater value, etc.
- 7.6.6. Placement Verification. The Successful Proposer shall review, process invoices and address any discrepancies prior to submitting to the Texas Lottery. This includes but not limited to: confirming traffic, rotation, in-geo placements, brand safety, and flight dates



for the purchased media channels. In addition, the Successful Proposer shall provide, at no cost to the Texas Lottery, affidavits, tearsheets or any other placement verification requested by the Texas Lottery.

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

## **7.7. Media Evaluations**

Up to fifteen (15) times per year, the Texas Lottery shall require the Successful Proposer up to provide media evaluations, an analysis of advertising opportunities with third-parties, with mutually agreed upon due dates. This may include retailer co-op promotional opportunities and sponsorship activations.

## **7.8. Out-Of-Home Production**

Campaign billboards. The Successful Proposer shall be responsible for negotiating and contracting out-of-home billboard assets including but not limited to: vinyls, extensions, and snipes.

Jackpot billboards. The Successful Proposer shall be responsible for negotiating and contracting new and replacement out-of-home billboard assets including but not limited to: vinyls, and jackpot number box replacement or repair. In addition, the Successful Proposer will also be responsible for resolving signal failures with jackpot box vendor.

## **7.9. Goods and Equipment**

The Successful Proposer shall be responsible for all storage, destruction and other costs in connection with the disposal of jackpot boxes and equipment as requested by the Texas Lottery. The Texas Lottery will reimburse the Successful Proposer for these costs. If needed, the Successful Proposer shall be required to provide supporting documentation confirming disposal or destruction of such items. The Successful Proposer is expressly prohibited from reproducing, distributing, displaying, performing publicly, making copies or derivative works of, selling, using, re-using or otherwise conveying to other persons or entities any goods and/or equipment bearing any Texas Lottery mark without prior written approval by an authorized Texas Lottery representative.



## 7.10. Sponsorship Activations and Entitlements

- 7.10.1. The Texas Lottery works with the Lottery Operator to select promotional selling activations at fairs, festivals, other public events and in-store retailer promotions that create awareness and interest for Texas Lottery products among adult Texans. Sponsorship activations are intended to increase product trial and educate new and potential players about Lottery products.
- 7.10.2. At the Texas Lottery's request, the Successful Proposer shall assist in contract negotiation and execution of sponsorship activations in support of the Texas Lottery brand and products. This may include contracted services with third-party vendors but does not include separate production or staffing.
- 7.10.3. *Free Tickets and Other Benefits.* Entitlements often carry with them an offer for free tickets to events, premium items and other special benefits. All such benefits provided in relation to sponsorship activations on behalf of the Texas Lottery shall be fully disclosed and documented. The Texas Lottery reserves the right to accept or reject the offer of any such items or benefits offered in association with an entitlement. The Successful Proposer may not utilize any such items for its own benefit or the benefit of other clients. No such item shall be provided to an employee of the Texas Lottery. The Successful Proposer shall maintain a listing of any or all items or benefits provided to the Texas Lottery, and shall make a recommendation for their use. If, at the Texas Lottery's sole discretion, the Texas Lottery cannot make appropriate use of the items offered, it shall be the obligation of the Successful Proposer to negotiate lower rates or alternative benefits.

## 7.11. Conventions and Meeting

- 7.11.1. *Conventions and Meetings.* All Texas Lottery vendors should stay current on industry trends by attending various conventions, HUB expos and related meetings. When the Successful Proposer's attendance is requested by the Texas Lottery, the Successful Proposer shall request prior written approval of actual expenses from the Texas Lottery and travel expenses will be reimbursed pursuant to Texas State per diem rates (See Section 7.14).

## 7.12. Expenditure Approval

- 7.12.1. The Successful Proposer shall prepare written estimates for all expenditures and obtain prior written approval from the Texas Lottery before making any commitment on behalf of the Texas Lottery. The Texas Lottery will not be responsible for any expenditure unless pre-approved in writing. The Successful Proposer shall provide at least five (5) Working Days for all estimate approvals and shall submit estimates in a format prescribed by the Texas Lottery.



- 7.12.2. Agency Fee. Each estimate will include a line item for agency fees (based on the projected expenditure of the job and commission percentage). This applies to any estimates related to any pre-existing media commitments that the Successful Proposer will take over.
- 7.12.3. Estimate Revisions. Revisions to approved estimates must be pre-approved in writing by the Texas Lottery. All revised estimates shall contain the cost differential, including previous approved amounts and reason for revision. No cost changes estimates will be prescribed by the Texas Lottery.
- 7.12.4. Estimate Cancellations. For any previously approved estimate that is cancelled, the Successful Proposer shall submit a zero-dollar closed invoice to the Texas Lottery, or other documentation process as prescribed by the Texas Lottery.

### **7.13. Billing/Invoices**

- 7.13.1. In accordance with Section 3.8 and as further described herein, the Successful Proposer shall submit invoices to the Texas Lottery following delivery of completed services in accordance with a signed and pre-approved estimate.
- 7.13.2. The Successful Proposer shall submit invoices in duplicate every other Monday, or as prescribed by the Texas Lottery, together with supporting documentation to substantiate all expenses incurred. If the designated Monday is a State holiday, invoices will be due the next State Working Day. By submitting an invoice for payment, the Successful Proposer certifies that services have been rendered in accordance with the Contract.
- 7.13.3. The Successful Proposer shall submit with each billing cycle, or as prescribed by the Texas Lottery, a billing contents list and a closed jobs list. Each billing binder to include a summary statement of invoices that lists all jobs.
- 7.13.4. The Successful Proposer must include, at a minimum, or as prescribed by the Texas Lottery the following with each invoice: (i) invoice with invoice number, PO number, date of service, estimate number, and any line items; flight dates; and amount; (ii) cost detail with approved estimate amount, current billed amount, amount billed to date and balance remaining; (iii) all approved estimates and revisions; and (iv) supporting documentation (e.g., vendor invoices, tearsheets, affidavits, etc.).
- 7.13.5. No payment will be made to the Successful Proposer without a signed and approved estimate. The Texas Lottery will only authorize payments upon the completion and acceptance of services. The Texas Lottery does not pay any vendors directly.
- 7.13.6. Agency Fees to be billed with each invoice after invoice reconciliation at an actualized amount (based on the actual expenditure of the job and commission percentage). Invoices will include media placements, Out Of Home Production (Section 7.8), Goods and





Equipment (Section 7.9), Sponsorship Activation (Section 7.10), Conventions and Meeting (Section 7.11) and Travel (Section 7.14).

- 7.13.7. The Texas Lottery does not pay sales tax. The Successful Proposer will be provided a tax exemption letter.
- 7.13.8. Estimates will be closed ninety (90) Days after the completion of the media job. Once an estimate is closed, no further billing can be submitted. The Successful Proposer is required to mark "Closed" on the all final job invoice submitted to the Texas Lottery for payment.
- 7.13.9. The State's fiscal year is September 1 through August 31. Any invoices submitted after August 31 for services performed during the previous fiscal year must be submitted to the Texas Lottery no later than October 30 of the immediately following fiscal year.
- 7.13.10. If no final invoice is received within ninety (90) Days after the termination or expiration of the Contract, the Successful Proposer waives the right to receive any further payments.
- 7.13.11. Any invoices submitted that do not have all required detail to process for payment will be disputed in accordance with Tex. Gov't Code §2251.042 et. seq. (Disputed Payment). A disputed invoice will be processed for payment as soon as possible following settlement of dispute, but no sooner than thirty (30) Days from original invoice received date.
- 7.13.12. The Successful Proposer shall be required to reimburse the Texas Lottery for any overpayment determined as a result of an audit or inspection of records on work performed under the Contract. At the Texas Lottery's sole discretion, reimbursement may be in the form of a credit or actual payment made by the Successful Proposer.

## **7.14. Travel**

The Texas Lottery does not reimburse for the Successful Proposer's travel-related expenses for regularly held meetings at Lottery Headquarters. If the TLC requires the Successful Proposer to travel, for sponsorship activation or any other reason requested by and pre-approved by the TLC, actual travel costs will be reimbursed pursuant to Texas State per diem rates. Travel expenses shall not be reimbursed without a prior approved estimate.

## **7.15. Unacceptable Services**

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





### **7.16. Meetings with TLC Vendors**

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

### **7.17. Media Review**

The Texas Lottery, in its sole discretion may conduct media reviews to ensure compliance with the Scope of this RFP. The Successful Proposer shall comply with any media review conducted by the Texas Lottery, or its designee.

### **7.18. Other Associated Services (Offered Option)**

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

### **7.19. Office Location**

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



## 8. MEDIA RESPONSE

### 8.1. Media Plan Assignment

- 8.1.1. The Texas Lottery is interested in the Proposer's process and approach to resolving communication challenges. The Texas Lottery will assess the Proposer's ability to utilize qualitative and quantitative data and translate the findings into a concise media plan that is both cost efficient and effective.
- 8.1.2. **Introduction.** The Texas Lottery's product mix consists of scratch ticket games and draw games. The Texas Lottery introduces approximately ninety (90) scratch ticket games annually ranging in price point from \$1 to \$100, which account for approximately 82% of overall Texas Lottery® sales. Draw games (Powerball®, Mega Millions®, Lotto Texas®, Cash Five®, Daily 4™, Pick 3™, All or Nothing™, and Texas Two Step®) range in price point from \$.50 to \$2 and account for approximately 18% of Texas Lottery sales. Several of the draw games also offer optional purchase add-on features.
- 8.1.3. **Advertising Media Impact.** Past advertising campaigns have primarily supported scratch ticket families. Each scratch ticket family has large print runs and multiple tickets resulting in more market longevity and greater advertising efficiency than supporting standard individual scratch tickets. Powerball and Mega Millions draw games are promoted year-round through permanent statewide billboards. With eight (8) draw games and approximately ninety (90) scratch tickets each year, the current ad budget cannot support impactful reach for all products.
- 8.1.4. **The Assignment.** Each Proposer shall create and submit as part of its Proposal, a cost efficient and effective FY 24 annual media plan that is designed to increase product awareness, trial and participation by adult (ages 18+) Texans. The media plan should detail the markets, mediums, planned goals (impressions, GRPs, etc.), and flight dates utilized to reach the intended audience. The media plan must exclude agency fee costs within the allocated budget.

Considerations are as follows:

#### (a) *Media Commitments*

The following annual media commitments are required in the media plan:

- **Permanent Billboards.** Texas Lottery looks to enter into a new 2-year deal with ninety-five (95) permanent billboards throughout Texas. For FY23, this dollar commitment is \$5,778,883 inclusive of both billboard media and jackpot box vendor costs.
- **Newspaper.** Public notice of game closings run in approximately seventy (70) newspapers across the state. These insertions run monthly and are negotiated annually. For FY23, this dollar commitment is \$135,000.



**(b) Media Audience**

Goal is to reach Adults 18+ Texans with a media core audience of Adults 18-49.

**(c) Budget**

The budget should include all media costs and shall not exceed \$10 million. **The budget shall not exceed \$10 million and should only include all media costs. Agency fees shall not be included in this assignment.**

**(d) Flighting**

At a minimum, flighting should include three (3) campaigns to occur September, January and May. Additional windows for campaign consideration are December and March. Texas Lottery fiscal year runs September 1 through August 31.

**(e) Markets**

Markets to be considered based on sales and population as well as any other factors deemed important.

- 8.1.5. **Evaluation of Campaign Effectiveness.** The Texas Lottery has provided resources in Section 1.1.2 for use by Proposers in completing the Annual Media Plan assignment. Proposers are encouraged to conduct additional quantitative and qualitative analysis. The response should include media plan support as well as any examples or case studies related to the assignment. Lastly, the proposer is to provide methods used to evaluate campaign effectiveness during and/or post campaign and stewardship procedures.



**ATTACHMENT A  
PROPOSER'S COMMITMENT**

I hereby commit \_\_\_\_\_

(Company Name)

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



---

## ATTACHMENT B FINANCIAL COMMITMENT AND RESPONSIBILITY

This financial commitment and responsibility statement shall 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 under this RFP or resulting contract 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 <b>do not</b> have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <b>continuous contract*</b> in place for <b>more than five (5) years</b> .	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 <b>do not</b> have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to HUBs with which you have a <u>continuous contract*</u> in place for <u>more than five (5) years</u> .	Percentage of the contract expected to be subcontracted to non-HUBs.
16		%	%	%
17		%	%	%
18		%	%	%
19		%	%	%
20		%	%	%
21		%	%	%
22		%	%	%
23		%	%	%
24		%	%	%
25		%	%	%
26		%	%	%
27		%	%	%
28		%	%	%
29		%	%	%
30		%	%	%
31		%	%	%
32		%	%	%
33		%	%	%
34		%	%	%
35		%	%	%
36		%	%	%
37		%	%	%
38		%	%	%
39		%	%	%
40		%	%	%
41		%	%	%
42		%	%	%
43		%	%	%
Aggregate percentages of the contract expected to be subcontracted:		%	%	%

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

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

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

**SECTION 4: AFFIRMATION**

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

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

Signature

Printed Name

Title

Date  
(mm/dd/yyyy)

**Reminder:**

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

## Rev. 2/17

**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:

Page 1 of 1  
(Attachment A)

# HSP Good Faith Effort - Method B (Attachment B)

Rev. 2/17

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

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

## SECTION B-1: SUBCONTRACTING OPPORTUNITY

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

## SECTION B-2: MENTOR PROTÉGÉ PROGRAM

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

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

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

## SECTION B-3: NOTIFICATION OF SUBCONTRACTING OPPORTUNITY

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

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

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

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

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

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

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

Rev. 2/17

Enter your company's name here: \_\_\_\_\_ Requisition #: \_\_\_\_\_

## SECTION B-4: SUBCONTRACTOR SELECTION

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

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

Item Number: \_\_\_\_\_ Description: \_\_\_\_\_

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

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

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

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



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



# HUB Subcontracting Plan (HSP)

## QUICK CHECKLIST

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

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

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



**ATTACHMENT C-2**  
**HUB SUBCONTRACTING OPPORTUNITY NOTIFICATION FORM**





# HUB Subcontracting Opportunity Notification Form

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

34 Texas Administrative Code, §20.14 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, §20.11(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 §20.14, 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, §20.11(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 director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

(1) is an individual who:

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

(B) is or has been a professional gambler;

(C) is married to an individual:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) For purposes of Subsection (a)(3), the comptroller, Texas Workforce Commission, 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; Acts 2013, 83rd Leg., R.S., Ch. 993 (H.B. [2197](#)), Sec. 5, eff. September 1, 2013; Acts 2017, 85<sup>th</sup> Leg., R.S., Ch. 141 (H.B. 1555), Sec. 1, eff. May 26, 2017; Acts 2019, 86<sup>th</sup> 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.



---

## **ATTACHMENT D-1 BACKGROUND INFORMATION CERTIFICATION**

Texas Government Code §466.155

Under Texas Government Code §466.103, the Executive Director of the Texas Lottery Commission may not award a contract for the purchase or lease of facilities, goods or services related to lottery operations to a person who would be denied a license as a sales agent under Texas Government Code §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 TEXAS LOTTERY COMMISSION VENDOR BACKGROUND INVESTIGATION FORM**

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

### **GENERAL INFORMATION**

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

### **SALES AGENT ELIGIBILITY STANDARDS**

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

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

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

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



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

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

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

sign

here \_\_\_\_\_

Signature of person  
authorized to contractually bind Proposer

Title

Date

\_\_\_\_\_  
Corporation or Legal Business Name



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

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

The following is a list of vendor principals for \_\_\_\_\_ [*company name*] \_\_\_\_\_ as defined by Tex. Gov't Code §466.155 (attach additional sheets if necessary).

Name	Title

\_\_\_\_\_  
(signature of person authorized to contractually bind the Proposer)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(date)



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

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

The following is a list of vendor principals for \_\_\_\_\_ [*company name*] \_\_\_\_\_ who will be directly involved in selling or leasing the goods or performing the services that are the subject of the Contract with the Texas Lottery. This includes any oversight function performed by the vendor principal(s). These individuals also must meet eligibility requirements under Tex. Gov't Code §466.155.

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

Name	Title

\_\_\_\_\_  
(signature of person authorized to contractually bind the Proposer)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(date)





### ATTACHMENT E-3

## VENDOR EMPLOYEE BACKGROUND INVESTIGATION LIST

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

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

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

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

Name	Title

\_\_\_\_\_  
(signature of person authorized to contractually bind the Proposer)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(date)



## ATTACHMENT E-4

### CONSENT TO BACKGROUND INVESTIGATION AND RELEASE OF PERSONAL INFORMATION

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

All persons contracting with the Texas Lottery Commission must meet the requirements of Tex. Gov't Code §466.155. Print or type all information in blue or black ink.

Vendor Principal - ☐ Vendor Employee/Subcontractor Employee - ☐

#### Company Name

Name \_\_\_\_\_  
Last First Middle .

Other Names Used \_\_\_\_\_ Phone # \_\_\_\_\_  
(Maiden, Nicknames, Previous Married Names, etc.)

Alternate Phone # \_\_\_\_\_

Place of Birth: \_\_\_\_\_ Social Security No.: \_\_\_\_\_ Country of Citizenship \_\_\_\_\_

Driver's License # \_\_\_\_\_ State \_\_\_\_\_ Type \_\_\_\_\_

DOB: \_\_\_\_\_ Race \_\_\_\_\_ Sex \_\_\_\_\_ Ethnicity \_\_\_\_\_

Height \_\_\_\_\_ Weight \_\_\_\_\_ Eye Color \_\_\_\_\_ Hair Color \_\_\_\_\_

Scars, Marks, Tattoos, Amputations: \_\_\_\_\_

Current Address: \_\_\_\_\_

City \_\_\_\_\_ State/Country: \_\_\_\_\_ Zip code: \_\_\_\_\_

I understand and agree that:

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

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

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

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



## ATTACHMENT F SAMPLE PERFORMANCE BOND

Bond No. \_\_\_\_\_

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

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

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

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

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

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



## ATTACHMENT G SCORING MATRIX

Advertising Media Services RFP	Possible Points	% of Total	Points Awarded
The Proposer's price to provide the goods or services.	100	10 %	
<b>Cost Proposal Subtotal</b>	<b>100</b>	<b>10%</b>	
The probable quality of the offered goods and/or services.	500	50 %	
The agency's evaluation of the likelihood of the Proposal to produce the desired outcome for the agency, considering:			
The quality of the Proposer's past performance in contracting with the Texas Lottery Commission, with other state entities, or with private sector entities.	100	10%	
The qualifications of the Proposer's personnel.	150	15%	
The experience of the Proposer in providing the requested goods or services.	150	15%	
The financial status of the Proposer.	<b>Pass/Fail</b>	<b>n/a</b>	
Whether the Proposer performed the good faith effort required by the HUB subcontracting plan.	<b>Pass/Fail</b>	<b>n/a</b>	
<b>Technical Proposal Subtotal</b>	<b>900</b>	<b>90%</b>	
<b>TOTAL</b>	<b>1000</b>	<b>100%</b>	

The following formula will be used in scoring cost proposals:

Lowest Cost Proposal Amount / Other Cost Proposal Amount = % of total points available for the Cost Proposal.



## ATTACHMENT H COST PROPOSAL

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

Each Proposer must complete the cost proposal stating the commission percentage (Commission Percentage) for the services stated in the RFP. Each Commission Percentage field must be completed with a value. Each field value amount must be greater than zero. "Not applicable" and "n/a" are not acceptable responses.

Please refer to the attached FY23 Media Flowchart (Attachment J) for an estimate of the media services that will be required to service this account. The Texas Lottery's actual needs may vary from the sample media flowchart. The Commission Percentage must include all direct and indirect costs, including all expenses associated with providing Contract services, e.g., salaries, overhead, general, and administrative expenses (including mail, shipping, invoice preparation, etc.) and profit.

Media placement, out-of-home production (RFP Section 7.8), sponsorship fee (RFP Section 7.10), conventions and meetings (RFP Section 7.11) and goods and equipment (RFP Section 7.9) will be reimbursed at net cost with no mark-up. The Commission Percentage is applicable to net cost.

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

**Commissions Percentage:** State the proposed commission rate at various expenditure levels. State the rate as a percentage, with the percentage lower for each successive increase billings amount.

The Commission Percentage should not go beyond the second (2) decimal places (to the hundredth decimal place) for Advertising Media Services.

Billings up to \$11,000,000 \_\_\_\_\_ % per fiscal year

Billings from \$11,000,001 to \$16,000,000 \_\_\_\_\_ % per fiscal year

Billings from \$16,000,001 to \$21,000,000 \_\_\_\_\_ % per fiscal year

Billings over \$21,000,000 \_\_\_\_\_ % per fiscal year



### **Offered Options**

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

---

*(signature of person authorized to contractually bind the Proposer)*

---

*(printed name)*

---

*(title)*

---

*(date)*



**ATTACHMENT I  
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 18<sup>th</sup> 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 13<sup>th</sup> 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.



**ATTACHMENT J**  
**FY23 MEDIA FLOWCHART**

## Texas Lottery FY23 Media Flowchart

	Cash Blowout										Holiday					Cash Blitz										Ca\$h Blowout										Gems																				
Month:	Sep-22					Oct-22				Nov-22				Dec-22				Jan-23					Feb-23					Mar-23					Apr-23					May-23				Jun-23				Jul-23				Aug-23						
Week:	8/29	9/5	9/12	9/19	9/26	10/3	10/10	10/17	10/24	10/31	11/7	11/14	11/21	11/28	12/5	12/12	12/19	12/26	1/2	1/9	1/16	1/23	1/30	2/6	2/13	2/20	2/27	3/6	3/13	3/20	3/27	4/3	4/10	4/17	4/24	5/1	5/8	5/15	5/22	5/29	6/5	6/12	6/19	6/26	7/3	7/10	7/17	7/24	7/31	8/7	8/14	8/21	8/28			
CAMPAIGN BUYS:																																																								
Billboards		9/5–10/2																	1/2–1/29																				5/1–5/28																	
Digital Video/Audio		9/5–10/2																	1/2–1/29																				5/1–5/28																	
Social Media		9/5–10/2													11/28–12/25				1/2–1/29										3/6-4/2										5/1–5/28																	
EVERGREEN:																																																								
Social Media																																																								
Permanment Jackpot Billboards																																																								
Jackpot Boxes																																																								
End of Game Newspaper																																																								



**ATTACHMENT K**  
**FY21 SALES BY GAME/ REVENUE**

**FY21 Sales by Game (Fiscal Year totals through 8/31/2021)**

<b>Game</b>		<b>FY21 Sales</b>
Scratch Tickets	\$	6,616,975,019
Lotto Texas		128,969,550
Lotto Extra		38,287,597
Pick 3		284,908,979
Pick 3 Sum It Up		-
Pick 3 Fireball		25,354,244
Cash Five		51,521,524
Texas Two Step		66,588,851
Mega Millions		323,909,286
Megaplier		55,378,819
MM Just the Jackpot		1,298,487
Daily 4		121,722,342
Daily 4 Sum It Up		-
Daily 4 Fireball		20,125,099
Powerball		279,351,266
Power Play		48,877,533
All or Nothing		43,934,799
	\$	<b>8,107,203,394</b>
<b>TOTAL FY21 REVENUE</b>	\$	<b>1,998,313,536</b>



**ATTACHMENT L**  
**SALES BY DESIGNATED MARKET AREA (DMA)**

Texas Lottery Commission  
Unaudited Sales for Fiscal Year 2022\*

DMA Code	DMA Desc	Net Sales
1	ABILENE-SWEETWATER	\$ 104,101,454.00
2	AMARILLO	\$ 122,239,166.50
3	AUSTIN	\$ 787,663,424.00
4	BEAUMONT-PORT ARTHUR	\$ 154,795,214.50
5	CORPUS CHRISTI	\$ 220,645,900.50
6	DALLAS-FT. WORTH	\$ 2,111,221,672.00
7	EL PASO	\$ 127,420,288.00
8	HARLINGEN	\$ 352,260,349.50
9	HOUSTON	\$ 1,980,908,494.50
10	LAREDO	\$ 63,620,111.50
11	LUBBOCK	\$ 111,720,787.00
12	ODESSA-MIDLAND	\$ 168,948,851.00
13	SAN ANGELO	\$ 57,465,591.50
14	SAN ANTONIO	\$ 1,057,821,086.50
15	SHERMAN-ADA	\$ 37,166,857.50
16	SHREVEPORT	\$ 96,296,858.00
17	TYLER-LONGVIEW	\$ 271,755,879.50
18	VICTORIA	\$ 37,920,915.00
19	WACO-TEMPLE-BRYAN	\$ 392,282,316.50
20	WICHITA FALLS	\$ 50,966,090.50
		\$ 8,307,221,308.00

\*Reflects Unaudited and Unadjusted FY 2022 Lottery Sales data. The amounts reported are unadjusted sales that do not reflect coupons/Free Tickets



**ATTACHMENT M**  
**SENSITIVITY GUIDELINES**





SUPPORTING  
TEXAS EDUCATION  
AND VETERANS

# Texas Lottery Advertising Sensitivity Guidelines

## Prohibited Advertisements restriction in the State Lottery Act

Sec. 466.110. PROHIBITED ADVERTISEMENTS. The legislature intends that advertisements or promotions sponsored by the commission or the division for the lottery not be of a nature that unduly influences any person to purchase a lottery ticket or number.

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. 6.17, eff. Sept. 1, 1995.

The Texas Lottery is an agency of the State of Texas, and all advertising efforts shall be conducted in a manner commensurate with the dignity and integrity of the State of Texas and the Texas Lottery brand. Advertising should be consistent with the core values, vision and mission of the Texas Lottery and in accordance with the State Lottery Act. All Texas Lottery advertising is designed in a manner to not unduly influence any person to purchase a lottery ticket or number based on the criteria detailed below.

Advertising should not:

1. Unduly influence or over promise the benefits and features of the game or infer that anything other than random chance will result in winning the game via game names, callouts, features or other game elements.
2. Depict or represent a change of lifestyle by presenting any Texas Lottery game as a potential means of relieving any person's financial or personal difficulty by emphasizing wins are a guarantee or substitute for employment.
3. Display guns, alcohol, tobacco, improper attire or imply lewd or indecent language, images or actions.
4. Portray product abuse, excessive play or preoccupation with gambling by glamorizing frequent or excessive play.
5. Imply or portray any illegal activity.
6. Make fun of other's pain, misfortune or impairment or physique.
7. Degrade the image or status of persons of any ethnic, minority or religious group.
8. Show any form of cruelty and/or abuse of animals.
9. Exploit a person, specific group or economic class.
10. Create the perception that the Texas Lottery has control over where winning tickets are sold and/or purchased.
11. Stereotype Texans.
12. Solicit children.



**ATTACHMENT N**  
**MEDIA BUYING GUIDELINES**

## **TLC Media Buying Guidelines**

- GENERAL BUYING GUIDELINES
- BROADCAST BUYING GUIDELINES
- TV BUYING GUIDELINES
- RADIO BUYING GUIDELINES
- BROADCAST PROGRAMMING GUIDELINES
- DIGITAL
- SOCIAL
- OUT-OF-HOME (OOH)
- NEWSPAPER
- ADDED VALUE
- POSTING

## **GENERAL BUYING GUIDELINES**

### PRIMARY DEMOGRAPHIC

- A18-49

### FISCAL YEAR

- Dates for annual buys are: September 1 to August 31

### GRPs/IMPRESSIONS/UNITS

- Buys to meet planned GRPs/Impressions/units, unless otherwise approved by the client

### BUDGET

- Media Buys will be negotiated as far out in advance as possible to secure best pricing and inventory options
- All final budgets by market must be reported and approved by the Media Buying Director. This includes savings and overages
- Overages/Savings of +/- 10% must be supported by written rationale
- Dollars can shift within the same estimate and same medium

### FLIGHTING

- Client approval required to change flighting beyond approved dates
  - TLC to be presented with any options needed to fulfill media buy goals, if any instances arise where goals may not be achieved
- Added Value/Underdelivery Weight weeks need to be approved by client in advance

## **BROADCAST BUYING GUIDELINES**

### AUDIENCE COMPOSITION

- All programming must have an audience composition of 70% + be 18+

### RATING BOOKS

- Rating books must be aligned per quarter with available books in each market and reflect the programming of the purchased quarter
- All broadcast buys to be negotiated, and posted, off of the General Market rating book

### STATION SELECTION

- Only stations licensed to the State of Texas can be purchased:
  - No "X" stations
  - Stations can be licensed in more than one state (EX: Texas and Oklahoma), but must be licensed in Texas
- All stations must be rated by Nielsen or Nielsen Audio and have the ability to post in order to be purchased or run added value

- TV and Radio stations that do not agree to post rating delivery per TLC guidelines will be ineligible for any media opportunities
- Consider ratings spill in markets that receive coverage from purchased stations in neighboring markets
  - Primary market will be purchased first to determine spill amount and then plan will be adjusted accordingly in spill market
  - Spill weight to be shown in buy reports

#### DAYPART VARIANCES

- Total Daypart Variance  $\pm 15\%$ 
  - (TV) Except Prime/Sports must be purchased at 100%
  - (TV) Except Early Morning, cannot be over planned goal
- Total Daypart Weekly Variance  $\pm 20\%$
- Total Overall Weekly Variance  $\pm 15\%$
- Total Overall GRP Goal 0%
  - Can be slightly over goal, but NEVER under goal

#### BUY VARIANCES

- Notify the Media Director of any of the following:
  - Unusual market situations, problems or deviations that exceed daypart variances
  - When a certain daypart is inefficient due to the lack of programming and/or ratings
- Although the budget may allow the purchase of inefficient spots, there may be a better option. In this situation, the buyer should work with the Media Director to recommend a smarter alternative to be discussed with the client.

#### COST CONSIDERATION

- Buy Recaps to show negotiated cost compared to Average SQUAD by daypart
- Buyers should consider cost efficiencies and can shift weight to upgraded dayparts

#### REVISED PLAN

- If the original planned daypart mix is not achievable or inefficient, agency will change the plan

#### STEWARDSHIP

- Any new programming or format change must air in a ratings book before being purchased
- Contracts and/or electronic confirmations of receipt to be verified upon release of orders to stations
- Post log times for TV and Radio are to be checked weekly and are due by 5p Tuesdays following an on-air week
  - Appropriate credits and/or makegoods must be taken if schedule does not air as ordered
- During political, pre-logs are to be checked weekly to ensure spots are scheduled to run as ordered
- Log times are to be checked for:
  - Correct flight dates
  - Separation policy

- Fair and equal horizontal and vertical rotation
- Late Run programming
- Correct traffic (ISCI)
- Approved programming
- Weekly spot count
- Weekly dollar amounts (spot rates) to be requested
- Re-rates are to be pulled with the release of each Nielsen/Nielsen Audio rating book
- Since orders will be negotiated far in advance, buys will need to be constantly monitored and updated or revised based on programming and rating changes

#### MAKEGOODS

- Makegoods are to be requested for:
  - Pre-empted or missed spots
  - Spots that air improperly or against guidelines
  - Poor rotation (both horizontally and vertically)
  - Unauthorized spots
  - Incorrect traffic
- Makegoods must be of the same dollars and:
  - Air in the current campaign flight
  - Be of the same spot length or upgraded length
  - Be of the same daypart or upgraded daypart
  - Be of the same rating or higher rating
  - Will not contribute to added value or UDW, but to buy delivery only
  - Adhere to all guidelines
- Buyers cannot accept downgraded makegoods when there is limited inventory or the flight is ending
- Under no circumstances should makegood weight air in overnight or in undesirable programming
- If a paid spot runs outside of approved programming guidelines, airs in hiatus week, or airs out of flight, a credit must be issued

#### BONUS WEIGHT & GOODWILL WEIGHT

- Bonus weight is no-charge weight that through stewardship was determined is needed for the buy to post through weekly logs/re-rates. This should be coded as INT and will be included for post-delivery
- Goodwill Weight is no-charge weight that has aired as Added Value from the station and is not needed to ensure delivery. Goodwill weight will be coded as GDW and will not be included in negotiated buy delivery but as standalone delivery

Medium	Daypart	DP Code	Day & Time	Comments
TV	Goodwill	GDW	M-Su 6a-12a	In planned dayparts & approved programming
	Bonus for Delivery	INT	M-Su 6a-12a	in planned dayparts & approved programming
Radio	Goodwill	GDW	M-F 5a-10p; Sa-Su 10a-10p	In planned dayparts & on approved stations
	Bonus for Delivery	INT	M-F 5a-10p; Sa-Su 10a-10p	In planned dayparts & on approved stations

## **TV BUYING GUIDELINES**

### **MINIMUM RATING REQUIREMENTS**

- Purchase programming that meets or exceeds the quarterly daypart average rating for the market for:
  - EM, DT, EF, EN, PA, LN, LF
- Prime/Sports (PR/SP) must exceed the quarterly daypart average rating

### **UNIT LENGTH**

- Recommended Unit Mix:
  - :30s 65%
  - :15s 35%
- Unit mix may be recommended to change during the course of the year with client approval given in advance
- :15s not to exceed goal
- When :15s are charged 90-100% of the :30s rate, only :30s will be purchased

### **SEPARATION**

- Only one paid spot is allowed per hour (60 minutes) or half-hour (30 minutes) program
- Two paid spots may air in a program that is 2+ hours long, if they air 1x per hour with a minimum separation of 30 minutes
  - If paid spots run without proper separation above, a full credit must be taken on one spot and a makegood issued
- If purchased, bookends must air in the same pod with an open/close position requested
- Added value or UD weight may run with 15 minute separation from other paid or unpaid spots

### **SPOT LOAD GUIDELINES**

- 4x per week M-F maximum allowed per program for 30 minute program or hour programming
- 5x per week maximum for any program with a 6-7 day broadcast (EX: M-Sa/Su local news)
- 7x per week M-F maximum allowed per program for 2+ hour programming (EX: *Today Show*)

### **BROAD ROTATORS & OVERNIGHT**

- Rotators are discouraged, however, if required:
  - Fair and equitable rotation is required across all dayparts
  - The rating for the lowest rated hour must be used
- No spots can air overnight (12a-5a), either paid or added value

### **DAYPART VARIANCES**

- Purchasing buys to daypart goals is preferred, however:
  - Can upgrade dayparts (EX: Prime) when efficient
  - Buyers should look to increase Late Fringe for markets with zero or low LF goal
- For programming that doesn't meet the Prime minimum rating:
  - These programs can be substituted for Early Fringe, Prime Access or Late Fringe GRPs, provided the daypart is a part of the approved mix for that effort.

- During the political windows, local Early News and Late News points may be shifted into other comparable or upgraded dayparts

#### INDEPENDENT STATIONS

- Independent station programming is acceptable in all dayparts as long as the programming is appropriate and meets minimum rating requirements per program

#### SPORTS

- Sports GRPs can be applied toward achieving Prime GRPs, however must be coded separately
- 100% of Sports GRPs (coded "SP") must air in live events only with a hard cutoff time to avoid late runs and reduced rating delivery
  - Pre/Post Game programming for Sports are approved but must be coded in the planned daypart they air in. If the pre/post game airs outside of a purchased daypart (i.e. 12n Sat), it should be coded as Prime Access.
- Pre/post games must be purchased separately and not included in the in-game timeperiod

#### BREAK POSITIONING

- Buyers will work with stations upfront in all markets to secure the best break positions
- Inside break positions versus adjacencies are always preferred in all programming, especially Prime and Late News
- For Late News and Late Fringe, secure spots in the first half of the program. If an early cut-off cannot be secured, then use the rating estimate from the last break

#### POD POSITIONING

- While stations may not guarantee positioning in a pod, the first or last placement in the break is requested as those placements are closest to programming
- If purchased, bookends are to be requested as the open and close of the break
  - Let the Media Director know if a premium is required to secure this positioning

#### TELEVISION DAYPARTS

- Market customization entails optimization of GRPs and daypart mix based on individual market nuances



Daypart	DP Code	Day and Time
Early Morning	MRN	M-F 6a-9a/Sa-Su 6a-10a
Daytime	DPT	M-F 9a-3p
Early Fringe	EFR	M-F 3p-6p/Sa-Su 3p-6p
Early News	ENS	M-Fri, Sat, Sun 5p-7p (M-F 4p-5p on a limited basis)
Prime Access	ACC	M-Sat 6p-7p
Prime	PRI	M-Sat 7p-10p, Sun 6p-10p (FOX/IND: M-Sat 7p-9p, Sun 6p-9p) (HISP: M-Sun 6p-10p)
Late News	LNS	M-Sun 10p-11p (FOX/IND: M-Sun 9p-10p)
Late Fringe	LFR	M-Sun 10p-12a (FOX/IND: M-Sun 9p-12a)
Sports	SPT	M-Sun 11a-CC in Live Sports (Hard cutoff of 1030p preferred)

## RADIO BUYING GUIDELINES

### UNIT LENGTH

- Recommended Unit Mix:
  - :60s 60%
  - :30s 40%
- Unit mix may be recommended to change during the course of the year with client approval given in advance
- :30s not to exceed goal
- When :30s are charged 90-100% of the :60s rate, only :60s will be purchased. This will skew the purchased unit mix from goal.

### SEPARATION

- Required separation for radio buys is 45 minutes:
  - One hour separation will be requested
- Added value or UD weight may run with 30 minute separation from other paid or unpaid spots

### BROAD ROTATORS & OVERNIGHT

- Rotators cannot be purchased
- No spots can air overnight (12a-5a), either paid or added value

### DAYPART VARIANCES

- Purchasing buys to daypart goals is preferred, however:
  - Can upgrade dayparts when efficient
  - Buyers should look to increase PM Drive for markets with lower PMD goal than MID

### STATION SELECTION

- Top ranked stations should always be purchased when possible
- Audience estimates based on Nielsen Audio MSA data

- Sources used to determine audience delivery should be latest 2-book average in diary or 3-book average in PPM markets
- All radio buys must cover all age cells of the primary audience
- Stations with several breaks are preferred over stations with one long break per hour

#### STATION SCHEDULING

- Station selection may vary by campaign or quarter
- Campaigns that have consecutive weeks crossing quarters are to be considered and purchased as one buy
- Stations are not to be flighted within a campaign or quarter, unless otherwise noted on buy specs or with prior client approval
- In the event there are weeks with higher GRP levels within flight, additional spots may be placed on the “base” stations (EX: Usually occurs with a 25 GRP or less increase)

#### SPOT SCHEDULING

- Diary markets: 15 spot minimum per M-Sun week per station, 20 minimum preferred
- PPM markets: 18 minimum per M-Sun week per station, 20 minimum preferred
  - Any deviations must have the Media Director’s approval
  - The exception to this rule is an abbreviated week (EX: Mon-Tue)
- Guaranteed fair horizontal and vertical rotation to be negotiated with each buy
- Narrowed dayparts should be negotiated to enhance quality and efficiencies where possible
- Must schedule enough spots per daypart in one week to be impactful, minimum 3x

#### FREQUENCY

- The weekly goal for individual station frequency is:
  - Diary markets 2.2-3.2 (2.5-3.0 preferred)
  - PPM markets 1.5-2.5 (2.0-2.5 preferred)

#### RADIO DAYPARTS

Daypart	DP Code	Day and Time
AM Drive	AMD	M-F 6a-10a <i>(approval needed for M-F 5a-6a)</i>
Midday	MID	M-F 10a-3p
PM Drive	PMD	M-F 3p-7p <i>(approval needed for M-F 7p-8p)</i>
Evening	EVE	M-F 7p-10p
Weekend	WKN	Sat-Sun 10a-10p <i>(Saturday preferred)</i>

### **BROADCAST PROGRAMMING GUIDELINES**

#### GENERAL PROGRAMMING GUIDELINES

- See Advertising Sensitivities in RFP.

## TV PROGRAMMING GUIDELINES

- Avoid any programming that appeals to children:
  - No animated programming
  - No holiday specials with heavy child viewership
- Movies are to be purchased by title. If titles are unavailable at the time the buy is made, please comment: "Title must be approved prior to air or credit will be taken". All movie titles must be approved by media buyers prior to airing and revised in buy software to include specific titles
- Program titles must be clearly indicated in the program line on buy reports
- No religious programming
- No paid programming
- It is the agency's responsibility to monitor programming prior to purchase.
- Programs on the hit-list are not to be included on any paid, bonus or compensatory schedules.

## TV PROGRAM MONITORING IS AN ON-GOING PROCESS

- All questionable ("Monitor") programs are placed on a hold list, during which time the program is not purchased
- Buyers to stay on top of programming changes throughout the seasons by watching the programs themselves, monitoring industry POVs and press commentary
- For new programming being introduced mid-season, please follow the same process:
  - The program is placed on hold until a rating book has been released and the program performance can be evaluated. Once enough episodes have aired, a recommendation is made whether to remove the program from the monitor list
- Hit-list programming chart is to be updated when programming season changes

## RADIO PROGRAMMING GUIDELINES

- Controversial on-air personalities are NOT to be purchased
- Do not purchase any Religious radio formats or programming
- Do not purchase any political talk shows
- Avoid programs that:
  - Regularly present facts inaccurately or distort them to a distinctly partisan advantage
  - Any "blue" formats of DJs that may be considered controversial
  - Excessively use profanity or vulgar "bathroom humor"
  - Include gratuitous, overly graphic and/or exploitive use of sex or violence
  - Are disparaging treatment of women, ethnic, religious or political groups
  - Glorify consumption of drugs or alcohol

## RADIO PROGRAM MONITORING IS AN ON-GOING PROCESS

- Buyers to stay on top of format, DJ and other programming changes occurring at the radio stations
- For station format changes, please follow the same process:
  - The station is placed on hold until a rating book has been released and the station performance can be evaluated

## **DIGITAL**

### GENERAL GUIDELINES

- Ads must be served within the state of Texas
- Ads must be served to Adults 18+
- All vendors must adhere to IAB Standard Terms & Conditions for Interactive Advertising v3.0
- Vendors will be provided a specific timing plan to be followed up on during course of campaign
- All selected digital vendors must provide details on how audiences are reached (pre and post site lists, app lists, channels, etc.)
  - Agency to review vendor partners sold only on a CPE/CPV setup

### BRAND SAFETY

- Vendors must adhere to TLC's content restrictions, refer to Advertising Sensitivities
- Brand safety 3<sup>rd</sup> party measurement must be implemented in order to verify safe content and context (EX: IAS). In instances where 3<sup>rd</sup> party measurement is not available, vendor to provide information on how brand safety is implemented to be approved by TLC.

### AD SERVING

- Selected Display, Video, Audio and Mobile vendors must be able to accept 3<sup>rd</sup> party ad serving tracking tags in order to verify delivery (EX: Sizmek), unless otherwise approved by the client
- At TLC discretion and with advance discussion with digital recommendation, site direct reports may be used:
  - If the Cost Per Engagement (CPE) or Cost Per View (CPV) models are purchased and 3<sup>rd</sup> party (Sizmek) reporting is unavailable
  - YouTube does not require 3<sup>rd</sup>-party ad server tracking since it is not allowed on the platforms, however real-time delivery dashboards are available
  - Or in the event of a 3<sup>rd</sup> party ad server or tag malfunction, TLC will be notified immediately
- Agency to determine and provide frequency caps on both campaign and vendor level, the activation of which to be validated weekly using Sizmek reporting

### AD NETWORKS

- Site list must be provided to agency pre-campaign to ensure ads are served in appropriate contexts
- All vendors required to provide post campaign site lists to agency within 10 days of campaign end

### REAL TIME BUYING (RTB)/DEMAND SIDE PLATFORMS/PROGRAMMATIC

- Vendors must be transparent with all buying parameters including but not limited to: data points, algorithm points of differentiation, cost models, inventory sources, brand safety, fraud and post-campaign reporting

## VIEWABILITY & FRAUD

- Viewability 3<sup>rd</sup> party measurement must be implemented in order to ensure display and video ads were viewable, prevent click and view fraud (EX: IAS), and can be implemented on publisher side. In instances where 3<sup>rd</sup> party measurement is not available, vendor to provide information on how viewability and fraud are addressed and methods to be approved by TLC
  - Agency must have access/ability to report details on viewability and fraud as technically possible
- All vendors are optimized to a minimum of 60% viewability goal above the 50% viewability standard for display based on MRC guidelines for measurable media
- Large video player sizes preferred

## REPORTING

- Recommended digital buy will be approved with goals per vendor (CPE/CPM/unit and budget) with notation that goals may change pending potential flight optimizations.
- If the original planned buy is not achievable or not efficient, agency can recommend a change to the plan with TLC approval
  - Documentation of Original and the final optimized Executed buys to be provided to TLC
- Partners to provide delivery by DMA post campaign
- Vendors billable amount will be based on Sizmek monthly reports, as possible
- Post Buy Reports will include the Executed Buy's unit and budget goals by vendor within the delivery summary

## BENCHMARK GUIDELINES

- Benchmarks provided are based on FY19-FY21 performances as well as industry benchmarks
- Metrics provided are to be used as a guide for optimizations, but please note that creative and game type affects performances

<b>Benchmark</b>	<b>Industry Standard</b>	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>
<b>Display (CTR)</b>	0.08%	0.10%	0.10%	0.10%
<b>Mobile (CTR)</b>	0.30%	0.20%	0.18%	0.17%
<b>Video (VCR)</b>				
Cross-Platform	60%	64%	60%	60%
Premium: FEP/CTV	90%	80-95%	90-95%	90-95%
Desktop Pre-Roll	65%	74-86%	60%	60%
Mobile Pre-Roll	55%	70%	65-70%	60-70%
Social Video	10%	4%	1%	2%
<b>Audio (CTR)</b>	0.12%	0.10-0.40%	0.10-0.40%	0.10-0.40%
<b>Rich Media</b>				
Expansion Rate	0.16%	0.14%	0.14%	0.14%
CTR	0.07%	0.77%	0.80%	0.80%
Interaction Rate	2.04%	6%	6%	6%

## **SOCIAL**

### GENERAL GUIDELINES

- Ads must be served within the state of Texas
- Ads must be served to Adults 18+
- Agency to provide recommendation for each campaign for approval prior to launch
- Annual CPM estimate to be reviewed throughout the year and updated as necessary with TLC approval prior to use.
- Social ads are contracted on a bidding model, delivery is estimated and not guaranteed
- Facebook algorithms to allocate impressions to FB/IG based on audience availability. No budget split is set.

### BRAND SAFETY

- Social buys must adhere to TLC's content restrictions, refer to Advertising Sensitivities
  - Agency to implement inventory restrictions as enabled by platforms
- Facebook Audience Network placements are to be excluded

### REPORTING

- Reported metrics will be based on platform 1<sup>st</sup> party data. Unable to implement 3<sup>rd</sup> Party tracking such as Sizmek
- Billable amounts will be based platform 1<sup>st</sup> party reporting

## **OUT-OF-HOME (OOH)**

### GENERAL GUIDELINES

- OOH must be within the state of Texas
- OOH demographic is Adults 18+
- OOH should not be placed in areas where the average Household Income is less than the state's median HHI
- Makegoods after TLC approval to be of comparable or higher ratings and to retain or increase the market RHR %
- OOH must be posted within approved campaign flights
  - OOH may be able to post early as Added Value but must run through entire campaign flight end date, with TLC approval
  - OOH may stay up in market beyond flight end date as Added Value when posted at start of campaign, with TLC approval
  - Any OOH that posts later than five (5) days from campaign start requires notification to TLC and revised estimate for specific board's deviated flight
- Agency to confirm with TLC any hard takedown dates for campaign creative

### BILLBOARD GUIDELINES

- Bulletins and poster placement should be in high-traffic locations with broad reach
  - Bulletins are preferred over posters
- Ad sizes for bulletins should be standard rectangular sizes and posters at standard rectangular sizes. Any unusual size deviations must be prior approved by TLC

- Campaign billboards must comprise a minimum of 70% Right Hand Reads by market
  - For markets with less than 70% RHR, deviation rationale must be provided to TLC
- Must refer to location hit-list to avoid boards with poor visibility, view obstruction, etc.

## **NEWSPAPER**

### **GENERAL GUIDELINES**

- Ensure all pubs comply with Texas Lottery Commission Print Requirements
- Current circulation audit is required of all publications
  - Audit report must cover at least 3 months of activity
    - Quarterly Data Reports and draft audits are not acceptable as Audit Reports
  - Contractual Print Audit Report to be submitted each quarter
- Publication must be active for a minimum of one (1) year
- Print ads must be scheduled within approved campaign (EOG) flight dates
- Agency to negotiate annual rates for the Fiscal Year for both display and classified rates which may include but are not limited to: cost per word, cost per line, cost per column inch, etc.
- txlottery.org and ncpgambling.org in ad copy must never be hyphenated or credit must be issued
- TLC does not pay for the following:
  - Bold fees
  - Tearsheet/affidavit fees
  - Online fees (exception when the charge is not optional and applies to all advertisers)
    - POP must be provided for all online listing
    - Notarized affidavit mention cannot be sole proof of performance
  - Finance charges
- E-tearsheets must be full pages and require affidavit
- If a pub is non-responsive for three months, then on the fourth month 3E will send a certified letter to the pub notifying them they will be cancelled until all required documents are received. The pub may be reinstated once all required documents are received

## **ADDED VALUE**

### **GENERAL GUIDELINES**

- Delivery of Added Value is cumulative on the year and not required within every flight
  - Agency to deliver minimum 30% annual return on media investment
- Values are to be based on net estimated cost
- Any promotions/promotional co-partners must be within and agree to TLC Advertising Sensitivity guidelines
- Some Added Value elements include, but are not limited to:
  - TV and Radio on-air and online giveaways of scratch-off tickets (on-air preferred)
  - Holiday scratch ticket tie-ins (EX: Memorial Day, Fourth of July)
  - DJ Chatter of product or event
  - News/Weather/Traffic Billboards, Sponsorships, Station IDs, Calendar sponsorship
  - Bonus spots (specific programming like sports/specials/prime, narrowed rotations preferred)
  - Pop-up announcements, crawls/tickers

- Online streaming of commercials (pre-roll TV and radio)
- Winning Numbers on-air and/or online
- Logo inclusion on printed materials (with TLC approval)
- Contests and on-site promotions
- For OOH: bonus billboards, early or extended postings
- For Newspaper: bonus placements or size upgrades
- For Digital: bonus impressions, element and programming upgrades, creative production
- Reporting in the Year End Media Review Report is to be based on actual delivered Added Value elements, not negotiated

## POSTING

### GENERAL GUIDELINES

- Posts are contractually due no more than 60 days from the end of the campaign flight
- Buys will be negotiated to post with the following guidelines:

Medium	Posting Parameters	Medium	Posting Parameters
<b>Television</b>		<b>Radio</b>	
Diary	<b>90-110%</b>	Diary	<b>90-110%</b>
Meter	<b>90-110%</b>	Meter	<b>90-110%</b>
LPM	<b>95-105%*</b>	PPM	<b>95-105%*</b>
	<i>*90-110% on station level</i>		<i>*90-110% on station level</i>
<b>OOH</b>	<b>90-110%</b>	<b>Digital</b>	<b>90-110%</b>

### UNDERDELIVERY WEIGHT

- Underdelivery weight is only an available option for mediums that cannot adjust cost based on actual delivery in real-time
- Specific vendors failing to post to the minimum percentage will owe free compensatory (UD) weight in the amount of the shortfall, regardless if the market delivers overall. UD Weight:
  - Should be requested in the same dayparts or upgraded dayparts
  - Should be requested in the same unit length or upgraded unit length
  - Must adhere to all TLC programming and timeperiod guidelines, otherwise cannot be counted toward UD
- UD Weight will be tracked and schedules maintained on a separate estimate and will run until all UD weight is recovered:
  - Only current TLC ads can run as UD Weight for previous campaign underdelivery
  - TLC may approve off-air weeks to run UD Weight to extend campaign message
  - TLC may approve alternate generic/branding ads to run when not in flight with campaign message
- The UD Weight Owed figure is to be included on the Post Buy Reports, but UD Weight Ran is not to be included within delivery for the campaign
- Station UD Weight schedules/contracts will be forwarded after Post Buy Reports are sent to the client
- Agency will keep a tally of all GRPs owed/ran by campaign, to be provided to TLC upon request