



**TEXAS LOTTERY COMMISSION**

**REQUEST FOR PROPOSAL FOR**  
**SCRATCH TICKET MANUFACTURING AND SERVICES**

**#362-2022-0005**

**RESPONSES TO PROPOSERS'**  
**QUESTIONS**

**AND**

**AMENDMENTS TO THE RFP**

**JANUARY 27, 2022**

**REQUEST FOR PROPOSALS  
FOR  
SCRATCH TICKET MANUFACTURING AND SERVICES  
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**Note to All Prospective Proposers:**

The following responses include questions raised and answers provided during the pre-proposal conference held on January 11, 2022 and questions submitted in writing by the RFP deadline.

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

Proposers shall review all sections of the RFP along with this document to ensure a complete understanding of the requirements. Any exceptions to the RFP shall be noted in the proposal, as required under Section 2.7 of the RFP.

It is recommended that Proposers review the pre-Proposal conference video located on the Texas Lottery's website at:

[https://www.texaslottery.com/export/sites/lottery/About\\_Us/Doing\\_Business\\_with\\_TLC/Procurement/](https://www.texaslottery.com/export/sites/lottery/About_Us/Doing_Business_with_TLC/Procurement/)

Please note: Any questions regarding the HUB Subcontracting Plan (HSP) are in a separate document that will be updated throughout the procurement process.

**PRE-PROPOSAL CONFERENCE QUESTIONS AND RESPONSES –  
January 11, 2022.**

1. Per clause 3.14.2; Confirming the Automated Scratch Solution option can be exercised effective Sep 1, 2022 and is therefore corresponding payment to the Proposer at time of deployment.

**RESPONSE:** The Automated Scratch Sales Solution pricing provided in Attachment H would begin on 9/1/2024 under either the Long-term Pricing Option (Table 2) or Short-term Pricing Option (Table 3) if the Texas Lottery exercises this Specified Option. The Texas Lottery will determine whether to execute the Long-term or Short-term Pricing Option at the time it exercises the Specified Option.

## **WRITTEN QUESTIONS RECEIVED BY January 18, 2022 @ 4 P.M.**

2. **General Questions Question:** Would the Lottery please provide current instant ticket pricing, preferably in Excel format, for each of its current instant ticket vendors?

RESPONSE: Please refer to the following website page for all public information regarding the current Instant Ticket Manufacturing and Services Contracts, including pricing. Excel format is not available.

[https://www.texaslottery.com/export/sites/lottery/About\\_Us/Doing\\_Business\\_with\\_TLC/InstantTicket\\_Manufacturing\\_Services\\_Contract/](https://www.texaslottery.com/export/sites/lottery/About_Us/Doing_Business_with_TLC/InstantTicket_Manufacturing_Services_Contract/)

3. **General Information Purpose, page 12** *RFP Text: Subsection 1.1.6 states that the Lottery produced approximately 97 scratch games in FY 2021.*

**Question:** Would the Lottery please provide an Excel table of the 97 scratch games, including ticket sizes, pack sizes, print order quantities, price points, and the print vendor for each game?

RESPONSE: Please see the public information provided at:  
[https://www.texaslottery.com/export/sites/lottery/Documents/UPC\\_List.pdf](https://www.texaslottery.com/export/sites/lottery/Documents/UPC_List.pdf)

4. **Proposal Process 2.10 Proposer's Cost Proposal, page 23** *RFP Text: Subsection 2.10.1 states, "Pricing agreed to in any resulting Contract shall be firm and remain constant through the life of the contract."*

**Question:** In order to provide the most competitive and cost-effective pricing to the Lottery, and in consideration of the lengthy term (to the year 2034) of the contract in conjunction with our current inflationary environment, would the Lottery consider inflation – index price adjustments to prices in Attachment H?

RESPONSE: No.

5. **3.14 Term of Contract, pg. 31** *RFP Text: Subsection 3.14.2 states, "Notwithstanding the Contract commencement date, all Scratch Ticket manufacturing and services hereunder, including associated pricing, shall commence on September 1, 2024; except that the Texas Lottery in its sole discretion may exercise the Automated Scratch Sales Solution Specified Option effective September 1, 2022, and in that event all other provisions of the Contract necessary for the full implementation and deployment of such Specified Option shall commence on that date".*

**Question:** Please confirm the Automated Scratch Solution option pricing shall commence on September 1, 2022, if the option is exercised? If so, what Automated Scratch Solution pricing option will be used?

**RESPONSE:** The Automated Scratch Sales Solution pricing provided in Attachment H would begin on 9/1/2024 under either the Long-term or Short-term Pricing Options if the Texas Lottery exercises this Specified Option. The Texas Lottery will determine whether to execute the Long-term or Short-term Pricing Option at the time it exercises the Specified Option.

6. **3.54 Sanctions and Remedies Schedule 3.54.31 Failure of the Automated Scratch Sales Solution at Retail, page 56** *RFP Text: Subsection #9 states, “Failure of the Automated Scratch Sales Solution at Retail. If the system that supports the Automated Scratch Sales Solution is unable to process or sell Scratch Tickets due to a problem with the Solution, as determined by the Texas Lottery, the Successful Proposer may be assessed sanctions in the amount of two thousand dollars (\$2,000) per incident. If any individual Automated Scratch Sales Solution deployed at a Retailer location is unable to process or sell Scratch Tickets due to a problem with the Solution, as determined by the Texas Lottery, the Successful Proposer may be assessed sanctions in the amount of fifty dollars (\$50) per incident if the problem is not remedied within a 24-hour period.”*

**Question:** Please confirm that the assessed sanction of \$2,000 per incident is not assessed per retailer.

**RESPONSE:** Correct, this sanction would be assessed for a problem with the overall solution or system. If it were a problem at an individual retailer location, the sanction would be \$50 per incident if not remedied within a 24-hour period. In addition, please see Amendment No. 3 herein.

7. **8. Scratch Ticket Manufacturing and Services 8.3 Ticket Stock 8.3.1 Pack Insert Pieces, page 87** *RFP Text: “Except as otherwise specified by the Texas Lottery, Successful Proposer shall be required to provide one (1) pack insert piece which shall be included in each shrink-wrapped pack of tickets.”*

**Question:** Would the Lottery please confirm that the insert referred to in 8.34, page 115 is a second pack insert, in addition to the first pack insert described in Section 8.3.1?

**RESPONSE:** Correct. The insert referred to in 8.34, page 115 is an additional insert.

8. **8.33 Specified Options 8.33.6 Automated Scratch Sales Solutions, page 112** *RFP Text: Subsection #3 states, “Texas Lottery security standards”.*

- a. **Question:** How are the Texas security standards defined and are they published?

**RESPONSE:** The Texas Lottery will provide security standards to the Successful Proposer after execution of the Contract.

*RFP Text: Subsection #4 states, “The Successful Proposer shall provide all required support and services to integrate, directly or indirectly, the Automated Scratch Sales Solution with the Lottery Gaming System (or any future gaming systems, including system upgrades) and with the Retailer’s point-of-sale system”.*

- b. **Question:** Please confirm that the Retailer is responsible for the integration of the Automated Scratch Sales solution with the Retailer’s point-of-sale system.

**RESPONSE:** The Retailer is responsible for any work done on the point-of-sale system. The Successful Proposer is responsible for ensuring the integration of the Automated Scratch Sales Solution with the Retailer’s point-of-sale system.

*RFP Text: Subsection #6 states, “The Texas Lottery may exercise this Specified Option upon execution of the Contract, and in that event, in each year of the four state Fiscal Year period beginning September 1, 2022 and ending August 31, 2026 (as used in this section and in Attachment H Cost Proposal, the Four-Year Period), the Successful Proposer shall provide the Texas Lottery either (a) an Automated Scratch Sales Solution for three thousand (3,000) units deployed as determined by the Texas Lottery, or (b) the Credit.”*

- c. **Question:** Does the credit start immediately at the period beginning September 1, 2022, or after a period of time allowing the Texas Lottery, Retailers and Vendor to deploy?

**RESPONSE:** The Credit as used in Subsection 6 is defined in Subsection 7. The Texas Lottery may use the Credit at any time over the term of the Contract.

- d. **Question:** Would the Lottery please confirm that the credit value described in 8.33.6 is applicable to pricing in Tables 2 & Table 3, but not to pricing in Table 1?

**RESPONSE:** Please see the Response to Question 8(c).

9. **Attachment H Cost Proposal Overall Cost Proposal**

- a. **Question:** Based on the Lottery working with the multiple Successful Proposers to establish a common price in Table 1 which could potentially impact the pricing presented in Tables 2 and 3. How does the Lottery anticipate resolving changes to Table 1 during negotiations that could affect pricing originally submitted in Tables 2 and 3?

RESPONSE: The Texas Lottery declines to respond to specific questions on its negotiation strategy. Please see RFP Attachment H, which states: "The Texas Lottery, through negotiations with all Apparent Successful Proposers, desires to establish common prices for the goods/services included in the Base Price and five (5) specified options (Full UV Coating, Metallic Ink, Fluorescent Ink, Holographic Paper Stock and Foil Paper Stock)."

*RFP Text: page 133 states that "As an incentive to accept the common prices established by the Texas Lottery and at the agency's sole discretion, Successful Proposers may be offered an opportunity to produce a comparable number of games for a set period."*

- b. **Question:** Given the substantial investment required to implement the Automated Scratch Sales Solution, would the Lottery consider a guaranteed annual number of games to the Successful Proposer(s) of the Automated Scratch Sales Solution award?

RESPONSE: The Texas Lottery declines to amend the RFP.

*RFP Text: page 138 states that "Proposers shall provide pricing that covers the implementation and deployment of the Automated Scratch Sales Solution."*

- c. **Question:** Does the Lottery intend to award the Automated Scratch Sales Solution to a single vendor or multiple vendors?

RESPONSE: The Texas Lottery intends to exercise the Specified Option under RFP Section 8.33.6 (1-13) with all Successful Proposers if exercised with one.

*RFP Text: page 138 states that “Proposers shall provide pricing that covers the implementation and deployment of the Automated Scratch Sales Solution.”*

- d. **Question:** Given the circumstance that one (or more) Proposers are awarded the Automated Scratch Sales Solution and other Proposers are print-only, would the Lottery please further explain how this functions in conjunction with the common pricing concept; Table 1 versus Tables 2 or 3?

**RESPONSE:** Please see the Response to Question 9(c).

*RFP Text: page 138 describes the “Credit in Lieu of Automated Scratch Sales Solution” and further states that “if a proposer provides an Automated Scratch Sales Solution, this section can be marked as Not Applicable (n/a)”.*

- e. **Question:** Please define what ‘this section’ is referring to?

**RESPONSE:** “This section” refers to the check box under Credit In Lieu of Automated Scratch Sales Solution. For Proposers providing the Credit only, they will check this box. For Proposers providing the Automated Scratch Sales Solution, they will mark this box “n/a.” All Proposers must complete Tables 1, 2 and 3.

- f. **Question:** Please confirm that vendors who are not providing an Automated Scratch Sales Solution do not complete Tables 2 and 3.

**RESPONSE:** All Proposers must complete Tables 1, 2 and 3. If a Proposer is not providing an Automated Scratch Sales Solution then the Proposer is providing the Credit, and the value of the Credit should be reflected in Table 2 and Table 3.

10. Section 1.7. Proposals Subject to The Texas Public Information Act, page 16. Would the Lottery please confirm our understanding that if a Successful Proposer’s confidential markings, which are consistent with the requirements of the RFP, are challenged that the Successful Proposer would be notified of that challenge prior to release of any such information?

**RESPONSE:** Pursuant to Texas Public Information Act Section 552.305, the TLC would notify any Proposer of a request for information the Proposer properly marked as confidential in accordance with RFP Section 1.7.

11. Section 2.5.2 Submission of Proposal, page 20. The RFP states that all pages of proposals must be numbered. Would the Lottery please confirm that pre-printed materials, e.g., marketing materials and brochures, that may or may not have been numbered originally, are exempted from the requirement that pages be numbered?

**RESPONSE:** Pre-printed materials do not have to be page-numbered.

12. Section 3.14.2 Term of Contract, page 31. Would the Lottery confirm our understanding that in any case – and even in the event the Lottery elects to exercise the Automated Scratch Sales Specified Option any time from September 1, 2022, to August 31, 2024 – each vendor will continue using the pricing in their current print contract? (Meaning, all current vendors will continue to use the pricing grids in their existing executed contracts for the provision of Scratch Ticket Manufacturing and Services through 8/31/2024 and that any compensation for an Automated Scratch Sales solution will not occur until the new pricing grids in tables 2 and 3 become effective.)

**RESPONSE:** Correct.

13. Section 3.16(h) Termination For Cause, page 32. Pursuant to Section 3.16 (h), the Lottery may terminate the contract for cause if: “The Successful Proposer fails to comply with any of the terms, conditions or provisions of the Contract, in any manner whatsoever...” The contract terms allow for termination by the Lottery for any breach of any provision of the contract, regardless how minor. Would the Lottery please limit the right to terminate to only breaches of material obligations under the contract?

**RESPONSE:** The Texas Lottery declines to amend the RFP.

14. Section 3.21.7 Warranties and 3.54.16 Omitted Packs and Quality Control Packs/Tickets and Misprinted Tickets, pages 35 and 53. Pursuant to Section 3.21.7 the Successful Proposer warrants and agrees to pay the apparent prize value of misprinted, quality control or omitted tickets that do not validate as winners. Altered tickets are not misprinted tickets.

In addition Section 3.54.16 provides that the Successful Proposer shall also be responsible for payment of the prize amount of any apparent winning ticket from omit packs or quality control packs/ticket, or the apparent prize value of a misprinted ticket, presented to the Texas Lottery by a player, except in the event of theft, fraud or wrongdoing and further provides that the Successful Proposer must pay a player within 10 days after notification from the Texas Lottery once an apparent winning ticket from omit packs and/or quality control packs/ticket for an otherwise valid claim, or a misprinted ticket with an apparent prize value, has been presented.



There are a number of unintended consequences that may result from the enforcement of Section 3.21.7 and for Section 3.54.16 in the case of misprinted tickets that do not validate on the system.

First, under the Texas Lottery Commission's Lottery Game Rules, the Lottery's liability for a ticket that does not validate is to a refund of the sales price of a ticket. Under the Texas Administrative Code Scratch Ticket Game Rules, a prize is subject to ticket validation requirements. Specifically per Rule 401.302 subsection (d) Ticket validation requirements "(4) Any ticket not passing all of the validation tests and requirements is void and ineligible for any prize and shall not be paid. The executive director may, at his/her exclusive determination, reimburse the player for the cost of the void ticket."

If these Sections were enforced to require the Successful Proposer to pay the apparent prize value of a misprinted, invalid ticket, such payment may constitute an unenforceable penalty as the Lottery would be legally obligating the Successful Proposer to pay potentially excessive amounts to a player that the Lottery itself is not legally obligated to pay. By allowing a player with an invalid or void ticket to claim an apparent prize despite applicable Game Rules disallowing such benefit, the Lottery would be changing standard industry practices and past rules and procedures, and by doing so, the Lottery would be altering the reasonable expectations set by the Game Rules for any player holding a non-validating ticket.

Finally, as to the issue of altered tickets, over the years, it has become well established that altered tickets cannot be validated by the system and therefore prizes are not paid. Given the sophistication with which some thieves approach altering tickets, in many cases, the distinction between a misprinted ticket and an altered ticket may be difficult to determine, and in some cases impossible. The Lottery's current rule that prohibits payment on an invalid ticket acts as a deterrent to prevent misguided individuals from attempting to alter tickets. By establishing a requirement that allows for prize payments on misprinted tickets that the system cannot validate, the Lottery is lowering the standard in Texas for those persons that may attempt to alter a ticket, while at the same time offering a new incentive for thieves to alter the ticket so that it looks like a misprint, as opposed to a valid winner. In so doing, the Lottery may unwittingly be inviting a new wave of altered tickets.

**In consideration of the above, and recognizing that the Successful Proposer indemnifies the Lottery and so Lottery is already protected from liability in the event the Lottery were required to pay any amounts in connection with a dispute with a player over a misprinted, void and invalid ticket under the indemnification provisions of the contract, we respectfully request that the Lottery revise these two Sections to provide that the Successful Proposers are not obligated to pay apparent prizes on misprinted tickets that do not validate on the system.**

**RESPONSE:** The TLC declines to amend the RFP. The warranty in RFP Section 3.21.7 is not a requirement to pay lottery prizes, but a sanction for the Successful

Proposer's failure to meet contract performance requirements, as detailed in RFP Section 3.54.16.

15. a. Section 3.24.3 Intellectual Property Rights, page 36. If the Successful Proposer during the term of the Contract invests resources to improve its standard offerings or create new standard offerings that are provided to the Lottery and other lotteries, would the Lottery agree that such improvements and new offerings are not Works?

RESPONSE: See the RFP Glossary of Terms definition of "Works." A Successful Proposer's "standard offerings" that predate the Contract term and are not prepared "for or on behalf of TLC under the Contract" would not be considered "Works." Improvements to such "standard offerings" that are prepared by the Successful Proposer for itself and for other customers, and not specifically "for or on behalf of TLC under the Contract," likewise would not be construed as "Works." To the extent necessary for the Texas Lottery to enjoy the goods and services provided by the Successful Proposer under the Contract, these "standard offerings" would be licensed to the Texas Lottery for the intended use associated therewith.

- b. If the Successful Proposer during the term of the Contract licenses third-party technology (that's provided by the third party to the Successful Proposer and other customers) under reasonable commercial terms, which do not include an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license, would the Lottery agree (i) that such third-party technology is not Works and (ii) to assess whether the Lottery will require an irrevocable, perpetual, non-exclusive, worldwide, royalty-free right and license to the associated intellectual property on a case by case where the third party objects to the grant of such license?

RESPONSE: Please refer to the Response to Question 15(a). Further, third-party intellectual property rights and the process for handling them are addressed in RFP Section 3.25. As necessary, the Texas Lottery would determine the appropriate process for addressing the specific rights at issue on a case-by-case basis. Generally, third-party technology would not be construed as "Works," but such technology may be necessary for the Texas Lottery to enjoy the goods and services provided by the Successful Proposer under the Contract and therefore should be licensed as set forth in RFP Section 3.25.

16. Section 3.24.3 Intellectual Property Rights, page 36. Our understanding is that the perpetual license grant to all intellectual property relating to the goods and/or services set forth in the RFP or under the Contract, is not intended to be and should not be greater in

scope than the scope of the right to use during the Contract. However, this section provides in relevant part that:

“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.**” (Emphasis added).

- a. To the extent goods and/or services (regardless of whether such goods and/or services are Works) include third-party intellectual property licensed to the Successful Proposer under terms that do not permit the Successful Proposer to grant the above license, would the Lottery agree to revise the above license to exclude such third-party intellectual property or please identify a process to enable exclusion on a case-by-case basis?

**RESPONSE:** Please refer to the Response to Question 15(b). The Texas Lottery declines to amend the RFP. Third-party intellectual property rights and the process for handling them are addressed in RFP Section 3.25.

- b. To the extent that the Lottery is not able to operate outside of Texas, would the Lottery please delete the words “worldwide basis” from this section or please explain why a perpetual irrevocable worldwide license is required and how it might be used?

**RESPONSE:** The Texas Lottery declines to amend the RFP. While Texas Lottery tickets may only be sold in Texas by a licensed retailer, one reason for including this language is that in certain instances Texas Lottery-related broadcast advertising and other media that reflects goods and/or services provided under the Contract may be observed by persons outside the state’s boundaries.

- c. Would the Lottery agree to revise the above license grant to clarify that terms related to use of the goods and/or services after the expiration of the Contract will be subject to commercially reasonable terms to be agreed upon by the parties in writing?

RESPONSE: The Texas Lottery declines to amend the RFP. The referenced part of RFP Section 3.24.3 addresses intellectual property rights that are not considered to be “Works” under the Contract. The intent of this provision is to allow the Texas Lottery to have continued use with respect to such rights as they pertain to goods and services provided under the Contract, because the sale of tickets or other use of such goods and services may extend past the Contract term. Such rights may include things such as, patent-related processes embodied in the goods and services provided under the Contract (for example, a process for printing tickets) that the Texas Lottery could continue to use in connection with those goods and services after the Contract term ends; or, a game name related to goods or services provided under the Contract that the Texas Lottery could continue to use in connection with those goods and services.

17. Section 3.24.9 Intellectual Property Rights, page 38. Our understanding is that the licenses to be granted to the Texas Lottery are specified elsewhere in the RFP. However, this section includes what is, in effect, a copyright license, which the Successful Proposer may not be able to grant the Lottery, especially for licensed third-party copyrightable material.

“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 a copyright** on any products, equipment, or any other goods provided under the Contract” (Emphasis added)

Would the Lottery agree to revise the above to delete “assert a copyright” or explain what additional right it provides the Lottery that is not included in the licenses specified elsewhere in the RFP?

RESPONSE: The Texas Lottery declines to amend the RFP. The intent of this provision is to ensure that, despite the fact licenses are granted elsewhere under the RFP, the Successful Proposer does not assert a copyright to attempt to prevent the Texas Lottery’s use of goods and/or services provided under the Contract.

18. Section 3.25.1, Pre-existing and Third-Party Rights, page 38. Please confirm that Successful Provider and third-party intellectual properties (such as game names, famous brand names, logos, images, content, etc.) separately licensed by the Successful Proposer as value-added goods and/or services offered to the Lottery will be licensed under the terms of the Working Papers (or as otherwise determined by the Lottery) which will control.

RESPONSE: Individual scratch ticket game working papers are the equivalent of work orders. They may contain licensed property inserts or similar language describing the scope of the Texas Lottery's rights to use specified intellectual property in connection with such game(s), but such inserts or similar language shall not amend the RFP or Contract.

Further, this provision also is intended to protect the Texas Lottery in the event an item that is incorrectly assumed to be a "Work" in fact contains pre-existing or third-party rights. In such an event, the Successful Proposer shall be required to follow the corrective actions set forth in Section 3.25.1 to protect the Texas Lottery from third-party or other claims.

19. Section 3.27 Intellectual Property Search and 3.54.15 Sections and Remedies Schedule, pages 40 and 53. Proposed Works may not be protectable; for example, it may not be patentable because it does not meet the legal requirement for patentability.

Would the Lottery revise the section to delete "are protectable by the Texas Lottery and" or acknowledge that if a Work is not protectable, (i) it does not constitute a breach and (ii) Section 3.54.15 is not applicable?

RESPONSE: Please see RFP Amendment No. 1 herein.

20. Section 3.31 Indemnification, page 42. The Indemnification section states the Texas Lottery will make demand of payment from the Successful Proposer or seek recovery against the Successful Proposer's performance bond.

It is the desire of the Surety Companies to "cure the default" in lieu of strict forfeiture. We respectfully request that the Lottery amend the wording in 3.31 as follows:

"The Texas Lottery will make demand of payment from the Successful Proposer or ~~seek recovery~~ **make a claim** against the Successful Proposer's performance bond"

RESPONSE: The Texas Lottery declines to amend the RFP.

21. Section 3.32 Insurance 3.32.2, page 43. In today's insurance market, certain coverages, such as Professional Liability, written with traditional insurers that are admitted and authorized to do business in Texas, may not be available. The Successful Proposer may have to obtain coverage through specialty markets or through the London market. Therefore, we respectfully request that Section 3.32.2 be amended as follows:

“All required insurance, **with the exception of Professional Liability (Errors and Omissions) Insurance** must be issued by companies....”

RESPONSE: The Texas Lottery verifies all insurance requirements with the Texas State Office of Risk Management for procurements. The Texas Lottery declines to amend the RFP. Proposers should take exception to any portions of the RFP that it may not be able to comply with as written.

22. Section 3.32.7 Insurance, page 43. The insurance market has undergone many changes and challenges over the last few years. Insurers have lowered their capacity to write certain lines of business or have gotten out of the market completely. Specialty coverages such as Cyber/Tech Errors and Omissions are not readily available in the traditional insurance market and are commonly written with Excess and Surplus lines carriers. The carriers are requiring higher retentions and deductibles. Some industries, such as the gaming industry, have been adversely affected, and carriers will no longer write certain coverages.

All of the above impacts all Proposers and is not unique to any one individual Proposer.

The proposed contract will be effective in 2024. Since this is two years away, specialty coverages such as Errors and Omissions, including Over Redemption, may not be commercially available. Carriers may be requiring higher Retentions and Deductibles. Coverages may only be available through Excess and Surplus lines; and not through traditional markets that are approved, admitted, and licensed in Texas.

We respectfully request that the Proposer have the opportunity to negotiate the insurance requirements with the Lottery based on current insurance market conditions if coverages change in advance of the effective start date of September 1, 2024.

RESPONSE: Please refer to the Response to Question 21.

23. Section 3.33 Self Insurance, page 43-44. In today’s insurance marketplace, insurance carriers have limited capacity; are raising deductibles and retentions; or are no longer writing certain coverages. This has required companies (the Proposers) taking on more risk based on their company’s financial strength. Therefore, we respectfully request that the Lottery reconsider the Self Insurance limit regarding deductibles and not put any limits on it.

RESPONSE: Please refer to the Response to Question 21.

24. Section 3.36 Professional Liability (Errors and Omissions) Insurance, page 44. Claims against the insurance may be invoked when the over-redemption exceeds one hundred percent (100%) of the anticipated prize payout based on the number of tickets actually sold. The insurance for over-redemption shall be enforced through thirteen (13) months following the official “announced end of game” for each game.

Over Redemption coverage is no longer available in the traditional or specialty insurance marketplace and we respectfully request that this requirement be removed.

**RESPONSE:** Please refer to the Response to Question 21.

25. Section 3.39 Performance Bond, page 45. It is standard practice in today’s Surety market when writing bonds, that a bond be annually renewable and that there be no forfeiture language. Lotteries have accepted these changes into their RFP and contract.

With regard to this RFP, Section 3.39.3 states that ***“The bond shall be forfeited to the Texas Lottery if the Successful Proposer fails to perform as requirement by the Contract, pay sanctions or liquidated damages, or indemnify the Texas Lottery.”***

It is the desire of the Surety Companies to “cure the default” in lieu of strict forfeiture. We respectfully request that the Lottery replace the wording “The bond shall be forfeited” with “A claim may be made against the Performance bond if the Successful Proposer fails to ....”

**RESPONSE:** Please refer to the Response to Question 21.

26. Section 3.31.2 Indemnification, page 42. The liability of the Successful Proposer for indemnification obligations in Section 3.31.2 is very broad, and Lottery has the right to withhold all such indemnification costs or expenses and fees incurred by Indemnified Parties from any payments to the Successful Proposer or to recover against the Performance Bond, and, in addition, the Lottery has the right upon giving notice to the Successful Proposer “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 consent or approval of the Successful Proposer.”

- a. Before the Lottery pays, settles, compromises, or litigates any claim would the Lottery give the Successful Proposer the opportunity to analyze the claim and present facts to the Lottery regarding such claim and Successful Proposer’s fault?



RESPONSE: Pursuant to Texas Government Code Section 467.105 and Article IX, Part 16 of the General Appropriations Act from the Regular Session of the 87th Texas Legislature, the Texas Attorney General represents the Texas Lottery in all legal proceedings and would have the authority to grant or deny such a request.

- b. Would the Lottery please confirm our understanding and revise this provision to clarify that the Successful Proposer will not be required to accept liability or enter into or acquiesce to any settlement containing any admission of, or stipulation to, any guilt, fault, liability, or wrongdoing on the part of the Successful Proposer or which would otherwise adversely affect the Successful Proposer without the Successful Proposer's prior written consent, which consent would not be unreasonably delayed or withheld?

RESPONSE: The Texas Lottery declines to amend the RFP.

- c. With respect to third-party claims, would the Lottery revise the above provision to allow the Successful Proposer to participate in any settlements or proceedings with its own attorney at its own expense and to control and conduct defense or settlement at its own expense with the Lottery's prior written approval not to be unreasonably delayed or withheld?

RESPONSE: The Texas Lottery declines to amend the RFP.

- d. Would the Lottery revise this provision to insert the word "reasonable" into this provision (as shown below) to confirm that any such actions that the Lottery takes that, in turn, are binding on the Successful Proposer shall only be made to the extent that the Lottery reasonably believes the claim is well founded?

"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 reasonable belief that the claim is well founded, whether it is or not, without consent or approval of the Successful Proposer"

RESPONSE: The Texas Lottery declines to amend the RFP.

- 27. Section 3.54 Sanctions and Remedies, page 51. Consistent with the purpose of the sanctions schedule and to clarify that the Lottery will not attempt to hold the Successful Proposer liable for the result of the actions of third parties or event not within its responsibility or control, would the Lottery confirm that the Successful Proposer will not be liable for sanctions to the extent the incident leading to the assessment of sanctions was



caused by the Lottery, third parties not under the control or direction of the Successful Proposer, or events of Force Majeure?

**RESPONSE:** The Texas Lottery declines to clarify the RFP.

28. Section 3.54 Sanctions and Remedies Schedule, page 51. Given that the Lottery has full indemnification protection, and may resort to a wide variety of sanctions and damages, would the Lottery consider a commercially reasonable cap on a Successful Proposer's liability for sanctions under the Contract?

**RESPONSE:** The Texas Lottery declines to amend the RFP.

29. Section 3.54 Sanctions and Remedies Schedule and 3.54.3 Failure to Assess Sanctions, page 51. Consistent with reasonable commercial practice, would the Lottery agree to some reasonable time period (for example one year) from the time it discovers any instance within which it will either assess sanctions or waive them?

**RESPONSE:** The Texas Lottery declines to amend the RFP.

30. Section 3.54.30 Failure to meet the Print Date Specified in Working Papers, page 56. Would the Lottery please confirm our understanding that the relevant 'dates' referred to in this section mean and refer only to any print-by date specified in the Working Papers, not delivery dates or any other dates that may be included in the Working Papers?

**RESPONSE:** Correct. RFP Section 3.54.30 is referring to working papers that specify that the game must be printed by August 31.

31. Would the Lottery please confirm that the only print-by date used in Working Papers will be August 31 (end of budget year)?

**RESPONSE:** Correct.

32. Section 4.6.2 Financial Soundness 4.6.2 (2), page 68. If a Proposer is providing financial resources or assurance of its parent corporation pursuant to Section 4.6.2.2 to fulfill the requirements of Section 4.6, would the Lottery please confirm that it is acceptable for the Proposer to provide the audited financials of its parent corporation only (and not to also include financials of the Proposer) where the Proposer does not maintain its own standalone financial statements, and where the audited financials of the parent corporation include results of the Proposer together with other subsidiaries of the parent company on a consolidated basis?

RESPONSE: Yes, it is acceptable for the Proposer to only provide the audited financials of its parent corporation as long as Attachment B is completed by the parent corporation.

33. Section 4.6.2 Financial Soundness, page 68. Due to the potential volume and size of financial statements, would the Lottery please confirm submission of financial statement on electronic media only is acceptable?

RESPONSE: Yes, the Texas Lottery will accept electronic financial statements. A Proposer may provide them on a USB drive. Please clearly label the USB drive and ensure the format is readable (PDF is preferred).

34. Attachment B Financial Commitment and Responsibility, page 117. It is understood that the Parent is fully responsible for any and all financial obligations of the Proposer arising out of or in connection with the RFP and the Contract, but since the Successful Proposer will be performing the Contract, would the Lottery consider revising Attachment B to indicate that the Parent obligation is one of collection and not of payment?

RESPONSE: The Texas Lottery declines to amend Attachment B; however, the Texas Lottery confirms that the Successful Proposer is billed for payment under the Contract.

35. Section 2.5.1. (pg. 20): We would like to respectfully request the Lottery's tax ID number for the purposes of our courier shipment of the response to this RFP. Per our courier company, UPS, our understanding is that US Customs and Border Protection and US Homeland Security requires that this number be provided on documentation when the Lottery is deemed to be 'importing' anything i.e. the proposal response. If this number is not provided on UPS' shipping paperwork that we fill out when we ship the boxes then it must be found and added to the paperwork by those agencies. When the tax ID number is left out, delays have been caused in the past. To ensure that there are no issues at customs and to expedite delivery, please provide the tax ID number.

RESPONSE: Texas Lottery Commission's Taxpayer ID number is 74-2630717.

36. Section 3.14.2 (pg. 31): Would the Lottery please clarify the criteria that will lead to exercising the Automated Scratch Sales Solution Specified Option effective September 1, 2022?

RESPONSE: The Texas Lottery declines to respond.

37. Section 3.14.2 (pg. 31):

- a. If Lottery chooses to exercise the Automated Scratch Sales Solution Specified Option and commence the contract on September 1, 2022, would the Lottery please clarify which pricing table included in Attachment H Cost Proposal will be applied for the following periods:
- September 1, 2022 to August 31st, 2024
  - September 1, 2024 to August 31st, 2026
  - September 1, 2026 to August 31st, 2034

**RESPONSE:** If the Texas Lottery exercises the Automated Scratch Sales Solution Specified Option, no pricing in Attachment H would apply to the September 1, 2022 through August, 31 2024 time period. The pricing that would apply to the 2024-2026 and 2026-2034 period would be determined by whether the Texas Lottery chose the Long-term Pricing Option (in which case, Table 2 pricing would apply to the period from 9/1/2024-8/31/2034) or the Short-term Pricing Option (in which case, Table 3 pricing would apply to the period 9/1/2024-8/31/2026 and Table 1 pricing would apply to the period 9/1/2026-8/31/2034).

- b. If the Successful Proposer does not propose an Automated Scratch Sales Solution, how would the credit be calculated and offered to the Lottery during each one of the above-mentioned periods?

**RESPONSE:** The Credit in Lieu of Automated Scratch Solution is based on the formula described in RFP Section 8.33.6 (7).

38. Section 3.54.30 (pg. 56): Can the Lottery please confirm that when the Successful Proposer is able to print the game BEFORE the date specified in the Working Papers, this will not be considered as a failure to meet the print date specified in Working Papers?

**RESPONSE:** Correct.

39. Section 3.54.30 (pg. 56): Would the Lottery please consider changing the title of this requirement to be "Printing Later than the Print Date Specified in Working Papers"? As well, would the Lottery please consider changing the first sentence of the requirement to read: "If the Successful Proposer prints a game later than the dates specified in the Working Papers, this will result in a credit in the amount of the total cost of the game to be utilized at the Texas Lottery's discretion."?

RESPONSE: The Texas Lottery declines to amend the RFP. Please see the Response to Question 38.

40. Section 4.6.2., 3. (pg. 68): For the financial documentation requested in this section, can the Lottery please confirm that financial statements can be submitted on a USB accompanying the hard copy of the proposal due to potential volume and size of this information?

RESPONSE: Please see the Response to Question 33.

41. Section 8.16.8. (pg. 101): Would the Lottery confirm that an annual audit report conducted in compliance with SOC 1 Type 1 audit standards is an acceptable alternative to the SOC 2 Type 2 report, along with ISO 27001 and WLA certifications? We follow a similar approach for a number of other lotteries that require operational audits. We do not have any lotteries that require SOC 2 audits for ticket production.

RESPONSE: Please see RFP Amendment No. 2 herein.

42. Attachment H Cost Proposal: Can the Lottery please confirm that Table 1 included in Attachment H Cost Proposal is only intended to reflect the scratch ticket base price, and should include NEITHER any Options (i.e. should only be based on the specifications indicated under the heading 'BASE PRICE' on page 133 of the RFP) NOR the Automated Scratch Sales Solution Specified Option?

RESPONSE: Table 1 in Attachment H should reflect the Base Price as described on RFP page 133.

43. Attachment H Cost Proposal: Would the Lottery please confirm that it is not its intent to establish common prices for Table 2 and Table 3 included in Attachment H Cost Proposal?

RESPONSE: Please see the Response to Question 9(a).

## AMENDMENTS TO THE RFP

The following have been adopted by Amendment to the RFP, as permitted by Section 2.12 of the RFP.

### Amendment No. 1

#### 3.27. Intellectual Property Search

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

### Amendment No. 2

- 8.16.8 The Successful Proposer must provide an annual SOC 2 Type 2 report **or an alternative approved in writing by the Texas Lottery**. In compliance with Standards of Attestations Engagement No. 16, System and Organizations Controls Report 2, Type 2 (SSAE-16 SOC 2 Type 2) requirements, a complete internal control audit ("SOC 2 Audit") shall be conducted annually by an independent certified public accounting firm on any facility producing and storing scratch tickets for the Texas Lottery, including facilities outside of the United States.

### Amendment No. 3

- 3.54.31 *Failure of the Automated Scratch Sales Solution at Retail.* If the system that supports the Automated Scratch Sales Solution is unable to process or sell Scratch Tickets due to a problem with the Solution, as determined by the Texas Lottery, the Successful Proposer may be assessed sanctions in the amount of two thousand dollars (\$2,000) per incident. **If the Solution is not operational within a 48-hour period, the Successful Proposer may be assessed an additional five hundred dollars (\$500) per Day or part of Day until the Solution is operational.** If any individual Automated Scratch Sales Solution

deployed at a Retailer location is unable to process or sell Scratch Tickets due to a problem with the Solution, as determined by the Texas Lottery, the Successful Proposer may be assessed sanctions in the amount of fifty dollars (\$50) per incident if the problem is not remedied within a 24-hour period.