



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER  
 LOT329

PAGE  
 1

ADDRESS CORRESPONDENCE TO ATTENTION OF  
 CHUCK BOWMAN  
 304-558-2157

RFQ COPY  
 TYPE NAME/ADDRESS HERE

VENDOR

SHIP TO

LOTTERY COMMISSION  
  
 312 MACCORKLE AVENUE, SE  
 CHARLESTON, WV  
 25314-1143 558-0500

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
04/26/2006				

BID OPENING DATE: 06/08/2006 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	JB		915-03		
ADVERTISING SERVICES  THE PURCHASING DIVISION, ON BEHALF OF THE AGENCY, THE WEST VIRGINIA LOTTERY COMMISSION, IS SOLICITING REQUEST FOR PROPOSALS FROM QUALIFIED VENDORS TO PROVIDE LOTTERY MARKETING SERVICES INCLUDING, BUT NOT LIMITED TO, ADVERTISING, PUBLIC RELATIONS, PROMOTIONAL EVENTS, RETAILER POINT OF SALE MATERIALS, RESEARCH, AND NOVELTY ITEMS, PER THE ATTACHED SPECIFICATIONS.  VENDOR PREFERENCE CERTIFICATE  CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).  A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:  <input type="checkbox"/> BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR  <input type="checkbox"/> BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD-QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHI						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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**GENERAL TERMS & CONDITIONS  
(REQUEST FOR QUOTATION) RFQ AND (REQUEST FOR PROPOSAL) RFP**

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$45 fee.
5. All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this contract is automatically null and void, and is terminated without further order.
14. **HIPAA Business Associate Addendum** - The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Covered Entity (45 CFR 160.103) and will be disclosing Protected Health Information (45 CFR 160.103) to the vendor.

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**INSTRUCTIONS TO BIDDERS**

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in cases of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **DUPLICATE BIDS:** All quotations must be delivered by the bidder to the respective offices listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications.

**ORIGINAL SIGNED BID TO:**

Department of Administration  
Purchasing Division  
2019 Washington Street East  
Post Office Box 50130  
Charleston, WV 25305-0130

**DUPLICATE BID TO:**

State Auditor's Office  
Bid Observer  
Building 1 Room W114  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0230



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LOTTERY COMMISSION  
  
 312 MACCORKLE AVENUE, SE  
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 25314-1143 558-0500

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<p>INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL, PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDOR WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>( ) BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>( ) BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES WORKING ON THE PROJECT BEING BID ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID;</p> <p>OR</p> <p>( ) BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p>						

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<p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX &amp; REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p> <p>UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASING DIVISION IN WRITING IMMEDIATELY.</p> <p>BIDDER: -----</p> <p>DATE: -----</p>						

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LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
SIGNED: -----  TITLE: -----  * CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)  NOTICE  AN ORIGINAL, SIGNED BID MUST BE SUBMITTED TO:  DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130  AN EXACT DUPLICATE MUST BE SUBMITTED TO:  STATE AUDITOR'S OFFICE BID OBSERVER BUILDING 1, ROOM W114 1900 KANAWHA BOULEVARD, EAST CHARLESTON, WV 25305-0230  BOTH BIDS MUST CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPES OR THE BIDS MAY NOT BE CONSIDERED:						

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04/26/2006				

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LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
	SEALED BID					
	BUYER:			CB-23		
	RFQ. NO.:			LOT329		
	BID OPENING DATE:			06/08/2006		
	BID OPENING TIME:			1:30 PM		
PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						
-----						
CONTACT PERSON (PLEASE PRINT CLEARLY):						
-----						
***** THIS IS THE END OF RFQ LOT329 ***** TOTAL:						

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**REQUEST FOR PROPOSAL**  
**West Virginia Lottery LOT #329 Marketing and Advertising**  
**Services**

**Part 1 GENERAL INFORMATION**

**1.1 Purpose:**

The Acquisition and Contract Administration Section of the Purchasing Division "State" is soliciting proposals for the Department of Revenue, State Lottery Commission, hereinafter known as Lottery, from qualified vendors to provide lottery marketing services including, but not limited to, advertising, public relations, promotional events, retailer point of sale materials, research and novelty items. Other services such as design and maintenance of the Lottery's web site, event management and ad hoc project management are required. In addition, management of animated nightly drawings may be required as set forth in the mandatory optional bid.

**1.2 Project:**

The fundamental objectives of the project are as follows:

- 1.2.1 Provide the Lottery with an adequate amount of marketing products and services to fully promote and to expand sales for its traditional games;
- 1.2.2 Provide the Lottery with adequate research to develop games and to direct effective, media related advertising;
- 1.2.3 Provide the Lottery the most efficient and effective media purchasing practices for general consumers in the State of West Virginia and in bordering markets;
- 1.2.4 Provide the Lottery with professional public relations, electronic clipping services, and event management services, upon request.
- 1.2.5 Provide the Lottery with effective tools and staff support for on-going promotional activities including 24/7 on-call account representatives and creative services staff with an initial response time of 60 minutes, or less.

**1.3 RFP Format:**

This RFP has four parts. "Part 1" contains informational sections, "Part 2" describes the background and working environment of the project, "Part 3" is a statement of the specifications for the services requested pursuant to this RFP, contractual requirements, and general terms/conditions and "Part 4" explains the required format of the Bidder's response to the RFP, the

evaluation criteria the State will use in evaluating the proposals received, and how the evaluation will be conducted.

#### **1.4 Inquiries:**

Additional information inquiries regarding specifications of this RFP must be submitted in writing to the State Buyer with the exception of questions regarding proposal submission, which may be oral. The deadline for written inquiries is identified in the Schedule of Events, Section 1.16. All inquiries of specification clarification must be addressed to:

Chuck Bowman, Senior Buyer  
Purchasing Division  
2019 Washington Street, East  
P.O. Box 50130  
Charleston, WV 25305-0130

Fax: (304) 558-4115

**Absolutely NO contact shall be made by the vendor with any member of the evaluation committee.** Violation may result in rejection of the bid. The State Buyer named above is the sole contact for any and all inquiries after this RFP has been released.

#### **1.5 Vendor Registration:**

Vendors participating in this process should complete and file a **Vendor Registration and Disclosure Statement** (Form WV-1) and remit the registration fee. Vendor is not required to be a registered vendor in order to submit a proposal, but the **successful bidder must** register and pay the fee prior to the award of an actual purchase order/contract.

#### **1.6 Oral Statements and Commitments:**

Vendor must clearly understand that any verbal representations made or assumed to be made during any oral discussions held between Vendor's representatives and any State personnel is **not** binding. Only the information issued in writing and added to the Request for Proposal specifications file by an official written addendum is binding.

#### **1.7 Economy of Preparation:**

Proposals should be prepared simply and economically, providing a straightforward, concise description of Vendor's abilities to satisfy the requirements of the RFP. Emphasis should be placed on completeness and clarity of content.



## **1.8 Labeling of RFP Sections:**

The sections within this RFP contain instructions governing how the Vendor's proposal is to be arranged, submitted and to identify the material to be included therein.

### **1.8.1 *Mandatory Requirements.***

The mandatory sections included in part 3 and 4 require a response, and they describe the minimum requirements requested in this RFP. Any specification or statement containing the word "must", "shall, or "will" are mandatory. The vendor is required to meet the mandatory specifications in order to be eligible for consideration and to continue in the evaluation process. A simple "yes" or "no" response to these sections is not adequate. Failure to meet mandatory items shall result in disqualification of the vendor's proposal and the evaluation process terminated for that vendor. Decisions regarding compliance with the intent of any mandatory specification shall be at the sole discretion of the State.

### **1.8.2 *Contract Terms and Conditions:***

Section "3" details the contractual terms and conditions under which the State of West Virginia will enter into a contract.

### **1.8.3 *Informational Sections:***

All information specifications do not require a response from the vendor. They are intended to aid the vendor in structuring an effective proposal capable of meeting the needs of the Lottery.

## **1.9 Proposal Format and Submission:**

**1.9.1** Vendors must complete a response to all mandatory specifications in order to be considered. Each proposal must be formatted as per the outline in Part 4 of this RFP. No other arrangement or distribution of the proposal information may be made by the bidder. Failure on the part of the bidder to respond to specific requirements detailed in the RFP may be basis for disqualification of the proposal. The State reserves the right to waive any informalities in the proposal format and minor irregularities.

**1.9.2** State law requires that the original technical and cost proposal be submitted to the State and also, a primary copy of the technical and cost proposal must be submitted to the Bid Observer of the State Auditor's Office. Copies for the Auditor's Office must not be mailed in the same

envelope or package as the State's. Each should be sent under separate cover to insure arrival at their designated locations prior to the bid opening. All copies must be submitted to the respective offices **prior** to the date and time stipulated in the RFP as the opening date. All bids will be date and time stamped in each office to verify official time and date of receipt.

**1.9.3** Vendors mailing proposals should allow sufficient time for mail delivery to ensure timely arrival. Neither the Purchasing Division nor the Auditor's Office can waive or excuse late receipt of a proposal that is delayed and late for any reason according State Code 5A-3-11. Any proposal received after the bid opening date and time will be immediately disqualified in accordance with State law and the administrative rules and regulations.

**Submit:**

One (1) original technical and cost plus five (5) convenience copies to:

Purchasing Division  
2019 Washington Street, East  
P.O. Box 50130  
Charleston, WV 25305-0130

**Submit:**

One (1) exact copy with technical and cost to:

Bid Observer's Office  
Building 1, Room W-114  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0230

The outside of the envelope or package(s) should be clearly marked:

Buyer: CB-23

Req#: LOT 329

Opening Date: 06/08/2006

Opening Time: 1:30 P. M.

#### **1.9.4. Best Value Purchasing Standard Format**

All Request for Proposals shall follow the standard format defined by the Purchasing Division. This format addresses required areas and enables the Lottery to modify the background and scope of work to meet its needs.

**1.9.4.1 Evaluation Criteria:** All evaluation criteria must be clearly defined in the specifications section and based on a 100 point total score. Based on a 100 point total, cost shall represent a minimum of 30 of the 100 total points in the criteria.

**1.9.4.2 Proposal Format and Content:** Proposals shall be requested and received in two distinct parts: Technical and Cost. The cost portion shall be sealed in a separate envelope and will not be opened initially.

**1.9.4.3 Proposal Submission:** West Virginia State Code §5A-3-11, states ". . . all bidders submitting bid proposals to the Purchasing Division are required to submit an extra or duplicate copy to the State Auditor. Both copies must be received at the respective offices prior to the specified date and time of the bid opening."

**1.9.4.4 Technical Bid Opening:** The Purchasing Division and the State Auditor will open only the technical proposals on the date and time specified in the Request for Proposal. The Purchasing Division representative will read aloud the names of those who responded to the solicitation to confirm receipt by the State Auditor, and to confirm that both original packages contained a separately sealed cost proposal.

**1.9.4.5 Technical Evaluation:** An evaluation committee will review the technical proposals, assign appropriate points and make a final written consensus recommendation to the Purchasing Division Buyer. If the Buyer approved the committee's recommendation, the formation will be forwarded to an internal review committee within the Purchasing Division.

**1.9.4.6 Cost Bid Opening:** Upon approval of the technical evaluation from the internal review committee, the Purchasing Division shall notify the State Auditor and schedule a time and date to publicly open and read aloud the cost proposals. The Lottery and the vendors shall be notified of this date.

**1.9.4.7 Cost Evaluation and Resident Vendor Preference:** The evaluation committee will review the cost proposals, assign appropriate points and make a final consensus recommendation to the Purchasing Division. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable. Resident Vendor Preference by West Virginia State Code §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia State Code. A certificate of application is used to request this preference. Generally, a West Virginia vendor may be eligible for two, 2.5% preferences in the evaluation process.

**1.9.4.8 Contract Approval and Award:** After the cost proposals have been opened, the evaluation committee performs its review and makes its recommendation based on the highest scoring vendor to the Purchasing Division buyer.

Once approved by the buyer, the contract is signed in the Purchasing Division, forwarded to the Attorney General's Office for approval as to form, encumbered and mailed to the appropriate parties.

#### **1.10 Rejection of Proposals:**

The State shall select the best value solution according to the evaluation criteria. However, the State reserves the right to accept or reject any or all proposals, in part or in whole at its discretion. The State reserves the right to withdraw this RFP at any time and for any reason. Submission of, or receipt by the State of proposals confers no rights upon the bidder nor obligates the State in any manner.

A contract based on this RFP and the Vendor's proposal, may or may not be awarded. Any contract resulting in an award from this RFP is not valid until properly approved and executed by the Purchasing Division and approved as to form by the Attorney General.

#### **1.11 Incurring Costs:**

The State and any of its employees or officers shall not be held liable for any expenses incurred by any bidder responding to this RFP for expenses to prepare, deliver the proposal, or to attend any mandatory pre-bid meeting or oral presentations.

### **1.12 Addenda:**

If it becomes necessary to revise any part of this RFP, an official written addendum will be issued by the State to all bidders of record.

### **1.13 Independent Price Determination:**

A proposal will not be considered for award if the price in the proposal was not arrived at independently without collusion, consultation, communication, or agreement as to any matter relating to prices with any competitor unless the proposal is submitted as a joint venture.

### **1.14 Price Quotations:**

The price(s) quoted in the bidder's proposal will not be subject to any increase and will be considered firm for the life of the contract unless specific provisions have been provided for adjustment in the original contract.

### **1.15 Public Record:**

#### ***1.15.1 Submissions are Public Record.***

All documents submitted to the State Purchasing Division related to purchase orders/contracts are considered public records. All bids, proposals, or offers submitted by bidders shall become public information and are available for inspection during normal official business hours in the Purchasing Division Records and Distribution center after the award is complete and documents have been microfilmed.

#### ***1.15.2 Written Release of Information.***

All public information may be released with or without a Freedom of Information request, however; only a written request will be acted upon with duplications fees paid in advance. Duplication fees shall apply to all requests for copies of any document. Currently the fees are \$0.50/page, or a minimum of \$10.00 per request which ever is greater.

#### ***1.15.3 Risk of Disclosure.***

The only exemptions to disclosure of information are listed in West Virginia Code §29B-1-4. Primarily, only trade secrets as submitted by a bidder are the only exemption to public disclosure. The submission of any information to the State by a vendor puts the risk of disclosure on the vendor. The State will make a reasonable effort not to disclose information that is within the guidelines of §29B-1-4 and is properly

labeled "proprietary information not for public disclosure". The State does not guarantee non-disclosure of any information to the public.

**1.16 Schedule of Events:**

Release of the RFP.....04/27/2006  
Vendor's Written Questions Submission Deadline.....1:00 pm 05/16/2006  
Mandatory Prebid Conference .....1:30 pm 05/18/2006  
Addendum Issued .....(subject to change).....05/27/2006  
Bid Opening Date .....(subject to change).....06/08/2006  
Oral Presentation .....(week of / subject to change).....06/12/2006

**1.17 Mandatory Prebid Conference:**

A mandatory pre-bid conference shall be conducted on the date specified above. Said conference will be held at West Virginia Lottery headquarters, 312 MacCorkle Avenue, S.E., Charleston, West Virginia. **All interested bidders are required to be present at this meeting. Failure to attend the mandatory pre-bid conference shall automatically result in disqualification. No one person can represent more than one vendor.**

**1.18 Bond Requirements:**

A performance bond, a litigation bond, and insurance are required as set forth in Section 3.3 of this Request for Proposal.

**1.19 No Debt Affidavit:**

West Virginia State Code §5A-3-10a(3)(d) requires that all bidders submit an affidavit regarding any debt owed to the State. The affidavit must be signed and submitted prior to award. It is preferred that the affidavit be submitted with the proposal.

**1.20 Resident Vendor Preference:** West Virginia State Code §5A-3-37 provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the West Virginia State Code. A certificate of application is used to request this preference. Generally, a West Virginia vendor may be eligible for two 2.5%

preferences in the evaluation process. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

## **PART 2 OPERATING ENVIRONMENT**

### **2.1 Location:**

The Lottery is located at 312 MacCorkle Avenue, S.E., Charleston, West Virginia. During any one of the possible extension years, the Lottery may relocate.

### **2.2 Background:**

The Lottery presently has a comprehensive marketing contract, including provisions for advertising, public relations and event management, web site development and maintenance and promotional activities, with Charleston, West Virginia advertising agency Charles Ryan & Associates that is scheduled to expire June 30, 2006.

The Lottery currently uses the services of its contractual vendor to carry out its comprehensive marketing endeavors. The vendor provides dedicated account services, creative services, talent, production and technical expertise and assistance in developing and implementing advertising and promotional campaigns, promotional endeavors, retailer and player information and other marketing-related services. Such services include, but are not limited to, radio, television, and print advertising; printed materials; ad hoc event logistics on a 24/7 basis; supplemental planned event staffing; website design, updates, and server operations; qualitative and quantitative research; development and procurement of promotional items for both retailers and players; daily mail pickup at Lottery headquarters; and oversight of specific or special ad hoc projects.

The comprehensive marketing budget for the Lottery is based upon a predetermined amount within an administrative operating budget. In fiscal year 2005, the Lottery's marketing expenditures, through the current contract, totaled approximately \$6.2 million. Of this amount, 84.6 percent was used for media and 6.05 percent was used for production. Point of sale items accounted for 1.61 percent; research expenditures accounted for 1.69 percent; and public relations work accounted for 0.08 percent of the budget. Miscellaneous items and fees comprised the remaining 5.97 percent. The production expenditures include procurement of novelty item prizes and retailer supplies.

**The Lottery does not reimburse its vendor for postage, telecommunications, travel or other costs of doing business. The vendor's set fees for media and production include such miscellaneous costs.**

The content categories of the above budget for fiscal year 2005 consisted of online games advertising (29 percent), instant games advertising (14 percent), winner awareness advertising (6.5 percent), promotions (9 percent), research (1.7 percent), website design and maintenance (1.8 percent), sponsorships (17.3 percent) and corporate image advertising (20.7 percent).

The marketing budget for the Lottery is based upon a predetermined amount within an administrative operating budget. **For the purpose of equitable bidding in this RFP, prospective vendors should use a hypothetical budget of \$10 million.**

The successful bidder for this RFP, is prohibited from performing any type of work without the written approval of the Lottery Director or the Director's designee. The Lottery Director holds creative control of all marketing projects. Current vendor account representatives work with the Lottery's marketing unit staff to execute the Director's plans.

The Lottery provides marketing services for traditional lottery products such as instant tickets, daily numbers games, small and large lotto games and the Travel/keno game. The Lottery is prohibited, by law, from marketing or promoting any form of limited video lottery gaming; however paid legal notices and public announcements related to limited video lottery have been required for print placement, upon the Director's request. The vendor pays for sponsorships and promotional activities authorized by the Lottery Director, or the Director's designee.

The Lottery uses the current vendor to contract with outdoor advertising agents for seven (7) billboards containing satellite fed jackpot signage units leased from Sunshine Electronics. The current vendor provides subcontractors for research services and for website development services, including, but not limited to the design, database management, upkeep and configuration, leasing of rack space, and firewall and other software.

As an agency of the State of West Virginia, the Lottery may not pay for services of any nature until such services are confirmed as having been delivered or, in some cases implemented or concluded to the Lottery's satisfaction. Such payments are made, by the Lottery, upon monthly, itemized, categorized receipts containing all documentation necessary to substantiate payment. The Lottery makes no direct payments to subcontractors, leasers, or other entities with which business is conducted by the vendor on the Lottery's behalf.



## **PART 3 PROCUREMENT SPECIFICATIONS**

### **3.1 General Requirements:**

The Lottery seeks a responsible, financially qualified and experienced vendor to provide comprehensive marketing and advertising services as those stated in Section 2.2, above, and the services requested in this RFP.

### **3.2 Scope of Work:**

#### **3.2.1 Professional Services:**

At minimum, the Vendor shall have the ability to provide:

3.2.1.1 Advice, counsel, and recommendations with respect to media selection, themes, copy, multi-media presentations, and positioning;

3.2.1.2 The development, production and central delivery of promotional materials to be used in advertising and marketing activities for the Lottery. The vendor may be requested to lease storage space for such items, as necessary, upon the Lottery's behalf. Point of sale materials, promotional items, ticket dispensers and other semi-permanent items and signage for use at the retailer level are a part of this request for proposal.

3.2.1.3 An agent relationship for the Lottery to develop, produce, and place advertising materials in newspapers, radio, and network and cable television broadcasts. The successful bidder shall be able to assume all current contracts for media advertising and permanent signage commitments;

3.2.1.4 Thorough research of rights, trademarks, legal procurement of stock photography, musical scores and vocals, film segments and other copy-written materials to be used in the Lottery's marketing endeavors.

3.2.1.5 Any such professional service necessary to develop and maintain successful marketing campaigns, including a minimum of two full time employees to serve as account representatives, on-call 24 hours a day, seven days a week with a response time to Lottery Headquarters within sixty (60) minutes;

3.2.1.6 A minimum of two (2) staff dedicated to assist with promotional activities, whether full-time Vendor employees or qualified temporary Vendor employees, for summer fairs and

festivals, retailer-based promotions, retailer rallies or special events as determined by the Lottery;

3.2.1.7 Accounting services to provide a monthly, ad hoc, and annual cumulative summary reports of all actual and projected expenditures and remaining balances to the Lottery, sorted by Lottery-specified categories and available to the Lottery electronically, in Excel spreadsheet format;

3.2.1.8 Full public relations and community relations services in the form of qualified staff in addition to the dedicated account representatives, to be utilized on an ad hoc basis, upon the Director's request;

3.2.1.9 Ongoing research concerning the target audience and propensity to purchase various products or to assess consumer behaviors and attitudes. A minimum of two baseline studies and two focus group studies will be conducted, annually. Ad hoc research projects are to be expected from time to time. Research projects may be subcontracted to a qualified firm upon approval from the Lottery; however, the subcontractor shall not be considered a partner entity. The Lottery reserves the right to select among multiple research firms for all projects based upon project cost comparisons.

3.2.1.10 The ability to update content and design, maintain and monitor the Lottery's Internet web site and related services including, but not limited to, assumption of current vendor-provided contracts for large scale data-base server space for Internet-based marketing endeavors. The successful vendor will coordinate with the Lottery and its Online System Vendor to assure accurate and updated information in a timely manner. The successful vendor will provide a 24/7 contact for unplanned changes or disruptions to the web site, so that they may be remedied in a timely manner. Website design, upgrades and maintenance may be subcontracted to a qualified firm upon approval from the Lottery.

The Vendor shall obtain competitive costs for all products and services procured on behalf of the Lottery. Whenever possible, a minimum of three (3) costs from three (3) subcontractors should be presented for the Lottery's review and selection on all procurements with exception to media buys.

### 3.2.2 Location of representatives:

The Vendor shall assign a minimum of two (2) account representatives to work on the Lottery's comprehensive marketing program. These representatives should be available at all times, on-call, within a 60-minute request time. The account representatives will also be expected to attend all weekly Lottery marketing meetings, *ad hoc* marketing meetings, and the majority of special promotions held during daytime, evening and weekend hours. Therefore, it is in the best interest of the Lottery for the vendor to be located in an area that is relatively accessible to Lottery headquarters in Charleston, West Virginia, to have its primary account staff located in an area that is relatively accessible to Lottery headquarters, or to have consistent and reliable transportation on a 24/7/365 basis.

### 3.2.3 Financial Stability:

The Vendor shall have sufficient financial stability to pledge and place commitments of advertising media without hesitation on behalf of the Lottery, possibly up to as much as \$1.5 million at any one time. The Vendor should be commonly recognized throughout the industry as a Vendor with a solid financial foundation to meet its commitments on behalf of itself, and its clients. A financial review of the last five years of annual business will be conducted on all bidders, by qualified Lottery staff, for use in helping to determine the technical scoring. All bidders should submit financial statements for a period of the last five (5) years with their proposals. Audited financial statements are **desirable**. The Lottery reserves the right to reject non-compliant bidders that do not meet business requirements set by the State of West Virginia.

### 3.2.4 Vendor Experience:

The Vendor will furnish the Lottery with evidence of its ability to provide experienced personnel in the areas of creativity, planning, media purchasing, point of sale marketing, Internet creative and marketing design, project management, and research, in sufficient quantities to provide a quality product on time as scheduled. Documentation to verify the experience and qualifications of the personnel assigned to manage the Lottery's account must be provided to verify each proposed individual's credentials and the credentials of individuals proposed as sub-contractors, if applicable. It is **desirable** that the Vendor's management level and key personnel proposed for this account have five years of experience in the areas of expertise requested in this Request for Proposal. Should a proposed individual lack five (5) years of professional work experience, the vendor shall submit any and all documentation, including educational achievement

that may compensate for the desired experience. It is **desirable** that the Vendor possesses comprehensive marketing experience in the retail industry and/or in the entertainment industry. If the vendor substitutes staff for the account, at any time during the term of the contract or possible extension years, the experience and qualification levels must be of a similar quality to the level of those initially proposed. The Lottery reserves the right to request staff changes throughout the term of the contract.

Each bidder shall identify three (3) recent and successfully completed, comprehensive marketing projects (within the last two (2) years from the date of the Request for Proposal) including, but not limited to, media related advertising and the subsequent buy, point of sale advertising and its positioning, publications, web pages, public relation endeavors and other pertinent materials, and individual staff members involved in the three (3) projects. **Campaigns or projects that did not use aired or published, paid media shall not be considered as eligible for the purpose of responding to this proposal.** Each bidder shall also include the name and phone number of a contact person at the client's place of business to serve as a reference for any project submitted. Identical information must also be provided for any principal in a joint venture or sub-contractor situation. In addition, each bidder shall provide the following:

3.2.4.1 A list of memberships in any local, national, or international advertising, marketing and research organizations;

3.2.4.2. An organizational chart of the Vendor by name and title indicating the name of all the full-time professionals that will be dedicated to the Lottery's account and full-time ancillary staff employed by the Vendor. Each bidder shall also provide resumes for all individuals identified for involvement in the Lottery's account along with any special qualifications, degrees, awards or professional memberships held. In addition, each bidder must provide the number of years each professional has been with the bidder's company, and each professional's employment history. Upon contract award, the successful vendor shall provide complete documentation and written authorization for the Lottery to conduct criminal background checks for each named individual. Failure of key individuals to pass criminal background checks may be grounds for revocation of the contract.

3.2.4.3 A list of annual gross billings for the last five years;

3.2.4.4 A list of all accounts gained and lost in the last 24 months;

3.2.4.5 A list of bank affiliations and credit references;

3.2.4.6 A statement of whether the bidder (including any individual management-level employees) has ever filed for protection under the federal bankruptcy laws;

3.2.4.7 A statement as to whether the bidder (including any individual management-level employees) is in arrears for federal, state, and/or local taxes of any type with explanation;

3.2.4.8 A statement as to whether the bidder or any of its current and proposed employees have been convicted of a felony or gambling-related misdemeanor; and

3.2.4.9 A statement detailing any account balances (including media billings) that have exceeded 90 days and an explanation thereof. Each bidder must include a contact and phone number for each account referenced. Failure to provide this information may result in rejection of the bid.

### 3.2.5 Creativity:

Each bidder shall provide a mock-up of a multi-media campaign for **one** (1) of the following online games: Cash25; Hot Lotto™, daily numbers (Daily 3 & Daily 4); POWERBALL® and PowerPlay™, or TRAVEL/Keno. The elements of the campaign must include, but are not limited to, a description of goals and objectives, general concept, and media placement. The Vendor shall provide design, layout, and storyboards and/or video of creative concepts. The Vendor shall provide a comprehensive marketing plan that includes proposed research, promotions and public and retailer relations to support the campaign.

### 3.2.6 Media Buying:

For this criterion, the Vendor shall:

3.2.6.1 Describe its in-house media purchasing capabilities, and designate (by name, title and credentials) the full time employees who will be responsible for media planning and buying for the Lottery.

3.2.6.2 Describe its local and regional media buying experience and capabilities and the software used to perform media buying.

3.2.6.3 Design a specific media plan for the campaign prepared for the creative portion of the proposal (Section 3.2.5, above). A detailed

television, radio and print buy, (including times and dates of placements and the itemized and total costs), and a detailed description of cable television purchasing must be included in this example, as well as that for any other media proposed.

#### 3.2.7 Research:

For this criterion, the Vendor shall describe its research capabilities including staff specialists and credentials; equipment, such as specialized software programs; and subcontracted services available, if such is proposed. The Vendor shall provide one (1) example of research used to develop or evaluate a recent (within two (2) years of bid date) comprehensive marketing and paid media advertising campaign. If subcontractors are to be used, the Vendor shall provide a copy of a signed agreement to do business with each subcontractor and all information as requested in Sections 3.2.4.6; 3.2.4.7; 3.2.4.8; and 3.2.4.9, above.

#### 3.2.8 Promotions:

For this criterion, the Vendor shall describe at least two promotional activities designed and conducted by the Vendor during the last year for actual clients. The names and contact numbers of the clients must be included to serve as references. Such promotional activities should be documented with photographs, video or print submissions. The Vendor shall list clients, promotional goals, set-up/logistics, budgets and the documented methodologies used to show the results of the endeavors.

#### 3.2.9 Website maintenance and ongoing development:

The Vendor shall provide the continued graphic development, data transfer and maintenance of the Lottery's Internet web site and the leasing of server space and related software. The Vendor shall also provide the leasing of any additional web-based programs and increased server space for database management, which may include, but not be limited to, the addition of Players' Clubs, retailer data access, and interactive promotions such as second chance drawings, at the Lottery's direction. This item requires the Vendor to provide the methodology by which the vendor would acquire current services or new services used and all plans for continuance or conversion.

#### 3.2.10 Oral Presentations:

All vendors who have submitted proposals will be invited to the Lottery's headquarters for an oral presentation worth a maximum of 5 points. The oral presentation shall include senior Vendor principals, individuals who will serve the Lottery's account and, if possible, representation of any subcontractors that are proposed. The oral presentation must be a presentation of the technical proposal requirements as set forth in Section 3. The Lottery will not be responsible for providing equipment necessary

to present the campaign. The written invitation shall include information concerning time limits and other logistics. (See Section 4.4 for Minimum Acceptable Score)

### **3.3 Special Terms and Conditions:**

#### **3.3.1 Bid and Performance Bonds:**

No bid bond is required. The Vendor will be required to furnish performance bonds in an amount equal to the anticipated annual payments to that Vendor for the services provided. An alternative type of performance guarantee, in the form of a certified or cashier's check made payable to the State of West Virginia, is also acceptable **but a letter of credit will not be satisfactory.** This performance bond/guarantee will be renewed on an annual basis for the duration of the contract, and any extensions thereof. This bond shall provide funds to the Lottery in the event that the Lottery suffers any liability, loss damage or expense as a result of the Vendor's failure to perform fully and completely all the requirements of the RFP and contract which includes, without limitation, the Vendor's obligation to pay liquidated damages, to indemnify the West Virginia Lottery under circumstances described in the RFP and contract and the Vendor's obligation to operate the system as required by the RFP and contract throughout the term of the contract and any extensions thereof. Failure to perform fully under the RFP and contract may result in termination of the contract.

#### **3.3.2 Insurance Requirements:**

In addition to the performance bond/guarantee discussed above, the successful Vendor will also be required to provide the insurance listed below throughout the contract period, and any extensions thereof. As with the performance guarantee funds, the insurance moneys will provide the State of West Virginia and/or the Lottery with compensation for fees, legal costs, loss of revenues, or other damages resulting from the Vendor's inability to provide the contracted services/products. Proof of all insurance must be provided prior to the issuance of the resulting contract, and certificates of insurance must be kept current and on file with the Lottery. Each such policy except for the errors & omissions and fidelity policies must name the West Virginia Lottery as an additional insured; errors & omissions policies must name the State of West Virginia as a certificate holder, and fidelity policies must name the West Virginia Lottery as a loss payee. The Lottery shall receive notice of cancellation from insurance companies ten (10) days in advance of cancellation. **Self-insurance is not an acceptable form of insurance for any of the cited coverages.** The types of insurance required for the resultant contracts include the following:

3.3.2.1 Public Liability with limits of \$500,000 for any one person, and \$1,000,000 for any one occurrence of personal injury, as well as \$1,000,000 for any one occurrence of property damage.

3.3.2.2 Errors and Omissions in the amount of \$500,000 for the selected Vendor for any losses the Lottery may incur resulting from the intentional or negligent acts of the Vendor. The Errors and Omissions insurance coverage will remain in effect during the entire contract period, any extensions thereof, and for one (1) year after the contract(s) is terminated.

3.3.2.3 A Fidelity Bond or insurance in the amount of \$1,000,000 covering any losses incurred by the Lottery due to the fraudulent or dishonest acts on the part of the Vendor, or the Vendor's officers, employees, agents, or subcontractors.

### **3.3.3 License Requirements:**

There are no license requirements.

### **3.3.4 Litigation Bond:**

Each Bidder responding to this request for proposal **is required** to submit a litigation bond in the amount of \$250,000, made payable to the State of West Virginia Purchasing Division. This bond **MUST** be issued by a surety company that is licensed to do business in the State of West Virginia, on a form acceptable to the State. The only acceptable alternate forms of the bond are (1) a company certified check (not an individual) and (2) a cashier's check.

The purpose of the litigation bond is to discourage unwarranted or frivolous law suits pertaining to the award of a contract from this request for proposal. Secondly, the bond provides a mechanism for the State of West Virginia, the Lottery, its officers, employees, or agents thereof to recover damages, including (but not limited to) attorney fees, loss of revenue, loss of grants or portions thereof, penalties imposed by the federal government and travel expenses which may result from any such litigation. A claim against the bond will be made if the vendor contests the award in a court of competent jurisdiction and the grounds are found to be unwarranted or frivolous based on the facts of the award or applicable law as determined by the court.

The bond or alternate form must remain in effect for one year from the proposal submission date. After six (6) months, each vendor may request, and the State anticipates granting, a release of the litigation bond. However, the vendor will be required to provide a release (signed and notarized in a



form that is acceptable to the State) prior to release of the bond which states that the vendor will not sue.

**Failure to submit an appropriate bond or alternate bond with the proposal at the time of bid opening will result in automatic disqualification of the vendor's proposal and the proposal will be considered non-responsive.**

### ***3.3.5 No Debt Affidavit:***

West Virginia State Code §5A-3-10a-(3)(d) requires that all vendors submit an affidavit of debt, which certifies that there are no outstanding obligations or debts owing the State of West Virginia. The Debt Affidavit is attached to this request for proposal, which ***should*** be completed, signed and returned ***with*** the vendor's proposal. If bidding a joint proposal, a Debt Affidavit must be completed for both vendors.

### **3.4 General Terms and Conditions:**

By signing and submitting their proposal, the successful Vendor agrees to be bound by all the terms contained in Section Three (3) of this RFP.

#### ***3.4.1 Conflict of Interest:***

Vendor affirms that it, its officers or members or employees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner or degree with the performance or its services hereunder. The Vendor further covenants that in the performance of the contract, the Vendor shall periodically inquire of its officers, members and employees concerning such interests. Any such interests discovered shall be promptly presented in detail to the Lottery.

#### ***3.4.2 Prohibition Against Gratuities:***

Vendor warrants that it has not employed any company or person other than a bona fide employee working solely for the vendor or a company regularly employed as its marketing agent to solicit or secure the contract and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the contract.

For breach or violation of this warranty, the State shall have the right to annul this contract without liability at its discretion, and/or to pursue any other remedies available under this contract or by law.

### **3.4.3 Certifications Related to Lobbying:**

Vendor certifies that no federal appropriated funds have been paid or will be paid, by or on behalf of the company or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal entity, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Vendor shall complete and submit a disclosure form to report the lobbying.

Vendor agrees that this language of certification shall be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this contract was made and entered into.

### **3.4.4 Vendor Relationship:**

The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents.

Vendor shall be responsible for selecting, supervising and compensating any and all individuals employed pursuant to the terms of this RFP and resulting contract. Neither the Vendor nor any employees or contractors of the vendor shall be deemed to be employees of the State for any purposes whatsoever.

Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension or other deferred compensation

plans, including but not limited to Workers' Compensation and Social Security obligations, and licensing fees, etc. and the filing of all necessary documents, forms and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Lottery with a defense against any and all claims including but not limited to the foregoing payments, withholdings, contributions, taxes, social security taxes and employer income tax returns.

The Vendor shall not assign, convey, transfer or delegate any of its responsibilities and obligations under this contract to any person, corporation, partnership, association or entity without expressed written consent of the Lottery.

#### **3.4.5 Indemnification:**

The Vendor agrees to indemnify, defend and hold harmless the State and the Lottery, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person or firm performing or supplying services, materials or supplies in connection with the performance of the contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use or disposition of any data used under the contract in a manner not authorized by the contract, or by Federal or State statutes or regulations; (3) Any failure of the Vendor, its officers, employees or subcontractors to observe State and Federal laws, including but not limited to labor and wage laws.

#### **3.4.6 Contract Provisions:**

After the successful Vendor is selected, a formal contract document will be executed between the State and the Vendor. In addition, the RFP and the Vendor's response will be included as part of the contract by reference. The order of precedence is the contract, the RFP and the Vendor's proposal in response to the RFP.

#### **3.4.7 Governing Law:**

This contract shall be governed by the laws of the State of West Virginia. The Vendor further agrees to comply with the Civil Rights Act of 1964 and all other applicable laws (Federal, State or Local Government) regulations.

### **3.4.8 Compliance with Laws and Regulations:**

The vendor shall procure all necessary permits and licenses to comply with all applicable laws, Federal, State or municipal, along with all regulations, and ordinances of any regulating body.

The Vendor shall pay any applicable sales, use, or personal property taxes arising out of this contract and the transactions contemplated thereby. Any other taxes levied upon this contract, the transaction, or the equipment, or services delivered pursuant here to shall be borne by the contractor. It is clearly understood that the State of West Virginia is exempt from any taxes regarding performance of the scope of work of this contract.

### **3.4.9 Subcontracts/Joint Ventures:**

The Vendor is solely responsible for all work performed under the contract and shall assume prime contractor responsibility for all services offered and products to be delivered under the terms of this contract. The State will consider the Vendor to be the sole point of contact with regard to all contractual matters. The Vendor may, with the prior written consent of the State, enter into written subcontracts for performance of work under this contract; however, the vendor is totally responsible for payment of all subcontractors.

### **3.4.10 Term of Contract & Renewals:**

This contract will be effective upon award and shall extend for the period of one (1) year, at which time the contract may, upon mutual consent, be renewed. Such renewals are for a period of up to one (1) year, with a maximum of two (2) one year renewals, or until such reasonable time thereafter as is necessary to obtain a new contract. The "reasonable time" period shall not exceed twelve (12) months. During the "reasonable time" period the vendor may terminate the contract for any reason upon giving the Lottery ninety (90) days written notice. Notice by Vendor of intent to terminate will not relieve Vendor of the obligation to continue to provide services pursuant to the terms of the contract.

Any change in Federal or State law, or court actions which constitute binding precedent in West Virginia, and which significantly alters the Vendor's required activities or any change in the availability of funds, shall be viewed as binding and shall warrant good faith renegotiation of the compensation paid to the Vendor by the Lottery and of such other provisions of the contract that are affected. If such renegotiation proves unsuccessful, the contract may be terminated by the State upon written notice to the Vendor at least thirty (30) days prior to termination of this contract.

#### **3.4.11 Non-Appropriation of Funds:**

If the Lottery is not allotted funds in any succeeding fiscal year for the continued use of the service covered by this contract by the West Virginia Legislature, the Lottery may terminate the contract at the end of the affected current fiscal period without further charge or penalty. The Lottery shall give the vendor written notice of such non-allocation of funds as soon as possible after the Lottery receives notice. No penalty shall accrue to the Lottery in the event this provision is exercised.

#### **3.4.12 Contract Termination:**

The State may terminate any contract resulting from this RFP immediately at any time the Vendor fails to carry out its responsibilities or to make substantial progress under the terms of this RFP and resulting contract. The State shall provide the Vendor with advance notice of performance conditions which are endangering the contract's continuation. If after such notice the Vendor fails to remedy the conditions contained in the notice, within the time period contained in the notice, the State shall issue the Vendor an order to cease and desist any and all work immediately. The State shall be obligated only for services rendered and accepted prior to the date of the notice of termination.

The contract may also be terminated upon mutual agreement of the parties with thirty (30) days prior notice.

#### **3.4.13 Changes:**

If changes to the original contract become necessary, a formal contract change order will be negotiated by the State, the Lottery and the Vendor, to address changes to the terms and conditions, costs of work included under the contract. An approved contract change order is defined as one approved by the Purchasing Division and approved as to form by the West Virginia Attorney General's Office, encumbered and placed in the U.S. Mail prior to the effective date of such amendment. An approved contract change order is required whenever the change affects the payment provision and/or the scope of the work. Such changes may be necessitated by new and amended Federal and State regulations and requirements.

As soon as possible after receipt of a written change request from the Lottery, but in no event more than thirty (30) days thereafter, the Vendor shall determine if there is an impact on price with the change requested and provide the Lottery a written statement to identifying any price impact on the contract or to state that there is no impact. In the event that price will be impacted by the change, the Vendor shall, provide a description of the price increase or decrease involved in implementing the requested change.

**NO CHANGE SHALL BE IMPLEMENTED BY THE VENDOR UNTIL SUCH TIME AS THE VENDOR RECEIVES AN APPROVED WRITTEN CHANGE ORDER.**

**3.4.14 Invoices, Progress Payments, & Retainage:**

The Vendor shall submit invoices, in arrears, to the Lottery at the address on the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. Progress payments may be made at the option of the Lottery on the basis of percentage of work completed if so defined in the final contract. Any provision for progress payments must also include language for a minimum 10% retainage until the final deliverable is accepted.

If progress payments are permitted, Vendor is required to identify points in the work plan at which compensation would be appropriate. Progress reports must be submitted to Lottery with the invoice detailing progress completed or any deliverables identified. Payment will be made only upon approval of acceptable progress or deliverables as documented in the Vendor's report. Invoices may not be submitted more than once monthly and State law forbids payment of invoices prior to receipt of services.

The Lottery requires proof of work by documentation including, but not limited to, tear sheets, subcontractor or agent actual invoices, and, in the case of broadcast media purchases, by sworn affidavits.

**3.4.15 Liquidated Damages:**

At any time during the course of the contract resulting from this Request for Proposal, or at any time during the course of possible extension years, the Lottery Director may choose to assess liquidated damages for actions, as described below. Liquidated damages for Vendor default may include, but are not limited to:

3.4.15.1 Failure to respond to request for on-site staff within the specified sixty (60) minute time frame requirement: **\$1,500 per incident, per requested person.**

3.4.15.2 Failure to make payments on the Lottery's behalf within 90-days of vendor's receipt of invoice: **Full amount of invoice plus 8.43 percent of invoice amount.**

3.4.15.3 Failure to provide and to maintain account staffing at the experience and educational levels of, or at similar levels to, those originally proposed. **\$300 per day, per person.**

3.4.15.4 Failure to comply with the *Covenant Related to Purchasing Lottery Tickets (Section 3.4.20)*: **Amount equal to the cash value of the prize won.**

3.4.15.5 Agency carelessness that results in failure to meet documented deadlines: **\$500 per day, per occurrence.**

Breach of any of the foregoing, or any action of the Vendor or any associate, agent or subcontractor of the Vendor involved in the contract, which reflects upon the integrity, credibility, honesty, or security of the State Lottery Commission will result in decisive remedial action, and may include cancellation of the contract by the State of West Virginia.

The Lottery Director shall have the discretion to determine whether liquidated damages, as described in this section of the RFP, will be assessed. The Lottery Director's determination shall not be arbitrary or capricious. In the event of a dispute regarding the imposition or the amount of liquidated damages, the Vendor shall designate one (1), and only one (1), on-site individual to discuss the dispute with the Lottery Director. In all possible areas of liquidated damages assessment, there shall be no proration of damages unless otherwise expressed for partial periods. Excessive liquidated damages, and events leading to such, may be grounds for termination of the contract.

**3.4.16 Record Retention (Access & Confidentiality):**

Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records a minimum of five (5) years and make available all records to Lottery personnel at Vendor's location during normal business hours upon written request by Lottery within 10 days after receipt of the request.

Vendor shall have access to private and confidential data maintained by Lottery to the extent required for Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Lottery against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by Vendor.

**3.4.17 Ownership of Data:**

All materials and data produced for the Lottery under the Contract shall be owned by the State of West Virginia unless otherwise agreed to in writing by

the Lottery. Patents, copyrights, or trademarks accruing under or developed in connection with the performance under this Contract must be considered by the Vendor as owned by, or perpetually licensed to, the State of West Virginia without additional financial considerations.

Data collected by the Lottery may not be used by the Vendor, nor any subcontractors, for commercial use unless directed by the Lottery. The data may not be passed to nor sold to any party unless indicated by the Lottery.

#### **3.4.18 Approval of Staffing:**

The Lottery reserves the right to review and if perceived necessary, decline the services of any employee of the successful bidder who is assigned to the Lottery's contract, either at contract inception or during the term of the contract.

#### **3.4.19 Additional Requirements**

At the option of the Lottery, the Vendor will have the responsibility to develop advertising, promotion and publicity materials including, but not limited to, television and radio ads, print ads, and collateral material. Research and other related activities will be required. Vendor services are subject to the following:

3.4.19.1 All broadcast media will be placed at the local level. Use of national or other third party representatives is strictly prohibited in the placement of broadcast media.

3.4.19.2 If the Lottery wishes to use any forms of advertising, materials or services not herein provided for by the Vendor, the Vendor will, at the request of the Lottery, assist the Lottery in their consideration and preparation. The cost for such assistance shall be in accordance with the costs as stipulated in the financial section of the Vendor's bid proposal. The Lottery reserves the right of direct media placement and use of production services outside the Vendor.

3.4.19.3 The Lottery shall receive the benefit of all media cash discounts, rebates, frequency discounts, or special adjustments allowed to the Vendor placed for and on behalf of the Lottery. The Vendor shall conduct post audits and require refunds for advertising not aired or placed. "Make-goods" may only be used if authorized by the Lottery Director, or his designee. The Vendor shall make available to the Lottery copies of all invoices, including broadcast affidavits, and proof of payment of all invoices, including any third party that was used to provide production services or materials for the Lottery's account. Such proof shall be made available to the Lottery for audit once per month.



3.4.19.4 The Lottery Director, or the Director's designee, in affiliation with the Vendor, shall determine the proper time schedule in which all advertising and promotions are to take place. The Lottery shall approve all work to be written, developed, or otherwise performed by the Vendor before the Vendor incurs any costs. Work that is not pre-approved, in writing, for payment, shall not be compensated by the Lottery.

3.4.19.5 Total expenditures for the Lottery's advertising and promotions program shall not exceed the amount set by the Lottery unless such change is requested and by mutual consent is agreed to.

3.4.19.6 All contracts, papers, correspondence, copy, books, accounts, and other information in the Vendor's care relating to the business of the Lottery shall be open to inspection and examination by an authorized representative of the Lottery at all reasonable times, as well as expenses incurred by the Vendor.

3.4.19.7 All layouts, sketches, art work, computer images and copy including, but not limited to, advertising copy, film, master tapes, typesetting, photocopies, storyboards, and computer data storage disks/cards used in advertisements or other materials developed or placed by the Vendor for the Lottery, shall become the exclusive property of the Lottery.

3.4.19.8 The Lottery shall have the full and free right to possess and use any and all said property in any way deemed by it to be necessary or advisable, either directly, or through the Vendor or otherwise and without payment of any compensation to the Vendor for the same.

3.4.19.9 The successful Vendor must have the ability to accept data electronically, and from disk, CD, CDR, CDRW, DVD or memory card, disk, and tape. E-mail capabilities with the ability to accept large file transfers (both Macintosh and PC) are required of the Vendor. In addition, daily runs to the Lottery's headquarters must be made by personnel of the successful bidder to pick up and deliver work related materials and documents.

3.4.19.10 It is the policy of the Lottery to use the services, talent and products of its state. As such, the Vendor will be expected to use in-state services and talent whenever possible.

3.4.19.11 Any contract terms must conform to provisions found in the Division of Purchasing form WV-96, Rev. 5/94, which is attached.

**3.4.20 Covenant Related to Purchase of Lottery Tickets:**

Employees or officers of the Vendor selected for award of a contract, and their immediate family members residing in the same household, are restricted from purchasing, winning, or participating in any West Virginia Lottery games. The successful Vendor will be expected to convey this restriction to its employees and officers, and they in turn to their family members residing in their household. The successful Vendor will also be expected to use all reasonable resources to exert its best efforts to enforce this restriction. Failure of any employee, officer, or family member to comply with this restriction will result in forfeiture of any winnings and could jeopardize the continuance of the contract at the option of the State of West Virginia or the Lottery.

**3.4.21 Prohibition for Billing for Work Not Authorized**

The successful vendor is prohibited from billing for work of any nature without written authorization from the Lottery Director, or the Director's designee.

**PART 4 PROPOSAL FORMAT**

**4.1 Vendor's Proposal Format:**

The proposal should be formatted in the following order, providing the information listed below:

Title page - Should state the RFP Subject and number, the name of the Vendor, Vendor's business address, telephone number, name of authorized contact person to speak on behalf of the Vendor, dated and signed.

Table of Contents - Clearly identify the material by section and page number.

Section I – Professional Services: Discuss how the vendor will fulfill all of the professional services required as set forth in Section 3.2.1 of this RFP. Include a discussion of any services that will be subcontracted and how such subcontracts shall be managed.

Section II – Location of Representatives: Provide the names and proposed work locations of persons proposed to serve as account representatives. See Section 3.2.2.

Section III - Financial Stability: Provide proof of financial stability and capabilities to manage the Lottery's account, including, but not limited to, submission of financial statements for the past five (5) years, if available. See Section 3.2.3.

Section IV – Vendor Experience: Discuss the experience of both your company and your personnel in the areas of creativity, planning, media purchasing, website development and maintenance, research and general marketing activities. Provide three (3) recent examples of comprehensive marketing campaigns that your firm has developed for paying clients over the last two (2) years that include paid media advertising. Discuss memberships in professional advertising, marketing and research organizations. List annual gross billings for the past five (5) years. List all accounts gained and lost in the past five (5) years. List bank affiliations and provide credit references. Discuss any filings under bankruptcy protection laws. Discuss any taxes in arrears and explain, if so. Discuss felony or gambling-related felony convictions, if applicable. Discuss account balances that have exceeded 90 days and provide contacts and phone numbers for each account referenced. See Section 3.2.4.

Section V: Creativity: Provide a mock up of a multi-media campaign for a specific online lottery game that includes, at minimum, a description of goals and objectives, general concept, and media placement. Provide design, layout and storyboards as well as a comprehensive marketing plan that includes proposed research, promotions and public and retailer relations plans to support the campaign. See Section 3.2.5.

Section VI: Media Buying: Discuss in-house media purchasing capabilities and those who will be responsible for such. Discuss media buying experience and the software used for such. Design a media plan for the campaign referenced in Section 3.2.5 that details media buys and costs, the target audience and the reasons such plan is recommended. See Section 3.2.6.

Section VII: Research: Discuss in-house or subcontracted research experience and capabilities. Provide one (1) example of a research project your firm has provided for a paying client within the last two (2) years related to a comprehensive marketing campaign. Describe any subcontractor relationships and provide signed work agreements for those proposed for this account. See Section 3.2.7.

Section VIII: Promotions: Discuss and describe at least two (2) promotional activities designed and conducted within the last year for a paying client. Include references and contact information. Demonstrate goals, logistics, budgets and methodologies used to show results of the endeavor. See Section 3.2.8.

Section IX: Website Maintenance and Ongoing Development: Discuss experience (either in-house or with a subcontractor) in developing and maintaining a web site for a paying client. Discuss plans for assumption of current services or for conversion of services for the Lottery's website. Discuss and demonstrate plans for enhancements to accommodate a players' club, a retailer data site, and interactive promotions. Discuss recommended enhancements to the existing site. See Section 3.2.9.

Section X: Oral Presentation: Discuss all aspects of the proposal and demonstrate all capability aspects. Present the creative concepts requested in Section 3.2.5 and the media plan requested in Section 3.2.6. See Section 3.2.10.

Section XI: Cost: This criterion is formula-driven. See Section 4.5 of this RFP.

If applicable, sign and submit the attached Resident Vendor Preference Certificate with the proposal.

## **4.2 Evaluation Process:**

### **4.2.1 Method of Evaluation:**

The proposals will be evaluated by a committee of five (5) individuals in accordance with the criteria stated. The Vendor who meets all the mandatory specifications, attains the final highest point score of all vendors (possible one-hundred 100 points maximum) shall be awarded the contract. The selection of the successful vendor will be made by a consensus of the evaluation committee.

**Bidders meeting criteria stated as "desirable" may receive a higher technical score than those who do not meet such criteria.**



Vendor's failure to provide complete and accurate information may be considered grounds for disqualification. The State reserves the right if necessary to ask vendors for additional information to clarify their proposals. Nothing may be added to alter the written solution or method contained in the original proposal after the bid opening.

#### **4.5. Cost Proposal Format/Bid Sheets**

All bidders should complete the following cost bid sheets for the purpose of this bid. If a service is provided at no additional charge, indicate such with a cost bid of \$0 for that item. However, if \$0 is listed on any of the following cost items, the Vendor will be prohibited from charging a fee per hour for that service during the lifetime of the contract and its possible extension years even if the cost is covered in another category.

*(Continued on page 33)*

<b>SPECIFIC ACTIVITIES</b>	<b>RATE PER HOUR*</b>	<b>TIMES</b>	<b>PRESUMED HOURS PER YEAR*</b>	<b>=</b>	<b>ESTIMATED COST PER YEAR</b>
Account/Client Services	\$	X	3,000	=	
Creative Planning	\$	X	2,000	=	
Media Planning and Buying	\$	X	1,500	=	
Strategic Planning	\$	X	50	=	
Art Direction	\$	X	300	=	
General Management	\$	X	500	=	
Research	\$	X	1,000	=	
Copy	\$	X	250	=	
Layout	\$	X	500	=	
Computer Graphics	\$	X	1,500	=	
Accounting	\$	X	500	=	
Event Planning	\$	X	250	=	
Public Relations	\$	X	75	=	
Promotions Staffing	\$	X	100	=	
Website development and maintenance	\$	X	1,000	=	
Clerical Services	\$	X	50	=	
<b>Total Bid Cost for Specific Activities</b>					<b>\$</b>

\* In the section, above, you are bidding your HOURLY RATES. The presumed hours are given to put all bidders on an even footing for cost scoring.

**Media Buying Add-on:** Each bidder responding to this RFP must provide a percent of add-on for the media buying activity **IF** the Vendor plans to charge an add-on. All communication costs associated with media buying shall be included in this figure. Such costs include, but are not limited to, phone calls, postage, shipping containers, and facsimiles. If the bidder fails to provide an add-on percent quote, the bidder shall not charge a media buying add-on charge at any time during the term of the resulting contract and any extensions to the contract.

The media add-on percentage is \_\_\_\_\_% X \$6,000,000\*\* =  
\$ \_\_\_\_\_ per year

\*\* In the section, above, you are bidding your MEDIA ADD-ON PERCENTAGE RATE. The estimated dollars are given

**Production Add-on:**

Each bidder responding to this RFP must provide a percent of add-on for the production activity **IF the** Vendor plans to charge an add-on. All communication costs associated with production shall be included in this figure. Such costs include, but are not limited to, phone calls, postage, shipping containers, and facsimiles. If the bidder fails to provide an add-on percent quote, the bidder shall not charge a media buying add-on charge at any time during the term of the resulting contract and any extensions to the contract.

The production add-on percentage is \_\_\_\_\_% X \$4,000,000\*\*\* =

\$ \_\_\_\_\_ per year

\*\*\* In the section, above, you are bidding your PRODUCTION ADD-ON PERCENTAGE RATE. The estimated dollars are for cost evaluation purposes, only.

The total cost for Specific Activities, Media Buying and Production =

\$ \_\_\_\_\_ per year

Each cost proposal will be evaluated by use of the following formula:

Lowest price of all proposals\*  
----- X 30 = Price Score  
Price of Proposal being evaluated\*



**A F F I D A V I T****West Virginia Code §5A-3-10a states:**

No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owned is an amount greater than one thousand dollars in the aggregate.

**DEFINITIONS:**

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions.

"Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

**EXCEPTION:**

The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

**LICENSING:**

The vendor must be licensed in accordance with any and all state requirements to do business with the state of West Virginia.

**CONFIDENTIALITY:**

The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy) for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor's Name: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_