

SOLE SOURCE DETERMINATION

The Purchasing Division has been requested to approve a sole source purchase for the commodity or service described below. Pursuant to West Virginia Code 5A-3-10c, the Purchasing Division is attempting to determine whether the commodity or service is a sole source procurement. If you believe your company meets the required experience and qualification criteria stated below, please e-mail the Purchasing Division Buyer at shelly.l.murray@wv.gov with a copy to w.michael.sheets@wv.gov to express your interest in the project. Please forward any and all information that will support your company's compliance with required qualification and eligibility criteria along with any other pertinent information relative to this project to the Purchasing Division no later than 1:30 PM on 04/23/2012.

Requisition Number: **LOT486** Department/Agency: **REVENUE/LOTTERY**

Detailed Description of Project:

The Lottery requires the service of established vendors to provide licenses to use intellectual property, logos, copyrights, and trademarks for artistic use in the development of instant scratch-off lottery tickets and promotions. Use of such property is an asset the Lottery add value to its products and increase the value to consumers across all game price points. Access to multiple licenses provides the resources for a flexible and collaborative strategy for the promotion of innovative Lottery products.

There are currently six known companies that provide this service and each company has the authority to grant licenses for different properties. Lottery would like to contract with all six companies to have access to all of the various properties that each company is authorized to grant trademark and logo licenses.

Proposed Sole Source Vendor:

ALCHEMY3
3480 Preston Ridge Rd, Suite 425
Alpharetta, GA 30005
770-442-6993

Specific Eligibility Criteria:

- **Must have legal authority to grant use of requested intellectual property, such as logos, copyrights, and trademarks**
- **Vendor may not assign, transfer, or sublicense any right granted in any manner, whether by sale, merger, operation of law or otherwise, without the prior written consent of the Lottery, which may be withheld at the sole and absolute discretion of the Lottery**
- **Vendor may engage in the development of products and services that have the same or similar intended benefits for use by the Lottery and may acquire such product or service for use by the Lottery**
- **Vendor may not restrict or impair the Lottery, now or in the future, from developing, procuring or marketing products or services which may be competitive with the vendor, or prevent the Lottery from entering into similar arrangements with other vendors providing competitive specialty products or services**
- **Vendor will provide normal licensing fees or percentage of sales rates upon request by the Lottery**
- **In order to assist the Lottery with development, refinement, or improvement, vendor may provide a licensed product or products at no charge for test marketing purposes. This service may be modified or discontinued at any time.**
- **Vendor warrants that all licenses granted by Vendor the owner of the property or an authorized grantee. Vendor shall indemnify, defend, and hold the Lottery, its Commissioners and Lottery staff harmless in the event of any legal claims or actions that are filed and any corresponding damages, and legal expenses, including reasonable attorneys' fees incurred relating to any matters connected to this Agreement.**
- **Vendor warrants that licenses granted for intellectual property such as logos, copyrights, and trademarks will not result in any claim asserting that the intellectual property, logos, copyrights, and trademarks infringe on any United States intellectual property, logos, copyrights, and trademarks owned by a person or entity.**
- **Vendor warrants that the license shall be effective upon execution of a game license agreement and shall expire on the last day for claiming game prizes as established by the Lottery unless previously terminated as**

provided herein. The warranties and indemnifications contained in this Agreement shall continue in perpetuity.

- **Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia. The Kanawha County Circuit Court and the United States District Court located in Charleston, WV shall be the exclusive jurisdiction for any disputes relating to this Agreement. Vendor shall accept service of process by U.S. certified or registered mail, return receipt requested, or by any other means authorized by West Virginia law.**

Specific Qualification Criteria:

- **Consumer marketing and gaming experience with Lotteries**
- **Brand marketing specific to the gaming industry**
- **Assistance in brand point-of-sale development**
- **Assistance in creation of brand packaging or in brand presence (i.e. web site creation or web components, promotional materials)**