



**REQUEST FOR APPLICATIONS
TO DEVELOP AND OPERATE
A GAMING FACILITY IN NEW YORK STATE**

Applicant Conference – Advance Questions and Answers

April 30, 2014

Q.312: RFA Exhibit VI.L, under the heading of “Public Officials,” requests:

... names, titles, addresses and telephone numbers of any Public Officials or officers or employees of any governmental entity, and Immediate Family Member(s) of said Public Officials, officers or employees, who, directly or indirectly, own any financial interest in, have any beneficial interest in, are the creditors of, hold any debt instrument issued by, or hold or have an interest, direct or indirect, in any contractual or service relationship with the Applicant, the Manager or their Affiliates ...

and then provides that:

... a statement listing all persons and entities not listed in the immediately preceding sentence who or that have any arrangement, written or oral, to receive any compensation from anyone in connection with the Application, the RFA process or obtaining of a License from the State, describing the nature of the arrangement, the service to be provided and the amount of such compensation, whether actual or contingent.

Is the “statement” requested in the second part of this Exhibit with reference specifically to Public Officials, or does it reference “all persons” who have any arrangement for compensation in connection with the Application (which would seemingly include all professionals, consultants, employees, etc., each of which is to be separately identified under other Exhibits of the RFA Application)?

A.312: Such statement should be interpreted as referring to “all persons and entities ... to receive any compensation from anyone in connection with the Application, the RFA process or obtaining of a License from the State ... ”.

Q.313: Please specify:

a. how many square feet, and in what location, should office space be allocated for offices for the Gaming Commission and any other state agencies intending to have a presence within the Gaming Facility?

b. what fixtures and finishes this space will require?

A.313:

a. While requirements have not been formalized, we anticipate State needs to be consistent with existing Indian gaming facilities. Such locations are generally two distinct sets of offices. Each set is generally no less than 450 square feet, divided among two distinct, connected spaces with one being no less than 100 square feet.

Offices should be located within the gaming facility, in close proximity to the gaming floor.

b. An applicant need not supply fixtures for the two sets of offices, although each should have full communications functionality. The larger of the space should also have one surveillance station and have connectivity to the utilized accounting and financial reporting system.

Q.314: Exhibit III, §H of the RFA (and 9 NYCRR §5300.2) requires each Applicant to submit (with its application) "A complete and accurate Gaming Facility License Application Form *for each of* ... [Applicant, parent entity, holding company, Manager, holder of beneficial interest of 5%, etc.]." (emphasis added)

Please advise whether this requirement is for one Gaming Facility License Application Form covering each enumerated interested party, or, rather, is each enumerated interested party required to submit its own separate Gaming Facility License Application Form?

A.314: Please see the answer to Round 1 Question 26, which is replicated below:

Applicants shall make a good faith effort to determine whether they and their respective related parties must submit background investigation forms as set forth in RFA Article III § H. If the Board determines that an Applicant has failed to provide background forms for a person or entity required to disclose, the Board will afford the Applicant the opportunity to

submit promptly the necessary background forms for such person or entity.

The Board may, in its discretion, waive disclosure requirements for institutional and other passive investors that can demonstrate they obtained an interest in a relevant party for investment purposes only and do not have any intention to influence or affect the affairs of an Applicant, a manager or any affiliated companies thereof. It is anticipated that the Commission will promulgate regulations in regard to this concern.

Q.315: PML § 1346.6 states, "***If otherwise applicable***, any gaming facility entering into a contract for a gaming facility capital project shall be deemed to be a state agency, and such contract shall be deemed to be a state contract, for purposes of article fifteen-A of the executive law and section two hundred twenty-two of the labor law." (emphasis added)

a. Please advise whether the Commission or the Board has determined that Labor Law §222 is in-fact applicable to the building and construction work to be performed under a Gaming Facility License?

Labor Law §222.2 (a) provides: "The [agency] having jurisdiction over the public work ***may require*** a contractor... for a project to enter into a project labor agreement during and for the work involved with such project when such [agency] ...determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement." (emphasis added)

b. Specifically, has the Commission or the Board affirmatively determined that Project Labor Agreements shall be required for the building and construction work to be conducted under a Gaming Facility License?

A.315:

a. The Board encourages any interested party to conduct a legal review of N.Y. Labor Law § 222 to determine whether such section applies to a gaming facility building and construction work.

b. The Board respectfully directs applicants to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3 (g)(2), which provides that among the selection factors that the Board will evaluate is an Applicant's demonstration that it has an agreement with organized labor that specifies detailed plans for assuring labor harmony during all phases of

the construction, reconstruction, renovation, development and operation of the gaming facility. The form of the demonstration is left to the Applicant's discretion.

Q.316: The Commission has not set forth a process where opponents of the Casino can file their objections. I propose that a 6 month period after the submission be given to any group that wishes to file an objection. This is fair since the applicants have been working on their plans for a long time and we are to be given ample time to review and respond. Let this communication serve as notice that we will file papers in response and we should be given this time period.

A.316: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.317: Let the applicant address the impact of the casino on the surrounding summer community.

A.317: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.318: We must be given copies of all communications and data in the possession of the applicant even though it was not submitted to the Site Commission.

A.318: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.319: Let the applicant address the consequences when New York City allows the building of Casinos in the city after the casinos have destroyed the residential climate of Monticello and Monticello will no longer have this economic base.

A.319: This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.320: Inasmuch as up to two casinos can go in a particular region, are we to contemplate a second casino when identifying local impacts?

A.320: No.

Q.321: Board Question, Posed For Clarification. Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1316.8 and the RFA, all Applicants were required to remit an Application fee of one million dollars to defray the costs associated with the processing of the Application and investigation of the applicant.

Under what circumstances and to what extent may an Applicant's fee be refunded?

A.321: Please see *Guidance Document - Refunding of Application Fee*, which has been posted to the Commission's RFA webpage.

Q.322. Board Question, Posed For Clarification. Will the Board consider the loss of VLT revenue caused by the conversion of a VLT facility to a commercial Gaming Facility when evaluating a proposed commercial Gaming Facility's revenue generation?

A.322. No. If a VLT facility is converted to a commercial Gaming Facility, all gaming revenue generated by the commercial Gaming Facility will be considered, without regard to the loss of VLT revenue.

Q.323. Board Question, Posed For Clarification. Will the Board consider the impact that a proposed commercial gaming facility may have on a VLT facility's gaming revenue?

A.323. No. Any potential reduction in VLT facility revenue will not be considered in evaluating a proposed commercial gaming facility's revenue.

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