



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

**Applicant Conference - Questions and Answers**

**May 2, 2014**

Q.324. Will the Commission toll the twenty-four (24) month time limit until such time as the SEQR process is completed?

**A.324. As addressed in the answer to Question 189. c., the Commission has not considered whether it will toll the twenty-four month time limit pending completion of the State Environmental Quality Review (SEQR) process.**

**The Commission believes that it will be unnecessary to toll any time limit as we assume Applicants will timely commence the SEQR process since speed to market is a graded factor in the RFA evaluation.**

Q.325. Will litigation over SEQR determinations toll the twenty-four (24) month period?

**A.325. See answer to Question 324.**

Q.326. Will post-application design changes to the Gaming Facility and Amenities be allowed?

**A.326. Yes. The Commission and the Board will authorize changes that do not reduce the size, quality, or fit and finish of a Gaming Facility or amenities or are otherwise government-mandated changes.**

Q.327. Do the preemption provisions of N.Y. Racing Pari-Mutuel Wagering and Breeding Law Article 13 extend beyond the "gaming floor"? Because the statute requires at least one hotel and other facilities, it is not clear why preemption doesn't extend beyond gaming activities.

**A.327. See N.Y. Racing Pari-Mutuel Wagering and Breeding Law § 1366 and the answer to Question 184.**

**The preemption of local zoning and land use under N.Y. Racing Pari-Mutuel Wagering and Breeding Law § 1366 applies only to conduct of gaming as a permitted use or approved activity for the Project Site. N.Y. Racing Pari-Mutuel Wagering and Breeding Law § 1366 does not preempt local zoning and land use regulation as to non-gaming activities and permitted uses of a proposed Gaming Facility.**

Q.328. What is the permissible format and time frame for public presentations?

**A.328. As mentioned at the Mandatory Applicant Conference, the Applicant Public Presentations are likely to be scheduled in Albany for the first Monday following Labor Day, September 8, 2014.**

**The extent of the time afforded each Applicant will depend upon the number of Applications received. Applicants should anticipate that the Board will confirm the date and format for the Presentations no later than July 14, 2014.**

**The format and scope of materials used at an Applicant's presentation will largely be left to the discretion of the Applicant. Applicants are advised that Public Presentations shall not be used to denigrate other proposals.**

Q.329. Are financial backers exempted from background investigations? What about providers of debt financing?

**A.329. In May 2014, the Commission will issue a regulatory white paper that will outline the direction the Commission intends to follow regarding the regulation of commercial gaming. Part of this paper will address waivers for certain investors including, among others, those providing debt financing.**

Q.330. For Regions in which more than one Gaming Facility is proposed, will the Board consider the potential anti-competitive implications of setting the Minimum Capital Investment too high, which could exclude one or more bidders.

**A.330. Yes. This issue will be considered by the Board.**

Q.331. Many answers to the Round 1 – Questions and Answers mentioned forthcoming Commission regulations. When will these regulations be issued?

**A.331. See answer to Question 329.**

Q.332. RFA Article VIII § C.1.f. asks for copies of any environmental reports. These reports could be thousands of pages. Can we provide an executive summary in hard copy and a supplemental USB drive with a soft copy?

**A.332. Yes. Applicants, however, should submit hard copies of any narrative, summary or executive reports. If a report's supporting exhibits, findings, field notes and related supporting matter would be unwieldy, Applicants may use their discretion to submit such materials in electronic form. The hard copy of Exhibit VIII.C.1.f. should briefly describe the physical materials omitted, but electronically submitted.**

Q.333. How were the purse amounts listed in the answer to Q.265 b. and c. calculated?

**A.333. Purse and breeding fund contributions were calculated consistent with the language contained in N.Y. Tax Law § 1612.**

**In general, purse contributions are subject to an agreement between a video lottery gaming facility and the organization representing the racetrack's horsemen. These agreements require a specific percentage of video lottery gaming net win to be allocated to purses, net of amounts required to be remitted to fund equine health and safety programs.**

**Breeding fund contributions are statutorily set at one and a quarter (1.25) percent of net win at each facility.**

Q.334. a. Regarding the answer to Q.147, should Applicants submit a high/low/average case for each competitive scenario? We would vary the assumptions with respect to competition.

b. Do we then need a low/average/high case for each competitive scenario?

**A.334. RFA Article VIII § A.3. requires submission of a study assessing the potential gaming market for the proposed Gaming Facility and submission of gaming revenue projections and gaming patronage on a high-, average- and low-case basis for the proposed Gaming Facility. For the purpose of the required projections, please assume that only the Gaming Facility proposed will be awarded in the Region. As noted in the answer to Question 147, the Board will be sensitive to intra-Region competition in evaluating the Applications.**

**As set forth in the answer to Question 147, an Application may, but is not required to, present gaming revenue and gaming patronage projections**

**under one competitive scenario that reflects another License awarded in the same Region. For the competitive scenario, the Application must include all the required components of the required gaming revenue and gaming patronage projections without intra-Region competition: high-, average- and low-case projections and a description of all material assumptions, including the geographic location within the Region of the assumed competitive Gaming Facility and its approximate size by number of slot machine and table positions.**

Q.335. If a license is granted in Southern Orange County that makes financing for a Sullivan or Ulster County casino difficult, what happens to the fourth license?

**A.335. This question fails to seek guidance or clarity regarding an element of the RFA and is thus outside the scope of response.**

Q.336. Does the ban under the Procurement Lobbying Law restricting communications between Applicants and the Commission/Board during the Application process apply to communications between an Applicant and other state agencies?

**A.336. No. Applicants may contact other State agencies, which are not subject to the requirements of the Procurement Lobbying Law, regarding technical elements necessary to appropriately respond to Application questions.**

Q.337. Will there be a media blackout during the period following the submission of applications and prior to the award?

**A.337. No.**

Q.338. Will regulations be issued in time for the SAPA public comment process?

**A.338. See answer to Question 331. Following issuance of guidance on the Commission's regulatory white paper, the Commission will propose regulations pursuant to the State Administrative Procedure Act (SAPA).**

Q.339. Given the answers to Question 189.a. and Question 215:

a. Is the award of a Gaming Facility license subject to SEQR?

b. Is the issuance of a Gaming Facility license subject to SEQR?

**A.339. Yes.**

Q.340. The answer to Question 184 says that the Applicant must supply a schedule of local zoning variances, permits, etc. Is the acquisition of those permits to be determined by the State or the local authority?

**A.340. N.Y. Racing Pari-Mutuel Wagering and Breeding Law §1366 preempts land use and zoning regulations only with respect to the conduct of gaming. All other land use and zoning approvals, as well as construction and occupancy permitting, shall be governed by the regulations of the applicable local authority.**

Q.341. Please clarify the definition of “fully operational” as to what is required to be open in 24 months.

**A.341. See generally the answer to Question 248.**

**The Board will evaluate each Application to determine what “fully operational” means for each proposed facility. Applicants proposing phased development should submit construction timelines that are intended to construct and open as much of the proposed Gaming Facility as is practicable on the proposed date to open for gaming.**

**The RFA is a competitive process, and Applicants should be aware that whether ancillary entertainment services and non-gaming amenities are proposed in an Application to open along with the gaming area may be part of the evaluation criteria.**

Q.342. In response to Question 70 of the Applicants' first round questions, the Board stated that it “does not currently intend to withhold from public disclosure” information contained in certain fields of the Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form “but reserves the right to do so if deemed appropriate.” Are we correct in assuming that the Applicants will have an opportunity to discuss this issue with the proper Board designee(s) consistent with Section III.E of the RFA in advance of submitting their Applications?

**A.342. Yes, the Commission and Board anticipate the scheduling of sessions wherein Applicants will have an opportunity to discuss the applications with Commission staff. Details regarding these sessions will be announced and posted on the Commission’s RFA webpage.**

Q.343. In the Q&A’s released by the Board on April 23, Answer 52.a. states that the Board will provide certain forms in MS word format.

a. Has this been done yet?

b. If so, where can they be found?

**A.343.**

**a. Yes.**

**b. The forms are available on the Commission’s RFA webpage at the following address: <http://www.gaming.ny.gov/gaming/casinos.php>**

Q.344. With respect to Exhibit VI.K (Conflicts of Interest) the Board is asking for any relationship or affiliation of the “Applicant, the Manager, or any of their respective Affiliates” with the Board, Commission, employees and consultants.

a. Do project consultants providing professional services to the Applicant and/or Manager constitute an “Affiliate” for purposes of conflict of interest disclosure?

b. What is the definition of “Conflict of Interest”?

c. What is the definition of “relationship or affiliation”?

**A.344.**

**a. Yes.**

**b. The phrase ‘conflict of interest’ is intended to mean any relationship, affiliation or situation that could be reasonably interpreted to compromise the integrity of the Application selection process by creating a risk that professional judgment or actions will be influenced unduly by a secondary interest. Applicants are encouraged to err on the side of disclosure of any relationship, affiliation or situation that could be a direct or indirect conflict of interest or perceived conflict of interest.**

**c. The phrase ‘relationship or affiliation’ is intended to mean any connection, whether financial, contractual, ownership, professional, social or otherwise, between a person or entity and another person or entity.**

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