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

Round 2 - Questions and Answers

May 14, 2014

Q.345. While a verbal emphasis to use N.Y. companies is well intended, as there was to the TPZ Bridge bidders, a written requirement would be better to assure the use of such New York companies. Will there be any language added to the RFP regarding the use of N.Y.S. companies?

A.345. No. The Board will not be adding any supplemental language to the RFA.

Q.346. Answer 200 in the Round 1-Questions and Answers indicated that the geographical area for partnerships with live entertainment venues that may be impacted by the proposed Gaming Facility was to include the host county, those counties adjoining the host county and any county within 25 miles of the proposed casino location. (emphasis added). Did the board intend to only limit the area within 25 mile radius of the facility rather than any county within 25 miles of the proposed casino location?

Any county within 25 miles of any proposed location would encompass more than 70 venues for nearly any Applicant.

A.346. The Board's language was intentional. The Board respectfully directs the questioner to the answer to Question 201, wherein a live entertainment venue is defined to include only a <u>not-for-profit or government-owned performance venue</u> designed in whole or in part for the presentation of live concerts, comedy or theatrical performances. It is also likely that the live entertainment venues will form coalitions, and Applicant can enter partnership agreements with such coalitions.

Q.347. For individuals completing the Multijurisdictional Personal History Disclosure Form and New York Supplemental Form, may they utilize financials

prepared in the 4 months preceding June 30, as an acceptable period in order to complete and compile the information in a timely manner for the June 30, 2014 submission?

A.347. Yes, although the Board and Commission reserve the right to request supplemental filings from any individual.

Q.348. RFA Section 7 calls for an Exhibit (A.7.b) that is an independent audit report of all financial activities and interests including, but not limited to donations, loans, or other financial transactions to or from a gaming operator in the past 5 years.

a. Do we need to engage a separate independent audit report explicitly for this purpose which goes beyond audited financial statements?

b. If yes, is there a specific form of this report or a material threshold deemed acceptable?

A.348.

a. If the audited financial statements submitted by the Applicant include a specific disclosure of all financial activities and interests, including, but not limited to, donations, loans or other financial transactions to or from a gaming operator in the past five years, then a separate independent audit report explicitly for this purpose is not required.

b. There is no specific form for this report or material threshold.

Q.349. The Commission has not set forth a process where opponents of a casino can file their objections. I propose that a six 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 should be given ample time to review their applications and respond. Let this communication serve as notice that we will file papers in response and we should be given a reasonable time period to do so.

A.349. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.350. The Applicant should be required to address the impact of the casino on the surrounding summer community.

A.350. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.351. 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.351. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.352. Let the Applicant address the consequences that the eventual approval of casino locations within New York City will have on the current proposed locations and surrounding areas once the casinos have destroyed the peaceful and residential climate of Monticello and Sullivan County.

A.352. This question fails to seek guidance or clarity regarding an element of the RFA and thus is outside the scope of response.

Q.353. As follow-up to the response to Question 261, could the Commission provide any further guidance, in terms of projected dollar amounts, regarding what may be assessed against licensees each year for regulatory costs, with respect to both onsite regulatory costs at each respective casino and headquarters regulatory costs which will be assessed and allocated among the four licensees?

A.353. It is not yet possible to provide more than general estimates of the regulatory costs. For rough planning purposes, an Applicant can assume that on-site staff salary plus fringe benefit costs will amount to approximately $750,000 annually, subject to increases based on civil service contracts. Administrative (overhead) costs would be in addition to the aforementioned figures.

See also the answer to Question 394.

Q.354. The statute provides that minors under the legal drinking age are not permitted on the gaming floor unless by way of passage to another room. This acknowledges that minors may need to pass through the casino, but does not give guidance on design parameters or requirements. Can the location board elaborate on what is required to be included in the design to facilitate the passage of minors?

A.354. See answer to Question 192.

Q.355. a. Are smoking rooms permitted in the Gaming Facility?

b. If so, is there a limit or minimum requirement for size and quantity of smoking rooms?

c. Are there any additional design parameters?

A.355.

a. No. Please refer to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1364.

b. See answer to Question 355.a.

c. See answer to Question 355.a.

Q.356. The New York State Lobbying Act defines "lobbyist" to mean every person or organization retained, employed or designated by any client to engage in lobbying. According to the Lobbying Act, "lobbying" does not include "the submission of a bid or proposal (whether submitted orally, in writing or electronically) in response to a request for proposals, invitation for bids or any other method for soliciting a response from offerers intending to result in a procurement contract". The Lobbying Act also states that "persons who participate as witnesses, attorneys or other representatives in public proceedings of a state or municipal agency with respect to all participation by such persons which is part of the public record thereof and all preparation by such persons for such participation" are not engaged in lobbying. Accordingly, please explain the basis for the response to Round One Question 20 which indicates that registration as a lobbyist is required for persons engaging in the above activities and advise:

a. Are Applicants and those appearing on behalf of an Applicant or submitting a response to the RFA required to register as a lobbyist with the Commission?

b. Are Applicants and those appearing on behalf of an Applicant or submitting a response to the RFA exempt from registering as a lobbyist with the Commission?

A.356.

A.356. Pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1329.2 a "lobbyist" seeking to engage in "lobbying activity" on behalf of a client or a client's interest before the commission must register with the commission. "Lobbying activities" means and includes any attempt to influence, among other things, any determination "by a public official, or by a person or entity working in cooperation with a public official relating to a governmental procurement. . . ." N.Y. Legislative Law § 1-c(c)(v)(A). As explained in the Guidelines to the New York State Lobbying Act, "attempt to influence" means any activity intended to support, oppose, modify, delay, expedite or otherwise affect any of the actions specified in N.Y. Legislative Law § 1-c(c)(i)-(x). See http://www.jcope.ny.gov/about/lob/Lobbying%20Guidelines%209_11_12.pdf.

As set forth in RFA section III.C. and as required by sections 139-j and 139-k of the N.Y. Finance Law, communications between an Applicant and the Commission or the Board are restricted during the Application process to Permissible Contacts as designated in RFA section III.E.

[NOTE: The web address reference in the RFA regarding lobbying inquiries is incorrect. The correct website address is www.ogs.ny.gov (not www.ogs.state.ny.gov/acpl)].

Q.357. RFA, Section XI.Q, Concerning Racing Support Payments, states that: A Licensee that possesses a pari-mutuel wagering franchise or a license awarded pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law Article 2 or Article 3, or who possessed in 2013 a franchise or a license awarded pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law Article 2 or Article 3 or is an articulated entity or such Applicant, shall maintain payments made from video lottery gaming operations to the relevant horsemen and breeders organizations at the same dollar level realized in 2013, to be adjusted annually pursuant to changes in the consumer price index for all urban consumers, as published annually by the United States Department of Labor Bureau of Labor Statistics; and racing activity and dates pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law Articles 2 and 3. This is inconsistent with N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1355.

Please clarify that the statute controls.

A.357. The statute controls. The Board disagrees with the assertion of inconsistency.

Q.358. Round One Question and Answer 303 states that a current licensee's intended "improvements to its existing facility that are unrelated to full scale gaming (VGM and/or track related)" should be included in the RFA Application. Will such improvements to its existing facility that are unrelated to full scale gaming (VGM and/or track related) be included in the calculation of the minimum capital investment?

A.358. Applicants should refer both to the guidance document on Minimum Capital Investment released by the Board on May 12, 2014 and RFA Article VIII § A.1.b for what is applicable toward Minimum Capital Investment.

Q.359. RFA Article III § J. requires that a selected Applicant must certify that its Application was arrived at independently and without collusion aimed at restricting competition in accordance with New York State Finance Law § 139-d, which provides:

> Every bid hereafter made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.
>
> (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:
> (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
> (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and
> (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Using the definitions contained in Question 176, may an Applicant in an Impacted County of Region 1 or Region 5 discuss with an Applicant in a Dominant County of Region 1 or Region 5, assuming that neither Applicant discourages the other from submitting or not submitting a bid and does not otherwise seek to restrict competition:

a. Joint marketing programs to be implemented if both Applicants are selected?

b. Debt or equity investments in each other's project?

c. Revenue sharing between Applicants under certain circumstances?

A.359. Each Applicant must certify that its Application was arrived at independently and without collusion aimed at restricting competition in accordance with N.Y. Finance Law § 139-d. The Board encourages any Applicant interested in contacting another Applicant to conduct a legal review of N.Y. State Finance Law 139-d to determine whether such contact is permissible.

Q.360. Several RFA sections refer to the selection of Applicants by the Board and the award of a License by the Commission. For example, the definition of

"Restricted Period" means the period of time beginning with the public release of this RFA through (i) such time as the Board selects an Applicant or Applicants other than the Applicant to proceed to Commission consideration of suitably for a License to operate a Gaming Facility in the Region in which an Applicant has sought such a License or (ii) the final decision of the Commission on the suitability of the Applicant for a License, if the Board selects the Applicant to proceed to Commission consideration of suitability for a License, as the case may be. The N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311, requires licensees to commence gaming operations no more than twenty-four months following "license award".

a. Since the applications for the Gaming Facility License and the applications for suitability are required to be submitted simultaneously, will the Board and Commission be conducting their respective responsibilities concurrently?

b. Do the Commission and Board contemplate the selection of the Applicant and the determination of suitability to be made at the same time?

c. Will there be a time lag between selection of an Applicant, a suitability determination and the actual award of a license?

d. If so, how long will it be?

e. Certain financing arrangements may be contingent upon the awarding of the license, rather than the selection by the Board. Since the Commission anticipates awarding all 4 licenses at the same time, will an Applicant that is "shovel ready" at the time of the selection by the Board be delayed in being awarded a license by an Applicant that still has to comply with the SEQRA timetables and delay caused by obtaining other permits?

f. If not, what determines when a license will be awarded?

g. Licensees are to begin gaming operations within 24 months of the award of a license. Should the construction timeline address the date that the Board selects the applicant or the date that the Commission awards the license if they are not the same?

A.360.

a. Yes.

b. No.

c. See answer to Question 360.b.

d. A determination of suitability will take as long as necessary to determine if an Applicant selected by the Board is suitable for licensure.

e. Whether the Commission awards licenses to more than one Applicant at the same time will depend on the facts and circumstances of the selected Applicants, including how far along each Applicant is in the SEQRA (State Environmental Quality Review Act) process each Applicant may be.

f. See answer to Question 360.e.

g. The construction timeline should commence with the award of a license.

Q.361. Will the Confirmatory Affidavit required under RFA Article XI § R require an Applicant that has been awarded a license to certify that it is in compliance with all of the requirements of The Upstate New York Gaming Economic Development Act, including the good faith obligation to be open for gaming within 24 months from the awarding of the license?

A.361. Yes.

Q.362. An entity applicant for a license to act as a Gaming Facility Manager is an LLC that is wholly owned by one corporate holding company and two intermediary companies. One of the intermediary companies operates a casino in the United States and has several executives with the title vice president. These executives will have no involvement with the operation of the Gaming Facility. Provided that the identities of all such executives are disclosed in the Gaming Facility license application and that the entity Applicant represents in writing that they will have no involvement with the Gaming Facility, may such executives be excused or waived from filing for individual licensure?

A.362. See answer to Question 26.

Q.363. Are we correct that private roads providing access to the Gaming Facility and service parking facilities will not be considered part of the "Project Site," as that term is defined in the RFA?

A.363. No.

Q.364. If the Applicant is a newly formed entity without any material amount of information to submit as Exhibit VIII.A.8.a, does the Applicant need to submit information for any other Related Parties to satisfy the requirements of RFA Section VIII.A.8.a?

A.364. See answer to Question 157. and the second paragraph of RFA Article IV. § A.

Q.365. In situations where multiple funding sources or entities are involved, or in joint venture situations, in accordance with GAAP, may Combined Financial Statements of the Project/Applicant be submitted for the purpose of satisfying the requirement of submitting audit and financial statements?

A.365. RFA Article VIII § A.7.a. requires audited annual financial statements from each Applicant and each Financing Source. If either the Applicant or a Financing Source is a joint venture, then audited annual financial statements must be submitted from such joint venture. If, for any entity, audited annual financial statements are unavailable for any given period, unaudited annual financial statements prepared in accordance with GAAP may be provided.

Q.366. Within the "Round 1 – Questions & Answers" released by the Board on April 23, 2014, Answers 159-166 make material changes to the information being sought by the Board under Exhibit VIII.A.8.a and VIII.A.8.b. For example, the answer to Question 159 seems to give instructions on answering Exhibit VIII.A.8.a as originally issued, while the Board's answer to Question 160 seems to consolidate and/or substitute Exhibit VIII.8.a with Exhibit VIII.A.7.a.

To avoid mistakes and misunderstandings, will the Board please re-issue its instructions for Exhibits VIII.A.7 and VIII.A.8, fully incorporating the changes the Board made to the information required for these Exhibits though its answers to Questions 159-166 issued on April 23, 2014, so the bidders may understand exactly what information the Board wants submitted in these Exhibits?

A.366. Exhibits VIII.A.8.a and VIII.A.8.b. are separate requirements of an Application and respond to separate requests in the RFA. However, the Board acknowledges those requests may overlap, and, pursuant to the answer to Question 160, an Applicant may take the position that the materials provided in Exhibit VIII.A.7.a. also satisfy the request in RFA Article VIII § A.8.a. An Application exhibit may cross-reference other exhibits to incorporate responsive material that is provided in the other exhibits.

Q.367. Within the "Round 1 – Questions & Answers" released by the Board on April 23, 2014, Answer 20 states: "…each lobbyist seeking to engage in lobbying activity on behalf of a client or a client's interest before the Commission or the Gaming Facility Location Board shall first register with the secretary of the Commission."

a. Given the restrictions described in Exhibit III.C (Procurement Lobbying Restrictions), is lobbying activity on behalf of a client before the Commission or the Board legally possible / permissible?

b. If yes, please describe what permitted activity before the Commission or Board would be deemed "lobbying"?

A.367. See answer to Question 356. Lobbying on behalf of an Applicant before the Commission or the Board is not permissible during the Restricted Period.

Q.368. In the document "Applicant Conference – Advance Questions and Answers April 30, 2014" Question 315 seeks an answer as to whether the Board has determined that Applicants are required to enter into Project Labor Agreements (PLA) for work related to the project pursuant to N.Y. Labor Law § 222 of the Labor Law. In its Answer (number 315), the Board instructs Applicants to review N.Y. Labor Law § 222. Re-reading N.Y. Labor Law § 222, however, does not inform us whether the Board (or the Commission), as the Agency having control over the public work, has affirmatively determined that PLA's are required (or not required) for the Gaming Facility Projects that are to be licensed.

Therefore, please advise, yes or no: has the Board has determined that Applicants are required to enter into Project Labor Agreements (PLA) for work related to the Gaming Facility Projects?

A.368. No. The Board encourages any Applicant to conduct a legal review of N.Y. Labor Law § 222 to determine its obligations thereunder.

Q.369. Within the "Round 1 – Questions & Answers" released by the Board on April 23, 2014, the Board's Answer 177 states: "By way of this response, the last paragraph of RFA Article VII.B.11. is deleted."

Did the Board mean to reference the last paragraph of Exhibit VIII.B.11?

A.369. Yes.

Q.370. The Evaluation Criteria utilizes a statutory scoring structure allocating a possible 70% to Economic Activity and Business Development, 20% to Local Impact and Siting Factors, and 10% to Workforce Enhancement Factors. Please advise:

a. Will the Board automatically recommend the Applicant (within a particular region) that attains the highest cumulative score for licensure by the Commission?

b. If two Applicants receive the same exact cumulative score, however, the first receives a higher score for Economic Activity and Business Development, while the second receives higher scores for both of the categories of Local Impact and Siting Factors and Workforce Enhancement, which Applicant will be recommended to the Commission for licensure?

c. Will the Board's analysis and scoring of the factors included within the evaluation Criteria be made public?

A.370.

a. The Board will not respond to hypothetical scoring scenarios.

b. See answer to Question 370.a.

c. Yes.

Q.371. RFA Exhibit X.B.2 requires Applicants to propose an affirmative action program: Will the Board be issuing guidance setting forth specific participation goals for affirmative action, EEO, and WMBE participation in the construction and operation of the Gaming Facilities as the Lottery did in section 2.9 of the RFP for VLTs at Aqueduct?

A.371. The Board issued an RFA Addendum that modifies several provisions relative to Affirmative Action, Equal Employment Opportunity and Women and Minority-Owned Business Enterprises.

This addendum is available at the following address:
http://www.gaming.ny.gov/pdf/05.12.14.MWBEAddendum.pdf

The Addendum did not set specific goals.

Q.372. With regard to the Multi-Jurisdictional Personal History Disclosure Form:

a. Must Applicants submit the exact form provided by the Board or may an Applicant update and submit a version of the Multi-Jurisdictional Personal History Disclosure Form that has been issued in another state?

For example, the Form issued by the Board has the tracking number PHDMJ06901. Other jurisdictions utilize a version of the Form with the tracking number PHDMJ111504. May an Applicant use the PHDMJ111504 Form?

b. Are they interchangeable in the Board's view?

c. Also, will the Multi-Jurisdictional Personal History Disclosure Form be issued in MS Word format?

A.372.

a. The Board and Commission adopted the most recent version of the Multi-Jurisdictional Personal History Disclosure Form maintained by the International Association of Gaming Regulators. The Board strongly suggests review of the earlier document to ensure it is identical with that adopted by the Board and Commission.

b. The Board is unfamiliar with any version not presently maintained on the webpage of the International Association of Gaming Regulators.

c. No. The application is available as an Adobe PDF Version and an Omniform Fillable Version at http://iagr.org/multi-jurisdictional-application/

Q.373. RFA Section XI.C warns that any licensee failing to begin gaming operations within twenty-four (24) months following license award shall be subject to suspension or revocation of the license and may, after being found by the Commission, after notice and opportunity for a hearing, to have acted in bad faith in its Application, be assessed a fine of up to $50 million. Accepting that certain events may occur during this two year period prior to opening, Applicants acting in good faith and capable of otherwise finishing the project within the mandated timeline are concerned that events outside of the Applicants control could serve to sabotage their project, or at a minimum cost them significant amounts of money.

a. Will litigation filed by third parties challenging the location, selection or award toll the 2 year timeline for opening?

b. Would injunctive action, halting construction for a period of time, toll the 2 year timeline for opening?

c. Will litigation filed by third parties against a project inhibiting the project from opening within the 24 month period constitute "good cause" for a delay in opening of the Gaming Facility?

d. Given the deadline of 24 months, would the proposed phasing of a project be considered a negative by Board as it relates to the scoring and selection process?

e. If unforeseen environmental issues concerning the Project Site arise after selection, will the Board or Commission (as applicable) work with the chosen Applicant and consider extending the 24 month window for opening while the

unforeseen problems are addressed and the resolved to the satisfaction of the governing agency?

A.373.

a. No. See answer to Question 249.b

b. No. See answer to Question 249.b.

c. It is not possible to evaluate such a hypothetical question without the particular facts and circumstances.

d. The Board cannot speculate on evaluation standards. Applicants are advised that the Board will consider speed to market in its evaluations.

e. No. See answer to Question 249.b.

Q.374. The Act essentially maintained payments to horsemen and breeder organizations at the "same dollar levels realized in 2013" as adjusted by the consumer price index. (RFA at p. 69-70). This level of financial support to racing and breeding does not appear to be tied to the ebbs and flow of the industry, particularly as it relates to the good faith obligations of race tracks to maintain 2013 levels of racing operations. This issue has a direct impact on the RFA process and individual Applications as the Act and the RFA require contributions from the racinos and/or the new casinos within a region to maintain the 2013 levels plus CPI. As a stark illustration, suppose a race track unilaterally decreased racing by 50% in year 3 of a Gaming Facility's 10-year License and ceased racing operations in year 6 of the Gaming Facility License.

a. Is the purse subsidy to the horsemen owed irrespective of third party causations, closure of the track or force majeure events?

b. Will either party be required to maintain business interruption insurance and if so, will the money recouped as a result of the policy mitigate the amount of money owed to the horsemen via the purse subsidy?

A.374.

a. See answer to Question 309.

b. The Commission does not anticipate a requirement for business interruption insurance, but advises that regulations are likely to address this issue.

Q.375. Are the submission deadlines for the 10 % deposit, the licensing fee and the 24 months to build linked to the selection date or the licensing date?

A.375. Please see RFA Section XI §§ A., B., C. All referenced sections declare that the award of a License is a condition predicate to Post-Licensure Responsibilities.

Q.376. a. How much time does the Board and the Commission anticipate will pass between selection by the Board and licensing by the Commission?

b. How long is the post selection suitability review expected to take?

c. Upon findings of suitability, does the Board or Commission expect to license Applicants prior to, or in conjunction with, casino openings?

A.376.

a. The time is unknown, given it is dependent upon many variables.

b. The time is unknown. It will depend on the facts and circumstances of the selected Applicants.

c. The Commission will award licenses following completion of a suitability review of selected Applicants. The award will be made prior to a casino opening. The Board will not engage in licensing.

Q.377. RFA Section IV.F (p. 22) and the Racing, Pari-mutuel Wagering and Breeding Law § 1313(2) provide an exemption from public disclosure under the New York State Freedom of Information Law (FOIL) for any records containing "trade secrets, competitively sensitive or other proprietary information provided in the course of an Applicant for a gaming license, the disclosure of which would place the Applicant at a competitive disadvantage." In Massachusetts—a state with similar exemptions to public disclosure in its Public Records Law—the Massachusetts Gaming Commission produced specimens of Background Investigation Forms with certain data fields highlighted to indicate fields that would be protected from public disclosure.

a. Regarding A.65 (p. 21), from Round One of the Question & Answer process, will the Multi-Jurisdictional and N.Y. Supplemental Personal History Disclosure Forms for each person required to submit Background Investigation Forms be posted on the Commission's website?

b. If yes, in redacted or unredacted form?

c. Will the Board or Commission promulgate regulations concerning the publication of sensitive personal or proprietary information sufficiently in advance of the deadline for submission of the application to the Board?

d. Regarding A.64 (p. 21) from Round One of the Question & Answer process, will the Commission exempt the following fields in the Multi-Jurisdictional Personal History Disclosure Form and N.Y. Supplemental Form from public disclosure:
1. Family / Social Data (incl. names and identification details of family members);
2. Financial Data (incl. bankruptcies, information concerning debt);
3. Net worth (incl. assets and liabilities); and
4. Cash, loans, notes, receivables, securities and real estate interests?

e. Are the Background Investigation Forms subject to protection under the state Personal Privacy Protection Act Public Officers Law, Article 6-A?

A.377.

a. All postings on the Commission website will be subject to the N.Y. Personal Privacy Protection Law, codified in Article 6-A of the N.Y. Public Officers Law.

b. Redacted form.

c. No. Applicants should refer to N.Y. Public Officers Law Article 6 for guidance on the standard for withholding of proprietary information from public disclosure and N.Y. Public Officers Law Article 6-A for guidance on the standard for withholding of personal information from public disclosure.

d. Applicants should refer to N.Y. Public Officers Law Article 6-A for guidance on the standard for withholding personal information from public disclosure.

e. Yes.

Q.378. Will there be a contract negotiated with the state in connection with selection or licensing?

A.378. No.

Q.379. There are several questions in the RFA and the Gaming Facility License Application that are duplicative. For example, both ask for financial statements, company formation governance documents, SEC reports, and information on bankruptcies, etc. Are the Applicants required to provide separate answers to these

duplicative items or, in the RFA, can Applicants simply reference the appropriate section of the Gaming Facility License Application where the same information is provided?

A.379. The request for an Applicant to submit redundant documents for the RFA and the Gaming Facility License Application is purposeful, and an Applicant must provide answers and submit required information as required by the documents. An Applicant cannot incorporate by reference in either document.

Q.380. Many Applicants are joint venture partners whose parent entities will have to file separate Gaming Facility License Application forms. These forms contain confidential and proprietary information (e.g. salary information). Can each partner to a joint venture submit separate Gaming Facility Application Forms on behalf of their respective parent entities?

A.380. Each partner to a joint venture may submit separate Gaming Facility Application Forms on behalf of the respective parent companies provided that the name of the Applicant is clearly identified at the top of the first page of the hardcopy of the forms and on the outside of the USB flash drives submitted by each such partner.

Q.381. a. Will an Applicant be permitted to withdraw its application before site selection by the Facility Location Board?

b. If so, what are the withdrawal procedures?

c. Will an Applicant be permitted to withdraw its application after being selected by the Facility Location Board?

d. If so, what are the withdrawal procedures?

A.381. Applicants are permitted to withdraw before a selection by the Board. Procedures for withdrawal will be posted on the Commission's website.

Q.382. a. Although included in the RFA under "Post-Licensure Responsibilities," Section XI, K (page 68), are Applicants required to have a signed Labor Peace Agreements in place by the time they submit their Applications on June 30?

b. Are labor neutrality agreements required or preferred with submissions on June 30?

A.382.

a. An evaluated factor is the Applicant's demonstration of an agreement, *inter alia*, with organized labor and support of organized labor for its Application. The form of the demonstration is left to the Applicant's discretion.

b. The Board directs the questioner to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1346.3, which provides that the Commission shall require any applicant for a Gaming Facility license <u>who has not yet entered</u> into a labor peace agreement to produce an affidavit stating it shall enter into a labor peace agreement with labor organizations that are actively engaged in representing or attempting to represent gaming or hospitality industry workers in the state.

Q.383. RFA Section X.C.6. requires Applicants to submit a description of plans for procuring or generating on-site at least ten (10) percent of the facility's annual electricity consumption from renewable energy sources qualified by the New York State Energy Research and development Authority, or NYSERDA. Assuming the above underlined terms are phrased to denote the disjunctive,

a. Does the renewable power need to be generated on the casino site or can it be generated at a satellite location and be transmitted to the project site?

b. Does the entity that owns the casino need to own the renewable energy assets and or other improvements that make up the facility?

c. What if a ground lease is used or a foundation is delivered for a third party to build and own some of the improvements?

d. Does NYSERDA have a current list of qualified energy sources, and is there a contact at NYSERDA for the RFA?

e. Certain segments of the project site i.e. parking garage, etc. may not lend themselves to LEED certification to what extent, if any, is this a factor for purposes of scoring and evaluation of an application?

f. Is LEED certification limited to those areas defined as the Gaming Facility?

g. Do all of the above possibilities for complying with renewable power needs qualify as "utility support" under the capital investments definition at RFA section VIII. A. 1.b.4. (RFA page 34)?

A.383.

a. It is at the Applicant's discretion as to where the renewable power is generated.

b. No.

c. This scenario would be allowable.

d. https://www.nyserda.ny.gov/Energy-Efficiency-and-Renewable-Programs/Renewables.aspx

e. See answer to Question 264.

f. Yes.

g. Yes.

Q.384. It's clear from the first round of questions that a VLT operator awarded a gaming license, would need to operate the Casino in a segmented area. Moreover, in the responses as well was the clarification indicating the Applicant would be scored only on the new jobs created (not retention of existing jobs). In possible contrast was the response stating the Applicant would be scored on all, or total, revenues. If a VLT operator discontinues or continues VLT operations whether existing VLT revenues will be counted in the scoring process or only new revenues in excess of prior VLT gaming figures from the VLT sites will be considered?

A.384. Applicants will be scored based upon the total revenue generated by the gaming operation.

Q.385. Can the Commission provide a projected annual cost attributed to the licensed Gaming Facilities in addition to those costs required pursuant to N.Y Racing, Pari-Mutuel Wagering and Breeding Law §1349?

A.385. See answer to Question 353.

Q.386. In Round 1 – Questions and Answers dated April 23, 2014, Q. 171 states:" If an Applicant or it's [sic] principals or primary shareholders of an Applicant that already [has] a gaming license for a racino in the approved region where an Applicant will be applying for a new license, will that Applicant be allowed to count the preservation of existing jobs toward its projected job counts?" In response, A. 171 states "No." Further, Q. 291 provides: "Will Applicants that possess a video lottery gaming license under Tax Law §1617-a be scored on accretive revenues or total revenues?" In response, A. 291 states "Total revenues."

Will the Gaming Facility Location Board please provide the rationale behind these two responses as they appear to suggest contradictory objectives?

A.386. The Board understood Question 171 to have asked if a VLT operator could count VLT jobs if such operator were to receive a Gaming Facility license pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13 in addition to the VLT facility. A potential operator of two facilities (one VLT and one a casino gaming facility) is not permitted to count the "preservation" of jobs at the VLT facility in its Application for a casino Gaming Facility.

Q.387. In Round 1 – Questions and Answers dated April 23, 2014, Q. 171 states:" If an Applicant or it's [sic] principals or primary shareholders of an Applicant that already [has] a gaming license for a racino in the approved region where an Applicant will be applying for a new license, will that Applicant be allowed to count the preservation of existing jobs toward its projected job counts?" In response, A. 171 states "No."

a. Does the term "existing jobs" include a job that will have similar responsibilities, but a different job title?

b. Will an Applicant be allowed to count such a job that will have similar responsibilities, but a different job title toward its projected job counts?

A.387.

a. Yes.

b. No.

Q.388. With respect to the on-site child day-care program, one interpretation of the statute is that an on-site child day-care program is just one factor in the weighted ten-percent Workforce Enhancement Factors. It appears from the Questions and Answers released on April 23, 2014, that the Board considers an on-site child day-care program a required element of an Applicant's project.

a. Will an Applicant receive zero percent out of the ten percent weighted for Workforce Enhancement Factors if an Applicant does not include an on-site child day-care program or will an Applicant's failure to include an on-site child day-care program deduct a fraction from the total possible amount of the ten percent for Workforce Enhancement Factors?

b. If an Applicant's failure to include an on-site child day-care program will only deduct a fraction from the total possible amount of the ten percent for Workforce Enhancement Factors, has the Board determined how much weight will be given to the inclusion or exclusion of an on-site child day-care program (i.e. how much will

an Applicant's application lose for not including an on-site child day-care program)?

c. If an Applicant's failure to include an on-site child day-care program will only deduct a fraction from the total possible amount of the ten percent for Workforce Enhancement Factors, will the Board's scoring take into consideration alternatives to an on-site child day-care program?

d. For example, would an Applicant be eligible to receive, at least, partial credit if it offered an alternative means for its employees to receive child care services not located at the proposed facility?

A.388. Please see the answer to Question 264 and N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.3.d(3).

Q.389. The majority of the information required to be provided by individuals on the Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form could result in an unwarranted invasion of personal privacy under New York's Freedom of Information Law if publicly released. Accordingly, will all information on these forms be considered confidential and not subject to public disclosure?

A.389. Please see the answer to Question 64. All information in the Multi-Jurisdictional Personal History Disclosure Form and New York Supplemental Form are public records, available to the public, subject to applicable exemptions under the Freedom of Information Law (N.Y. Public Officers Law Article 6) and the Personal Privacy Protection Law (N.Y. Public Officers Law Article 6-A).

Q.390. If an existing VLT facility is awarded the facility license, may the VLT facility, as part of the "conversion" referred to in A.296(a), and with a goal of reducing the time period of a total shut down of gaming operations at the facility, submit a plan for a staged shutdown of its VLT operations whereby the facility licensee will remove VLTs in stages and replace same with Class III gaming devices which will not become operational until the conversion is complete?

This plan would reduce the number of operational VLTs, pre-conversion, however it would also facilitate shorter time period for completion of the conversion of the facility and also continue to generate tax revenues and funds for education in the State.

A.390. A conversion involving the gradual reduction of VLTs would be permissible so long as the area being converted to commercial gaming is secured against public access. The Commission would have to approve any transition plan.

Q.391. In Round 1 – Questions and Answers dated April 23, 2014, A. 261 states in part: "The Commission receives no allocation of gaming revenues for administrative costs, so all administrative costs allocated to the commercial gaming program will be assessed annually on gaming licensees in proportion to the number of gaming positions at each gaming facility, per N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350."

Further, N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350 provides: Any remaining costs of the commission necessary to maintain regulatory control over gaming facilities that are not covered by the fees set forth in section one thousand three hundred forty-nine of this title; any other fees assessed Under this article; or any other designated sources of funding, shall be assessed annually on gaming licensees under this article in proportion to the number of gaming positions at each Gaming Facility.

a. Does the term "gaming positions" referred to in the above provision refer only to active gaming positions or does it also refer to proposed gaming positions?

b. For example, if one of the facilities awarded a license commences gaming operations prior to the commencement of gaming operations at the other 3 facilities issued a license, will that facility be responsible for paying 100 percent of the regulatory costs contemplated by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350?

A.391.

a. The term "gaming positions" refers to on-site Commission employees.

b. The Commission will accrue startup costs beginning in fiscal year 2013-2014. The four licensed gaming facilities will ultimately share assessment of startup costs in proportion to the number of Commission gaming positions at each facility. Once one Gaming Facility opens, that facility will pay future regulatory costs until successive facilities open, at which time assessed costs will be shared in proportion to the number of Commission gaming positions at each operational facility.

Q.392. a. Will a proposed facility awarded a gaming license (as opposed to an operational facility) be assessed for any portion of the Commission's regulatory costs as contemplated by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350?

b. If so, what portion?

A.392. A facility's obligations under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350 commence upon award of the license.

Q.393. When does a facility's obligations under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1350 commence upon the award of the license, at the time the facility commences gaming operations or at some other time?

A.393. See answer to Question 392.

Q.394. In Round 1 – Questions and Answers dated April 23, 2014, A. 261 provides in relevant part: "The Commission, not the Board, will provide an annual budget of commercial gaming expenditures as the basis for regulatory assessment. Licensees should anticipate direct billing for staffing levels adequate to assure twenty four-hour, 365 days-per-year coverage of the gaming operation, estimated to be not less than nine (9) full time employees at each Gaming Facility and their direct supervisors."

If a licensee were to propose a plan to the Commission, prior to the opening of its facility or at any time thereafter, that demonstrated fewer than nine (9) full time employees would be needed at their facility, would the Commission lower this requirement?

A.394. The Commission will be willing to consider a plan that lowers the staffing requirements, but reserves the right to determine what is in the best interests of New York State.

Q.395. Is an affiliate of an Applicant permitted to participate in the hearing process of another non-affiliated Applicant (i.e., through oral presentation or the submission of written materials) where the affiliate holds its own VLT facility license in order to represent the interests of the affiliate's VLT facility – and not the interests of the Applicant to which it is affiliated?

A.395. We presume this question regards participation in the Public Presentations and not Public Hearings. Given that understanding, no. Participation in the Public Presentations will be limited to affiliates of the Applicant.

Q.396. In Round 1 – Questions and Answers dated April 23, 2014, A. 61 states "Applicants will not be given an opportunity to opine about other Applications." Does the term "Applicant," in response to this question include the "Applicant Party" as that term is defined in the RFA?

A.396. Yes, but the Applicant alone may determine which, if any, affiliates or other parties will participate in their Public Presentation.

Q.397. In Round 1 – Questions and Answers dated April 23, 2014, A. 61 states "Applicants will not be given an opportunity to opine about other Applications." Does the term "Applicant," in response to this question include an "Affiliate" of an Applicant, as that term is defined in the RFA?

A.397. See answer to Question 396.

Q.398. In Round 1 – Questions and Answers dated April 23, 2014, A. 61 states "Applicants will not be given an opportunity to opine about other Applications." Does the term "Applicant," in response to this question include a "Close Associate" of an Applicant, as that term is defined in the RFA?

A.398. See answer to Question 396.

Q.399. Will existing New York based tribal gaming facilities be afforded the opportunity to provide written public comment to the Board with respect to an Applicant's project?

A.399. Yes, public comments will be accepted.

Q.400. Will existing New York based tribal gaming facilities be afforded the opportunity to provide public comment at the Board Public Hearings identified in RFA Article IV § E with respect to an Applicant's project?

A.400. Yes, public comments will be accepted.

Q.401. Will an existing New York VLT facility, that is neither an "Applicant," nor and "Affiliate" of an Applicant, be afforded the opportunity to provide written public comment to the Board with respect to an Applicant's project?

A.401. Yes, public comments will be accepted.

Q.402. a. Will the Board consider in its evaluation process the potential inequity in the implementation of § 1355 of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as described herein?

The obvious intent of § 1355 is to insure that new gaming facilities make payments to offset a potential reduction in amounts otherwise due for purses and breeders from existing VLT gaming facilities. VLT gaming facilities will remain obligated to pay an amount equal to 10% of their gaming revenue for purses and breeders, while new gaming facilities will likely pay a significantly lower percentage. By way of

example, if an existing VLT facility generated $60 million in revenue in 2013, it would have paid $6 million (10% of that revenue) for purses and breeders. Upon the opening of a Gaming Facility not in close proximity to the VLT facility but yet still within the same region, assume the VLT facility's revenue decreases by only 5% to $57 million. The VLT facility would then continue to pay 10% for purses and breeders but the dollar amount of its payment would be reduced to $5.7 million. The Gaming Facility in the region would be required to pay only an additional $300,000 regardless of its gaming revenue. If the new Gaming Facility generated $100 million in slot machine revenue, the new facility would still pay only $300,000, or 0.3% of its revenue for purses and breeders.

b. Will the Board consider this likely inequitable result in its evaluation process?

c. Assuming this inequity results in a competitive disadvantage to the existing VLT facility, will the Board consider the effect of this competitive disadvantage on overall gaming revenue to the State?

A.402. See answer to Question 333. The Board will evaluate Applications for Gaming Facility licenses as set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1320.

Q.403. a. Will the Board consider in its evaluation process the potential inequity in the implementation of § 1355 of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as described herein?

If an existing VLT facility is awarded a gaming license it will pay 100% of the amounts for purses and breeders based on 2013 generated revenue paid by the VLT facility. Effectively, an existing VLT facility that obtains a gaming license will pay the slot and table tax amounts in addition to the 2013 dollar amount for purses and breeders. On the other hand, if a gaming license is awarded to someone other than an existing VLT facility, it will only pay that portion for purses and breeders which represents the difference between the 2013 amount and the amount paid by the VLT facility in a particular year.

b. Will the Board consider this and note this advantage in its evaluation process?

A.403. See answers to Question 333 and Question 402.

Q.404. a. Will the Board consider in its evaluation process the potential inequity in the implementation of § 1355 of the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law as described herein?

The obvious intent of § 1355 is to insure that new gaming facilities make payments to offset a potential reduction in amounts otherwise due for purses and breeders

from existing VLT gaming facilities. VLT gaming facilities will remain obligated to pay an amount equal to 10% of their gaming revenue for purses and breeders, while new gaming facilities will likely pay a significantly lower percentage and only a percentage of reduction of the amount paid for purses and breeders within the region in which it is located. A new facility would not be required to contribute to payments for purses and breeders as required by § 1355(2) for reductions in payments for purses and breeders from VLT facilities located outside its region. By way of example, VLT Facility A located in Region 1 generates $50 million in revenue in 2013. It would have paid $5 million for purses and breeders. If a new Gaming Facility is awarded a license in a different region, in this example, Region 2, yet still in close proximity to the existing VLT Facility A in Region 1, any reduction in the payment for purses and breeders from the existing VLT Facility A in Region 1 will not be offset by any payment from the new Gaming Facility located in Region 2; thus, frustrating the intent of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355.

b. Will the Board consider this likely inequitable result in its evaluation process?

A.404. See answers to Question 333 and Question 402.

Q.405. Will an existing New York VLT facility that is neither an "Applicant," nor an "Affiliate" of an Applicant, be afforded the opportunity to provide public comment at the Board Public Hearings identified in RFA Article IV § E with respect to an Applicant's project?

A.405. See answer to Question 401.

Q.406. If a current Video Lottery Gaming Facility is awarded a Class III gaming license and (i) ceases to operate as a Video Lottery Facility, and (ii) removes all video lottery equipment and components owned or operated by the Commission's Division of the Lottery:

a. Will the licensee be permitted to directly purchase or lease any or all of the remaining (i) networking hardware, (ii) gaming hardware, (iii) Gaming, Accounting and Central Determination software, and/or (iv) Video Lottery Terminal gaming equipment directly from the current vendors/owners?

b. Will Video Lottery Terminals (VLTs) be allowed to operate physical, logical, financial and completely isolated from the remaining video lottery gaming facilities and the Commission's Division of the Lottery?

c. Will existing VLTs be allowed to operate with a standalone Accounting and Central Determination System residing locally and independently managed at the

site physical, logical, financial and completely disconnected from the Commission's Division of the Lottery?

d. Will there be any limitation to the use of any protocol (i.e. SAS) used between Electronic Gaming Machines (EGMs), Video Lottery Terminals (VLTs), Electronic Table Games (ETGs) and the Accounting system of choice?

e. Will the current technical standards for VLTs Central Determination be restricted?

f. Will restrictions be placed on the use of any Central Determination method or system chosen to operate in conjunction with Electronic Gaming Machines (EGMs), Video Lottery Terminals (VLTs), and Electronic Table Games (ETGs)?

g. Will plans to keep some or all existing VLTs at an existing location have a negative impact on scoring?

h. Will the current supplier of Video Lottery Terminals (VLTs) Accounting and Central Determination System be allowed to sell, deploy and service the System outside the Commission's Division of the Lottery?

i. Will Video Lottery Terminals (VLTs) Gaming Manufacturers be allowed to supply currently consumed files that determine outcomes physical, logical, financial and completely isolated from the video lottery gaming facilities and the Commission's Division of the Lottery?

A.406.

a. A licensee is permitted to acquire the network infrastructure, VLTs for conversion to random number generator devices, and MGAM system equipment. Licensees may not acquire MGAM Central Determination software.

b. No.

c. No, the Commission will not permit operation of VLTs or a Central Determination system in the commercial Gaming Facility.

d. A licensee can determine the system protocols used in its facility, except that Central Determination VLTs are not permitted.

e. The current standard (Interface Control Document) is the property of MGAM.

f. See answer to Question 406.c.

g. See answer to Question 406.c.

h. The Lottery's vendor, MGAM, is allowed to sell its system, but a Licensee may not install the Central Determination system in New York State.

i. No.

Q.407. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §1311, as established in Section 2 of Assembly Bill 8101 of the 2013-2014 Regular Session mandates:

AS A CONDITION OF LICENSURE, LICENSEES ARE REQUIRED TO COMMENCE GAMING OPERATIONS NO LESS THAN TWENTY-FOUR MONTHS FOLLOWING LICENSE AWARD. NO ADDITIONAL LICENSES MAY BE AWARDED DURING THE TWENTY-FOUR MONTH PERIOD, NOR FOR AN ADDITIONAL SIXTY MONTHS FOLLOWING THE END OF THE TWENTY-FOUR MONTH PERIOD.

As noted in the RFA, and consistent with N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1315: "Any Licensee that fails to begin gaming operations within twenty four (24) months following License Award shall be subject to suspension or revocation of the License and may, after being found by the Commission, after notice and opportunity for a hearing, to have acted in bad faith in its application, be assessed a fine of up to $50 million."

On April 23rd, the Commission responded to question 189c saying: "The Commission has not considered whether it will toll the twenty four month time limit pending completion of the SEQRA process." (emphasis added). The response to Question 249a reads: "The Commission will interpret the 24-month timeline reasonably to provide for force majeure." Finally, the May 2 answers in response to Question 324 notes: "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." (emphasis added)

a. Are there statutory or other State procurement standards for force majeure that the Commission will be applying to depart potentially from the statutory requirement to commence gaming operations within 24 months of the license award?

b. Will the Commission define force majeure for this purpose in its forthcoming regulatory framework or otherwise prior to the June 30 RFA deadline?

c. Since environmental approvals are an expected part of any major gaming development project and have been anticipated by Applicants in Sullivan and Ulster Counties under the previous Law, prior to the enactment of the Act, will the Commission provide guidance to clarify, at a minimum, that completion of the SEQR process is not so outside of an Applicant's control as to constitute force majeure that would allow for a delay in opening of a licensed facility?

d. In the response to Question 324, shouldn't Applicants be timely "completing" the SEQR process in order to fulfil the statutory requirement of opening within 24 months of licensure and not just "commencing" the SEQR process?

e. Does the Board or Commission anticipate assigning a specific weight or percentage to the "speed to market" factor identified in Answer 324 or will it have an unassigned weighting within the statutory value of 70 percent for "Economic Activity and Business Development Factors?"

A.407.

a. No. "Force majeure" will have its ordinary meaning under New York law. Generally, "force majeure" means an unavoidable catastrophe that is outside the control of the Applicant, such as a natural disaster

b. See answer to Question 407.a.

c. Compliance or noncompliance with SEQRA requirements would not constitute a "force majeure." The award of the license by the Commission will occur after the requirements of SEQRA have been satisfied. The Commission assumes that Applicants will timely commence the SEQRA process, as speed to market is a graded factor in the RFA evaluation.

d. Applicants should be completing the SEQRA process with all due speed. The Board will assess their ability to do so in its evaluation process. The time to open that is set forth in statute runs from the Commission's award of a license, which will occur consistent with SEQRA requirements.

e. The Board will score speed to market as a component of the seventy (70) percent weighting for "Economic Activity and Business Development Factors".

Q.408. On April 23rd, the Board also said that it will "accept Applications as complete without completion of a SEQRA process, however Applicants must disclose in their applications, the status of the SEQRA review, the anticipated timeframe for completion of the SEQRA review, and any obstacles they may prevent the Gaming Facility from opening within 24 months of Licensure." Given the enormity of

obstacles (most unforeseen) that large scale developments face in the course of a full, start-to-finish SEQRA review, how can the Commission rely on and approve any prospective Casino Applicant's timing submission as compliant given the 24 month completion window from "License Award" stated in the RFA?

A.408. The award of the license by the Commission will occur after the requirements of SEQRA have been satisfied. The Commission assumes Applicants will timely commence the SEQRA process, because speed to market is a factor in the Board's evaluation.

Q.409. a. Given that many top gaming analysts consider the Orange County market to be the primary market that would ultimately serve casino development in the Catskill region, how will the Commission deem bids that are conditioned upon no Orange County facility to be conforming?

b. Must each Catskills Applicant provide an "A" scenario assuming at $50M license fee and associated project costs and a "B" scenario assuming a $35M license fee and associated project costs, the latter of which incorporates the potential harmful impact of a competing facility in Orange County?

c. If a full project debt and equity financing commitment, a critical component of an Applicant's bid, is conditioned upon a Casino not being constructed in Orange County, does that make said associated bid non-conforming?

A.409.

a. An Application that is conditioned on a License <u>not</u> being awarded for another Gaming Facility in the same region would be non-conforming. However, as described below and in the answer to Question 176, Applicants are permitted to bid in the alternative by including binding alternative proposals depending on whether a License is granted for another Gaming Facility in the same Region.

b. As described in the answer to Question 176, an Application for a proposed Gaming Facility in Region One or Region Five may bid in the alternative by including binding alternative proposals as to the scope, scale and Minimum Capital Investment of the proposed Gaming Facility depending on whether a License is granted for another Gaming Facility in the same Region.

If presenting binding alternative proposals for the proposed Gaming Facility, an Application:

1. **must state in each of Exhibits V, VIII.A.2.a., VIII.A.3., VIII.A.4., VIII.A.5., VIII.A.6.b., VIII.B.1., VIII.B.3.a., VIII.B.3.b., VIII.B.4., VIII.B.6., VIII.B.7.a., VIII.B.7.b., VIII.B.8., VIII.B.10., VIII.B.11., VIII.C.4.a., VIII.C.4.b., VIII.C.4.c., VIII.C.5.a., VIII.C.5.b., VIII.C.6.a., VIII.C.6.b., VIII.C.6.c., VIII.C.6.d., VIII.C.7.a., VIII.C.7.b., VIII.C.7.d., VIII.C.7.e., VIII.C.8.a., VIII.C.9.a., VIII.C.10.a., VIII.C.13., VIII.C.14.a., VIII.C.14.b., VIII.C.15., VIII.C.16., VIII.C.17.a., VIII.C.17.b., VIII.C.17.c., VIII.C.17.d., VIII.C.17.e., VIII.C.19., VIII.C.20.a., VIII.C.20.b., VIII.C.20.d., VIII.C.20.e., VIII.C.21., IX.A.2.a., IX.A.2.b., IX.A.3., IX.A.4., IX.A.5., X.C.1., X.C.2., X.C.3., X.C.4., X.C.5. and X.C.6. that alternative proposals are presented depending on whether a License is granted for another Gaming Facility in the same Region;**

2. **must, to the extent that responses differ between the binding alternative proposals, provide responsive information for each alternative proposal to the requests for information in the corresponding section; and**

3. **must describe under what competitive circumstances each binding alternative would apply (e.g. that "Proposal A" applies if no License is awarded for another Gaming Facility in the same Region and that "Proposal B" applies if a License is awarded for another Gaming Facility in the same Region).**

Every Application must include a proposal for a Gaming Facility, either as its sole proposal or as one of its binding alternative proposals, that satisfies the Minimum Capital Investment requirement if no License is awarded for another Gaming Facility in the same Region. In addition, if an Application includes binding alternative proposals, the Application must include a proposal that commits to develop a Gaming Facility in accordance with the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law and the RFA that satisfies the Minimum Capital Investment requirement if a License for another Gaming Facility is awarded in the same Region.

If an Application does not present binding alternative proposals depending on whether a License is granted for another Gaming Facility in the same Region, then, as discussed in answers to Question 147 and Question 334, the Application may, but is not required to, include projections of gaming revenue and gaming patronage in Exhibit VIII.A.3., financial forecasts in the form of pro-forma financial statements in Exhibit VIII.A.4. and projections of tax revenues in Exhibit VIII.B.4., in each case,

on a high-, average- and low-case basis under <u>one</u> scenario featuring intra-Region competition. In an Application that does not present binding alternative proposals, an Applicant has discretion whether to include a competition scenario and, if included, what assumptions inform that competition scenario. If an Application does not include binding alternative proposals, then the sole proposal, which must satisfy the Minimum Capital Investment requirement if <u>no</u> License is awarded for another Gaming Facility in the same Region, will also apply if a License <u>is</u> awarded for another Gaming Facility in the same Region.

c. The Board anticipates that Applicants' financing plans, arrangements and agreements will be subject to conditions that are usual and customary for significant projects similar in size and scope to the proposed gaming facilities. However, an Application that describes financing plans, arrangements and agreements that are conditioned on a License <u>not</u> being awarded for another Gaming Facility in the same region would be non-conforming. Applications may describe financing conditions related to competition that are less than a complete prohibition on intra-Region competition (e.g., that apply to a defined area that does not include most of the respective Region). The Board expects that the financing conditions for the proposed Gaming Facility will be a material consideration in evaluating, pursuant to the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law, the relative value that the Application offers to the State, the zone and the Region in which the proposed Gaming Facility is to be located.

Q.410. The earlier response to Question 176 suggests that an Applicant for a Gaming Facility in one of the "Region 1 Impacted Counties" (namely Columbia, Delaware, Greene, Sullivan or Ulster Counties) may apply in the alternative whereby two scenarios would be presented including as to "Minimum Capital Investment."

a. If the Commission sets alternative Minimum Capital Investments for these Region 1 Impacted Counties based on a second license in one of the "Region 1 Dominant Counties" (Orange or Dutchess County), must the Applicant provide an alternative proposal under each scenario, even if it concludes that the Minimum Capital Investment scenario involving a second license in Region 1 Dominant Counties is too high or not in the best long-term interests of the Catskills region?

b. If an Applicant is open to a second license its same county or within the same Region 1 Impacted Counties will it be precluded from applying if it determines that the Minimum Capital Investment is not feasible with a second license in a Region 1 Dominant County?

A.410.

a. See answer to Question 176.

b. See answer to Question 176.

Q.411. Has the Commission or the Division of Budget published a guidance document or table that summarizes all of the information needed to estimate fiscal impacts to state and local entities, based on anticipated net revenues from the facility operator?

A.411. No.

Q.412. Board Question, Posed For Clarification. To what extent will the Board credit an Applicant toward the Minimum Capital Investment required for capital investment that has already occurred in regard to a gaming facility project site?

A.412. The Board will issue a Guidance Document regarding credit toward the Minimum Capital Investment for capital investment already made. This Guidance will be posted on the Commission's RFA webpage and sent to official contacts of all Qualified Applicants.

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